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CA

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CA. AD RE

ca. ad re.abbr.See *capias ad respondendum* under *CAPIAS*.

CABAL

cabal (k<<schwa>>-balor k<<schwa>>-bahl). A small group of political schemers or conspirators. • The term is sometimes said to have originated as an acronym from a committee of five ministers of Charles II, whose sur-names began with C, A, B, A, and L (Clifford, Arlington, Buckingham, Ashley, and Lauderdale). Though colorful, this etymology is false: the term came into English directly from the French *cabale* “intrigue,” which derives ultimately from Hebrew *kabbalah* “received lore.”

CABALA

cabala (kab-<<schwa>>-l<<schwa>> or k<<schwa>>-bahl-<<schwa>>). An esoteric or obscure doctrine.

CABALLERIA

caballeria (kah-bah-ye-ree-ah). [Spanish] Spanish law. An allotment of land in regions formerly conquered by Spain, such as Mexico and the southwestern United States. • Originally a Spanish feudal tenure held by a soldier, a *caballeria* eventually came to refer to an area of land. It usu. measures 100 by 200 feet in the United States, and between 30 and 200 acres in Mexico and other former Spanish territories.

CABINET

cabinet. (often cap.) The advisory council to an executive officer, esp. the President. • The President's cabinet is a creation of custom and tradition, dating back to the term of George Washington. The U.S. Constitution alludes to a group of presidential advisers — the President “may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices” (art. II, § 2, cl. 1) — but the term *cabinet* is not specifically mentioned. The cabinet today comprises the heads of the 15 executive departments: the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the At-torney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Sec-retary of Labor, the Secretary of Health and Human Services, the

Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, and the Secretary of Homeland Security. Other officials, such as the U.S. ambassador to the United Nations and the director of the Office of Management and the Budget, have been accorded cabinet rank. [Cases: United States 35. C.J.S. United States §§ 23, 53, 56–57.]

inner cabinet. The heads of the departments of State, Treasury, Defense, and Justice. • This group is so called because in most administrations it tends to be closer to the executive and more influential than the rest of the cabinet (the outer cabinet).

kitchen cabinet. An unofficial and informal body of noncabinet advisers who often have more sway with the executive than the real cabinet does. • This term was first used derisively in reference to some of President Andrew Jackson's advisers, who, because of their reputation for unpolished manners, were supposedly not important enough to meet in the formal rooms of the White House.

“The term [kitchen cabinet] began to lose its sting after Jackson's time. But because most Presidents do have circles of personal friends, the idea remains. Theodore Roosevelt had his ‘tennis cabinet.’ Jonathan Daniels referred to Warren Harding's ‘poker cabinet.’ Herbert Hoover had an exercise-loving ‘medicine ball cabinet.’ Even governors can play the game. In writing of New York's Alfred Smith, Ed Flynn mentions the ‘golfing cabinet.’” William Safire, *Safire's New Political Dictionary* 389 (1993).

CABLE AND SATELLITE DIRECTIVE

Cable and Satellite Directive. See DIRECTIVE ON THE COORDINATION OF CERTAIN RULES CONCERNING COPYRIGHT AND NEIGHBOURING RIGHTS APPLICABLE TO SATELLITE BROADCASTING AND CABLE RETRANSMISSION .

CABOTAGE

cabotage (kab-*<<schwa>>-tij*). Int'l law. 1. The carrying on of trade along a country's coast; the transport of goods or passengers from one port or place to another in the same country. • The privilege to carry on this trade is usu. limited to vessels flying the flag of that country. 2. The privilege of carrying traffic between two ports in the same country. 3. The right of a foreign airline to carry passengers and cargo between airports in the same country.

“Some writers maintain [that cabotage] should be applied only to maritime navigation; in this context one can distinguish between petit cabotage — transport between ports situated on the same sea (e.g. Bordeaux–Le Havre) — and grand cabotage — transport between ports situated on different seas (e.g. Bordeaux–Marseille). However, the term is also properly applied to transport between two inland points on an international river within one State, although the term grand cabotage is sometimes incorrectly applied to transnational transport between the inland ports of different riparian States on the same waterway. River cabotage properly so called is sometimes also referred to as local transport. Finally, the term has also been adopted to describe commercial air transport between airports situated in the same State.” Robert C. Lane, “Cabotage,” in 1 *Encyclopedia of Public International Law* 519–20 (1992).

CA'CANNY STRIKE

ca'canny strike. See STRIKE.

CACICAZGOS

cacicazgos (kah-see-kahz-gohs). Land held in entail by caciques (leaders of Indian villages) and their descendants in Spanish America.

CADASTRE

cadastre (k<<schwa>>-das-t<<schwa>>r). A survey and valuation of real estate in a county or region compiled for tax purposes. — Also spelled cadaster.

CADENA

cadena (ka-day-n<<schwa>>). [Spanish “chain”] Spanish law. A period of imprisonment; formerly, confinement at hard labor while chained from waist to ankle.

cadena perpetua (ka-day-n<<schwa>> p<<schwa>>r-pet-w<<schwa>>). Life imprisonment.

cadena temporal (ka-day-n<<schwa>> tem-por-ahl). Imprisonment for a term less than life.

CADERE

cadere (kad-<<schwa>>-ree), vb. [Latin “to fail”] Hist. 1. To end, cease, or fail. • This term usu. refers to the failure of a writ action. Cadit breve, for example, means “the writ fails.” 2. To be changed or turned into. • Cadit assisa in juratum means “the assize is changed into a jury.”

CADIT QUAESTIO

cadit quaestio (kay-dit kwes-chee-oh). [Latin] Hist. The question falls to the ground; the dispute is over.

CADUCA

caduca (k<<schwa>>-d[y]oo-k<<schwa>>), n. pl. [Latin “fallen things”] 1. Civil law. Heritable property; property descending to an heir. 2. Roman law. Property forfeited for crime. See LAPSE. 3. Roman law. Property that either was without an heir or could not be taken by the testamentary heir or legatee. • In many cases, the property would escheat to the state. See ESCHEAT.

CADUCARY

caducary (k<<schwa>>-d[y]oo-k<<schwa>>-ree), adj. (Of a bequest or estate) subject to, relating to, or by way of escheat, lapse, or forfeiture of property <the statute was intended to waive the rights of the caducary heirs>.

CADUCE

caduce (k<<schwa>>-d[y]oos), vb. To take by escheat or lapse <the government caduced the unclaimed mineral royalties>.

CADUCITY

caducity (k<<schwa>>-d[y]oo-s<<schwa>>-tee), n. The lapse of a testamentary gift <the testator failed to provide a contingency for the caducity of the legacy>.

CAETERIS PARIBUS

caeteris paribus. See CETERIS PARIBUS.

CAETERIS TACENTIBUS

caeteris tacentibus. See CETERIS TACENTIBUS.

CAETERORUM ADMINISTRATION

caeterorum administration. See ADMINISTRATION.

C.A.F.

c.a.f. Cost, assurance, and freight. • This term is synonymous with C.I.F. [Cases: Sales 201(4). C.J.S. Sales §§ 224–227.]

“[I]n a French contract the term ‘C.A.F.’ does not mean ‘Cost and Freight’ but has exactly the same meaning as the term ‘C.I.F.’, since it is merely the French equivalent of that term. The ‘A’ does not stand for ‘and’ but for ‘assurance,’ which means insurance.” William D. Hawkland, Uniform Commercial Code Series § 2-320 (1984).

CAFC

CAFC.abbr. UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

CAFETERIA PLAN

cafeteria plan. An employee fringe-benefit plan allowing a choice of basic benefits up to a certain dollar amount. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

CAHOOTS

cahoots (k<<schwa>>-hoots). Slang. Partnership, esp. in an illegal act; collusion <the lawyer was in cahoots with her client>.

CAIRNS'S ACT

Cairns's Act (kairn-z<<schwa>>z). Hist. An 1858 statute that expanded the relief available in England's chancery courts to include monetary damages in addition to injunctive relief. • Cairns's Act was superseded by the Judicature Acts of 1873–1875. — Also spelled Cairns' Act. Cf. JUDICATURE ACTS .

CALANDRA<TT> RULE

Calandra rule (k<<schwa>>-lan-dr<<schwa>>). The doctrine that a grand-jury witness may be compelled to answer questions about certain items, even though the items were obtained by the

police illegally. *United States v. Calandra*, 414 U.S. 338, 94 S.Ct. 613 (1974). [Cases: Grand Jury 36.]

CALCULATED AMBIGUITY

calculated ambiguity. See AMBIGUITY.

CALDWELL ERROR

Caldwell error. See ERROR(2).

CALEFAGIUM

calefagium (kal-i-fay-jee-<<schwa>>m), n. Hist. A feudal right to take wood from the King's forest or the lord's estate.

CALENDAR

calendar, n. 1. A systematized ordering of time into years, months, weeks, and days; esp., the Gregorian calendar established by Pope Gregory XIII in 1582 and adopted in Great Britain in 1752. • The Gregorian calendar is used throughout the Western world. [Cases: Time 1. C.J.S. Time § 2.]

Gregorian calendar. See NEW STYLE.

Julian calendar. See OLD STYLE.

2. A court's list of civil or criminal cases. [Cases: Criminal Law 632(2); Trial 9. C.J.S. Criminal Law § 1144; Trial § 60.]

court calendar. See COURT CALENDAR.

short-cause calendar. A trial calendar on which a short-cause trial may be scheduled for the 10th day after the opposing party is given notice. • The request for scheduling must include an affidavit that the trial will take no longer than a certain specified period (e.g., an hour).

special calendar. A calendar marked with court cases that have been specially set for hearing or trial. See special setting under SETTING. [Cases: Trial 13. C.J.S. Trial §§ 77, 81–90.]

trial calendar. See DOCKET(2).

3. A list of bills reported out of a legislative committee for consideration by the entire legislature. 4. Parliamentary law. AGENDA. — Also termed calendar of business.

action calendar. The list of business awaiting a deliberative assembly's vote. — Also termed action agenda.

consent calendar. A list of business awaiting a deliberative assembly's vote that is not expected to be substantially opposed and is therefore scheduled for a vote without debate, or for automatic adoption unless a member objects. — Also termed consent agenda; unanimous-consent agenda; unanimous-consent calendar.

“An assembly with a large number of routine or noncontroversial matters on its agenda may find it not only convenient but expeditious to consider these matters under unanimous consent procedure. This gives every member an opportunity to object. At the same time, it gives the presiding officer an opportunity to dispose of a great deal of the agenda confronting the assembly quickly and efficiently, particularly when it would be most helpful to the assembly to get its job done. This can even be done by taking en bloc action (that is, disposing of various items at the same time without taking separate consideration of them) when matters are not controversial or are of minor importance to the assembly, though every member has the right to object.” Floyd M. Riddick & Miriam H. Butcher, *Riddick's Rules of Procedure* 56 (1985).

debate calendar.The list of business that is awaiting a deliberative assembly's vote and that is not on the consent calendar. — Also termed debate agenda.

report calendar.The list of business coming before a deliberative assembly for information only rather than for its vote. • An item on the report calendar may be the subject of a vote in the future. — Also termed report agenda.

special-order calendar.The list of business scheduled as special orders. — Also termed special-order agenda. See special order under ORDER(4).

unanimous-consent calendar.See consent calendar.

calendar, vb.1. To place an important event on a calendar, esp. so that the event will be remembered. 2. To place a case on a calendar.

CALENDAR CALL

calendar call.A court session in which the judge calls each case awaiting trial, determines its status, and assigns a trial date.

CALENDAR DAY

calendar day.See DAY.

CALENDAR MONTH

calendar month.See MONTH(1).

CALENDAR MOTION

calendar motion.See MOTION(1).

CALENDAR OF PRISONERS

calendar of prisoners.Hist. A list kept by the sheriffs containing the names of all the prisoners in custody alongside notes about each prisoner's present and past convictions.

CALENDAR YEAR

calendar year.See YEAR(1).

CALENDARS

Calends (kal-<<schwa>>ndz). Roman law. In the ancient Roman calendar, the first day of the month. — Also spelled kalends. Cf. IDES; NONES.

CALL

call, n.1. A request, demand, or command, esp. to come or assemble; an invitation or summons.

call for the orders of the day. Parliamentary law. A demand that the meeting proceed according to its order of business. — Also termed call for the regular order.

call for the regular order. See call for the orders of the day.

call of a meeting. Parliamentary law. Formal written notice of a meeting's time and place, sometimes stating its business, sent to each member in advance.

call of the house. A legislative body's order compelling each absent member's attendance, usu. instructing that the sergeant-at-arms arrest and present each absentee.

“In legislative bodies or other assemblies that have legal power to compel the attendance of their members, a procedure that can be used to obtain a quorum, if necessary, is the motion for a Call of the House. This is a motion that unexcused absent members be brought to the meeting under arrest. A Call of the House is not applicable in voluntary societies.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 40, at 339 (10th ed. 2000).

call of the roll. See roll call.

call to order. Parliamentary law. 1. The chair's declaration that a deliberative assembly has properly convened and is ready for business. — Also termed convocation. 2. The chair's request that a member follow the applicable rules or observe appropriate decorum. See DECORUM.

quorum call. A roll call to determine whether a quorum is present. See QUORUM.

roll call. Parliamentary law. A calling of the roll to take attendance or a vote. See roll-call vote under VOTE(4). — Also termed call of the roll.

2. A demand for payment of money.

margin call. A securities broker's demand that a customer put up money or stock as collateral when the broker finances a purchase of securities. • A margin call usu. occurs when the market prices of the securities are falling. — Also termed maintenance call. [Cases: Brokers 24(2). C.J.S. Brokers §§ 71–72.]

3. See call option under OPTION. 4. A demand for the presentation of a security (esp. a bond) for redemption before the maturity date. [Cases: Corporations 473. C.J.S. Corporations § 670.] 5. A landmark designating a property boundary. • The landmarks are chosen by the surveyor and recorded in his field notes or in the accompanying deed. See METES AND BOUNDS.

call, vb. 1. To summon. 2. To demand payment of money. 3. To redeem (a bond) before maturity.

CALLABLE

callable,adj. (Of a security) redeemable by the issuing corporation before maturity. See REDEMPTION. [Cases: Corporations 68. C.J.S. Corporations §§ 177, 180–183.]

CALLABLE BOND

callable bond.See redeemable bond under BOND(3).

CALLABLE PREFERRED STOCK

callable preferred stock.See STOCK.

CALLABLE SECURITY

callable security.See redeemable security under SECURITY.

CALLED MEETING

called meeting.See special meeting under MEETING.

CALL EQUIVALENT POSITION

call equivalent position.Securities. A security position that increases in value as the value of the underlying equity increases. • It includes a long convertible security, a long call option, and a short put option. SEC Rule 16a-1(b) (17 CFR § 240.16a-1(b)). [Cases: Securities Regulation 5.25(3). C.J.S. Securities Regulation §§ 28–29.]

CALL FOR THE ORDERS OF THE DAY

call for the orders of the day.See CALL(1).

CALL FOR THE REGULAR ORDER

call for the regular order.See call for the orders of the day under CALL(1).

CALLING TO THE BAR

calling to the bar.See CALL TO THE BAR.

CALL LOAN

call loan.See LOAN.

CALL OF A MEETING

call of a meeting.See CALL(1).

CALL OF THE HOUSE

call of the house.See CALL(1).

CALL OF THE ROLL

call of the roll.See roll call under CALL(1).

CALL OPTION

call option. See **OPTION**.

CALL PATENT

call patent. See **PATENT**(2).

CALL PREMIUM

call premium. The percentage amount of a bond's face value that a company pays, along with the face value, to redeem a callable bond; the difference between a bond's call price and its par value.

CALL PRICE

call price. See **PRICE**.

CALL-PROTECTION CLAUSE

call-protection clause. A clause in a bond issue or a callable-preferred-stock issue prohibiting the issuer from recalling the security during a specified period. [Cases: Corporations 68, 473. C.J.S. Corporations §§ 177, 180–183, 670.]

CALL THE QUESTION

call the question. Parliamentary law. 1. (Of a member) to move to close debate. 2. (Of a deliberative assembly) to adopt a motion to close debate. See **CLOSE DEBATE** .

CALL TO ORDER

call to order. See **CALL**(1).

CALL TO THE BAR

call to the bar, n. The admission of a person to practice law. • This common phrase is a loan translation of the Latin *ad barram evocatus* (“called to the bar”). See **AD BARRAM EVOCATUS**. — Also termed calling to the bar. [Cases: Attorney and Client 7. C.J.S. Attorney and Client §§ 19–22.]

CALL UP

call up, vb. Parliamentary law. To bring before a deliberative assembly business that is ready for consideration <call up the motion to reconsider>.

CALUMNIA

calumnia (k<<schwa>>-l<<schwa>>m-nee-<<schwa>>), n. pl. [Latin “vexatious proceedings”] Roman law. Vexatiously instituted civil proceedings or knowingly false criminal charges made against someone. • The victim had civil or criminal remedies depending on the circumstances.

CALUMNIAE JUDICIUM

calumniae judicium (k<<schwa>>-l<<schwa>>m-nee-ee joo-dish-ee-<<schwa>>m). [Latin “action for vexation”] Roman law. A countersuit that a defendant who was maliciously sued could bring after winning a judgment in the principal action.

CALUMNIAE JUSJURANDUM

calumniae jusjurandum (k<<schwa>>-l<<schwa>>m-nee-ee j<<schwa>>s-j<<schwa>>-ran-d<<schwa>>m). [Law Latin “oath of calumny”] Roman law. An oath given by a litigant that he is not suing or defending vex-atiouly.

CALUMNIATE

calumniate (k<<schwa>>-l<<schwa>>m-nee-ayt), vb. To slander or make false charges against. — calumnia-tor,n.

CALUMNY

calumny (kal-<<schwa>>m-nee), n. Archaic. 1. The act of maliciously misrepresenting someone's words or actions in a way that is calculated to injure that person's reputation. 2. A false charge or imputation. — calumnious (k<<schwa>>-l<<schwa>>m-nee-<<schwa>>s), adj. — calumniator (k<<schwa>>-l<<schwa>>m-nee-ay-t<<schwa>>r), n.

CALVIN'S CASE

Calvin's case.The decision establishing that persons born in Scotland after the 1603 accession of James I to the English throne were deemed natural-born subjects of the King of England and could inherit English land.Calvin v. Smith, 7 Eng. Rep. 1, 2 S.T. 559 (1608).

CALVO CLAUSE

Calvo clause (kahl-voh). A contractual clause by which an alien waives the right to invoke diplomatic immunity. • Such a clause typically appears in a contract between a national government and an alien.

CALVO DOCTRINE

Calvo doctrine.Int'l law. The rule that resident aliens have the same rights to protection as citizens, but no more. • This doctrine, which sought to establish a minimum international standard for the treatment of aliens, was developed by the Argentinian jurist Carlos Calvo in his treatise *Le droit international théorique et pratique* (5th ed. 1896). The doctrine was intended to prevent aliens from abusing their right of diplomatic protection. It was re-jected by many states on the ground that the doctrine sought to deprive states of their right to protect their citizens in countries when the rights of the general population fell below the minimum international standards.

CAMBIALE JUS

cambiale jus (kam-bee-ay-lee j<<schwa>>s). [Latin “law of exchange”] The law of commercial exchange.

CAMBIATOR

cambiator (kam-bee-ay-t<<schwa>>r).Hist. An exchanger, usu. of money (cambiatores monetae).

CAMBIST

cambist (kam-bist). [fr. Latin cambiare “to exchange”] A broker who trades promissory notes or bills of exchange. — Also termed cambiator.

CAMBIUM

cambium (kam-bee-<<schwa>>m). [Law Latin “exchange”] Hist. 1.An exchange of money, debt, or land.

cambium locale.A contract of exchange in which a person agrees to pay a sum of money at one location in consideration of money received at another location. — Also termed cambium mercantile; cambium trajectitium.

cambium reale.An exchange of land. — Also termed cambium manuale.

2. A mercantile contract in which the parties agree to exchange money for money; a bill of exchange. — Also termed escambium. 3.Eccles. law. An exchange of money that potentially allows one party to profit. • Historically, most forms of cambium were forbidden under laws against usury but were gradually allowed as a fair recompense for trouble and risk. Cf. (in sense 3) USURY.

CAMERA

camera (kam-<<schwa>>-r<<schwa>>). [Latin] Chamber; room. See IN CAMERA.

CAMERA REGIS

camera regis (kam-<<schwa>>-r<<schwa>> ree-jis). [Latin “chambers of the king”] Hist. A locale that the king takes a particular interest in, usu. expressed as a royal privilege benefiting a city.

CAMERARIUS

camerarius (kam-<<schwa>>-rair-ee-<<schwa>>s). [fr. Latin camera “chamber”] Hist. 1.A chamberlain or other treasurer in charge of public money. 2.BAILIFF.

CAMERA SCACCARII

Camera Scaccarii.See EXCHEQUER CHAMBER.

CAMERA STELLATA

Camera Stellata (kam-<<schwa>>-r<<schwa>> st<<schwa>>-lay-t<<schwa>>). [Law Latin] See STAR CHAMBER, COURT OF.

CAMPERS

campers.Hist. The share of a lawsuit's proceeds payable to a champertor. See CHAMPERTY.

[Cases: Champerty and Maintenance 1. C.J.S. Champerty and Maintenance, Barratry and Related Matters §§ 2–3, 5–6, 12, 14.]

CAMPIPARTIA

campipartia. See CHAMPERTY.

CAMPIPARTICEPS

campiparticeps. See CHAMPERTOR.

CAMPIPARTITIO

campipartitio (kam-p<<schwa>>-pahr-tish-ee-oh). [Law Latin] See CHAMPERTY.

CAN

can,vb.1. To be able to do something <you can lift 500 pounds>.2. To have permission (as often interpreted by courts); MAY <no appeal can be filed until the filing fee is paid>.

CANCEL

cancel,vb.1. To destroy a written instrument by defacing or obliterating it < she canceled her will by marking through it>.2. To terminate a promise, obligation, or right <the parties canceled the contract>. [Cases: Contracts 251.]

CANCELED CHECK

canceled check. See CHECK.

CANCELLARIA

cancellaria (kan-s<<schwa>>-lair-ee-<<schwa>>). [Law Latin] See CHANCERY (1). — Also termed curia cancellaria.

CANCELLARIUS

cancellarius (kan-s<<schwa>>-lair-ee-<<schwa>>s). [Law Latin] 1. A chancellor, scrivener, or notary. 2. See LORD CHANCELLOR.

CANCELLATION

cancellation,n.1. The act of defacing or obliterating a writing (as by marking lines across it) with the intention of rendering it void. 2. An annulment or termination of a promise or an obligation. [Cases: Cancellation of Instruments 1; Contracts 249. C.J.S. Cancellation of Instruments; Rescission §§ 2–7; Contracts §§ 422, 424, 427–428, 456, 465–466, 484.]

flat cancellation. The cancellation of an insurance policy without any charge to the insured. [Cases: Insurance 1933.]

3. An equitable remedy by which courts call in and annul outstanding void or rescinded instruments because they may either spawn vexatious litigation or cloud someone's title to property. [Cases: Cancellation of Instruments 1. C.J.S. Cancellation of Instruments; Rescission

§§ 2–7.] 4.Trademarks. The removal of a trademark from the Principal Register. • A trademark already on the Principal Register can be challenged by a person who claims to be damaged by the placement. For five years after a mark is allowed, it can be canceled for any reason that would have blocked allowance of the application. After that time, if the owner files a declaration under § 15, the grounds for cancellation are more restricted. See INCONTESTABILITY STATUS. Cf. OPPOSITION. [Cases: Trade Regulation 281. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 150, 188, 191–192.] — cancel,vb. — cancelable,adj.

CANCELLATION CLAUSE

cancellation clause.A contractual provision allowing one or both parties to annul their obligations under certain conditions. — Also termed termination clause. [Cases: Contracts 217, 250. C.J.S. Contracts §§ 436–443, 446, 448–449, 462, 500–501.]

CANCELLATURA

cancellatura.Hist. See CANCELLATION.

CANCELLED CHECK

cancelled check.See CHECK.

CANCELLI

cancelli (kan-sel-I). [Latin “lattice, grille”] Archaic. 1. Lines drawn on a writing, esp. a will, indicating its revocation. See CANCELLATION(1).2.Hist. The rails or latticework enclosing the bar of a court.

C & F

C & F.abbr.COST AND FREIGHT. — Also spelled CandF.

CANDIDATE

candidate,n.[fr. Latin candidatus, “clothed in white”; fr. candidus, “white,” from the white toga worn by a can-didate for public office in ancient Rome as a symbol of clean government] An individual seeking nomination, election, or appointment to an office, membership, award, or like title or status. • A candidate for election becomes a “nominee” after being formally nominated. Cf. NOMINEE(1).

CANDLEMAS

Candlemas. See quarter day under DAY.

CANFARA

canfara (kan-f<<schwa>>-r<<schwa>>). [Law Latin] Hist. A trial by hot iron, formerly used in England. See ordeal by fire under ORDEAL.

CANON

canon (kan-<<schwa>>n), n.1. A rule or principle, esp. one accepted as fundamental.

canon of construction. A rule used in construing legal instruments, esp. contracts and statutes. • Although a few states have codified the canons of construction — examples of which are *contra proferentem* and *eiusdem generis* — most jurisdictions treat the canons as mere customs not having the force of law. — Often shortened to canon. — Also termed rule of construction; rule of interpretation. [Cases: Contracts 143; Statutes 174. C.J.S. Contracts § 302; Statutes § 306.]

“A frequent criticism of the canons [of construction], made forcefully by Professor Llewellyn many years ago, is that for every canon one might bring to bear on a point there is an equal and opposite canon. This is an exaggeration; but what is true is that there is a canon to support every possible result.” Richard A. Posner, *The Federal Courts: Crisis and Reform* 276 (1985).

canon of descent. (usu. pl.) A common-law rule governing intestate succession. • In England, canons of descent tended to concentrate landholdings in the hands of a few people, an approach generally rejected in the United States. — Also termed canon of inheritance. [Cases: Descent and Distribution 1–19. C.J.S. Conflict of Laws §§ 71, 84; Descent and Distribution §§ 1–22; Right of Privacy and Publicity § 42.]

“The common-law canons of descent tended to prevent the diffusion of landed property, and to promote its accumulation in the hands of a few. The principles sprang from the martial genius of the feudal system. In the United States the English common law of descents, in its essential features, has been rejected; each State has established a law for itself.” William C. Anderson, *A Dictionary of Law* 349 (1889).

2. (usu. cap.) A maxim stating in general terms the standards of professional conduct expected of lawyers. • The Model Code of Judicial Conduct (1990) contains five canons and hundreds of specific rules. [Cases: Attorney and Client 32(2). C.J.S. Attorney and Client § 44.] 3. A rule of ecclesiastical law. 4. A corpus of writings. 5. A clergy member on the staff of a cathedral.

honorary canon. A canon who serves without pay or other benefits.

6. A fixed regular payment or tribute made as a contribution payable to the church.

CANON EMPHYTEUTICUS

canon emphyteuticus (kan-*<<schwa>>*n em-fi-t[y]oo-ti-k*<<schwa>>*s). [Latin fr. Greek] Roman law. The annual payment that an emphyteuta made under a contract of emphyteusis. See EMPHYTEUSIS; EMPHYTEUTA.

CANONICAL

canonical (k*<<schwa>>*-non-*<<schwa>>*-k*<<schwa>>*l), adj. 1. (Of a rule or decree) prescribed by, in conformity with, or relating to canon law. 2. Orthodox; conforming to accepted rules or conventions.

CANONICAL DISABILITY

canonical disability. See DISABILITY(3).

CANONICAL IMPEDIMENT

canonical impediment. See IMPEDIMENT.

CANONICAL LAW

canonical law. See CANON LAW.

CANONICAL PURGATION

canonical purgation. See PURGATION.

CANONIST

canonist (kan-<<schwa>>n-ist), n. An expert in canon law; esp., a canon lawyer or professor of ecclesiastical law.

CANON LAW

canon law. 1. A body of western ecclesiastical law that was compiled from the 12th to 14th centuries. • It has grown steadily since that time, and is now codified in the Codex Juris Canonici of 1983, replacing that of 1918. — Also termed corpus juris canonici; papal law; jus canonicum. 2. A body of law developed within a particular religious tradition. — Also termed church law; canonical law. Cf. ECCLESIASTICAL LAW. [Cases: Religious Societies 5.C.J.S. Religious Societies § 6.]

“The indirect contributions of the canon law to the development of English law were as great as, and the direct contributions far greater than, those made by the civil law. Indirectly the canon lawyers gave much even to the purely secular law of England, because, during the early Middle Ages, most of the judges or the royal courts were ecclesiastics acquainted with the chief doctrines of canon law.... The direct influence of the canon law in England resulted from its being the law which was administered in the courts of the Church.” W.J.V. Windeyer, *Lectures on Legal History* 41 (2d ed. 1949).

“Canon law has its roots in theology. But, so far as England is concerned, it may be defined as so much of the law of England as is concerned with the regulation of the affairs of the Church of England.” E. Garth Moore & Timothy Briden, *Moore's Introduction to English Canon Law* 9 (2d ed. 1985).

CANON OF CONSTRUCTION

canon of construction. See CANON(1).

CANON OF DESCENT

canon of descent. See CANON(1).

CANON OF INHERITANCE

canon of inheritance. See canon of descent under CANON(1).

CANT

cant (kant). Civil law. A method of dividing commonly held property by awarding it to the

highest-bidding owner on condition that the successful bidder must buy out each coowner's interest. — Also termed licitation.

CANTRED

cantred (kan-tred). [fr. Welsh cant “hundred” + tref “village”] See HUNDRED.

CANUM

canum (kay-n<<schwa>>m). [Law Latin] Hist. A duty or tribute payable from a tenant to a lord, usu. consisting of produce from the land.

CANVASS

canvass,vb. 1. To examine in detail; scrutinize <that issue has been repeatedly canvassed by our state's courts>.2. To formally count ballots and report the returns <canvass the votes>.

“When all the ballots have been collected, including those of the presiding officer, the secretary, and the tellers, the ballots are canvassed by the tellers. Canvassing the ballots means more than just counting. It includes evaluating ballots to identify those that are invalid, blank, cast for illegal nominees, illegible, abstaining, and the like, and reporting the total results to the presiding officer for his announcement of the results.” Ray E. Keesey, *Modern Parliamentary Procedure* 113 (1994).

3. To solicit political support from voters or a voting district; to take stock of public opinion <the candidate is actively canvassing the Western states>. — canvass,n.

CAP

cap,n. An upper limit, such as a statutory limit on the recovery in a tort action or on the interest a bank can charge. — cap,vb.

CAPACITATE

capacitate (k<<schwa>>-pas-<<schwa>>-tayt), vb. To qualify; to make legally competent. — capacitation (k<<schwa>>-pas-<<schwa>>-tay-sh<<schwa>>n), n.

CAPACITY

capacity. 1. The role in which one performs an act <in her corporate capacity>.

proprietary capacity.The capacity of a city or town when it engages in a business-like venture rather than a governmental function. See PROPRIETARY FUNCTION. [Cases: Municipal Corporations 57. C.J.S. Mu-nicipal Corporations §§ 104, 106, 108, 110–115, 117–118, 122, 137–138, 143, 145–146.]

representative capacity.The position of one standing or acting for another, esp. through delegated authority <an agent acting in a representative capacity for the principal>. [Cases: Principal and Agent 1. C.J.S. Agency §§ 2, 4–6, 23, 25–27, 33, 38–40, 58; Architects § 21.]

2. The power to create or enter into a legal relation under the same circumstances in which a

normal person would have the power to create or enter into such a relation; specif., the satisfaction of a legal qualification, such as legal age or soundness of mind, that determines one's ability to sue or be sued, to enter into a binding contract, and the like <she had full capacity to bind the corporation with her signature>. • Unless necessary to show the court's jurisdiction, a plaintiff's pleadings need not assert the legal capacity of any party. A party wishing to raise the issue of capacity must do so by specific negative pleading. Fed. R. Civ. P. 9(a). — Also termed (specif.) capacity to sue; power over oneself. See **STANDING**. Cf. **LACK OF CAPACITY**. [Cases: Contracts 11; Federal Civil Procedure 111; Infants 70. C.J.S. Contracts § 32; Infants §§ 215, 226.] 3. The mental ability to understand the nature and effect of one's acts <his acute pain reduced his capacity to understand the hospital's admission form>. — Also termed mental capacity; sane memory. See **COMPETENCY**.

criminal capacity.The mental ability that a person must possess to be held accountable for a crime; the ability to understand right from wrong. See **INSANITY**; **INFANCY**. [Cases: Criminal Law 46; Homicide 815. C.J.S. Criminal Law §§ 96–98, 113.]

diminished capacity.An impaired mental condition — short of insanity — that is caused by intoxication, trauma, or disease and that prevents a person from having the mental state necessary to be held responsible for a crime. • In some jurisdictions, a defendant's diminished capacity can be used to determine the degree of the offense or the severity of the punishment. — Also termed diminished responsibility. Cf. **INSANITY**. [Cases: Criminal Law 46; Homicide 816. C.J.S. Criminal Law §§ 96–98, 113.]

disposing capacity.See **testamentary capacity**.

testamentary capacity.The mental ability that a person must have to prepare a valid will. • This capacity is often described as the ability to recognize the natural objects of one's bounty, the nature and extent of one's estate, and the fact that one is making a plan to dispose of the estate after death. Traditionally, the phrase “of legal age and sound mind” refers to the testator's capacity. — Also termed disposing capacity; disposing mind; sound mind. See **age of capacity** under **AGE**. [Cases: Wills 21–55. C.J.S. Indians § 117; Wills §§ 2, 4–40.]

4. The ability or power to do or experience something.

decreased capacity.A diminution in a person's physical ability because of an illness, injury, or impairment.

CAPACITY DEFENSE

capacity defense. See **DEFENSE**(1).

CAPACITY TO SUE

capacity to sue. See **CAPACITY**(2).

CAPAX DOLI

capax doli (kay-paks doh-II). See **DOLI CAPAX**.

CAPAX NEGOTII

capax negotii (kay-paks ni-goh-shee-I), adj. [Latin “capable of entering into a transaction”] (Of a person) having capacity to enter into a contract; capable of transacting business.

CAPE

cape (kay-pee). Hist. [Latin “take”] A writ filed to recover possession of land.

cape magnum (kay-pee mag-n<<schwa>>m). [Latin “grand” cape] A writ granting possession of land before a tenant's appearance in the action. — Also termed magnum cape; grand cape.

cape parvum (kay-pee pahr-v<<schwa>>m). [Latin “little” cape] A writ for the recovery of land issuing after the appearance of the tenant in the action. — Also termed petit cape.

“Cape is a writ judicial touching plee of land or tenements, so tearmed (as most writs be) of that word in itselife, which carieth the especiallest intention or end thereof. And this writ is divided in (Cape magnum, & Cape parvum:) both which ... take hold of things immoveable, and seeme to differ betweene themselves in these points. First, because (cape magnum) or the (grand Cape) lyeth before appearance, and (Cape parvum) afterward. Secondly, the (Cape magnum) summoneth the tenent to aunswer to the default, and over to the demaundant: (Cape parvum) summoneth the tenent to aunswer to the default onely: and therefore is called (Cape parvum) or in French English (petit Cape.)” John Cowell, *The Interpreter* (1607).

CAPIAS

capias (kay-pee-<<schwa>>s orkap-ee-<<schwa>>s). [Latin “that you take”] Any of various types of writs that require an officer to take a named defendant into custody. • A capias is often issued when a respondent fails to appear or when an obligor has failed to pay child support. — Also termed writ of capias; body execution. [Cases: Process 9.]

capias ad audiendum judicium (ad aw-dee-en-d<<schwa>>m joo-dish-ee-<<schwa>>m). [Latin “that you take to hear the judgment”] In a misdemeanor case, a writ issued to bring the defendant to hear the judgment to be imposed after having failed to appear.

capias ad computandum (ad kom-pyoo-tan-d<<schwa>>m). [Latin “that you take for computation”] Hist. A writ issued when a debtor has failed to appear and make account after losing in an action of account render. See ACCOUNTING(3).

capias ad faciendum. Hist. A writ used to enforce a creditor's judgment against a debtor by authorizing the debtor's arrest and imprisonment.

capias ad respondendum (ad ree-spon-den-d<<schwa>>m). [Latin “that you take to answer”] A writ commanding the sheriff to take the defendant into custody to ensure that the defendant will appear in court. — Abbr. ca. resp.; ca. re.; ca. ad re.

capias ad satisfaciendum (ad sat-is-fay-shee-en-d<<schwa>>m). [Latin “that you take to satisfy”] Hist. A post-judgment writ commanding the sheriff to imprison the defendant until the

judgment is satisfied. — Abbr. ca. sa. [Cases: Execution 421. C.J.S. Executions § 24.]

capias extendi facias (ek-sten-dIfay-shee-*<<schwa>>s*). [Latin “take for extending”] Hist. A writ of execution issued against one who is indebted to the Crown, commanding the sheriff to arrest the debtor.

capias in withernam (in with-*<<schwa>>r-nahm*). [Law Latin “taking again”] A writ authorizing the sheriff to seize the goods or cattle of a wrongful distrainer. — Also termed writ of withernam. See WITHERNAM.

capias pro fine (proh fI-nee). [Latin “that you take for the fine”] A writ for the arrest of a person who had not paid an imposed fine. — Also termed *capiatur pro fine*. [Cases: Fines 9.]

capias utlagatum (*<<schwa>>t-l<<schwa>>-gay-t<<schwa>>m*). [Latin “you take the outlaw”] A writ commanding the arrest of an outlawed person. [Cases: Criminal Law 1000.]

CAPIENDO SECURITATEM PRO DUPLICATIONE FEUDIFIRMAE

capiendo securitatem pro duplicatione feudifirmae (kap-ee-en-doh si-kyuur-*<<schwa>>-tay-t<<schwa>>m* proh d[y]oo-pI-kay-shee-oh-nee fyoo-di-f*<<schwa>>r-mee*). [Law Latin “by taking caution for the payment of a double of the feu-duty”] Hist. In a precept for entry of an heir, a clause that cautions against taking a double feu payment when the investiture did not expressly provide for it.

CAPITA

capita. See PER CAPITA.

CAPITAL

capital, adj. 1. Of or relating to economic or financial capital <capital market>. 2. Punishable by execution; involving the death penalty <a capital offense>. [Cases: Sentencing and Punishment 1610. C.J.S. Criminal Law §§ 1529–1530, 1606–1607.]

capital, n. 1. Money or assets invested, or available for investment, in a business. 2. The total assets of a business, esp. those that help generate profits. 3. The total amount or value of a corporation's stock; corporate equity. See capital stock under STOCK. [Cases: Corporations 61. C.J.S. Corporations § 130.]

actual capital. Funds generated by the sale of stock. See capital stock (1) under STOCK.

authorized capital. See nominal capital.

circulating capital. See floating capital.

debt capital. Funds raised by issuing bonds.

equity capital. Funds provided by a company's owners in exchange for evidence of ownership, such as stock. [Cases: Corporations 60. C.J.S. Corporations §§ 122–125.]

fixed capital. 1. The amount of money invested in fixed assets, such as land and machinery. 2.

Fixed assets.

floating capital. 1. Funds not allocated to a particular class of the corporation's capital stock. 2. Funds not presently invested or committed; esp., money retained for the purpose of meeting current expenditures. — Also termed circulating capital.

impaired capital. Corporate funds consisting of assets that are less than the sum of the corporation's legal capital and its liabilities.

legal capital. An amount equal to the aggregate “par” or stated value of all outstanding shares of a corporation, or, in the case of stock without par value, an amount set by the board of directors. • A minority of states require this amount to remain in the corporation to protect creditors. — Also termed stated capital. [Cases: Corporations 60. C.J.S. Corporations §§ 122–125.]

moneyed capital. Money that is invested with the intent of making a profit.

nominal capital. The minimum value of the shares that a company is authorized by its association documents to issue. — Also termed authorized capital.

paid-in capital. The money paid for the capital stock of a corporation. [Cases: Corporations 16, 60. C.J.S. Corporations §§ 41–43, 122–125.]

proprietary capital. Money that represents the initial investment in a sole proprietorship.

risk capital. 1. Money or property invested in a business venture, esp. one in which the investor has no managerial control. 2. See venture capital.

stated capital. 1. See legal capital. 2. The total equity of a corporation as it appears on the balance sheet.

subscribed capital. The total value of stock for which there are subscriptions (contracts of purchase).

venture capital. Funds invested in a new enterprise that has high risk and the potential for a high return. — Also termed risk capital. See SEED MONEY.

working capital. Current assets (such as cash, inventory, and accounts receivable) less current liabilities. • Working capital measures liquidity and the ability to discharge short-term obligations. [Cases: Corporations 152. C.J.S. Corporations §§ 295–299.]

CAPITAL ACCOUNT

capital account. See ACCOUNT.

CAPITAL ASSET

capital asset. See ASSET.

CAPITAL CONTRIBUTION

capital contribution. 1. Cash, property, or services contributed by partners to a partnership. [Cases: Partnership 72, 355. C.J.S. Partnership §§ 80, 409.] 2. Funds made available by a

shareholder, usu. without an increase in stock holdings. [Cases: Corporations 60. C.J.S. Corporations §§ 122–125.]

CAPITAL CRIME

capital crime. See capital offense under OFFENSE(1).

CAPITALE

capitale (kap-i-tay-lee). [Latin “a thing”] Hist. 1. Movable property, esp. animals (such as 100 head of cattle). • Over time, chattel became the more common term. 2. A stolen thing, or its equivalent value. Pl. capitalia.

CAPITAL EXPENDITURE

capital expenditure. An outlay of funds to acquire or improve a fixed asset. — Also termed capital improvement; capital outlay.

CAPITAL EXPENSE

capital expense. See EXPENSE.

CAPITAL FLIGHT

capital flight. The sending of large amounts of investment money out of a country, usu. as a result of panic caused by political turmoil or a severe recession.

CAPITAL GAIN

capital gain. The profit realized when a capital asset is sold or exchanged. — Also termed capital gains. Cf. ordinary gain under GAIN(3); capital loss under LOSS. [Cases: Internal Revenue 3230.1–3234. C.J.S. Internal Revenue §§ 128–129, 132, 490–491.]

“Throughout most of the history of income taxation in the U.S., a distinction has been drawn between the rate of taxation on ‘ordinary income’ (or ordinary loss) and ‘capital gain’ (or capital loss). ‘Capital gain’ refers to the income from certain transactions in some assets, called capital assets, or from other transactions that Congress has said should be taxed as capital gain.... The most common form of capital gain or loss transaction is a sale of an asset such as a share of stock or a parcel of land, for cash.” John K. McNulty, *Federal Income Taxation of Individuals in a Nutshell* 420 (5th ed. 1995).

long-term capital gain. The profit realized from selling or exchanging a capital asset held for more than a specified period, usu. one year. [Cases: Internal Revenue 3260. C.J.S. Internal Revenue § 127.]

short-term capital gain. The profit realized from selling or exchanging a capital asset held for less than a specified period, usu. one year. • It is treated as ordinary income under current federal tax law. [Cases: Internal Revenue 3260. C.J.S. Internal Revenue § 127.]

CAPITAL-GAIN DISTRIBUTION

capital-gain distribution. See capital-gain dividend under DIVIDEND.

CAPITAL-GAIN DIVIDEND

capital-gain dividend. See DIVIDEND.

CAPITAL GAINS

capital gains. See CAPITAL GAIN.

CAPITAL-GAINS TAX

capital-gains tax. See TAX.

CAPITAL GOODS

capital goods. See GOODS.

CAPITAL IMPAIRMENT

capital impairment. The financial condition of a corporation whose assets are less than the sum of its legal capital and its liabilities.

CAPITAL IMPROVEMENT

capital improvement. See CAPITAL EXPENDITURE.

CAPITALIS

capitalis (kap-i-tay-lis), adj. [Latin] 1. Roman law. (Of a crime) punishable by death, loss of liberty, or loss of citizenship. See CAPUT. 2. Hist. (Of a person or judicial proceeding) that is principal or chief.

capitalis, n. [Latin "chief"] Hist. A principal (or chief) person, object, or judicial proceeding.

CAPITALIS BARO

capitalis baro (kap-i-tay-lis bar-oh). [Latin "chief baron"] Hist. The chief baron of the Court of Exchequer. See CHIEF BARON.

CAPITALIS CUSTOS

capitalis custos (kap-i-tay-lis k<<schwa>>s-tohs). [Latin "chief guardian"] Hist. 1. A chief warden or magistrate. 2. Loosely, a mayor.

CAPITALIS DOMINUS

capitalis dominus (kap-i-tay-lis dom-<<schwa>>-n<<schwa>>s). [Latin "chief lord"] Hist. A tenant's immediate lord; CHIEF LORD.

CAPITALIS JUSTICIARIUS

capitalis justiciarius (kap-i-tay-lis j<<schwa>>s-tish-ee-air-ee-<<schwa>>s). [Latin "chief justiciary"] Hist. The principal minister of state who governed when the king traveled abroad. • By

the 13th century the duties of office were more judicial than political. See JUSTICIARY(2).

CAPITALIS JUSTICIARIUS AD PLACITA CORAM REGE TENENDA

capitalis justiciarius ad placita coram rege tenenda (kap-i-tay-lis j<<schwa>>s-tish-ee-air-ee-<<schwa>>s ad plas-<<schwa>>-t<<schwa>> kor-<<schwa>>m ree-jee t<<schwa>>-nen-d<<schwa>>). [Latin] Hist. Chief justice for holding pleas before the king. • This phrase — which dates from the 13th century — referred to the chief justice of the King's Bench.

CAPITALIS JUSTICIARIUS BANCII

capitalis justiciarius bancii (kap-i-tay-lis j<<schwa>>s-tish-ee-air-ee-<<schwa>>s ban-sI). [Latin] Chief justice of the bench. • This phrase — which dates from the 13th century — referred to the chief justice of the Court of Common Pleas.

CAPITALIS JUSTICIARIUS TOTIUS ANGLIAE

capitalis justiciarius totius Angliae (kap-i-tay-lis j<<schwa>>s-tish-ee-air-ee-<<schwa>>s toh-shee-<<schwa>>s ang-gee-ee). [Latin] Hist. Chief justice of all England. • This was the title of the presiding justice in the court of aula regis.

CAPITALISM

capitalism,n. An economic system that depends on the private ownership of the means of production and on competitive forces to determine what is produced. Cf. COMMUNISM(1). — capitalist,adj. & n.

CAPITALIS PLEGIUS

capitalis plegius (kap-i-tay-lis plee-jee-<<schwa>>s). [Latin “chief pledge”] Hist.1.A chief pledge or surety. 2.BORSHOLDER.

CAPITALIS TERRA

capitalis terra (kap-i-tay-lis ter-<<schwa>>). [Latin “head-land”] Hist. A piece of land lying before, or at the head of, other land.

CAPITALIZATION

capitalization,n.1. The act or process of capitalizing or converting something into capital. 2. The amount or sum resulting from this act or process. 3. The total amount of long-term financing used by a business, including stocks, bonds, retained earnings, and other funds. 4. The total par value or stated value of the authorized or outstanding stock of a corporation.

thin capitalization.The financial condition of a firm that has a high ratio of liabilities to capital.

undercapitalization. The financial condition of a firm that does not have enough capital to carry on its business. [Cases: Corporations 1.4(1). C.J.S. Corporations §§ 9, 13.]

CAPITALIZATION ACCOUNTING METHOD

capitalization accounting method. See ACCOUNTING METHOD.

CAPITALIZATION RATE

capitalization rate. The interest rate used in calculating the present value of future periodic payments. — Also termed cap rate; income yield.

CAPITALIZATION RATIO

capitalization ratio. The ratio between the amount of capital raised and the total capitalization of the firm. — Also termed capital ratio.

CAPITALIZE

capitalize, vb. 1. To convert (earnings) into capital. 2. To treat (a cost) as a capital expenditure rather than an ordinary and necessary expense. 3. To determine the present value of (long-term income). 4. To supply capital for (a business).

CAPITALIZED EXPENSE

capitalized expense. See EXPENSE.

CAPITAL LEASE

capital lease. See LEASE-PURCHASE AGREEMENT.

CAPITAL LEVERAGE

capital leverage. The use of borrowed funds in a business to obtain a return greater than the interest rate. See LEVERAGE.

CAPITAL LOSS

capital loss. See LOSS.

CAPITAL MARKET

capital market. See MARKET.

CAPITAL OFFENSE

capital offense. See OFFENSE(1).

CAPITAL OUTLAY

capital outlay. 1. CAPITAL EXPENDITURE. 2. Money expended in acquiring, equipping, and promoting a business.

CAPITAL PUNISHMENT

capital punishment. The sentence of death for a serious crime. — Also termed death penalty. See DEATH PENALTY.

“At Common Law capital punishment was imposed for a few very serious offences such as treason, murder, rape, and burning a dwelling-house. Even as late as 1688, despite the exceptionally rigorous laws which had been enacted during the reigns of the Tudors and Stuarts, no more than about fifty offences carried the death penalty. In the eighteenth century, however, their number began spectacularly to increase.... Broadly speaking, in the course of the hundred and sixty years from the Restoration to the death of George III, the number of capital offences had increased by about one hundred and ninety.” 1 Leon Radzinowicz, *A History of English Criminal Law* § 1, at 4 (1948).

CAPITAL RATIO

capital ratio. See CAPITALIZATION RATIO.

CAPITAL RECOVERY

capital recovery. The collection of charged-off bad debt that has been previously written off against the allowance for doubtful accounts.

CAPITAL RETURN

capital return. See RETURN.

CAPITAL-RISK TEST

capital-risk test. Securities. A method of determining whether a transaction constitutes an investment contract (subject to securities laws), whereby if a substantial portion of the capital used by a franchiser to start its operations is provided by a franchisee, then the transaction is treated as an investment contract. [Cases: Securities Regulation 5.10. C.J.S. Securities Regulation §§ 3, 9–10, 33.]

CAPITAL STOCK

capital stock. See STOCK.

CAPITAL-STOCK TAX

capital-stock tax. See TAX.

CAPITAL STRUCTURE

capital structure. The mix of debt and equity by which a business finances its operations; the relative proportions of short-term debt, long-term debt, and capital stock.

CAPITAL SURPLUS

capital surplus. See SURPLUS.

CAPITAL TRANSACTION

capital transaction. A purchase, sale, or exchange of a capital asset.

CAPITANEUS

capitaneus (kap-i-tay-nee-<<schwa>>s). [Law Latin “tenant in chief”] 1.Hist. A tenant in capite; one who holds title directly from the king. — Also termed cataneus. 2.Maritime law. A ship captain or naval commander. 3. A ruler or leader.

CAPITATION

capitation. See poll tax under TAX.

CAPITATION TAX

capitation tax. See poll tax under TAX.

CAPITIS AESTIMATIO

capitis aestimatio (kap-i-tis es-ti-may-shee-oh). [Latin “valuing of a head”] Hist. A monetary estimate of a person's life, made to assess a penalty for the person's slaying. See WERGILD.

CAPITIS DEMINUTIO

capitis deminutio (kap-i-tis dem-i-n[y]oo-shee-oh). [Latin “reduction of status”] Roman law. A diminution or alteration of a person's legal status. — Also spelled capitis diminutio. See DE CAPITE MINUTIS.

“Capitis deminutio is the destruction of the ‘caput’ or legal personality. Capitis deminutio, so to speak, wipes out the former individual and puts a new one in his place, and between the old and the new individual there is, legally speaking, nothing in common. A juristic personality may be thus destroyed in one of three ways: (1) by loss of the status libertatis. This is the capitis deminutio maxima; (2) by loss of the status civitatis. This is the capitis deminutio media (magna); (3) by severance from the agnatic family. This entails capitis deminutio minima.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law 178–79* (James Crawford Ledlie trans., 3d ed. 1907).

capitis deminutio maxima (kap-i-tis dem-i-n[y]oo-shee-oh mak-si-m<<schwa>>). [Latin “maximum reduction of status”] Roman law. The diminution of a person's legal status as a result of being reduced to slavery.

capitis deminutio minima (kap-i-tis dem-i-n[y]oo-shee-oh min-i-m<<schwa>>). [Latin “minimal reduction of status”] Roman law. The diminution of a person's legal status involving a change of family, while both citizenship and freedom were retained.

capitis deminutio minor (kap-i-tis dem-i-n[y]oo-shee-oh mI-n<<schwa>>r). [Latin “minor reduction of status”] Roman law. The diminution of a person's legal status involving a loss of citizenship but not of freedom. • Under the Empire, banishment for life to an island or other restricted area had this effect. — Also termed capitis deminutio media.

CAPITULA

capitula (k<<schwa>>-pich-<<schwa>>-l<<schwa>>). [Law Latin “chapters”] Hist. 1.Collections of laws or ordinances organized under various headings. — Also termed capitulary. 2. Chapters or assemblies of ecclesiastical persons.

CAPITULA CORONAE

capitula coronae (k<<schwa>>-pich-<<schwa>>-l<<schwa>> k<<schwa>>-roh-nee). [Latin “chapters of the Crown”] Hist. A more detailed form of the articles of the eyre. See ARTICLES OF THE EYRE.

CAPITULA DE JUDAEIS

capitula de judaeis (k<<schwa>>-pich-<<schwa>>-l<<schwa>> dee joo-dee-is). [Latin “chapters on the Jews”] Hist. 1.Laws concerning the Jews. 2. Questions posed by the justices in eyre to determine the amount a Jew would pay to receive the king's protection and a license to conduct business. • The capitula de judaeis reflected the pervasive anti-Semitism of medieval England. Cf. ARTICLES OF THE EYRE.

CAPITULA ITINERIS

capitula itineris (k<<schwa>>-pich-<<schwa>>-l<<schwa>> I-tin-<<schwa>>-ris). [Law Latin “chapters of the eyre”] See ARTICLES OF THE EYRE.

CAPITULARY

capitulary (k<<schwa>>-pich-<<schwa>>-ler-ee). [Latin “chapter or section (of a code)”] 1. Any orderly and systematic collection or code of laws. See CAPITULA(1).2.Hist. A law or series of laws enacted by a Frankish king, esp. Charlemagne, dealing esp. with ecclesiastical affairs.

CAPITULATION

capitulation (k<<schwa>>-pich-<<schwa>>-lay-sh<<schwa>>n), n.1. The act of surrendering or giving in. 2.Int'l law. An agreement to surrender a fortified place or a military or naval force. • A commander in control may generally make such an agreement for the place or force. [Cases: War and National Emergency 9. C.J.S. War and National Defense § 4.] 3.Hist. An agreement between a Christian state and a non-Christian one (such as the Ottoman Empire) giving subjects of the former certain privileges in the territory of the latter. — capitulate,vb. — capitulatory,adj.

CAPJ

CAPJ.abbr.See chief administrative patent judge under JUDGE.

CAPPER

capper. 1. One who solicits business for an attorney. See BARRATRY(1); RUNNER (2).2.Slang. A person who acts as a lure for others (as in a gambling or confidence game). — Also termed (in sense 2) stool pigeon.

CAP RATE

cap rate.See CAPITALIZATION RATE.

CAPRICE

caprice (k<<schwa>>-prees), n.1. Arbitrary or unfounded motivation. 2. The disposition to change one's mind impulsively.

CAPRICIOUS

capricious (k<<schwa>>-prish-<<schwa>>s), adj.1. (Of a person) characterized by or guided by unpredictable or impulsive behavior. 2. (Of a decree) contrary to the evidence or established rules of law. Cf. ARBITRARY.

CAPTA

CAPTA.abbr.CHILD ABUSE PREVENTION AND TREATMENT ACT.

CAPTAIN-OF-THE-SHIP DOCTRINE

captain-of-the-ship doctrine.In medical-malpractice law, the doctrine imposing liability on a surgeon for the actions of assistants who are under the surgeon's control but who are employees of the hospital, not the surgeon. [Cases: Health 787.]

CAPTAIN'S MAST

captain's mast.Military law. The nonjudicial punishment of an enlisted person by a military commanding officer. • This type of punishment is usu. for a minor offense. See nonjudicial punishment under PUNISHMENT. [Cases: Armed Services 39; Military Justice 525. C.J.S. Armed Services §§ 155, 159; Military Justice §§ 24–27.]

CAPTATION

caption (kap-tay-sh<<schwa>>n).Civil law. Coercion of a testator resulting in the substitution of another person's desires for those of the testator. • The term formerly applied to the first stage of a hypnotic trance. Cf. UNDUE INFLUENCE . [Cases: Wills 154. C.J.S. Wills § 345.]

CAPTATOR

captator (kap-tay-t<<schwa>>r).Civil law. A person who obtains or tries to obtain a gift or legacy through artifice. See UNDUE INFLUENCE.

CAPTIO

captio (kap-shee-oh).Hist.1. An arrest of a person, or a seizure of a thing. 2. The holding of court.

CAPTION

caption. 1. The introductory part of a court paper stating the names of the parties, the name of the court, the docket or file number, and a description of the paper. Fed. R. Civ. P. 10(a). Cf. STYLE(1). [Cases: Federal Civil Procedure 626; Pleading 4, 43–46. C.J.S. Pleading §§ 8, 96–99, 163.] 2. The arrest or seizure of a person by legal process.

CAPTIVE

captive,n.1. A person who is unlawfully seized and held by another. Cf. PRISONER. 2.PRISONER OF WAR. 3. An animal, esp. a wild one, that is caught and kept confined.

CAPTIVE-AUDIENCE DOCTRINE

captive-audience doctrine. 1.Constitutional law. The principle that when the listener cannot, as a practical matter, escape from intrusive speech, the speech can be restricted. [Cases: Constitutional Law 90. C.J.S. Constitutional Law §§ 539, 542.] 2.Labor law. The rule that prohibits either party to a union election from making a speech on company time to a mass assembly of employees within 24 hours of an election. — Also termed captive-audience rule.

CAPTIVE INSURANCE

captive insurance.See INSURANCE.

CAPTIVE INSURANCE COMPANY

captive insurance company.See INSURANCE COMPANY.

CAPTIVE INSURER

captive insurer.See captive insurance company under INSURANCE COMPANY.

CAPTIVE LAW FIRM

captive law firm.See LAW FIRM.

CAPTURE

capture. See RULE OF CAPTURE.

CAPTURE-AND-HOLD RULE

capture-and-hold rule.Oil & gas. For royalty-calculation purposes, the doctrine that “production” occurs when oil or gas is pumped to the surface and stored, whether at the wellhead or elsewhere on the leased property. Cf. MARKETABLE-PRODUCT RULE.

CAPUT

caput (kap-<<schwa>>t), n. [Latin “head”] 1.Hist. A head, chief, or principal person. 2.Roman law. A person. 3.Roman law. A person's condition or status.

“A ‘natural,’ as opposed to an ‘artificial,’ person is such a human being as is regarded by the law as capable of rights or duties: in the language of Roman law as having a ‘status.’ ... Besides possessing this general legal capacity, or status, a man may also possess various special capacities, such as the ‘tria capita’ of liberty, citizenship, and family rights. A slave having, as such, neither rights nor liabilities, had in Roman law, strictly speaking, no ‘status,’ ‘caput,’ or ‘persona.’ ... It must however be remembered that the terms ‘persona’ and ‘caput’ were also used in popular language as nearly equivalent to ‘homo,’ and in this sense were applied to slaves as well as to freemen.” Thomas E. Holland, *The Elements of Jurisprudence* 80–81 (4th ed. 1888).

CAPUT COMITATUS

caput comitatus (kap-<<schwa>>t kom-<<schwa>>-tay-t<<schwa>>s). [Latin “head of the county”] Hist. The head of a county; a sheriff.

CAPUT GERAT LUPINUM

caput gerat lupinum (kap-<<schwa>>t jeer-<<schwa>>t loo-pl-n<<schwa>>m). [Latin “let him bear the head of a wolf”] Hist. An outlawed felon considered a pariah — a lone wolf — open to attack by anyone. See OUT-LAWRY.

“He who breaks the law has gone to war with the community; the community goes to war with him. It is the right and duty of every man to pursue him, to ravage his land, to burn his house, to hunt him down like a wild beast and slay him; for a wild beast he is; not merely is he a ‘friendless man,’ he is a wolf....Caput gerat lupinum — in these words the court decreed outlawry.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 449 (2d ed. 1899).

CAPUT MORTUUM

caput mortuum. Archaic. A matter or thing that is void as to all persons and for all purposes.

CARCANUM

carcanum (kahr-kay-n<<schwa>>m). [Latin “iron collar, pillory”] Hist. A prison or workhouse.

CARCELAGE

carcelage (kahr-s<<schwa>>-lij). [fr. Latin carcer “prison”] Hist. Prison fees.

CARCER

carcer (kahr-s<<schwa>>r), n. [Latin “jail, prison”] Hist. A prison or jail, esp. one used to detain rather than punish. • Carcer, as used in English law and Roman law, usu. referred to a jail used as a place of detention during trial or after sentence pending execution, rather than as a place of punishment. The modern term incarceration derives from this word.

CARDINAL-CHANGE DOCTRINE

cardinal-change doctrine. Contracts. The principle that if the government makes a fundamental, unilateral change to a contract beyond the scope of what was originally contemplated, the other party (usu. a contractor) will be released from the obligation to continue work under the contract. • A contractor's allegation of cardinal change is essentially an assertion that the government has breached the contract. [Cases: United States 73(17).]

CARDO CONTROVERSIAE

cardo controversiae (kahr-doh kon-tr<<schwa>>-v<<schwa>>r-shee-ee). [Law Latin] Hist. The hinge of the controversy; the main point of a controversy.

CA. RE

ca. re. See *capias ad respondendum* under *CAPIAS*.

CARE

care, n. 1. Serious attention; heed <written with care>. 2. Under the law of negligence or of obligations, the conduct demanded of a person in a given situation. • Typically, this involves a person's giving attention both to possible dangers, mistakes, and pitfalls and to ways of minimizing those risks <standard of care>. See *DEGREE OF CARE*; *REASONABLE PERSON*. [Cases: Negligence 230. C.J.S. Negligence §§ 34, 59, 114, 116–117.]

adequate care. See *reasonable care*.

due care. See *reasonable care*.

extraordinary care. See *great care*.

great care. 1. The degree of care that a prudent person exercises in dealing with very important personal affairs. 2. The degree of care exercised in a given situation by someone in the business or profession of dealing with the situation. — Also termed *extraordinary care*; *high degree of care*; *utmost care*.

high degree of care. See *great care*.

highest degree of care. 1. The degree of care exercised commensurate with the danger involved. [Cases: Negligence 230. C.J.S. Negligence §§ 34, 59, 114, 116–117.] 2. See *great care*.

ordinary care. See *reasonable care*.

proper care. See *reasonable care*.

reasonable care. As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. — Also termed *due care*; *ordinary care*; *adequate care*; *proper care*. See *REASONABLE PERSON*. [Cases: Negligence 233. C.J.S. Negligence §§ 34, 118–121, 125–127, 130–131, 133.]

slight care. The degree of care a person gives to matters of minor importance; the degree of care given by a person of limited accountability.

utmost care. See *great care*.

3. Family law. The provision of physical or psychological comfort to another, esp. an ailing spouse, child, or parent.

CAREER CRIMINAL

career criminal. See *RECIDIVIST*.

CAREER OFFENDER

career offender. See *OFFENDER*.

CAREER VICE-CONSUL

career vice-consul. See VICE-CONSUL.

CAREGIVER

caregiver. Family law. A person, usu. not a parent, who has and exercises custodial responsibility for a child or for an elderly or disabled person. — Also termed caretaker; custodian. See RESIDENTIAL RESPONSIBILITY.

CARELESS

careless, adj. 1. (Of a person) not exercising reasonable care. 2. (Of an action or behavior) engaged in without reasonable care. Cf. RECKLESS.

CARELESSNESS

carelessness, n. 1. The fact, condition, or instance of a person's either not having done what he or she ought to have done, or having done what he or she ought not to have done. 2. A person's general disposition not to do something that ought to be done.

“The word ‘carelessness’ as a synonym for negligence can be committed by those who care deeply. A man may take all the care of which he is capable, and yet be accounted negligent for failing to reach the objective standard. He may honestly ... believe that the facts are such that he is not imperilling anyone; but he may be held to have been negligent in arriving at that belief. An incompetent driver may be convicted of driving ‘without due care and attention’ even though he was doing his level best. The careless person is the person who does not take the care he ought to take: never mind whether he felt careful. He can be held to be negligent in making a perfectly honest mistake.” Glanville Williams, *Textbook of Criminal Law* 44–45 (1978).

CA. RESP

ca. resp. See *capias ad respondendum* under CAPIAS.

CARETAKER

caretaker. See CAREGIVER.

CARETAKING FUNCTIONS

caretaking functions. Family law. A parent's or caregiver's task that either involves interaction with a child or directs others' interaction with a child. • Some caretaking functions include feeding and bathing a child, guiding the child in language and motor-skills development, caring for a sick child, disciplining the child, being involved in the child's educational development, and giving the child moral instruction and guidance. *Principles of the Law of Family Dissolution: Analysis and Recommendations* § 2.03 (ALI, Tentative Draft No. 3, pt. I, 1998). Cf. PARENTING FUNCTIONS.

CARGO

cargo. Goods transported by a vessel, airplane, or vehicle; FREIGHT(1).

general cargo. Goods and materials of various types transported by carriers, often in a common load, with few or no restrictions.

hazardous cargo. Dangerous goods or materials whose carriage is usu. subject to stringent regulatory and statutory restrictions.

CARGO INSURANCE

cargo insurance. See INSURANCE.

CARJACKING

carjacking. The forcible theft of a vehicle from a motorist; the unlawful commandeering of an automobile. 18 USCA § 2119. [Cases: Robbery 1.C.J.S. Robbery §§ 2, 4, 12, 90–91.] — carjack, vb.

CARNAL ABUSE

carnal abuse. See sexual abuse (1) under ABUSE.

CARNALIS COPULA

carnalis copula. See SEXUAL RELATIONS(1).

CARNAL KNOWLEDGE

carnal knowledge. Archaic. Sexual intercourse, esp. with an underage female. — Sometimes shortened to knowledge. [Cases: Incest 6; Rape 7.C.J.S. Incest § 5; Rape § 17.]

“The ancient term for the act itself was ‘carnal knowledge’ and this is found in some of the recent cases and statutes. The phrase ‘sexual intercourse,’ more common today apart from legal literature, is also found in recent cases and statutes. Either term, when the reference is to rape, is sometimes coupled with the word ‘ravish.’ And unlawful intercourse with a girl under the age of consent is often characterized as ‘carnal knowledge and abuse.’ ” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 201 (3d ed. 1982).

CARNET

carnet (kahr-nay). A customs document allowing an item (esp. an automobile) to be exported temporarily from one country into another country.

CARRIAGE

carriage. Transport of freight or passengers.

CARRIAGE AND INSURANCE PAID TO

carriage and insurance paid to. A mercantile-contract term allocating the rights and duties of the buyer and the seller of goods with respect to delivery, payment, and risk of loss, whereby the seller must (1) clear the goods for export, (2) procure and pay for insurance against the buyer's risk of damage while the goods are in carriage, (3) deliver the goods to the buyer's chosen carrier, and (4) bear the costs of carriage (apart from import duties) to the named destination. • When the

goods are delivered to the carrier, the seller's delivery is complete; the risk of loss then passes to the buyer. Any mode of transportation can be used to carry the goods. — Abbr. CIP. Cf. CAR-RIAGE PAID TO.

CARRIAGE OF GOODS BY SEA ACT

Carriage of Goods by Sea Act. Maritime law. A 1936 federal statute regulating a carrier's liability for the loss or damage, and sometimes the delay, of ocean cargo shipped under a bill of lading. 46 USCA §§ 1300–1315. • The Act defines many of the rights and responsibilities of both the issuers and the holders of ocean bills of lading. — Abbr. COGSA. [Cases: Shipping 103. C.J.S. Shipping §§ 232–242.]

“The Carriage of Goods by Sea Act (COGSA), the domestic enactment of the international convention popularly known as the Hague Rules, allocates the risk of loss for cargo damage that occurs during ocean transportation to or from the United States under contracts evidenced by bills of lading and similar documents of title. It is the central statute in commercial admiralty, governing over \$200 billion worth of American foreign commerce annually. The other major maritime countries of the world have also adopted the Hague Rules to govern their international ocean commerce.” Michael F. Sturley, *The Fair Opportunity Requirement Under COGSA Section 4(5): A Case Study in the Misinterpretation of the Carriage of Goods by Sea Act*, 19 J. Mar. L. & Com. 1, 1–2 (1988).

CARRIAGE PAID TO

carriage paid to. A mercantile-contract term allocating the rights and duties of the buyer and the seller of goods with respect to delivery, payment, and risk of loss, whereby the seller must (1) clear the goods for export, (2) deliver them to the buyer's chosen carrier, and (3) pay the costs of carriage (apart from import duties) to the named destination. • When the goods are delivered to the carrier, the seller's delivery is complete; the risk of loss then passes to the buyer. Any mode of transportation can be used to carry the goods. — Abbr. CPT. Cf. CARRIAGE AND INSURANCE PAID TO.

CARRIED INTEREST

carried interest. Oil & gas. In an oil-and-gas lease, a fractional interest that is free of some or all costs of exploring, drilling, and completing the well. • The owner of a carried interest may earn royalties on production but does not have a working interest, at least until all costs are recouped by the working-interest owner or owners, and often until some multiple of those costs is paid.

CARRIER

carrier. 1. An individual or organization (such as a shipowner, a railroad, or an airline) that contracts to transport passengers or goods for a fee. Cf. SHIPPER. [Cases: Carriers 3, 235. C.J.S. Aeronautics and Aerospace § 179; Carriers §§ 2, 385.]

common carrier. A commercial enterprise that holds itself out to the public as offering to transport freight or passengers for a fee. • A common carrier is generally required by law to transport freight or passengers or freight, without refusal, if the approved fare or charge is paid. —

Also termed public carrier. [Cases: Carriers 4.]

“[A] ‘common carrier’ is bound to take all goods of the kind which he usually carries, unless his conveyance is full, or the goods be specially dangerous; but may charge different rates to different customers.” Thomas E. Holland, *The Elements of Jurisprudence* 299 (13th ed. 1924).

marine carrier.A carrier operating on navigable waters subject to the jurisdiction of the United States.

non-vessel-operating common carrier.Maritime law. A freight forwarder that does not own the means of transportation, but that contracts with a shipper to transport freight, and with a carrier to perform the transportation. • The non-vessel-operating common carrier becomes the carrier in the contract with the original shipper, and the shipper in the contract with the eventual carrier. See FREIGHT FORWARDER. — Abbr. NVOCC.

private carrier.Any carrier that is not a common carrier by law. • A private carrier is not bound to accept business from the general public. — Also termed contract carrier. [Cases: Automobiles 76; Carriers 3. C.J.S. Aeronautics and Aerospace § 179; Carriers §§ 2, 385; Motor Vehicles §§ 5, 105–113.]

2.INSURER.

CARRIER'S LIEN

carrier's lien.See LIEN.

CARROLL<TT> DOCTRINE

Carroll doctrine. The principle that a broadcast licensee has standing to contest any grant of a competitive license by the Federal Communications Commission because the grant could lead to a diminution in broadcast service by causing economic injury to an existing licensee. *Carroll Broadcasting Co. v. FCC*, 258 F.2d 440 (D.C. Cir. 1958). [Cases: Telecommunications 404.]

CARRY

carry,vb.1. To sustain the weight or burden of; to hold or bear <more weight than a single person can carry>.2. To convey or transport <carrying the coal from one state to another>.3. To possess and convey (a firearm) in a vehicle, including the locked glove compartment or trunk of a car <he carried the guns in his trunk>. • The United States Supreme Court adopted this definition in interpreting the phrase carries a firearm as used in a statute imposing a mandatory prison term on a person who uses or carries a firearm while committing a drug-trafficking crime. *Muscarello v. U.S.*, 524 U.S. 125, 118 S.Ct. 1911 (1998). [Cases: Weapons 10.] 4. In a figurative sense, to possess or hold (insurance, etc.) <the decedent did not carry life insurance>.5.Parliamentary law. To adopt. • In this sense, the verb may be either intransitive <the motion carries> or transitive (in a passive construction) <the motion is carried>. See ADOPTION(5).6. To provide funds or credit for the payment of (stock, etc.), often as an advance, for an agreed-on period <the investor carried the stock purchases for eight months>.7. To absorb the cost of holding or having, usu. temporarily <the business will carry the debt for another quarter>.

CARRY AWAY

carry away,vb. To take or move (stolen property, etc.). • The traditional count for larceny was that the defendant “did steal, take, and carry away” the property. A “carrying away” can be a slight movement of the property. See ASPORTATION. [Cases: Larceny 17; Robbery 10.]

CARRYBACK

carryback.Tax. An income-tax deduction (esp. for a net operating loss) that cannot be taken entirely in a given period but may be taken in an earlier period (usu. the previous three years). — Also termed loss carryback; tax-loss carryback. Cf. CARRYOVER. [Cases: Internal Revenue 3438; Taxation 1043. C.J.S. Taxation § 1752.]

CARRYFORWARD

carryforward. See CARRYOVER.

CARRYING AWAY

carrying away.See ASPORTATION.

CARRYING BACK THE DATE OF INVENTION

carrying back the date of invention.See ANTEDATING OF A PRIOR-ART REFERENCE.

CARRYING CHARGE

carrying charge. 1. A cost, in addition to interest, paid to a creditor for carrying installment credit. 2. Expenses incident to property ownership, such as taxes and upkeep.

CARRYING COST

carrying cost.See COST(1).

CARRYOVER

carryover. An income-tax deduction (esp. for a net operating loss) that cannot be taken entirely in a given period but may be taken in a later period (usu. the next five years). — Also termed loss carryover; tax-loss carryover; carryforward; loss carryforward; tax-loss carryforward. Cf. CARRYBACK. [Cases: Internal Revenue 3438, 3439; Taxation 1043.C.J.S. Internal Revenue § 409; Taxation § 1752.]

CARRYOVER BASIS

carryover basis.See BASIS.

CARTA

carta (kahr-t<<schwa>>). [Latin] Hist. A charter, deed, or other written instrument.

CARTA DE FORESTA

Carta de Foresta.See CHARTA DE FORESTA.

CARTA FORESTAE

Carta Forestae. See CHARTA DE FORESTA.

CARTA MERCATORIA

Carta Mercatoria (kahr-t<<schwa>> m<<schwa>>r-k<<schwa>>-tor-ee-<<schwa>>). Hist. An English statute (enacted in 1303) establishing various rules that favored certain foreign merchants. • In exchange for paying customs duties, merchants received extensive trading rights throughout England, the power to export their merchandise, the liberty to dwell where they pleased, and certain legal rights. — Also termed Statutum de Nova Custuma.

CARTBOTE

cartbote. See plowbote under BOTE(1).

CARTE BLANCHE

carte blanche (kahrt blawnsh). [French “blank card”] 1. A signed, blank instrument that is filled out at an agent's discretion. 2. Full discretionary power; unlimited authority.

CARTEL

cartel (kahr-tel), n.1. A combination of producers or sellers that join together to control a product's production or price. 2. An association of firms with common interests, seeking to prevent extreme or unfair competition, allocate markets, or share knowledge. [Cases: Monopolies 12(1.14, 1.16). C.J.S. Monopolies §§ 54–55, 73–74, 77, 80–82, 85, 87, 93, 105, 143, 153.] 3. Int'l law. An agreement between belligerents about the means of conducting whatever relations they allow during wartime; esp., such an agreement regarding the exchange of prisoners. — Also spelled chartel. — cartelize (kahr-t<<schwa>>-Iz or kahr-tel-Iz), vb.

CAR TRUST CERTIFICATE

car trust certificate. See EQUIPMENT TRUST CERTIFICATE.

CARTULARY

cartulary (kahr-tyoo-lair-ee), n. A collection of legal documents, esp. charters and title deeds to property.

CARUCAGE

carucage (kar-<<schwa>>-kij). [Law Latin] Hist. A tax imposed either on a carucate or on the plows used on the land. — Also termed carvage.

CARUCATE

carucate (kar-<<schwa>>-kayt). [Law Latin] Hist. A measure of land for assessment purposes, usu. considered about 120 acres. • This amount was thought to be as much land as one plow with eight oxen could plow in a year. A carucate was used to assess taxes. — Also termed carucata; carve; plowland. Cf. HIDE(1); OXGANG.

CARVAGE

carvage. See CARUCAGE.

CARVE

carve (karv), n. See CARUCATE.

CARVE OUT

carve out,vb.1. To create an explicit exception to a broad rule. 2.Tax. To separate from property the income derived from the property.

CARVEOUT

carveout,n.1. An explicit exception to a broad rule. 2.Tax. For tax purposes, the separation from property of the income derived from the property.

CA. SA

ca. sa.See *capias ad satisfaciendum* under CAPIAS.

CASA

CASA.abbr.1.COURT-APPOINTED SPECIAL ADVOCATE. 2.COURT APPOINTED SPECIAL ADVOCATES .

CASATA

casata (k<<schwa>>-say-t<<schwa>>).Hist. A house with enough land to support one family.

CASATUS

casatus (k<<schwa>>-zay-t<<schwa>>s).Hist. A vassal or feudal tenant possessing a casata.

CASA VOLUNTEER

CASA volunteer.Family law. A specially screened and trained child-welfare volunteer appointed by the court to conduct an independent investigation of both the state agency and the family and to submit a report with findings and recommendations. • In some jurisdictions, such volunteers are provided for statutorily. They sometimes act as guardians ad litem. The CASA volunteer usu. (1) provides independent assessment of the child's needs, (2) acts as an advocate for the child, and (3) monitors agency decision-making and court proceedings. See COURT AP-POINTED SPECIAL ADVOCATES.

CASE

case. 1. A civil or criminal proceeding, action, suit, or controversy at law or in equity <the parties settled the case>.

active case.A case that is still pending.

case at bar.A case under the immediate consideration of the court. — Also termed case at

bench; instant case; present case. See BAR(3).

case made. See case reserved (1).

case of first impression. A case that presents the court with an issue of law that has not previously been decided by any controlling legal authority in that jurisdiction.

case reserved. 1. A written statement of the facts proved at trial and drawn up and stipulated to by the parties, so that certain legal issues can be decided by an appellate court. — Also termed case made; special case. 2. Hist. An agreement between litigants to submit the case to a judge rather than to a jury.

“It should have come as no surprise ... that in most cases ‘merchants were not fond of juries.’ For one of the leading measures of the growing alliance between bench and bar on the one hand and commercial interests on the other is the swiftness with which the power of the jury is curtailed after 1790.... [D]uring the last years of the eighteenth century American lawyers vastly expanded the ‘special case’ or ‘case reserved,’ a device designed to submit points of law to the judges while avoiding the effective intervention of a jury. In England, Lord Mansfield had used a similar procedure to bring about an alliance between common lawyers and mercantile interests.” Morton J. Horwitz, *The Transformation of American Law, 1780–1860* 141–42 (1977).

case stated. 1. A formal written statement of the facts in a case, submitted to the court jointly by the parties so that a decision may be rendered without trial. — Also termed case agreed on. [Cases: Trial 368. C.J.S. Trial § 1022.] 2. Hist. A procedure used by the Court of Chancery to refer difficult legal questions to a common-law court. • This procedure was abolished in 1852. 3. English law. An appeal from a Magistrates' Court to the Divisional Court of Queen's Bench on a point of criminal law. • After ruling, the magistrate states the facts for the appeal and the Queen's Bench rules on the question of law presented by the magistrate's ruling.

inactive case. A pending case that is not proceeding toward resolution. • This may occur for several reasons, such as nonservice, want of prosecution, or (in a criminal case) the defendant's having absconded.

instant case. See case at bar.

present case. See case at bar.

special case. See case reserved (1).

test case. 1. A lawsuit brought to establish an important legal principle or right. • Such an action is frequently brought by the parties' mutual consent on agreed facts — when that is so, a test case is also sometimes termed amicable action or amicable suit.

“The suit is spoken of, in the affidavits filed in support of it, as an amicable action, and the proceeding defended on that ground. But an amicable action, in the sense in which these words are used in courts of justice, presupposes that there is a real dispute between the parties concerning some matter of right. And in a case of that kind it sometimes happens, that, for the purpose of obtaining a decision of the controversy, without incurring needless expense and trouble, they agree

to conduct the suit in an amicable manner, that is to say, that they will not em-barrass each other with unnecessary forms or technicalities, and will mutually admit facts which they know to be true, and without requiring proof, and will bring the point in dispute before the court for decision, without subjecting each other to unnecessary expense or delay. But there must be an actual controversy, and adverse interests. The amity consists in the manner in which it is brought to issue before the court. And such amicable actions, so far from being objects of censure, are always approved and encouraged, because they facilitate greatly the administration of justice between the parties. The objection in the case before us is, not that the proceedings were amicable, but that there is no real conflict of interest between them; that the plaintiff and defendant have the same interest, and that interest adverse and in conflict with the interest of third persons, whose rights would be seriously affected if the question of law was decided in the manner that both of the parties to this suit desire it to be." Lord v. Veazie, 49 U.S. 251, 255 (1850)(Taney, C.J.).

2. An action selected from several suits that are based on the same facts and evidence, raise the same question of law, and have a common plaintiff or a common defendant. • Sometimes, when all parties agree, the court orders a consolidation and all parties are bound by the decision in the test case. — Also termed test action.

2. A criminal investigation <the Manson case>.3. An individual suspect or convict in relation to any aspect of the criminal-justice system <the probation officer said he considers Mr. Jones a difficult case>.4. An argument <the debater made a compelling case for gun control>.5. An instance, occurrence, or situation <a case of mistaken identity> <a terminal case of cancer>.6. TRESPASS ON THE CASE <the actions of trover and case are not entirely defunct>.

CASE ABSTRACT

case abstract. See CASE NOTE.

CASE AGREED ON

case agreed on. See case stated (1) under CASE.

CASEBOOK

casebook. A compilation of extracts from instructive cases on a particular subject, usu. with commentary and questions about the cases, designed as a teaching aid. See SOCRATIC METHOD. Cf. HORNBOOK.

CASEBOOK METHOD

casebook method. An inductive system of teaching law in which students study specific cases to learn general legal principles. • Professor Christopher C. Langdell introduced the technique at Harvard Law School in 1869. The casebook method is now the most widely used form of instruction in American law schools. — Also termed case method; case system; Langdell method. Cf. SOCRATIC METHOD; HORNBOOK METHOD.

CASE BRIEF

case brief. See CASE NOTE.

CASE EVALUATION

case evaluation. See **MEDIATION**(1).

CASEFLOW

caseflow. 1. The movement of cases through the judicial system, from the initial filing to the final appeal. 2. An analysis of that movement.

CASE-IN-CHIEF

case-in-chief. 1. The evidence presented at trial by a party between the time the party calls the first witness and the time the party rests. 2. The part of a trial in which a party presents evidence to support the claim or defense. Cf. **REBUTTAL**.

CASELAW

caselaw. The law to be found in the collection of reported cases that form all or part of the body of law within a given jurisdiction. — Also written case law; caselaw. — Also termed decisional law; adjudicative law; juri-sprudence; organic law.

“Case law in some form and to some extent is found wherever there is law. A mere series of decisions of individual cases does not of course in itself constitute a system of law. But in any judicial system rules of law arise sooner or later out of the solution of practical problems, whether or not such formulations are desired, intended or consciously recognized. These generalizations contained in, or built upon, past decisions, when taken as normative for future disputes, create a legal system.” Karl N. Llewellyn, “Case Law” in 3 *Ency. Soc. Sci.* 249 (1930).

CASE LAWYER

case lawyer. An attorney whose knowledge is largely confined to a specific field of expertise.

“A working lawyer cannot expect to keep abreast of all this output of ideas, but he can at least study some portion so as to liberalize his views of law and to avoid the reproach of being a mere case lawyer.” Lord Wright, *The Study of Law*, 54 *Law Q. Rev.* 185, 185 (1938).

CASELOAD

caseload. The volume of cases assigned to a given court, agency, officer, judge, law firm, or lawyer.

CASE MADE

case made. See case reserved (1) under **CASE**.

CASE-MANAGEMENT ORDER

case-management order. A court order designed to control the procedure in a case on the court's docket, esp. by limiting pretrial discovery. — Abbr. CMO. [Cases: Federal Civil Procedure 1935; Pretrial Procedure 747. C.J.S. Trial § 47.]

CASE METHOD

case method.See CASEBOOK METHOD.

CASE NOTE

case note.A short statement summarizing a case, esp. the relevant facts, the issues, the holding, and the court's reasoning. — Sometimes written casenote. — Also termed brief; case brief; case statement; case abstract.

CASE NUMBER

case number.The number assigned to a lawsuit when it is filed with the clerk of the court. • Each case has a distinct number that distinguishes it from all other suits filed within the jurisdiction.

CASE OF FIRST IMPRESSION

case of first impression.See CASE.

CASE-OR-CONTROVERSY REQUIREMENT

case-or-controversy requirement.The constitutional requirement that, for a federal court to hear a case, the case must involve an actual dispute. See CONTROVERSY(3); advisory opinion under OPINION(1). [Cases: Federal Courts 12.]

“The courts of the United States do not sit to decide questions of law presented in a vacuum, but only such questions as arise in a ‘case or controversy.’ The two terms can be used interchangeably, for, we are authoritatively told, a ‘controversy,’ if distinguishable at all from a ‘case,’ is distinguishable only in that it is a less comprehensive term, and includes only suits of a civil nature.” Charles Alan Wright, *The Law of Federal Courts* 60 (5th ed. 1994).

CASE PLAN

case plan.A written procedure for the care and management of a child who has been removed from his or her home and placed in foster care or in an institution. • The case plan includes (1) a description of the place where the child has been placed, (2) a plan for providing the child with safe and proper care, and (3) a plan for services that will be provided to the child's parents. Each state must have a case-review system formulated to ensure that the child is placed in the least restrictive and most appropriate place and that the plan is in the best interests of the child; the plan must be reviewed every six months. See ADOPTION AND SAFE FAMILIES ACT.

CASE RESERVED

case reserved.See CASE.

CASE STATED

case stated.See CASE.

CASE STATEMENT

case statement.See CASE NOTE.

CASE SYSTEM

case system. See CASEBOOK METHOD.

CASE-WITHIN-A-CASE RULE

case-within-a-case rule. Torts. The requirement that a legal-malpractice-action plaintiff show that, but for the attorney's negligence, the plaintiff would have won the case underlying the malpractice action. [Cases: Attorney and Client 112. C.J.S. Attorney and Client §§ 258–260.]

CAS FORTUIT

cas fortuit (kah for-twee). [French “fortuitous case”] Insurance. An unforeseeable event; an inevitable accident; FORTUITOUS EVENT.

CASH

cash, n. 1. Money or its equivalent. 2. Currency or coins, negotiable checks, and balances in bank accounts. — cash, vb.

petty cash. Currency kept on hand for incidental expenditures.

CASH-AGAINST-DOCUMENTS SALE

cash-against-documents sale. See documentary sale under SALE.

CASH-AND-CARRY CLAUSE

cash-and-carry clause. Int'l law. A regulation that, before U.S. involvement in World War II, allowed belligerent countries to pay cash for goods whose export was prohibited. • Formally, this regulation was entirely neutral, but in practice it favored Great Britain.

CASH BAIL

cash bail. See BAIL(1).

CASH-BASIS ACCOUNTING METHOD

cash-basis accounting method. See ACCOUNTING METHOD.

CASH BOOK

cash book. An account book of all cash received and paid out by a business.

CASH BUDGET

cash budget. A period-by-period schedule of a business's opening cash on hand, estimated cash receipts, cash disbursements, and cash balance. • A cash budget is used to project a business's cash receipts and disbursements over some future period.

CASH COLLATERAL

cash collateral. See COLLATERAL.

CASH CYCLE

cash cycle. The time it takes for cash to flow into and out of a business, such as the time between the purchase of raw materials for manufacture and the sale of the finished product.

CASH DISCOUNT

cash discount. See DISCOUNT.

CASH DIVIDEND

cash dividend. See DIVIDEND.

CASH EQUIVALENT

cash equivalent. A short-term security that is liquid enough to be considered equivalent to cash.

CASH-EQUIVALENT DOCTRINE

cash-equivalent doctrine. Tax. The doctrine requiring income to be reported even if it is not cash, as when the taxpayer barter to receive in-kind payments. [Cases: Internal Revenue 3116, 3714.]

CASH-EXPENDITURE METHOD

cash-expenditure method. Tax. A technique used by the IRS to reconstruct a taxpayer's unreported income by comparing the amount spent on goods and services during a given period with the income reported for that period. • If the expenditures exceed the reported revenue, the IRS treats the difference as taxable income. [Cases: Internal Revenue 4530.1.]

CASH FLOW

cash flow. 1. The movement of cash through a business, as a measure of profitability or liquidity. 2. The cash generated from a business or transaction. 3. Cash receipts minus cash disbursements for a given period. — Sometimes written cashflow.

cash flow per common share. The cash flow from operations minus preferred stock dividends, divided by the number of outstanding common shares.

discounted cash flow. A method of evaluating a capital investment by comparing its projected income and costs with its current value. • Discounted cash flow is used to determine the value of a company by calculating the present value of its future cash flows. In theory, the value of the corporation's assets equals the present value of the expected cash flow generated by those assets. — Also termed discounted-cash-flow method. — Abbr. DCF; DCF method.

incremental cash flow. The net increase in cash flow attributable to a particular capital investment.

negative cash flow. A financial situation in which cash outflow exceeds cash inflow. See INSOLVENCY.

net cash flow.Cash inflow minus cash outflow.

CASHIER

cashier,n.1. One who receives and records payments at a business. 2. A bank's or trust company's executive officer, who is responsible for banking transactions. [Cases: Banks and Banking 105(3)–109(3), 314. C.J.S. Banks and Banking §§ 252–256, 264–265, 631–632.]

cashier,vb. To dismiss from service dishonorably <after three such incidents, Jones was cashiered>.

CASHIER'S CHECK

cashier's check.See CHECK.

CASHLITE

cashlite. See AMERCEMENT.

CASH MERGER

cash merger.See MERGER.

CASH OR DEFERRED ARRANGEMENT

cash or deferred arrangement.A retirement-plan provision permitting an employee to have a certain amount of compensation paid in cash or contributed, on behalf of the employee, to a profit-sharing or stock-bonus plan. • A 401(k) plan is a type of cash or deferred arrangement. — Abbr. CODA.

CASHOUT

cashout,n. An arrangement by a seller to receive the entire amount of equity in cash rather than retain an interest in the property. — cash out,vb.

CASH-OUT MERGER

cash-out merger.See cash merger under MERGER.

CASH-REFUND ANNUITY

cash-refund annuity.See ANNUITY.

CASH SALE

cash sale.See SALE.

CASH SURRENDER VALUE

cash surrender value.See VALUE(2).

CASH TENDER OFFER

cash tender offer.See TENDER OFFER.

CASH-TRANSACTION REPORT

cash-transaction report. IRS Form 4789, which requires banks and other financial institutions to report cash transactions above a certain amount. [Cases: Internal Revenue 4473. C.J.S. Internal Revenue §§ 631–632.]

CASH VALUE

cash value. 1. See fair market value under VALUE(2). 2. See full cash value under VALUE(2).

CASH-VALUE OPTION

cash-value option. See OPTION.

CASING

casing. Oil & gas. The pipe in a wellbore hole, cemented into place to prevent pollution and to protect the hole.

intermediate casing. Casing that protects deep formations against pollution from drilling and producing operations.

production casing. Wellbore pipe through which oil and gas is produced. • Production casing is the last pipe set in the hole.

surface casing. Casing that protects groundwater against pollution from drilling and producing operations. • Surface casing is the first pipe set in the hole.

CASINGHEAD GAS

casinghead gas. Oil & gas. Natural gas in a liquid solution with crude oil, produced at the casinghead (top) of an oil well. • Casinghead gas separates from the oil at the time of production or shortly afterward.

CASING POINT

casing point. Oil & gas. The point at which a well has been drilled to the desired depth and the owners must decide whether to place production pipe (“casing”) in the hole to complete and equip the well for production.

CASSARE

cassare (k<<schwa>>-sair-ee), vb. [Law Latin fr. Latin cassus “void”] Hist. To quash or nullify. • Cassare usu. referred to voiding an agreement, law, or writ. See CASSETUR BILLA; CASSETUR BREVE.

CASSATION

cassation (ka-say-sh<<schwa>>n), n. A quashing. See COURT OF CASSATION.

CASSETUR BILLA

cassetur billa (k<<schwa>>-see-t<<schwa>>r bil<<schwa>>). [Latin “that the bill be

quashed”] Hist. 1. A judgment quashing a plea in abatement. — Also termed judgment of *cassetur billa*. 2. A plaintiff's on-the-record admission that a defendant's plea in abatement cannot be avoided. • This statement discontinues the action. — Also termed *billa cassetur*; *quod billa cassetur*.

CASSETUR BREVE

cassetur breve (k<<schwa>>-see-t<<schwa>>r bree-vee). [Latin “that the writ be quashed”] Hist. A judgment quashing an action begun by writ. — Also termed judgment of *cassetur breve*.

CASSIS/BIB

CASSIS/BIB. Patents. A U.S. Patent and Trademark Office database of bibliographies relating to patents, sorted by their classification. • *CASSIS* stands for Classification and Search Support Information System. Cf. *CAS-SIS/CLASS*.

CASSIS/ CLASS

CASSIS/CLASS. Patents. A U.S. Patent and Trademark Office database of patents sorted by classification, available at any PTO Depository Library. Cf. *CASSIS/BIB*.

CAST

cast, vb. To formally deposit (a ballot) or signal one's choice (in a vote) < most voters cast their ballots for write-in candidates>.

CAST A CLOUD ON

cast a cloud on, vb. Patents. Create doubt about (a patent, esp. its validity).

CASTIGATORY

castigatory (kas-ti-g<<schwa>>-tor-ee). Hist. A device for punishing scolds by repeatedly plunging them un-derwater. • This device is mentioned by the ancient Saxons (*scealfing stole*) and in *Domesday Book* (*cathedra stercoralis*). It was also used to punish bakers and brewers by ducking them into “stinking water” (*stercore*), possibly into a midden. — Also termed *ducking stool*; *cucking stool*; *trebucket*. See *SCOLD*. Cf. *BRANKS*.

“[A] common scold, ... if convicted, shall be sentenced to be placed in a certain engine of correction called the *trebucket*, *castigatory*, or *cucking stool*, which in the Saxon language signifies the scolding stool; though now it is frequently corrupted into *ducking stool*, because the residue of the judgment is, that, when she is so placed therein, she shall be plunged in the water for her punishment.” 4 William Blackstone, *Commentaries on the Laws of England* 169 (1769).

CASTING VOTE

casting vote. See *VOTE*(1).

CAST-IRON-PIPE DOCTRINE

cast-iron-pipe doctrine. See *DIVIDEND-CREDIT RULE*.

CASTLE DOCTRINE

castle doctrine. Criminal law. An exception to the retreat rule allowing the use of deadly force by a person who is protecting his or her home and its inhabitants from attack, esp. from a trespasser who intends to commit a felony or inflict serious bodily harm. — Also termed dwelling defense; defense of habitation. See RETREAT RULE. [Cases: Homicide 747, 760.]

CASTLE-GUARD

castle-guard, n. Hist. 1. The protection of a castle. 2. A form of knight-service in which a tenant must protect the lord's castle. 3. The tenure giving rise to this knight-service. 4. A tax once imposed in lieu of this knight-service. 5. The territory that is chargeable with the tax imposed in lieu of the knight-service. — Also termed (in senses 2–5) ward.

“Castleguard is an imposition upon such of the king's subjects as dwell within a certain compass of any castle, to the maintenance of such as watch and ward it. It is sometimes used for the circuit itself which is inhabited by such as are subject to this service.” William Rastell, *Termes de la Ley* 70 (1st Am. ed. 1812).

CASUAL

casual, adj. 1. (Of employment) occurring without regularity; occasional <a casual employee>. See casual employment under EMPLOYMENT. 2. (Of an event or occurrence) not expected, foreseen, or planned; fortuitous <a casual deficit>.

CASUAL AFFRAY

casual affray. See CHANCE-MEDLEY.

CASUAL CONDITION

casual condition. See CONDITION(2).

CASUAL DEFICIT

casual deficit. An unforeseen shortfall of funds.

CASUAL EJECTOR

casual ejector. See EJECTOR.

CASUAL EMPLOYMENT

casual employment. See EMPLOYMENT.

CASUAL NEGLIGENCE

casual negligence. See NEGLIGENCE.

CASUALTY

casualty. 1. A serious or fatal accident. 2. A person or thing injured, lost, or destroyed.

CASUALTY GAIN

casualty gain. Insurance. The profit realized by an insured when the benefits paid exceed the insured property's adjusted value.

CASUALTY INSURANCE

casualty insurance. See INSURANCE.

CASUALTY LOSS

casualty loss. See LOSS.

CASUALTY POT

casualty pot. Tax. A step in evaluating tax liability in which casualty gains and losses are compared to determine whether a net loss or gain has occurred. Cf. MAIN POT.

CASU CONSIMILI

casu consimili (kay-s[y]oo k<<schwa>>n-sim-<<schwa>>-II), n. [Latin "in a like case"] Hist. A writ of entry allowing the holder of a reversionary interest in land to sue for the return of land alienated by a life tenant or a tenant by the curtesy. • This writ originated in the second Statute of Westminster (13 Edw. I) ch. 24 (1285), which expanded the writs available to litigants by requiring the Chancery to issue a writ for any situation that called for a writ similar to one that had previously issued consimili casu ("in a like case"). Specifically, the statute provided (in Latin) that "as often as it shall happen in chancery that in one case a writ is found, and in a like case [in consimili casu], falling under the same right, and requiring like remedy, no writ is to be found, the clerks of chancery shall agree in making a writ..." Many other writs were framed under Westminster 2, but this particular writ's close association with the statute led to its taking the generic name. — Also termed consimili casu; entry in casu consimili. See ACTIONES NOMINATAE.

CASU PROVISIO

casu proviso (kay-s[y]oo pr<<schwa>>-vI-zoh). [Latin "in the case provided"] Hist. A writ of entry to recover a reversion in land alienated by a tenant in dower, i.e., a widow with a life estate in the alienated land.

CASUS

casus (kay-s<<schwa>>s). [Latin] 1. A chance accident; an event without human intervention or fault. Cf. CULPA(1); DOLUS(1). 2. A situation actually contemplated by the legislature in enacting a statute that applies to the situation. • In this sense, the term is opposed to casus omissus. Cf. CASUS OMISSUS .

CASUS AMISSIONIS

casus amissionis (kay-s<<schwa>>s <<schwa>>-mis[h]-ee-oh-nis). [Latin "the occasion of the loss"] Hist. The circumstances under which a document is lost or destroyed. • In an action to

prove the contents of a lost instrument, the circumstances under which a document was lost was required evidence. Lost documents are now covered by Federal Rule of Evidence 1004(1).

CASUS BELLI

casus belli (kay-s<<schwa>>s bel-I). [Latin] An act or circumstance that provokes or justifies war.

CASUS FOEDERIS

casus foederis (kay-s<<schwa>>s fed-<<schwa>>r-is). [Latin “the case of the treaty” or “the case of the agreement”] 1.Int'l law. A provocative act by one nation toward another, entitling the latter to call upon an ally to fulfill the terms of an alliance. 2. A clause within a treaty of alliance specifying such provocative acts. 3.Contracts. A case or an event falling within the terms of a contract.

CASUS FORTUITUS

casus fortuitus (kay-s<<schwa>>s for-t[y]oo-<<schwa>>-t<<schwa>>s). [Latin] 1. A fortuitous event. 2. A loss not attributable to human fault.

CASUS IMPROVISUS

casus improvisus (kay-s<<schwa>>s im-pr<<schwa>>-vI-z<<schwa>>s). [Latin] Hist. An unforeseen case; a case not provided for.

“Casus improvisus This phrase is of frequent occurrence, and admits of varied illustration. Thus, if an Act of Parliament has been passed for the removal of some inconvenience, or the suppression of some evil, and specifies the circumstances or cases in which it is to have application, and a case occurs which is not specified by the Act, in which, nevertheless, the application of the Statute would be beneficial, this is a casus improvisus, and neither the procedure nor the provisions of the Act can be applied to it. The Statute cannot be strained so as to be made applicable to a case for which it does not provide. Statutes, however, which are purely remedial are construed liberally, and are often extended to cases similar to those mentioned in the Act, although such cases do not fall within the letter of the enactment.” John Trayner, Trayner's Latin Maxims 70 (4th ed. 1894).

CASUS INCOGITATI

casus incogitati (kay-s<<schwa>>s in-koj-i-tay-tI). [Law Latin] Hist. Circumstances unthought of. • Circumstances that were not otherwise addressed in an instrument could be determined on equitable grounds.

CASUS INSOLITUS

casus insolitus (kay-s<<schwa>>s in-sol-<<schwa>>-t<<schwa>>s). [Latin] Hist. An unusual circumstance; an unusual event.

CASUS MAJOR

casus major (kay-s<<schwa>>s may-j<<schwa>>r). [Latin] An extraordinary casualty.

CASUS MALE INCLUSUS

casus male inclusus (kay-s<<schwa>>s mal-ee in-kloo-s<<schwa>>s). [Latin “case wrongly included”] A situation literally provided for by a statute or contract, but wrongly so because the provision's literal application has unintended consequences.

CASUS OMISSUS

casus omissus (kay-s<<schwa>>s <<schwa>>-mis-<<schwa>>s). [Latin “case omitted”] A situation not provided for by a statute or contract, and therefore governed by caselaw or new judge-made law. Pl. casus omissi. Cf. CASUS(2). [Cases: Statutes 186. C.J.S. Statutes § 320.]

“At times a state of war appears to exist between the courts and the parliamentary draftsman. The courts decline to come to the rescue when a casus omissus is revealed, so words appropriate to cover the casus omissus are added to the statute. More frequently the draftsman gets in first and, anticipating a strict construction by the courts coupled with a total lack of sympathy if there should happen to be a casus omissus, he produces a statute which is nothing less than horrific in its detail.” Rupert Cross, *Statutory Interpretation* 11–12 (1976).

CASUS RARIOR

casus rarior (kay-s<<schwa>>s rair-ee-or).Hist. An exceptional case. Pl. casus rariores.

CATALLA

catalla (k<<schwa>>-tal-<<schwa>>). [Law Latin “chattels”] Hist. 1.CHATTEL. — Also termed catals.

“Catals (catalla) alias chatels, cometh of the Normans. For ... all movable goods ... are called chatels: the contrary whereof is (fief) which we do call fee.” John Cowell, *The Interpreter* (1607).

2. Cattle used for plowing.

CATALLA OTIOSA

catalla otiosa (k<<schwa>>-tal-<<schwa>> oh-shee-oh-s<<schwa>>). [Law Latin “nonworking chattels”] Hist. 1.Chattels that are not animals. 2. Animals not used for plowing or pulling plows or carts (averia carucae).

CATALLIS CAPTIS NOMINE DISTRICTIONIS

catallis captis nomine districtionis (k<<schwa>>-tal-is kap-tis nahm-<<schwa>>-nee di-strik-shee-oh-nis). [Latin “chattels taken in name of distress”] Hist. A writ permitting a landlord who is owed rent to distrain (i.e., seize) the doors, windows, and gates of the tenant's house.

CATALLIS REDDENDIS

catallis reddendis (k<<schwa>>-tal-is ri-den-dis). See DE CATALLIS REDDENDIS.

CATALS

catals. See CATALLA.

CATANEUS

cataneus. See CAPITANEUS.

CATCHALL

catchall,adj. Broad; widely encompassing <the catchall factor allows the jury to consider all circumstances extenuating the gravity of the crime>.

catchall,n. See BROADENING STATEMENT.

CATCHING BARGAIN

catching bargain.See BARGAIN.

CATCHPOLL

catchpoll (kach-pohl).Hist. A sheriff's deputy or bailiff. — Also spelled catchpol; catchpole.

“Catchpol ... (One that catches by the Poll) Though now taken as a word of Contempt, yet in ancient times, it was used, without reproach, for such as we now call Sergeants of the Mace, Bailiffs, or any other that use to Arrest Men upon any Action.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

CATEGORICAL QUESTION

categorical question.See QUESTION(1).

CATER COUSIN

cater cousin (kay-t<<schwa>>r). A distant relative. • The term derives from the French *quatre cousin*, meaning a cousin in the fourth degree.

CATHEDRAL

cathedral.Eccles. law. The principal church of a diocese, in which the bishop's throne, or *cathedra*, is situated.

CATHEDRAL PREFERMENT

cathedral preferment.Eccles. law. In a cathedral church, a deanery, archdeaconry, canonry, or other office below the rank of bishop.

CATHOLIC CREDITOR

catholic creditor.See CREDITOR.

CATONIANA REGULA

Catoniana regula (k<<schwa>>-toh-nee-ay-n<<schwa>> reg-y<<schwa>>-l<<schwa>>). See REGULA CATONIANA.

CATS AND DOGS

cats and dogs.Slang. 1. Nonperforming securities. 2. Highly speculative securities.

“Wall Street disdainfully regards most penny stocks as cats and dogs, a popular phrase in use since 1879 to describe low-priced, often worthless, speculative securities. The single word dog also means a worthless security, and the related pup meant a low-priced, inactive stock during the 1940s and 1950s.” Kathleen Odean, *High Steppers, Fallen Angels, and Lollipops: Wall Street Slang* 10 (1988).

CATTLE-RUSTLING

cattle-rustling. The stealing of cattle.

CATTLE-TRESPASS

cattle-trespass. See TRESPASS.

CAUCUS

caucus (kaw-k<<schwa>>s), n.1. Representatives from a political party who assemble to nominate candidates and decide party policy. [Cases: Elections 125. C.J.S. Elections § 104.] 2. A meeting of a group, usu. within a deliberative assembly, of people aligned by party or interest to formulate a policy or strategy. — caucus,vb.

“The term caucus also sometimes applied to a similar meeting of all the known or admitted partisans of a par-ticular position on an important issue — in a convention or any other deliberative assembly — who meet to plan strategy toward a desired result within the assembly. Such a meeting may be held on the presumed informal understanding that those who attend will follow the decisions of the caucus.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 59, at 588 (10th ed. 2000).

separate caucus.A confidential mediation session that a mediator holds with an individual party to elicit settle-ment offers and demands. • When separate caucuses are used, the mediator typically shuttles between the two (or more) sides of a dispute to communicate offers and demands. Formerly, ABA Model Rule of Professional Re-sponsibility 2.2 (governing when a lawyer could act for more than one client or as an intermediary between parties) applied when a lawyer acted as a mediator. Although the rule was deleted from the Model in 2002, many states have similar rules in effect. The rule requires a lawyer acting as an intermediary to inform the parties about mediation and the mediator's role, to act impartially, and to have a good-faith belief that the matter can be resolved in all parties' best interests.

CAUSA

causa (kaw-z<<schwa>>), n.[Latin] 1.CAUSE(1).

“One of the vaguest terms of the Roman juristic language. Starting from the basic meaning of cause, reason, inducement, the jurists use it in very different senses....Causa is the reason for which some judicial measures (actions, exceptions, interdicts) were introduced by the praetor....

Sometimes causa is roughly identical with animus when it alludes to the subjective motive, intention, or purpose of a person.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 382–83 (1953).

causa causans (kaw-z<<schwa>> kaw-zanz). An immediate or effective cause. See immediate cause under CAUSE(1).

causa jactitationis maritagii (kaw-z<<schwa>> jak-ti-tay-shee-oh-nis mar-<<schwa>>-tay-jee-I). [Latin “cause of assertion of marriage”] See JACTITATION OF MARRIAGE.

causa matrimonii praelocuti (kaw-z<<schwa>> ma-tr<<schwa>>-moh-nee-I pree-l<<schwa>>-kyoo-tl). [Latin “cause of prearranged marriage”] Hist. A writ of entry available to a woman who had given land to a suitor who refused to marry her within a reasonable time. — Also termed entry for marriage in speech.

causa proxima (kaw-z<<schwa>> prok-si-m<<schwa>>). The immediate or latest cause. See proximate cause under CAUSE.

causa remota (kaw-z<<schwa>> ri-moh-t<<schwa>>). A remote or indirect cause. See remote cause under CAUSE.

causa sine qua non (kaw-z<<schwa>> si-nee kway nonalsosin-ay kwah nohn). A necessary cause; the cause without which the thing cannot be or the event would not have occurred. See but-for cause under CAUSE(1).

2.Roman & civil law. A consideration or inducement.“The revolution of the ancient law of Contract was consummated when the Praetor of some one year announced in his Edict that he would grant equitable actions upon Pacts which had never been matured at all into Contracts, provided only that the Pacts in question had been founded on a consideration (causa).” Henry S. Maine, *Ancient Law* 28 (17th ed. 1901).

“Article 1131 of the French Civil Code provides that: ‘L’obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, ne peut avoir aucun effet.’ This cause or causa is a synonym for consideration, and we find the terms used interchangeably in the earlier English authorities.” John Salmond, *Jurisprudence* 361 (Glanville L. Williams ed., 10th ed. 1947).

causa falsa (kaw-z<<schwa>> fal-s<<schwa>> [orfawl-s<<schwa>>]). See falsa causa.

causa non secuta (kaw-z<<schwa>> non s<<schwa>>-kyoo-t<<schwa>>). [Latin “the (expected) consideration not having followed”] Roman law. A consideration that has failed; failure of consideration.

falsa causa (kaw-z<<schwa>> fal-s<<schwa>> [orfawl-s<<schwa>>]). [Latin “mistaken reason or motive”] Roman law. Falsity of consideration. • This might result from several things, such as a mistaken reason for making a gift or bequest. — Also termed (esp. in civil law) causa falsa.

CAUSA CAUSAE EST CAUSA CAUSATI

causa causae est causa causati (kaw-z<<schwa>> kaw-zee est kaw-z<<schwa>> kaw-zay-tI). [Latin “the cause of a cause is the cause of the thing caused”] Torts. The principle that the cause of the cause (rather than only the immediate cause) should also be considered as the cause of the effect.

CAUSA COGNITA

causa cognita (kaw-z<<schwa>> kog-ni-t<<schwa>>). [Latin] Hist. After investigation; the cause (or facts) having been ascertained. Cf. POST CAUSAM COGNITAM .

“Formerly, inhibitions were not granted except causa cognita (although a different rule now prevails), because they imposed a restraint on the full exercise of the rights of property; and in our own time decrees of divorce or judicial separation are not granted, except on inquiry into the facts, and cause shown warranting such orders.” John Trayner, *Trayner's Latin Maxims* 71–72 (4th ed. 1894).

CAUSA DATA CAUSA NON SECUTA

causa data causa non secuta (kaw-z<<schwa>> day-t<<schwa>> kaw-z<<schwa>> non si-kyoo-t<<schwa>>). [Latin] Roman law. The consideration having been given but the counterpart not having followed. • The phrase appeared in reference to consideration promised for an act that never took place — e.g., an advance payment for work not done, or a gift given in contemplation of marriage before the wedding was called off. See CONDICTIO.

CAUSA DEBENDI

causa debendi (kaw-z<<schwa>> di-ben-dI). [Latin] Hist. The grounds of debt.

CAUSA ET MODUS TRANSFERENDI DOMINII

causa et modus transferendi dominii (kaw-z<<schwa>> et moh-d<<schwa>>s trans-f<<schwa>>r-en-dI d<<schwa>>-min-ee-I). [Law Latin] Hist. The title and the manner of transferring property. — Also (erroneously) spelled causa et modus transferendi dominii.

CAUSA FALSA

causa falsa. See falsa causa under CAUSA(2).

CAUSA JACTITATIONIS MARITAGII

causa jactitationis maritagii (kaw-z<<schwa>> jak-ti-tay-shee-oh-nis mar-<<schwa>>-tay-jee-I). [Latin “cause of assertion of marriage”] See JACTITATION OF MARRIAGE .

CAUSAL

causal (kaw-z<<schwa>>l), adj. 1. Of, relating to, or involving causation <a causal link exists between the de-fendant's action and the plaintiff's injury>. 2. Arising from a cause <a causal symptom>. Cf. CAUSATIVE.

CAUSAL CHALLENGE

causal challenge. See challenge for cause under CHALLENGE(2).

CAUSALITY

causality (kaw-zal-⟨schwa⟩-tee), n. The principle of causal relationship; the relation between cause and effect <the foreseeability test is one of duty and of causality>. — Also termed causation. — causal, adj.

CAUSA LUCRATIVA

causa lucrativa. See LUCRATIVA CAUSA.

CAUSA MATRIMONII PRAELOCUTI

causa matrimonii praelocuti. See CAUSA(1).

CAUSAM NOBIS SIGNIFICES QUARE

causam nobis significes quare (kaw-z⟨schwa⟩m noh-bis sig-nif-⟨schwa⟩-seez kwair-ee). [Latin “that you signify to us the cause why”] Hist. A writ ordering a town's mayor to give seisin of land to a grantee of the king.

CAUSA MORTIS

causa mortis (kaw-z⟨schwa⟩ mor-tis), adj. Done or made in contemplation of one's own death. See gift causa mortis under GIFT.

CAUSA NON SECUTA

causa non secuta. See CAUSA(2).

CAUSA PROMISSIONIS

causa promissionis (kaw-z⟨schwa⟩ pr⟨schwa⟩-mish-ee-oh-nis). Eccles. law. The doctrine that an informal undertaking does not oblige if it lacks a good cause.

CAUSA PROXIMA

causa proxima. See CAUSA(1).

CAUSARE

causare (kaw-zair-ee), vb. [Law Latin fr. Latin causari “to litigate”] To litigate; to show cause against.

CAUSA REMOTA

causa remota. See CAUSA(1).

CAUSA SCIENTIAE

causa scientiae (kaw-z⟨schwa⟩ sI-en-shee-ee). [Law Latin] Scots law. Cause of knowledge. • The phrase typically referred to a witness's basis for drawing a particular conclusion, esp. in a case involving scientific expertise.

CAUSA SINE QUA NON

causa sine qua non. See CAUSA(1).

CAUSATION

causation (kaw-zay-sh<<schwa>>n). 1. The causing or producing of an effect <the plaintiff must prove causa-tion>. 2. CAUSALITY.

“Here is the key to the juridical treatment of the problems of causation. We pick out the cause which in our judgment ought to be treated as the dominant one with reference, not merely to the event itself, but to the jural consequences that ought to attach to the event.” Benjamin Cardozo, *The Paradoxes of Legal Science* 83 (1928).

negative causation. Securities. The defense that part of the plaintiff's damages were caused by factors other than the depreciation in value of the securities resulting from registration-statement defects. • If negative causation is proved, the plaintiff's damages should be reduced. 15 USCA § 77k(e). [Cases: Securities Regulation 25.21(5). C.J.S. Securities Regulation § 89.]

transaction causation. Securities. The fact that an investor would not have engaged in a given transaction if the other party had made truthful statements at the required time. [Cases: Securities Regulation 60.47. C.J.S. Securities Regulation §§ 208–210, 215.]

CAUSATIVE

causative (kaw-z<<schwa>>-tiv), adj. 1. Effective as a cause or producing a result <causative factor of the ac-cident>. 2. Expressive of causation <the causative relationship between drinking and assault>. Cf. CAUSAL.

CAUSATOR

causator (kaw-zay-t<<schwa>>r), n. [Latin “promoter of litigation”] Hist. 1. A litigant. 2. A person who manages or litigates a cause for another.

CAUSE

cause, n. 1. Something that produces an effect or result <the cause of the accident>.

“It has been said that an act which in no way contributed to the result in question cannot be a cause of it; but this, of course, does not mean that an event which might have happened in the same way though the defendant's act or omission had not occurred, is not a result of it. The question is not what would have happened, but what did happen.” Joseph H. Beale, *The Proximate Consequences of an Act*, 33 Harv. L. Rev. 633, 638 (1920).

but-for cause. The cause without which the event could not have occurred. — Also termed actual cause; cause in fact; factual cause.

concurrent cause. One of two or more causes that simultaneously produce a result.

contributing cause. A factor that — though not the primary cause — plays a part in producing a result.

cooperative cause. Archaic. A person who is contributorily or comparatively negligent.

direct and proximate cause. See proximate cause.

direct cause. See proximate cause.

efficient adequate cause. See proximate cause.

efficient cause. See proximate cause.

efficient intervening cause. See intervening cause.

efficient proximate cause. See proximate cause.

factual cause. See but-for cause.

first cause. See proximate cause.

immediate cause. The last event in a chain of events, though not necessarily the proximate cause of what follows. — Also termed effective cause.

initial cause. See proximate cause.

intervening cause. An event that comes between the initial event in a sequence and the end result, thereby altering the natural course of events that might have connected a wrongful act to an injury. • If the intervening cause is strong enough to relieve the wrongdoer of any liability, it becomes a superseding cause. A dependent intervening cause is one that is not an act and is never a superseding cause. An independent intervening cause is one that operates on a condition produced by an antecedent cause but in no way resulted from that cause. — Also termed intervening act; intervening agency; intervening force; independent intervening cause; efficient intervening cause; supervening cause; novus actus interveniens; nova causa interveniens. See superseding cause. [Cases: Negligence 430. C.J.S. Negligence §§ 202–205.]

jural cause. See proximate cause.

legal cause. See proximate cause.

primary cause. See proximate cause.

procuring cause. 1. See proximate cause (2). 2. Real estate. The efforts of the agent or broker who effects the sale of realty and who is therefore entitled to a commission. [Cases: Brokers 53. C.J.S. Brokers §§ 166–169.]

proximate cause. 1. A cause that is legally sufficient to result in liability; an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor. [Cases: Negligence 375.] 2. A cause that directly produces an event and without which the event would not have occurred. [Cases: Negligence 379, 385. C.J.S. Negligence § 197.] — Also termed (in both senses) direct cause; direct and proximate cause; efficient proximate cause; efficient cause; efficient adequate cause; initial cause; first cause; legal cause; pro-curing cause; producing cause; primary cause; jural cause. Cf. (in sense 2) remote cause.

“The four ‘tests’ or ‘clues’ of proximate cause in a criminal case are (1) expediency, (2) isolation, (3) foreseeability and (4) intention.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 823 (3d ed. 1982).

“ ‘Proximate cause’ — in itself an unfortunate term — is merely the limitation which the courts have placed upon the actor's responsibility for the consequences of the actor's conduct. In a philosophical sense, the consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would ‘set society on edge and fill the courts with endless litigation.’ [North v. Johnson, 58 Minn. 242, 59 N.W. 1012 (1894).] As a practical matter, legal responsibility must be limited to those causes which are so closely connected with the result and of such significance that the law is justified in imposing liability. Some boundary must be set to liability for the consequences of any act, upon the basis of some social idea of justice or policy.” W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 41, at 264 (5th ed. 1984).

remote cause. A cause that does not necessarily or immediately produce an event or injury. Cf. proximate cause (2). [Cases: Negligence 383.]

sole cause. The only cause that, from a legal viewpoint, produces an event or injury. • If it comes between a defendant's action and the event or injury at issue, it is treated as a superseding cause. [Cases: Negligence 431. C.J.S. Negligence §§ 202, 315.]

“When this one dominant cause is found it is treated as the ‘sole cause’ for the purposes of the particular case, even if it might not be so treated in a different kind of cause of action. A ‘sole cause’ which intervenes between defendant's act and the result in question is spoken of as a ‘superseding cause.’ ... The phrase ‘sole cause,’ meaning the only cause which will receive juridical recognition for the purposes of the particular case, is convenient to give emphasis to three points: (1) If defendant's act was the sole cause of the death or other socially-harmful occurrence, it is by definition a proximate cause thereof; (2) if something other than his act was the sole cause of the harm there need be no further inquiry so far as he is concerned; (3) it is not necessary that defendant's act should have been the sole cause of the harm, — which is merely another form of stating that a contributory cause is sufficient.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 781–82 (3d ed. 1982).

superseding cause. An intervening act or force that the law considers sufficient to override the cause for which the original tortfeasor was responsible, thereby exonerating that tortfeasor from liability. — Also termed sole cause. Cf. intervening cause. [Cases: Negligence 431. C.J.S. Negligence §§ 202, 315.]

supervening cause. See intervening cause.

unavoidable cause. A cause that a reasonably prudent person would not anticipate or be expected to avoid.

2. A ground for legal action <the plaintiff does not have cause to file suit>.

good cause. A legally sufficient reason. • Good cause is often the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused. The term is often used in employment-termination cases. — Also termed good cause shown; just cause; lawful cause; sufficient cause.

“Issues of ‘just cause,’ or ‘good cause,’ or simply ‘cause’ arise when an employee claims breach of the terms of an employment contract providing that discharge will be only for just cause. Thus, just cause is a creature of contract. By operation of law, an employment contract for a definite term may not be terminated without cause before the expiration of the term, unless the contract provides otherwise.” Mark A. Rothstein et al., *Employment Law* § 9.7, at 539 (1994).

probable cause. See PROBABLE CAUSE.

3. A lawsuit; a case <the court has 50 causes on the motion docket>.

preferred cause. A case that a court may for good reason accelerate and try ahead of other cases. — Also termed preference case; preference cause.

short cause. A case that requires little time to try, usu. half a day or less. — Also termed short-cause trial.

4. CAUSA(2).

cause, vb. To bring about or effect <dry conditions caused the fire>.

CAUSE-AND-PREJUDICE RULE

cause-and-prejudice rule. Criminal law. The doctrine that a prisoner petitioning for a federal writ of habeas corpus on the basis of a constitutional challenge must first show that the claim rests on either a new rule of constitutional law (one that was unavailable while the case was heard in the state courts) or a fact that could not have been uncovered earlier despite due diligence, and then show by clear and convincing evidence that if the constitutional error had not occurred, the prisoner would not have been convicted. 28 USCA § 2254(e)(2). • This is an exception to the procedural-default doctrine. Before 1996, the cause-and-prejudice rule allowed federal courts to grant relief on the basis of a constitutional challenge that was not presented to the trial if the prisoner showed good cause for failing to make the challenge at trial, and also showed that the trial court's error actually prejudiced the prisoner. [Cases: Criminal Law 1438; Habeas Corpus 404–409.]

CAUSE CÉLÈBRE

cause célèbre (kawz s<<schwa>>-leborkawz say-leb-r<<schwa>>). [French “celebrated case”] A trial or decision in which the subject matter or the characters are unusual or sensational <the O.J. Simpson trial was a cause célèbre in the 1990s>.

CAUSE IN FACT

cause in fact. See but-for cause under CAUSE(1).

CAUSE LIST

cause list. See DOCKET(2).

CAUSE OF ACTION 1

cause of action. 1. A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; CLAIM(4) <after the crash, Aronson had a cause of action>. [Cases: Action 1, 2. C.J.S. Actions §§ 2–9, 11, 17, 21, 26, 31–33, 36.]

“What is a cause of action? Jurists have found it difficult to give a proper definition. It may be defined generally to be a situation or state of facts that entitles a party to maintain an action in a judicial tribunal. This state of facts may be — (a) a primary right of the plaintiff actually violated by the defendant; or (b) the threatened violation of such right, which violation the plaintiff is entitled to restrain or prevent, as in case of actions or suits for injunction; or (c) it may be that there are doubts as to some duty or right, or the right beclouded by some apparent adverse right or claim, which the plaintiff is entitled to have cleared up, that he may safely perform his duty, or enjoy his property.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 170 (2d ed. 1899).

2. A legal theory of a lawsuit <a malpractice cause of action>. Cf. RIGHT OF ACTION. — Also termed (in senses 1 & 2) ground of action.

new cause of action. A claim not arising out of or relating to the conduct, occurrence, or transaction contained in the original pleading. • An amended pleading often relates back to the date when the original pleading was filed. Thus, a plaintiff may add claims to a suit without facing a statute-of-limitations bar, as long as the original pleading was filed in time to satisfy the statute. But if the amended pleading adds a claim that arises out of a different transaction or occurrence, or out of different alleged conduct, the amendment does not relate back to the date when the original pleading was filed. Fed. R. Civ. P. 15(c).

3. Loosely, a lawsuit <there are four defendants in the pending cause of action>.

CAUSE-OF-ACTION ESTOPPEL

cause-of-action estoppel. See COLLATERAL ESTOPPEL.

CAUSIDICUS

causidicus (kaw-zid-<<schwa>>-k<<schwa>>s), n. [Latin “pleader”] Roman law. A speaker or pleader who pleaded cases orally for others. Cf. ADVOCATUS.

CAUTIO

cautio (kaw-shee-oh), n. [Latin “security”] Roman & civil law. 1. Security usu. given to ensure the performance of an obligation. See BAIL(1); BOND(2). 2. A surety. Pl. cautiones (kaw-shee-oh-neeZ).

cautio fidejussoria (kaw-shee-oh fi-dee-y<<schwa>>-sor-ee-<<schwa>>). [Latin] Security given by a third party in a contract of fidejussio. See FIDEJUSSION.

cautio judicatum solvi (kaw-shee-oh joo-di-kay-t<<schwa>>m sol-vI). [Latin] A plaintiff's security for court costs. — Also spelled *cautio judicatam solvi*. [Cases: Costs 105. C.J.S. Costs §§ 59, 63.]

cautio Muciana (kaw-shee-oh myoo-shee-ay-n<<schwa>>). [Latin “security introduced by Mucius Scaevola”] Security given by an heir or legatee to obtain immediate possession of a conditional inheritance. • The condition in the will usu. required an heir to refrain from doing some act, such as marriage or overseas travel.

cautio pigneratitia (kaw-shee-oh pig-n<<schwa>>r<<schwa>>-tish-[ee]-<< schwa>>). [Latin “security by pledge”] Security given by pledging goods. — Also spelled *cautio pigneraticia*; *cautio pignoratitia*. Cf. *actio pigneratitia* under ACTIO.

cautio pro expensis (kaw-shee-oh proh ek-spen-sis). [Latin “security for costs”] Security for court costs. [Cases: Costs 105. C.J.S. Costs §§ 59, 63.]

cautio usufructuaria (kaw-shee-oh yooz-y<<schwa>>-fr<<schwa>>k-choo-air-ee-<< schwa>>). [Latin “tenant's security”] Security given by a usufructuary or tenant for life or a term of years against waste of the enjoyed property. See USUFRUCT. [Cases: Landlord and Tenant 184(1); Life Estates 6. C.J.S. Estates § 54.]

CAUTION

caution (kay-sh<<schwa>>n). Civil & Scots law. 1. Security given to ensure performance of some obligation. See JURATORY CAUTION(2). 2. The person who gives the security; a cautioner. See BAIL(4).

CAUTIONARY INSTRUCTION

cautionary instruction. See JURY INSTRUCTION.

CAUTIONE ADMITTENDA

cautione admittenda. See DE CAUTIONE ADMITTENDA.

CAUTIONER

cautioner (kaw-sh<<schwa>>n<<schwa>>r or [in senses 2 & 3] kay-sh<<schwa>>n-<< schwa>>r). 1. A person who cautions or warns. 2. Civil & Scots law. A person who puts up security to ensure the performance of some obligation. 2. Scots law. A personal security.

CAUTION MONEY

caution money. See EARNEST MONEY.

CAUTIONRY

cautionry (kay-sh<<schwa>>n-ree), n. Scots law. The obligation to act as surety for another.

C.A.V.

c.a.v.abbr.CURIA ADVISARI VULT.

CAVEAT

caveat (kav-ee-aht orkay-vee-at orkav-ee-at). [Latin “let him or her beware”] 1. A warning or proviso <he sold the car to his friend with the caveat that the brakes might need repairs>.

caveat actor (kay-vee-at ak-tor). [Latin] Let the doer, or actor, beware.

caveat emptor (kay-vee-at emp-tor). [Latin “let the buyer beware”] A doctrine holding that purchasers buy at their own risk. • Modern statutes and cases have greatly limited the importance of this doctrine. [Cases: Sales 41, 269; Vendor and Purchaser 37(1). C.J.S. Sales §§ 52, 271; Vendor and Purchaser §§ 49, 51–63, 67–69, 79.]

“It [caveat emptor] is one of that tribe of anonymous Latin maxims that infest our law [T]hey fill the ear and sound like sense, and to the eye look like learning; while their main use is to supply the place of either or both.” Gulian C. Verplanck, *An Essay on the Doctrine of Contracts* 218 (1825).

“Caveat emptor is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist.” William R. Anson, *Principles of the Law of Contract* 245 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“This action of unfair competition is the embodiment in law of the rule of the playground — ‘Play fair!’ For generations the law has enforced justice.... The maxim caveat emptor is founded on justice; the more modern rule that compels the use of truth in selling goods is founded on fairness. It conflicts with the rule of caveat emptor.” Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 25 (1929).

caveat venditor (kay-vee-at ven-di-tor). [Latin] Let the seller beware. [Cases: Sales 269. C.J.S. Sales § 271.]

caveat viator (kay-vee-at vI-ay-tor). [Latin “let the traveler beware”] The duty of a traveler on a highway to use due care to detect and avoid defects in the way.

2. A formal notice or warning given by a party to a court or court officer requesting a suspension of proceedings <the decedent's daughter filed a caveat stating the facts on which her will contest is based>.3. Under the Torrens system of land titles, a formal notice of an unregistered interest in land. • Once lodged with the register of deeds, this notice prevents the register from recording any dealing affecting the estate or the interest claimed. See TORRENS SYSTEM. [Cases: Records 9(13.1).] — caveat,vb.

CAVEATABLE

caveatable (kay-vee-at-<<schwa>>-b<<schwa>>l), adj. Of or relating to a legal or equitable interest that is protectable by a caveat. See CAVEAT(2), (3).

CAVEATEE

caveatee (kay-vee-at-ee). One whose interest is challenged by a caveat.

CAVEATOR

caveator (kay-vee-ay-t<<schwa>>r). One who files a caveat, esp. to challenge the validity of a will; CON-TESTANT(1).

C.B.

C.B.abbr.1.COMMON BENCH. 2.Hist. Chief Baron of the Exchequer.

CBA

CBA.abbr. COLLECTIVE-BARGAINING AGREEMENT.

CBO

CBO.abbr. CONGRESSIONAL BUDGET OFFICE.

CBOE

CBOE.abbr.CHICAGO BOARD OPTIONS EXCHANGE.

CBOT

CBOT.abbr.CHICAGO BOARD OF TRADE.

CBT

CBT.abbr.CHICAGO BOARD OF TRADE.

CC

CC.abbr.1. Circuit, city, civil, or county court. 2. Chancery, civil, criminal, or Crown cases. 3.CIVIL CODE.

CCC

CCC.abbr.1.COMMODITY CREDIT CORPORATION. 2.CUSTOMS COOPERATION COUNCIL.

C CORPORATION

C corporation.See CORPORATION.

CCPA

CCPA.abbr. COURT OF CUSTOMS AND PATENT APPEALS.

CCR

CCR.abbr. UNITED STATES COMMISSION ON CIVIL RIGHTS.

CD

CD.abbr.CERTIFICATE OF DEPOSIT.

CDC

CDC.abbr. CENTERS FOR DISEASE CONTROL AND PREVENTION.

CDFI FUND

CDFI Fund.abbr.COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION FUND.

CEA

CEA.abbr.COUNCIL OF ECONOMIC ADVISORS.

CEAP

ceap (cheep).Hist. Anything for sale; a chattel (usu. cattle) used as a medium for barter.

CEAPGILD

ceapgild (cheep-gild).Hist. A tax or fine paid with an animal rather than with money. — Also spelled ceapgilde.

CEASE

cease,vb.1. To stop, forfeit, suspend, or bring to an end. 2. To become extinct; to pass away. — cessation (se-say-sh<<schwa>>n), n.

CEASE-AND-DESIST LETTER

cease-and-desist letter.A cautionary notice sent to an alleged wrongdoer, describing the offensive activity and the complainant's remedies and demanding that the activity stop. • A cease-and-desist letter is commonly used to stop or block the suspected or actual infringement of an intellectual-property right before litigation.

CEASE-AND-DESIST ORDER

cease-and-desist order.A court's or agency's order prohibiting a person from continuing a particular course of conduct. See INJUNCTION; RESTRAINING ORDER . [Cases: Administrative Law and Procedure 510; Injunction 157, 202.1. C.J.S. Injunctions §§ 240–241; Public Administrative Law and Procedure § 159.]

CEASEFIRE

ceasefire. See TRUCE.

CEDANT

cedant. See REINSURED.

CEDE

cede (seed), vb.1. To surrender or relinquish. 2. To assign or grant. — cession (sesh-<<schwa>>n), n. — cessionary (sesh-<<schwa>>n-er-ee), adj.

CEDENT

cedent. See REINSURED.

CÉDULA

cédula (say-doo-lah). [Spanish] Spanish law. 1. An official document used to identify someone; an identity card. 2. A promissory note. 3. A summons; specif., a citation requiring a fugitive to appear in court to face criminal charges. • The citation is usu. affixed to the fugitive's door. 4.Hist. A decree of the Spanish Crown; esp., a royal enactment issued by the Council of Castile or of the Indies.

CEILING PRICE

ceiling price. See PRICE.

CEILING RENT

ceiling rent. See RENT(1).

CENEGILD

cenegild (kay-n<<schwa>>-gild). Hist. An expiatory fine paid by a murderer to the victim's relatives.

CENSERE

censere (sen-seer-ee), vb. [Latin "to express an opinion"] Roman law. To decree or resolve.

CENSO

censo (sen-soh). [Spanish] Spanish law. 1. The census; specif., an official count of the people within a nation, state, district, or other political subdivision. 2. Ground rent. 3. An annuity or payment for the use of land.

censo al quitar (ahl kee-tahr). A redeemable annuity. — Also termed censo redimible.

censo consignativo (kawn-seeg-nah-tee-voh). A transferable annuity backed by a lien on the debtor's real prop-erty. • The debtor retains full legal title to the real property. — Also termed censo consignatorio.

censo enfiteutico (en-fee-tay-oo-tee-koh). A real property owner's annuity from a usufructuary tenant; an annuity paid from an emphyteusis (a long-term lease of land). See EMPHYTEUSIS.

censo redimible. See censo al quitar.

censo reservatio (ray-ser-vah-tee-oh). An annuity payable by a grantee of land to the grantor. • The annuity is reserved when the land is transferred to the grantee.

CENSOR

ensor, n. 1. Roman law. (ital.) A Roman officer who acted as a census-taker, assessor, and reviewer of public morals. 2. A person who inspects publications, films, and the like for

objectionable content. 3. In the armed forces, someone who reads letters and other communications and deletes material considered a security threat. — cen-sorial,adj. — censorship,n.

censor (sen-s<<schwa>>r), vb. To officially inspect (esp. a book or film) and delete material considered offensive.

CENSORIAL JURISPRUDENCE

cen-sorial jurisprudence.See LAW REFORM.

CENSUMETHIDUS

cen-su-meth-idus (sen-s<<schwa>>-meth-<<schwa>>-d<<schwa>>s). [Law Latin] See MORTMAIN. — Also spelled censumorthidus.

CENSURE

cen-sure (sen-sh<<schwa>>r), n. An official reprimand or condemnation; harsh criticism <the judge's careless statements subjected her to the judicial council's censure>. — censorious,adj.

cen-sure,vb. To reprimand; to criticize harshly <the Senate censured the senator for his inflammatory remarks>.

CENSUS

cen-sus. The official counting of people to compile social and economic data for the political subdivision to which the people belong. Pl. censuses.[Cases: Census 1. C.J.S. Census §§ 5, 8.]

federal census.A census of a state or territory, or a portion of either, taken by the Census Bureau of the United States. • The Constitution (art. I, § 2) requires only a simple count of persons for purposes of apportioning con-gressional representation among the states. Under Congress's direction, however, the census has evolved to include a wide variety of information that is useful to businesses, historians, and others not affiliated with the federal government. [Cases: Census 1. C.J.S. Census §§ 5, 8.]

CENSUS BUREAU

Census Bureau.See BUREAU OF THE CENSUS.

CENTENA

cen-tena (sen-tee-n<<schwa>>). [fr. Latin centum “hundred”] Hist. A district containing 100 freemen, established among the Germans, Franks, Goths, and Lombards. • The centena corresponds to the Saxon hundred.

CENTENARIUS

cen-ten-ari-us (sen-t<<schwa>>-nair-ee-<<schwa>>s). [fr. Latin centum “hundred-man”] Hist. A petty judge or undersheriff of a hundred. See HUNDRED.

CENTER FOR MINORITY VETERANS

Center for Minority Veterans.A unit in the U.S. Department of Veterans Affairs responsible for promoting the use of VA services, benefits, and programs by minority veterans.

CENTER FOR WOMEN VETERANS

Center for Women Veterans.A unit in the U.S. Department of Veterans Affairs responsible for advising female veterans about VA programs and for evaluating VA programs to ensure access by women.

CENTER-OF-GRAVITY DOCTRINE

center-of-gravity doctrine.Conflict of laws. The rule that, in choice-of-law questions, the law of the jurisdiction with the most significant relationship to the transaction or event applies. — Also termed significant-relationship theory; grouping-of-contacts theory. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

CENTERS FOR DISEASE CONTROL AND PREVENTION

Centers for Disease Control and Prevention.An agency in the U.S. Department of Health and Human Services responsible for conducting medical research and for responding to public-health emergencies. • It was established by Department reorganization in 1999. — Abbr. CDC.

CENTESIMA

centesima (sen-tes-<<schwa>>-m<<schwa>>), n. & adj. [Latin “one-hundredth”] Roman law. The hundredth part; 1%. See USURAE CENTESIMAE.

CENTRAL AMERICAN COURT OF JUSTICE

Central American Court of Justice.A court created by a 1908 convention between Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, to guarantee the rights of the various republics to maintain peace and harmony in their relations and to prevent recourse to the use of force. • The convention expired after ten years, and the court ceased to exist in 1918.

CENTRAL CLEARING SYSTEM

central clearing system.A method of facilitating securities transactions in which an agent or subsidiary of an exchange acts as a clearinghouse for member brokerage firms by clearing their checks, settling their accounts, and delivering their payments. • Most transactions are reflected solely by computerized book entries, and clearing-house statements are submitted showing the net balance to be paid to reconcile the member firm's accounts.

CENTRAL CRIMINAL COURT

Central Criminal Court.The Crown Court sitting in London, formerly known as the Old Bailey. • The Central Criminal Court, created in 1834, has jurisdiction to try all indictable offenses committed in London. See CROWN COURT .

CENTRAL CRIMINAL COURT ACT

Central Criminal Court Act. See PALMER'S ACT.

CENTRAL GOVERNMENT

central government. See federal government (1) under GOVERNMENT.

CENTRAL INTELLIGENCE AGENCY

Central Intelligence Agency. An independent federal agency that compiles intelligence information, conducts counterintelligence activities outside the United States, and advises the President and the National Security Council on matters of foreign intelligence and national security. • It was created by the National Security Act of 1947. 50 USCA §§ 401 et seq. — Abbr. CIA. See NATIONAL SECURITY COUNCIL.

CENTRAL OFFICE

Central Office. The primary office for most of England's courts. • The Central Office was established in 1879 to consolidate the masters and associates of the common-law courts, and the clerical functions of the Crown Office of the Queen's Bench Division, the Report and Enrollment offices of the Chancery Division, and several other offices.

CENTUMVIRI

centumviri (sen-t<<schwa>>m-v<<schwa>>-rI), n. pl. [Latin "hundred men"] Roman law. A court with jurisdiction to hear important cases, esp. those relating to inheritances and disputed wills. • The court originally consisted of 105 judges — 3 from each of the 35 tribes.

CEO

CEO. abbr. CHIEF EXECUTIVE OFFICER.

CEORL

ceorl (chorl). Hist. A Saxon freeman who either possessed no landed property or held land of a thane by paying rent or providing services. • After the Norman Conquest, ceorls were reduced to the status of unfree villeins. Under Norman rule, the variant form of the word, churl, became associated with a base peasant, and soon acquired the connotation of a surly, coarse person (hence the modern meaning). — Also termed churl; ciriliscus.

CEPI

cepi (see-pl). [Latin] Hist. I have taken. • Cepi was often used in a *capias* return by an arresting sheriff, as in *cepi corpus et est in custodia* ("I have taken the defendant [or body] and he is in custody").

"But for injuries committed with force to the person, property, or possession, of the plaintiff, the law, to punish the breach of the peace, and prevent its disturbance in the future, provided also a process against the defendant's person.... This process was called a *capias ad respondendum*, which at once authorised the sheriff to take the defendant, and imprison him till the return-day, and then produce him in court.... If by this process the defendant was arrested, the sheriff returned

it with cepi corpus indorsed. But notwithstanding this writ commanded the sheriff to take and secure him till the return-day, he might, at his own peril, have let the defendant continue at large; though he was liable, in case of his non appearance in court, to make amends to the plaintiff in an action for an escape, or to be amerced by the court for the contempt, in not producing the body pursuant to the return he had made on the writ." George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xlii–xliii (3d ed. 1787).

cepi corpus et bail (see-pIkor-p<<schwa>>s et bayl). I have arrested and then released the defendant on a bail bond.

cepi corpus et committitur (see-pIkor-p<<schwa>>s et k<<schwa>>-mit-<<schwa>>-t<<schwa>>r). I have arrested and committed the defendant (to prison).

cepi corpus et est languidus (see-pIkor-p<<schwa>>s et est lang-gw<<schwa>>-d<<schwa>>s). I have arrested the defendant and he is sick. • This notation in a sheriff's return indicated that the defendant was too sick to be moved safely from the place of arrest.

cepi corpus et paratum habeo (see-pIkor-p<<schwa>>s et p<<schwa>>-ray-t<<schwa>>m hay-bee-oh). I have made an arrest and am ready to produce the defendant.

CEPIT

cepit (see-pit). [Latin] Hist. He took. • This was the main verb in a declaration in an action for trespass or replevin.

CEPIT ET ABDUXIT

cepit et abduxit (see-pit et ab-duk-sit). [Latin] Hist. He took and led away. • This declaration appeared in either a writ of trespass or a larceny indictment for theft of an animal.

CEPIT ET ASPORTAVIT

cepit et asportavit (see-pit et as-por-tay-vit). [Latin] Hist. He took and carried away. • This declaration appeared in either a writ of trespass or a larceny indictment for a defendant's wrongfully carrying away goods.

CEPIT IN ALIO LOCO

cepit in alio loco (see-pit in ay-lee-oh loh-koh). [Latin] Hist. He took in another place. • This phrase appeared in a replevin-action pleading in which a defendant asserted that the property had been taken at a place other than that named in the plaintiff's declaration.

CEQ

CEQ.abbr. COUNCIL ON ENVIRONMENTAL QUALITY.

CERAGE

cerage (seer-ij). See WAX SCOT.

CERA IMPRESSA

cera impressa (seer-⟨schwa⟩ im-pres-⟨schwa⟩). [Latin “impressed wax”] Hist. An impressed seal. • Cera impressa originally referred only to wax seals, but later came to include any impressed seal, regardless of the substance impressed. See SEAL.

“The courts have held that an impression made on wafers or other adhesive substance capable of receiving an impression comes within the definition of ‘cera impressa.’ If then wax be construed to be merely a general term including any substance capable of receiving and retaining the impression of a seal, paper, if it has that quality, may well be included in the category. The machine now used to impress public seals does not require any substance to receive or retain the impression, which is as well defined, as durable — less likely to be defaced than that made on wax. It is the seal which authenticates, not the substance impressed.” William C. Anderson, A Dictionary of Law 926 (1889).

CERATIUM

ceratium (si-ray-shee-⟨schwa⟩m). See WAX SCOT.

CERCLA

CERCLA (s⟨schwa⟩r-kl⟨schwa⟩).abbr. Comprehensive Environmental Response, Compensation, and Liability Act of 1980. • This statute holds responsible parties liable for the cost of cleaning up hazardous-waste sites.⁴² USCA §§ 9601 et seq. See SUPERFUND. [Cases: Environmental Law 436.]

“CERCLA is probably the most controversial environmental law ever enacted. Supporters praise it as a vital program to safeguard human health and the environment from the toxic consequences of decades of irresponsible waste handling. Citing cost estimates ranging up to \$750 billion, critics deride it as an extraordinarily expensive measure which imposes crippling liability on innocent parties to fund clean-ups which are either unnecessary or largely ineffective.” John G. Sprankling & Gregory S. Weber, *The Law of Hazardous Wastes and Toxic Substances in a Nutshell* 256 (1997).

CEREMONIAL MARRIAGE

ceremonial marriage.See MARRIAGE(3).

CERT

cert.abbr.CERTIORARI.

CERTAIN CONTRACT

certain contract.See CONTRACT.

CERTANS DE DAMNO VITANDO

certans de damno vitando (s⟨schwa⟩r-tanz dee dam-noh vI-tan-doh). [Law Latin] Hist. Striving to avoid a loss. — Sometimes shortened to damno vitando.

CERTANS DE LUCRO CAPTANDO

certans de lucro captando (s<<schwa>>r-tanz dee loo-kroh kap-tan-doh). [Law Latin] Hist. Striving to make a gain; attempting to obtain an advantage.

CERTIFICANDO DE RECOGNITIONE STAPULAE

certificando de recognitione stapulae (s<<schwa>>r-ti-fi-kan-doh dee rek-<<schwa>>g-nish-ee-oh-nee stay-py<<schwa>>-lee). [Law Latin "by certifying the recognition of the statute staple"] Hist. A writ commanding the holder of certain commercial debt instruments (i.e., the mayor of the staple) to certify to the lord chancellor the existence and terms of a statute staple (i.e., a bond for commercial debt) wrongfully detained by a party to the bond. See STATUTE STAPLE.

CERTIFICAT D'UTILITE

certificat d'utilite.[French] Patents. UTILITY MODEL.

CERTIFICATE

certificate,n.1. A document in which a fact is formally attested <death certificate>. See STOCK CERTIFICATE. 2. A document certifying the bearer's status or authorization to act in a specified way <nursing certificate>.3. A notice by one court to another court of the action it has taken <when issuing its opinion, the Seventh Circuit sent a certificate to the Illinois Supreme Court>.

CERTIFICATE CREDITOR

certificate creditor.See CREDITOR.

CERTIFICATED SECURITY

certificated security.See SECURITY.

CERTIFICATE INTO CHANCERY

certificate into chancery.English law. The decision of a common-law court on a legal question submitted by the chancery court.

CERTIFICATE LAND

certificate land.See LAND.

CERTIFICATE OF ACKNOWLEDGMENT

certificate of acknowledgment.See ACKNOWLEDGMENT(5).

CERTIFICATE OF AMENDMENT

certificate of amendment.A document filed with a state corporation authority, usu. the secretary of state, re-flecting changes made to a corporation's articles of incorporation. [Cases: Corporations 40. C.J.S. Corporations § 38.]

CERTIFICATE OF APPEALABILITY

certificate of appealability. In an appeal from the denial of federal habeas corpus relief, a document issued by a United States circuit judge certifying that the prisoner showed that a constitutional right may have been denied. 28 USCA § 2253(c)(2). • The prisoner does not have to show that the case would succeed on the merits, only that reasonable jurists would find the claim at least debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029, 1039 (2003). If the certificate is not issued, no appeal is possible. 28 USCA § 2253(c)(1); Fed. R. App. P. 22(b). — Also termed (before 1996) certificate of probable cause; certificate of reasonable doubt; writ of probable cause. — Abbr. COA.

CERTIFICATE OF ASSIZE

certificate of assize. Hist. In England, a writ granting a retrial. • The certificate of assize has been replaced by a court order granting a new trial.

CERTIFICATE OF AUTHORITY

certificate of authority. 1. A document authenticating a notarized document that is being sent to another jurisdiction. • The certificate assures the out-of-state or foreign recipient that the notary public has a valid commission. — Also termed certificate of capacity; certificate of official character; certificate of authentication; certificate of prothonotary; certificate of magistracy; apostille; verification. 2. A document issued by a state agency, usu. the secretary of state, granting an out-of-state corporation the right to do business in the state. [Cases: Corporations 648. C.J.S. Corporations § 903.]

CERTIFICATE OF BAD FAITH

certificate of bad faith. In a case in which a party has been allowed to proceed in a United States district court in forma pauperis, a document issued by the court attesting that an appeal by that party would be frivolous and therefore should not be allowed unless the party pays the ordinary filing fees and costs. 28 USCA § 1915(a)(3). Cf. **CERTIFICATE OF GOOD FAITH**.

CERTIFICATE OF CAPACITY

certificate of capacity. See **CERTIFICATE OF AUTHORITY**(1).

CERTIFICATE OF CONFERENCE

certificate of conference. A section of a pleading or motion filed with the court, usu. contained separately on a page near the end of the document, whereby the party filing the pleading or motion certifies to the court that the parties have attempted to resolve the matter, but that a judicial determination is needed because an agreement could not be reached. • Courts require some motions to have a certificate of conference attached to them. This compels the parties to try to resolve the issue themselves, without burdening the court unless necessary. Fed. R. Civ. P. 26(c), 37.

CERTIFICATE OF CONVENIENCE AND NECESSITY

certificate of convenience and necessity. A certificate issued by an administrative agency granting operating authority to a utility or transportation company. — Also termed certificate of public convenience and necessity. [Cases: Automobiles 77; Carriers 8; Public Utilities 113. C.J.S. Aeronautics and Aerospace § 189; Carriers §§ 356–366, 373–376, 378–381, 383–384; Motor Vehicles §§ 174, 179–183; Public Utilities §§ 4, 69, 71.]

CERTIFICATE OF CONVICTION

certificate of conviction. A signed and certified warrant authorizing a person's imprisonment after an adjudication of guilt.

CERTIFICATE OF CORRECTION

certificate of correction. 1. A document that corrects an error in an official document, such as a certificate of incorporation. 2. Patents. A document issued by the U.S. Patent and Trademark Office after a patentee or assignee rectifies a minor error unrelated to either questions of ownership or else defects in a patent application's specifications or drawings. • The certificate can correct only three types of errors: (1) mistakes made by the PTO, (2) minor clerical or typographical errors, and (3) the omission or misidentification of an inventor's name. 35 USCA §§ 254–256. Cf. reissue patent under PATENT(3). [Cases: Patents 126. C.J.S. Patents §§ 215–216.]

CERTIFICATE OF DEPOSIT

certificate of deposit. 1. A banker's certificate acknowledging the receipt of money and promising to repay the depositor. 2. A bank document showing the existence of a time deposit, usu. one that pays interest. — Abbr. CD. [Cases: Banks and Banking 152. C.J.S. Banks and Banking §§ 294–300, 370.]

negotiable certificate of deposit. A security issued by a financial institution as a short-term source of funds, usu. with a fixed interest rate and maturity of one year or less. [Cases: Banks and Banking 152. C.J.S. Banks and Banking §§ 294–300, 370.]

CERTIFICATE OF DISCHARGE

certificate of discharge. See SATISFACTION PIECE.

CERTIFICATE OF DISHONOR

certificate of dishonor. See NOTICE OF DISHONOR.

CERTIFICATE OF DISSOLUTION

certificate of dissolution. A document issued by a state authority (usu. the secretary of state) certifying that a corporation has been dissolved.

CERTIFICATE OF ELECTION

certificate of election. A document issued by a governor, board of elections, or other competent authority certifying that the named person has been duly elected. [Cases: Elections 126(7), 265. C.J.S. Elections § 119(1).]

CERTIFICATE OF GOOD FAITH

certificate of good faith. In a case in which a party has been allowed to proceed in a United States District Court in forma pauperis, a document issued by the court attesting that an appeal by the party would not be frivolous, so the party should not be required to pay costs or security. • District judges occasionally issue certificates of good faith even though they are never required: a party is allowed to appeal in forma pauperis unless the court issues a certificate of bad faith. 28 USCA § 1915(a)(3). Cf. CERTIFICATE OF BAD FAITH.

CERTIFICATE OF HOLDER OF ATTACHED PROPERTY

certificate of holder of attached property. A certificate given by a person who holds — but does not own — property attached by a sheriff; the certificate sets forth the holder's interest in the property. [Cases: Attachment 187. C.J.S. Attachment §§ 239–241.]

CERTIFICATE OF INCORPORATION

certificate of incorporation. 1. A document issued by a state authority (usu. the secretary of state) granting a corporation its legal existence and the right to function as a corporation. — Also termed charter; corporate charter. 2. ARTICLES OF INCORPORATION. [Cases: Corporations 18. C.J.S. Corporations §§ 26, 33–35, 41, 559.]

CERTIFICATE OF INDEBTEDNESS

certificate of indebtedness. 1. DEBENTURE. 2. TREASURY BILL. 3. CERTIFICATE OF DEPOSIT .

CERTIFICATE OF INSURANCE

certificate of insurance. A document acknowledging that an insurance policy has been written, and setting forth in general terms what the policy covers. [Cases: Insurance 1710.]

CERTIFICATE OF INTEREST

certificate of interest. Oil & gas. A document evidencing a fractional or percentage ownership in oil-and-gas production.

CERTIFICATE OF MAGISTRACY

certificate of magistracy. See CERTIFICATE OF AUTHORITY(1).

CERTIFICATE OF MARRIAGE

certificate of marriage. See MARRIAGE CERTIFICATE.

CERTIFICATE OF MERIT

certificate of merit. A certificate, signed by the plaintiff's attorney and filed with the complaint in a civil suit, declaring that the plaintiff's attorney has conferred with at least one competent expert and afterward concluded that the suit has merit. • Many states have a law mandating certificates of merit in certain types of cases, such as professional malpractice. The law's purpose

is to weed out frivolous claims as early as possible. In those states, if a certificate is not filed with the complaint, the action is usu. dismissed. If the law requires the certificate to be signed under oath or penalty of perjury, it is sometimes called an affidavit of merit.

CERTIFICATE OF OCCUPANCY

certificate of occupancy.A document indicating that a building complies with zoning and building ordinances. • A certificate of occupancy is often required before title can be transferred and the building occupied. [Cases: Health 392; Zoning and Planning 371. C.J.S. Zoning and Land Planning §§ 191, 199, 203.]

CERTIFICATE OF OFFICIAL CHARACTER

certificate of official character.See CERTIFICATE OF AUTHORITY(1).

CERTIFICATE OF PROBABLE CAUSE

certificate of probable cause.See CERTIFICATE OF APPEALABILITY. — Abbr. CPC.

CERTIFICATE OF PROOF

certificate of proof.See PROOF OF ACKNOWLEDGMENT.

CERTIFICATE OF PROTEST

certificate of protest.See NOTICE OF DISHONOR.

CERTIFICATE OF PROTHONOTARY

certificate of prothonotary.See CERTIFICATE OF AUTHORITY(1).

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

certificate of public convenience and necessity.See CERTIFICATE OF CONVENIENCE AND NECESSITY .

CERTIFICATE OF PURCHASE

certificate of purchase.A document reflecting a successful bid for property at a judicial sale. • The bidder receives a property deed if the land is not redeemed or if the sale is confirmed by court order. — Also termed certificate of sale. [Cases: Judicial Sales 61. C.J.S. Judicial Sales §§ 48–52.]

CERTIFICATE OF REASONABLE DOUBT

certificate of reasonable doubt.See CERTIFICATE OF APPEALABILITY.

CERTIFICATE OF REDEMPTION

certificate of redemption.A document issued by a sheriff or other statutorily designated officer to a debtor whose property has been foreclosed as evidence that the debtor paid the redemption price for the foreclosed property. See statutory redemption under REDEMPTION.

CERTIFICATE OF REGISTRATION

certificate of registration. 1. Copyright. A U.S. Copyright Office document approving a copyright application and stating the approved work's registration date and copyright registration number. [Cases: Copyrights and Intellectual Property 50.25. C.J.S. Copyrights and Intellectual Property §§ 39, 96.] 2. Trademarks. A document affirming that the U.S. Patent and Trademark Office has allowed and recorded a trademark or servicemark. • The certificate identifies (1) the registered mark, (2) the date of first use, (3) the type of product or service that the mark applies to, (4) the registration number and date, (5) the registration's term, (6) the original application date, and (7) any conditions or limitations on registration. [Cases: Trade Regulation 251. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 149, 199–201.]

CERTIFICATE OF REGISTRY

certificate of registry. Maritime law. A document certifying that a ship has been registered as required by law. See REGISTRY(2). [Cases: Shipping 5. C.J.S. Shipping § 16.]

CERTIFICATE OF REHABILITATION

certificate of rehabilitation. 1. A document issued in some states by a court or other authorized governmental agency, such as a parole board, as evidence that a convicted offender is entitled to recover at least some of the rights and privileges of citizenship. • The terms and conditions under which certificates of rehabilitation are issued vary widely among the states that use them. Some states, such as New York, issue different kinds of rehabilitation certificates based on the number or type of convictions. 2. A document issued by a (usu. local) government on the renovation, restoration, preservation, or rehabilitation of a historic building. • The certificate usu. entitles the property owner to favorable tax treatment. 3. A document attesting that substandard housing has been satisfactorily renovated and meets housing-code standards.

CERTIFICATE OF SALE

certificate of sale. See CERTIFICATE OF PURCHASE.

CERTIFICATE OF SERVICE

certificate of service. A section of a pleading or motion filed with the court, usu. contained separately on the last page, in which the filing party certifies to the court that a copy has been mailed to or otherwise served on all other parties. • A certificate of service is usu. not included with the initial pleading that the plaintiff files to begin a suit, because that pleading is usu. filed before it is served (although the plaintiff may be required to file proof of service). Other pleadings and motions are usu. required to have a certificate of service. Fed. R. Civ. P. 5(d). — Also termed proof of service. [Cases: Federal Civil Procedure 665; Pleading 336; Process 132. C.J.S. Pleading §§ 577, 579–583; Process §§ 79–80.]

CERTIFICATE OF STOCK

certificate of stock. See STOCK CERTIFICATE.

CERTIFICATE OF TITLE

certificate of title.A document indicating ownership of real or personal property. UCC § 9-102(a)(10). • This document usu. identifies any liens or other encumbrances. [Cases: Property 9. C.J.S. Property §§ 35–37.]

CERTIFICATION

certification,n.1. The act of attesting. 2. The state of having been attested. 3. An attested statement. 4. The writing on the face of a check by which it is certified. 5. A procedure by which a federal appellate court asks the U.S. Supreme Court or the highest state court to review a question of law arising in a case pending before the appellate court and on which it needs guidance. • Certification is commonly used with state courts, but the U.S. Supreme Court has steadily restricted the number of cases it reviews by certification. See 28 USCA § 1254(2). Cf. CER-TIORARI. [Cases: Federal Courts 392, 463.]

CERTIFICATION AUTHORITY

certification authority.An organization that issues digital certificates and maintains a database of certificates available on the Internet. • Many states have licensing laws for certification authorities. — Abbr. CA. — Also termed certifying authority.

CERTIFICATION HEARING

certification hearing.See transfer hearing under HEARING.

CERTIFICATION MARK

certification mark.See certification trademark under TRADEMARK.

CERTIFICATION OF BARGAINING AGENT

certification of bargaining agent.See UNION CERTIFICATION.

CERTIFICATION OF LABOR UNION

certification of labor union.See UNION CERTIFICATION.

CERTIFICATION TO STATE COURT

certification to state court.The procedure by which a federal court of appeals defers deciding a novel question of state law by certifying the question to the highest court of the state. See CERTIFICATION(5). [Cases: Federal Courts 392.]

CERTIFICATION TRADEMARK

certification trademark.See TRADEMARK.

CERTIFIED CHECK

certified check.See CHECK.

CERTIFIED COPY

certified copy.See COPY.

CERTIFIED FILE HISTORY

certified file history. Patents. A patent application together with records of all proceedings and correspondence related to its prosecution, as certified by the U.S. Patent and Trademark Office for appeals, arbitration, and other postprosecution proceedings. Cf. FILE WRAPPER. [Cases: Patents 160.C.J.S. Patents §§ 275–276.]

CERTIFIED FINANCIAL STATEMENT

certified financial statement. See FINANCIAL STATEMENT.

CERTIFIED JUVENILE

certified juvenile. See JUVENILE.

CERTIFIED MAIL

certified mail. See MAIL.

CERTIFIED MILITARY LAWYER

certified military lawyer. See LAWYER.

CERTIFIED PUBLIC ACCOUNTANT

certified public accountant. See ACCOUNTANT.

CERTIFIED QUESTION

certified question. A point of law on which a federal appellate court seeks guidance from either the U.S. Supreme Court or the highest state court by the procedure of certification. [Cases: Federal Courts 392, 463.]

CERTIFY

certify, vb. 1. To authenticate or verify in writing. 2. To attest as being true or as meeting certain criteria. 3. (Of a court) to issue an order allowing a class of litigants to maintain a class action; to create (a class) for purposes of a class action. Cf. DECERTIFY. See CERTIFICATION. — certified, adj.

CERTIFYING AUTHORITY

certifying authority. See CERTIFICATION AUTHORITY.

CERTIORARI

certiorari (s<<schwa>>r-shee-<<schwa>>-rair-lor -rair-ee or -rah-ree). [Law Latin “to be more fully informed”] An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in the case for review. • The writ evolved from one of the prerogative writs of the English Court of King's Bench, and in the United States it became a general appellate remedy. The U.S. Supreme Court uses certiorari to review most of the cases that it decides to hear. — Abbr. cert. — Also termed writ of certiorari. Cf. CERTIFICATION(5).

[Cases: Certiorari 1. C.J.S. Certiorari §§ 2–4, 6, 8, 33.]

“The established method by which the Court of King's Bench from the earliest times exercised superintendence over the due observance of their limitations by inferior courts, checked the usurpation of jurisdiction, and main-tained the supremacy of the royal courts, was by writs of prohibition and certiorari. A proceeding by writ of certiorari (cause to be certified) is a special proceeding by which a superior court requires some inferior tribunal, board, or judicial officer to transmit the record of its proceedings for review, for excess of jurisdiction. It is similar to a writ of error, in that it is a proceeding in a higher court to superintend and review judicial acts, but it only lies in cases not appealable by writ of error or otherwise.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 340, at 541 (Henry Winthrop Ballantine ed., 3d ed. 1923).

“The discretionary writ of certiorari has come to control access to almost all branches of Supreme Court juris-diction. Appeal jurisdiction has been narrowly limited, and certification of questions from federal courts of ap-peals has fallen into almost complete desuetude. Certiorari control over the cases that come before the Court enables the Court to define its own institutional role.” Charles Alan Wright et al., *Federal Practice and Procedure* § 4004, at 22 (2d ed. 1996).

“The writ of certiorari (from the Latin certiorarie ”in form“) is used today in the United States as a general vehicle of discretionary appeal. Historically, however, the writ had a much narrower function. It lay only to inferior courts and only to demand that the record be ‘certified’ and sent to the King's Bench to see if that [inferior] court had exceeded its power in particular cases. It was most frequently used to review criminal indictments and local administrative orders, and was often used to examine the statutory authority for acts of administrative bodies created by statute.” Daniel R. Coquillette, *The Anglo-American Legal Heritage* 248 (1999).

certiorari facias (s<<schwa>>r-shee-<<schwa>>-rair-Ifay-shee-<<schwa>>s). [Latin “cause to be certified”] The command of a writ of certiorari, referring to certification of the court record for review.

CERTIORARI PETITION

certiorari petition.See PETITION.

CERT POOL

cert pool.A group of clerks in the U.S. Supreme Court who read petitions for certiorari and write memorandums for the justices with a synopsis of the facts and issues and often a recommendation of whether a grant of certiorari is warranted.

“The cert pool is not without its critics. Some commentators have contended that inexperienced clerks in the cert pool give short shrift to cases of practical importance in favor of cases presenting esoteric legal questions.... Other critics have contended that the cert pool does little to advance its stated goal of efficiency.... Pool clerks frequently must take the time to formally summarize petitions that would occasion only a brief, candid recommendation to ‘deny’ from their own Justices.” Robert L. Stern et al., *Supreme Court Practice* 291 (8th ed. 2002).

CERTUM AN ET QUANTUM DEBEATUR?

certum an et quantum debeatur? (s<<schwa>>r-t<<schwa>>m an et kwon-t<<schwa>>m dee-bee-ay-t<<schwa>>r). [Law Latin] Hist. Certain whether there is a debt due at all, and how much is owed? • These were the two questions that had to be resolved before a defendant could make a plea in compensation.

CERTUS PLEGIUS

certus plegius (s<<schwa>>r-t<<schwa>>s plee-jee-<<schwa>>s). [Latin “sure pledge”] See SALVUS PLEGIUS.

CERTWORTHY

certworthy,adj. Slang. (Of a case or issue) deserving of review by writ of certiorari. — certworthiness,n.

CESS

cess (ses), n. Hist. 1.English law. An assessment or tax. 2.Scots law. A land tax. — Also spelled cesse; sess.

CESSATION-OF-PRODUCTION CLAUSE

cessation-of-production clause.Oil & gas. A lease provision that specifies what the lessee must do to maintain the lease if production stops. • The purpose of the clause is to avoid the uncertainties of the tempo-rary-cessation-of-production doctrine. Cf. TEMPORARY-CESSATION-OF-PRODUCTION DOCTRINE . [Cases: Mines and Minerals 78.1(9). C.J.S. Mines and Minerals §§ 260–263.]

“Many oil and gas leases contain provisions intended to give lessees more certainty than is given by the temporary cessation of production doctrine. Usually, such provision takes the form of a temporary cessation of production clause, a provision in the lease that states that the lease will be maintained so long as production does not cease for more than an agreed period of time, usually sixty to ninety days.... So long as sixty days does not elapse without operations on the property, the lease will not terminate even though there is no production.” John S. Lowe, *Oil and Gas Law in a Nutshell* 258 (3d ed. 1995).

CESSAVIT PER BIENNIUM

cessavit per biennium (se-say-vit p<<schwa>>r bI-en-ee-<<schwa>>m). [Latin “he ceased for two years”] Hist. A writ of right available to a landlord to recover land from a tenant who has failed to pay rent or provide prescribed services for a two-year period. • The writ could also be used to recover land donated to a religious order if the order has failed to perform certain spiritual services. — Also termed cessavit.

CESSE

cesse. See CESS.

CESSER

cesser (ses-*<<schwa>>r*).1.Hist. A tenant whose failure to pay rent or perform prescribed services gives the landowner the right to recover possession of the land. — Also spelled cessor; cessure. 2. The termination of a right or interest.

“A proviso of cesser is usually annexed to long terms, raised by mortgage, marriage settlement, or annuity, whereby the term is declared to be determinable on the happening of a certain event; and until the event provided for in the declaration of cesser has occurred, the term continues.” 4 James Kent, *Commentaries on American Law* *90 (George Comstock ed., 11th ed. 1866).

“The cesser of a term, annuity or the like takes place when it determines or comes to an end. The expression was formerly chiefly used with reference to long terms of years created by a settlement for the purpose of securing portions, etc., given to the objects of the settlement. In such cases, it was usual to introduce a proviso that the term should cease when the trusts thereof were satisfied (as, for example, on the death of the annuitant where the term was created to secure an annuity). This was called a proviso for cesser.” *Jowitt's Dictionary of English Law* 308 (John Burke ed., 2d ed. 1977).

CESSET EXECUTIO

cesset executio (ses-*<<schwa>>t ek-s<<schwa>>-kyoo-shee-oh*). [Latin “let execution stay”] An order directing a stay of execution.

CESSET PROCESSUS

cesset processus (ses-*<<schwa>>t proh-ses-<<schwa>>s*). [Latin “let process stay”] An order entered on the record directing a stay of a legal proceeding.

CESSIO

cessio (sesh-ee-oh). [Latin “cession”] A relinquishment or assignment; CESSION.

CESSIO ACTIONUM

cessio actionum (sesh-ee-oh ak-shee-oh-n*<<schwa>>m*). [Latin] Roman law. The assignment of an obligation by allowing a third party to (1) sue on the obligation in the name of the party entitled to it, and (2) retain the proceeds.

CESSIO BONORUM

cessio bonorum (sesh-ee-oh b*<<schwa>>-nor-<<schwa>>m*). [Latin “cession of goods”] Roman law. An assignment of a debtor's property to creditors. [Cases: Debtor and Creditor 1, 12. C.J.S. Assignments for Benefit of Creditors §§ 2, 4, 27; Creditor and Debtor §§ 2–3, 106–109.]

“It was the Roman equivalent of modern bankruptcy.... [O]ne who thus made cessio bonorum would not become infamis, was never liable in future beyond his means, for the old debts, and was not liable to personal seizure thereafter in respect of them.” W.W. Buckland, *A Manual of Roman Private Law* 388 (2d ed. 1939).

CESSIO FORI

cessio fori (sesh-ee-oh for-I). [Latin] Hist. The giving up of business; the act of becoming bankrupt.

CESSIO IN JURE

cessio in jure (sesh-ee-oh in joor-ee). [Latin “transfer in law”] Roman law. A fictitious action brought to convey property, whereby the claimant demanded certain property, the owner did not contest the claim, and a magistrate awarded the property to the claimant.

CESSION

cession (sesh-*<<schwa>>n*). 1. The act of relinquishing property rights. 2. Int'l law. The relinquishment or transfer of land from one nation to another, esp. after a war, as part of the price of peace. [Cases: Indians 11.C.J.S. Indians § 71.] 3. The land so relinquished or transferred.

CESSIONARY BANKRUPT

cessionary bankrupt. See BANKRUPT.

CESSMENT

cessment (ses-*m<<schwa>>nt*). Hist. An assessment or tax.

CESSOR

cessor. See CESSER.

CESSURE

cessure. See CESSER.

CESTUI

cestui (set-ee orses-twee). [French “he who”] A beneficiary. — Also spelled cestuy.

CESTUI QUE TRUST

cestui que trust (set-ee [orses-twee] kee [or *k<<schwa>>*] *tr<<schwa>>st*). [Law French] Archaic. One who possesses equitable rights in property, usu. receiving the rents, issues, and profits from it; BENEFICIARY. — Also termed fide-commissary; fidei-commissarius. Pl. cestuis que trust or (erroneously) cestuis que trustent. [Cases: Trusts 139. C.J.S. Trover and Conversion § 251.]

“[A]n alternative name for the beneficiary is ‘cestui que trust,’ an elliptical phrase meaning ‘he [for]= whose [benefit the] trust [was created].’ In this phrase cestui is pronounced ‘settee’ (with the accent on the first syllable), que is pronounced ‘kee,’ and trust as in English. Grammatically the plural should be cestuis que trust (pronounced like the singular); but by an understandable mistake it is sometimes written cestuis que trustent, as if trust were a verb.” Glanville Williams, *Learning the Law* 10 (11th ed. 1982).

CESTUI QUE USE

cestui que use (set-ee [orses-twee] kee [or k<<schwa>>] yoos). Archaic. The person for whose use and benefit property is being held by another, who holds the legal title to the property. Pl. cestuis que use or (erroneously) cestuis que usent. [Cases: Trusts 131. C.J.S. Trover and Conversion § 241.]

“The basis of this institution was the transfer of property to a trusted friend, who was to hold it not for personal benefit but for the purpose of carrying out the transferor's instructions. The person to whom the land was conveyed for this purpose was the ‘feoffee to uses’; the person for whose benefit the land was conveyed — the beneficiary — was the ‘cestui que use’ ... , from the law French ‘cestui a que use le feoffment fuit fait.’ ” Peter Butt, *Land Law* § 702, at 97 (3d ed. 1996).

CESTUI QUE VIE

cestui que vie (set-ee [orses-twee] kee [or k<<schwa>>] vee). The person whose life measures the duration of a trust, gift, estate, or insurance contract. Cf. MEASURING LIFE. [Cases: Life Estates 1. C.J.S. Estates §§ 28–29, 31, 34.]

“[L]et us assume that A instead transfers ‘to E for the life of A.’ Since A has used his own life as the measuring life of E's estate, A has given away all that he had. Because E's estate is measured by the life of someone other than himself, his estate is called an estate pur autre vie. A, whose life is the measuring life, is called the cestui que vie.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 36 (2d ed. 1984).

CETERIS PARIBUS

ceteris paribus (set-<<schwa>>-ris par-<<schwa>>-b<<schwa>>s). [Latin] Other things being equal. — Also spelled caeteris paribus.

CETERIS TACENTIBUS

ceteris tacentibus (set-<<schwa>>-ris ta-sen-t<<schwa>>-b<<schwa>>s). [Latin] Hist. The others being silent. • This phrase appeared in serially printed law reports after an opinion by one judge. It referred to the judges who did not vote or express an opinion. — Also spelled caeteris tacentibus. See SERIATIM.

CF.

cf.abbr.[Latin confer] Compare. • As a citation signal, cf. directs the reader's attention to another authority or section of the work in which contrasting, analogous, or explanatory statements may be found.

C.F.

C.F.abbr.COST AND FREIGHT.

CFC

CFC. See controlled foreign corporation under CORPORATION.

CFO

CFO.abbr. CHIEF FINANCIAL OFFICER.

CFP

CFP.abbr.Certified financial planner. See FINANCIAL PLANNER.

CFR

CFR.abbr.1.CODE OF FEDERAL REGULATIONS. 2.COST AND FREIGHT.

CFTC

CFTC.abbr.COMMODITY FUTURES TRADING COMMISSION.

CGL INSURANCE

CGL insurance.See comprehensive general-liability insurance under INSURANCE.

CGL POLICY

CGL policy.1. See commercial general-liability policy under INSURANCE POLICY. 2. See comprehensive general-liability policy under INSURANCE POLICY.

CH.

ch.abbr.1. Chapter. 2. Chancellor. 3. Chancery. 4. Chief.

CHACE ACT

Chace Act.Hist. Copyright. An 1891 statute giving U.S. copyright protection to the citizens of other nations that in turn gave a similar degree of reciprocal protection to U.S. citizens. • The Act was invoked by presidential order or by treaty, primarily with European countries. Under the Act's manufacturing clause, English-language books and other printed matter had to be produced in the U.S. or Canada in order to qualify for domestic protection. — Also termed 1891 Copyright Amendment Act.

CHAD

chad. The small bit of precut paper that is attached to a punch-card ballot by several points and punched out by a voter to cast a vote. • Because most punch-card ballots are machine-read, the chad must be completely separated from the ballot for the vote to be counted. The results of the closely contested 2000 presidential election were delayed for several weeks because more than 40,000 ballots with partially attached chads had to be hand-counted.

dimpled chad.A chad that is bulging but not pierced, with all its points attached to the ballot. — Sometimes termed pregnant chad.

hanging chad.A chad that is attached to the ballot by a single point.

pregnant chad.See dimpled chad.

swinging-door chad. A chad that is attached to the ballot by two points.

tri-chad. A chad that is attached to the ballot by three points.

CHAFEWAX

chafewax (chayf-waks). Hist. A chancery officer who heated (or chafed) wax to seal writs, commissions, and other instruments. • The office was abolished in 1852. — Also spelled chaffwax.

CHAFFER

chaffer (chaf-*<<schwa>>r*), vb. To bargain; negotiate; haggle; dicker. For offer to chaffer, see INVITATION TO NEGOTIATE.

CHAIN-CERTIFICATE METHOD

chain-certificate method. The procedure for authenticating a foreign official record by the party seeking to admit the record as evidence at trial. See Fed. R. Civ. P. 44. [Cases: Evidence 341. C.J.S. Evidence §§ 879–880, 893, 895; Patents § 179.]

CHAIN CONSPIRACY

chain conspiracy. See CONSPIRACY.

CHAIN GANG

chain gang. A group of prisoners chained together to prevent their escape while working outside a prison.

CHAIN OF CAUSATION

chain of causation. 1. A series of events each caused by the previous one. 2. The causal connection between a cause and its effects. Cf. CAUSATION. [Cases: Negligence 432. C.J.S. Negligence §§ 203–208.]

CHAIN-OF-CAUSATION RULE

chain-of-causation rule. Workers' compensation. The principle that an employee's suicide is compensable under workers'-compensation statutes if the employee suffered an earlier work-related injury that led to a mental disorder resulting in the suicide. [Cases: Workers' Compensation 546, 603, 799. C.J.S. Workmen's Compensation §§ 313, 361, 482–483.]

CHAIN OF CUSTODY

chain of custody. 1. The movement and location of real evidence, and the history of those persons who had it in their custody, from the time it is obtained to the time it is presented in court. [Cases: Criminal Law 404.30; Evidence 188. C.J.S. Criminal Law § 846; Evidence §§ 789–791, 794, 796.]

“Chain of custody requires testimony of continuous possession by each individual having possession, together with testimony by each that the object remained in substantially the same

condition during its presence in his possession. All possibility of alteration, substitution or change of condition need not be eliminated. For example, normally an object may be placed in a safe to which more than one person had access without each such person being produced. However the more authentication is genuinely in issue, the greater the need to negate the possibility of alteration or substitution.” Michael H. Graham, *Federal Rules of Evidence in a Nutshell* 402 (3d ed. 1992).

2. The history of a chattel's possession. — Also termed chain of possession.

CHAIN OF TITLE

chain of title. 1. The ownership history of a piece of land, from its first owner to the present one. — Also termed line of title; string of title. 2. The ownership history of commercial paper, traceable through the indorsements. • For the holder to have good title, every prior negotiation must have been proper. If a necessary indorsement is missing or forged, the chain of title is broken and no later transferee can become a holder.

CHAIN-REFERRAL SCHEME

chain-referral scheme. See PYRAMID SCHEME.

CHAIR

chair. Parliamentary law. 1. A deliberative assembly's presiding officer <the chair calls for order>. See PRESIDE. 2. The presiding officer's seat <take the chair>. 3. The officer who heads an organization <the treasurer reports directly to the chair>. — Also termed chairman (of a male chair, in senses 1 & 3); chairwoman (of a female chair, in senses 1 & 3); chairperson (in senses 1 & 3); moderator (in sense 1); president (in senses 1 & 3); presiding officer (in sense 1); speaker (in sense 1). — chair, vb.

“The term the chair refers to the person in a meeting who is actually presiding at the time, whether that person is the regular presiding officer or not. The same term also applies to the presiding officer's station in the hall from which he or she presides, which should not be permitted to be used by other members as a place from which to make reports or speak in debate during a meeting...” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 47, at 433 (10th ed. 2000).

chair by decree. A chair appointed by an outside authority rather than elected by the deliberative assembly being presided over.

chair pro tempore. A chair elected or appointed during or in anticipation of the regular presiding officer's (or officers') absence from the chair, and whose service ends when a regular presiding officer resumes the chair. — Often shortened to chair pro tem. See PRO TEMPORE.

CHAIRMAN OF COMMITTEES OF THE WHOLE HOUSE

Chairman of Committees of the Whole House. The member of Parliament who presides over the House of Commons when it is sitting in committee.

CHAIRPERSON

chairperson. See CHAIR.

CHAIRWOMAN

chairwoman. See CHAIR.

CHALLENGE

challenge, n.1. An act or instance of formally questioning the legality or legal qualifications of a person, action, or thing <a challenge to the opposing party's expert witness>.

as-applied challenge. A claim that a law or governmental policy, though constitutional on its face, is unconstitutional as applied, usu. because of a discriminatory effect; a claim that a statute is unconstitutional on the facts of a particular case or in its application to a particular party.

Batson challenge. Procedure. An objection that an opposing party has used a peremptory challenge to exclude a potential juror on the basis of race, ethnicity, or sex. • It is named for *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986), a criminal case in which the prosecution struck potential jurors on the basis of race. The principle of *Batson* was extended in later Supreme Court cases to civil litigants (*Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 111 S.Ct. 2077 (1991)) and to criminal defense attorneys (*Georgia v. McCollum*, 505 U.S. 42, 112 S.Ct. 2348 (1992)). The Court also applied it to peremptory challenges based on a juror's sex (*J.E.B. v. Alabama*, 511 U.S. 127, 114 S.Ct. 1419 (1994)). See Fed. R. Civ. P. 47(b). [Cases: Constitutional Law 221(4); Jury 33(5.15). C.J.S. Juries §§ 443, 445–446, 450–456, 460.]

constitutional challenge. A claim that a law or governmental action is unconstitutional.

facial challenge. A claim that a statute is unconstitutional on its face — that is, that it always operates unconstitutionally.

2. A party's request that a judge disqualify a potential juror or an entire jury panel <the personal-injury plaintiff used his last challenge to disqualify a neurosurgeon>. — Also termed jury challenge.

causal challenge. See challenge for cause.

challenge for cause. A party's challenge supported by a specified reason, such as bias or prejudice, that would disqualify that potential juror. — Also termed for-cause; causal challenge; general challenge; challenge to the poll. [Cases: Jury 83–108, 124. C.J.S. Juries §§ 225, 248, 367, 369–409, 415, 417–418, 420, 446.]

challenge propter affectum (prop-t<<schwa>>r <<schwa>>-fek-t<<schwa>>m). A challenge because some circumstance, such as kinship with a party, renders the potential juror incompetent to serve in the particular case.

challenge propter defectum (prop-t<<schwa>>r d<<schwa>>-fek-t<<schwa>>m). A challenge based on a claim that the juror is incompetent to serve on any jury for a reason such as alienage, infancy, or nonresidency.

challenge propter delictum (prop-t<<schwa>>r d<<schwa>>-lik-t<<schwa>>m). A challenge based on a claim that the potential juror has lost citizenship rights, as by being convicted of an infamous crime. See civil death (1) under DEATH.

challenge to the array.A legal challenge to the manner in which the entire jury panel was selected, usu. for a failure to follow prescribed procedures designed to produce impartial juries drawn from a fair cross-section of the community. • Such a challenge is either a principal challenge (if some defect renders the jury prima facie in-competent, as where the officer selecting veniremembers is related to the prosecutor or defendant) or a challenge for favor (as where the defect does not amount to grounds for a principal challenge, but there is a probability of partiality). — Also termed challenge to the jury array. [Cases: Jury 114. C.J.S. Juries §§ 355, 359, 443–444.]

challenge to the favor.A challenge for cause that arises when facts and circumstances tend to show that a juror is biased but do not warrant the juror's automatic disqualification. See challenge for cause.

challenge to the poll.See challenge for cause.

general challenge.See challenge for cause.

peremptory challenge.One of a party's limited number of challenges that do not need to be supported by a reason unless the opposing party makes a prima facie showing that the challenge was used to discriminate on the basis of race, ethnicity, or sex. • At one time, a peremptory challenge could not be attacked and did not have to be explained. But today if discrimination is charged, the party making the peremptory challenge must give a nondiscriminatory reason for striking the juror. The court must consider several factors in deciding whether the proffered reason is merely a screen for illegal discrimination. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). — Often shortened to peremptory. — Also termed peremptory strike. See STRIKE(2); Batson challenge under CHALLENGE(1). [Cases: Jury 33(5.15), 134. C.J.S. Juries §§ 344, 421, 423–424, 439, 442–443, 445–446, 450–456, 460.]

principal challenge.A for-cause challenge that arises when facts and circumstances support a conclusive pre-sumption of a juror's bias, resulting in automatic disqualification. See challenge for cause.

3.Military law. An objection to a member of the court serving in a court-martial case. • A military judge can be challenged only for cause. [Cases: Armed Services 47(4); Military Justice 884, 889. C.J.S. Armed Services § 178; Military Justice §§ 138–139, 151–152, 154–155, 345, 347.]

challenge,vb.1. To dispute or call into question <the columnist challenged the wisdom of the court's ruling>.

challenge the vote.See DIVIDE THE ASSEMBLY.

2. To formally object to the legality or legal qualifications of <the defendant challenged the person's eligibility for jury service>.

CHAMBER

chamber, n. 1. A room or compartment <gas chamber>. 2. A legislative or judicial body or other deliberative assembly <chamber of commerce>. 3. The hall or room where such a body conducts business <the senate chamber>. — chamber, adj.

judge's chamber. (usu. pl.) 1. The private room or office of a judge. 2. Any place where a judge transacts official business when not holding a session of the court. See IN CAMERA. [Cases: Judges 27. C.J.S. Judges § 58.]

lower chamber. In a bicameral legislature, the larger of the two legislative bodies, such as the House of Representatives or the House of Commons. [Cases: States 26. C.J.S. States § 40.]

Star Chamber. See STAR CHAMBER.

upper chamber. In a bicameral legislature, the smaller of the two legislative bodies, such as the Senate or the House of Lords.

chamber, vb. Slang. (Of a judge) to sit in one's chambers at a given location < Chief Judge Kaye chambers sometimes in New York City and sometimes in Albany>.

CHAMBER BUSINESS

chamber business. Official judicial business conducted outside the courtroom. [Cases: Judges 27. C.J.S. Judges § 58.]

CHAMBERLAIN

chamberlain (chaym-b<<schwa>>r-lin). A treasurer; originally, the keeper of the royal treasure chamber. • The term has been used for several high offices in England, such as the Lord Great Chamberlain, Lord Chamberlain of the Household, and Chamberlain of the Exchequer.

CHAMBERLARIA

chamberlaria (chaym-b<<schwa>>r-lair-ee-<<schwa>>). [Law Latin] Chamberlainship; the office of chamberlain.

CHAMBER OF ACCOUNTS

chamber of accounts. French law. A court responsible for adjudicating disputes concerning public-revenue collection. Cf. COURT OF EXCHEQUER.

CHAMBER OF COMMERCE

chamber of commerce. An association of merchants and other business leaders who organize to promote the commercial interests in a given area and whose group is generally affiliated with the national organization of the same name.

CHAMPERTOR

champertor (cham-p<<schwa>>r-t<<schwa>>r), n. A person who engages in champerty; one who supports and promotes another person's lawsuit for pecuniary gain. — Also termed

(archaically) campiparticeps.

CHAMPERTOUS

champertous (cham-p<<schwa>>r-t<<schwa>>s), adj. Of, relating to, or characterized by champerty; consti-tuting champerty <a champertous contract>.

“In England and many other countries, the contingent fee is prohibited as a form of champerty because it permits a client to carry on litigation in exchange for a promise to the lawyer of a share in the recovery. Although most states in the United States prohibit a lawyer from accepting an assignment of a percentage of the client's cause of action as a legal fee, they do not similarly condemn, as champertous, contingent fees whereby the lawyer receives a percentage of the recovery as a fee and no fee at all if there is no recovery.” Robert H. Aronson & Donald T. Weckstein, *Professional Responsibility in a Nutshell* 271–72 (2d ed. 1991).

CHAMPERTY

champerty (cham-p<<schwa>>r-tee), n.[fr. French champs parti “split field”] 1. An agreement between an officious intermeddler in a lawsuit and a litigant by which the intermeddler helps pursue the litigant's claim as consideration for receiving part of any judgment proceeds; specif., an agreement to divide litigation proceeds between the owner of the litigated claim and a party unrelated to the lawsuit who supports or helps enforce the claim. — Also termed (archaically) campipartia. Cf. BARRATRY; MAINTENANCE(6). [Cases: Champerty and Maintenance 14. C.J.S. Champerty and Maintenance, Barratry and Related Matters §§ 2, 5.]

“There is disagreement in the American courts as to what constitutes champerty. (1) Some courts hold that an agreement to look to the proceeds of the suit for compensation is champerty.... (2) Some courts hold that in addition the attorney must prosecute the suit at his own cost and expense to constitute champerty.... (3) Some courts hold even in a case like (2) that there is no champerty.... (4) All authorities agree that a contract for a contingent fee is not champerty if it is not to be paid out of the proceeds of the suit.... (5) In some states it is declared that the common law doctrines of maintenance and champerty are unknown ... ; in some the matter is regulated wholly by statute.... [A]nd in most there is a marked tendency to narrow the doctrines of champerty or to evade them.” William R. Anson, *Principles of the Law of Contract* 294 n.2 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“The rule as to champerty has been generally relaxed under modern decisions and a majority of courts now recognize that an agreement by which the attorney is to receive a contingent fee, i.e., a certain part of the avails of a suit or an amount fixed with reference to the amount recovered, is valid as long as the attorney does not agree to pay the expenses and costs of the action.” Walter Wheeler Cook, “Quasi-Contracts,” in *1 American Law and Procedure* 129 (1952).

2.Hist. A writ available to the party who is the target of a champertous action. “Champerty is a writ that lies where two men are impleading, and one gives the half or part of a thing in plea to a stranger, to maintain him against the other; then the party grieved shall have this writ against the stranger.” William Rastell, *Termes de la Ley* 76 (1st Am. ed. 1812).

CHAMPION

champion.Hist. A person chosen to represent a defendant in trial by combat. • If the champion lost, the defendant was adjudged guilty. A champion who survived was fined for intentionally or ignorantly defending an unjust cause; one who died was buried in unhallowed ground. See TRIAL BY COMBAT.

CHANCE

chance,n.1. A hazard or risk. 2. The unforeseen, uncontrollable, or unintended consequences of an act. 3. An accident. 4. Opportunity; hope.

CHANCE BARGAIN

chance bargain.Contracts. A transaction in which the parties mutually agree to accept the risk that facts and circumstances assumed by the parties at the time of contracting may not actually be what the parties believe they are. • If no fraud or misrepresentation is involved, a court will uphold a chance bargain. For instance, in a chance bargain involving a land swap, each deed may describe a tract as containing a number of acres “more or less.” If the tract is actually larger than described, the seller can't demand more money for the excess. And if the tract is actually smaller, the disappointed buyer cannot ask for a reduced price to make up for the deficiency.

CHANCELLOR

chancellor,n.1. A judge serving on a court of chancery. 2. A university president or CEO of an institution of higher education. 3. In the U.S., a judge in some courts of chancery or equity. 4.Scots law. The presiding juror. 5.Eccles. law. A law officer who presides over the bishop's court. • The chancellor advises and assists the bishop in all matters of canon law, both juridical and administrative. — chancellorship,n.

CHANCELLOR, LORD

Chancellor, Lord.See LORD CHANCELLOR.

CHANCELLOR OF THE EXCHEQUER

Chancellor of the Exchequer.In England, a government minister who controls revenue and expenditures. • Formerly, the Chancellor sat in the Court of Exchequer.

CHANCELLOR'S FOOT

chancellor's foot.A symbol of the variability of equitable justice. • John Selden, the 17th-century jurist, is thought to have coined the phrase in this passage, from his best-known book: “Equity is a roguish thing. For law we have a measure, know what to trust to: equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure the Chancellor's foot. What an uncertain measure would this be! One Chancellor has a long foot, another a short foot, a third an indifferent foot; 'tis the same thing in the Chancellor's conscience.” Table Talk (1689).

CHANCE-MEDLEY

chance-medley. [fr. Anglo-Norman chance medlee “chance scuffle”] A spontaneous fight during which one participant kills another in self-defense. — Also termed chaud-medley; casual affray. Cf. MEDLEY.

“But the self-defence, which we are now speaking of, is that whereby a man may protect himself from an assault, or the like, in the course of a sudden brawl or quarrel, by killing him who assaults him. And this is what the law expresses by the word chance-medley, or (as some rather choose to write it) chaud-medley; the former of which in its etymology signifies a casual affray, the latter an affray in the heat of blood or passion: both of them of pretty much the same import; but the former is in common speech too often erroneously applied to any manner of homicide by misadventure; whereas it appears ... that it is properly applied to such killing, as happens in self-defence upon a sudden rencounter.” 4 William Blackstone, *Commentaries on the Laws of England* 184 (1769).

CHANCE-OF-SURVIVAL DOCTRINE

chance-of-survival doctrine. The principle that a wrongful-death plaintiff need only prove that the defendant's conduct was a substantial factor in causing the death — that is, that the victim might have survived but for the defendant's conduct. [Cases: Death 17. C.J.S. Death §§ 41–42.]

CHANCER

chancer (chan-s<<schwa>>r), vb. To adjust according to equitable principles, as a court of chancery would. • The practice arose in parts of New England when the courts had no equity jurisdiction, and were compelled to act on equitable principles.

“The practice of ‘chancering’ is a very old one. A forfeiture could be ‘chancered’ under a law of 1699.... Adjudged cases in 1630–1692 may be found in the Records of the Court of Assistants of Massachusetts Bay Colony. The early laws of Massachusetts provided for ‘chancering’ the forfeiture of any penal bond.... In Rhode Island an act of 1746 provided for ‘chancering’ the forfeiture ‘where any penalty is forfeited, or conditional estate recovered, or equity of redemption sued for, whether judgment is confessed or otherwise obtained.’ ” 1 John Bouvier, *Bouvier's Law Dictionary* 456–57 (8th ed. 1914).

CHANCERY

chancery (chan-s<<schwa>>r-ee). 1. A court of equity; collectively, the courts of equity. • The term is derived from the court of the Lord Chancellor, the original English court of equity. — Also termed court of chancery; chancery court.

“Chancery's jurisdiction was complementary to that of the courts of common law — it sought to do justice in cases for which there was no adequate remedy at common law. It had originated in the petition, not the writ, of the party who felt aggrieved to the Lord Chancellor as ‘keeper of the King's conscience.’ In its origins, therefore, Chancery's flexible concern for justice complemented admirably the formalism of a medieval system of common law which had begun to adhere strictly, perhaps overstrictly on occasion, to prescribed forms. By 1800, however, Chancery's system was itself regarded as being both consistent and certain.” A.H. Manchester, *Modern Legal History of*

England and Wales, 1750–1950 135–36 (1980).

2. The system of jurisprudence administered in courts of equity. See EQUITY. [Cases: Equity 1. C.J.S. Equity §§ 2–5, 7–8, 10.] 3.Int'l law. The place where the head of a diplomatic mission and staff have their offices, as distinguished from the embassy (where the ambassador lives).

CHANCERY COURT OF YORK

Chancery Court of York.Eccles. law. The ecclesiastical court of the province of York, responsible for appeals from provincial diocesan courts. • This court corresponds to the Court of Arches in the Province of Canterbury. Cf. COURT OF ARCHES.

CHANCERY GUARDIAN

chancery guardian.See GUARDIAN.

CHANCE VERDICT

chance verdict.See VERDICT.

CHANGE IN CIRCUMSTANCES

change in circumstances.Family law. A modification in the physical, emotional, or financial condition of one or both parents, used to show the need to modify a custody or support order; esp., an involuntary occurrence that, if it had been known at the time of the divorce decree, would have resulted in the court's issuing a different decree, as when an involuntary job loss creates a need to modify the decree to provide for reduced child-support payments. — Also termed change of circumstances; changed circumstances; material change in circumstances; substantial change in circumstances; change of condition. See MODIFICATION ORDER. [Cases: Child Custody 555–556; Child Support 233–234; Divorce 245(2). C.J.S. Parent and Child § 231; C.J.S. Divorce §§ 405–413.]

CHANGE OF CONDITION

change of condition. 1.Workers' compensation. A substantial worsening of an employee's physical health occurring after an award, as a result of which the employee merits an increase in benefits. [Cases: Workers' Compensation 2005–2012. C.J.S. Workmen's Compensation §§ 1509, 1511–1525, 1558–1560.] 2.Family law. CHANGE IN CIRCUMSTANCES.

CHANGE-OF-OWNERSHIP CLAUSE

change-of-ownership clause.Oil & gas. A provision in an oil-and-gas lease specifying what notice must be given to a lessee about a change in the leased land's ownership before the lessee is obliged to recognize the new owner. — Also termed assignment clause.

CHANGE OF VENUE

change of venue.The transfer of a case from one locale to another court in the same judicial system to cure a defect in venue, either to minimize the prejudicial impact of local sentiment or to

secure a more sensible location for trial. — Also termed transfer of venue. See VENUE. [Cases: Venue 34–84. C.J.S. Trover and Conversion § 719; Venue §§ 128–316.]

CHANGE ORDER

change order. 1. A modification of a previously ordered item or service. 2. A directive issued by the federal government to a contractor to alter the specifications of an item the contractor is producing for the government. [Cases: United States 70(25.1).]

CHANGING FUND

changing fund. See FUND(1).

CHANNEL

channel. 1. The bed of a stream of water; the groove through which a stream flows <digging a deeper channel was thought to help protect the river from flooding>.

main channel. The bed over which the principal volume of water flows; the deepest and most navigable part of a channel.

natural channel. The naturally formed bed and banks of a stream.

natural flood channel. A channel through which floodwaters naturally accumulate and flow downstream.

2. The line of deep water that shipping vessels follow <a shipping channel>. 3. A water route between two islands or an island and a continent <the English Channel>. 4. A mode of transmitting something <the news channel>.

CHANNEL OF DISTRIBUTION

channel of distribution. See DISTRIBUTION CHANNEL.

CHANNEL OF TRADE

channel of trade. See DISTRIBUTION CHANNEL.

CHANTRY

chantry (chan-tree), n. Hist. Eccles. law. 1. A benefice endowed for the saying of Mass by chantry priests for the soul of the founder or his designees. • This practice was abolished in England by the Chantry Acts of 1545 and 1547. 2. A chapel or part of a church so endowed. — Also spelled chauntry.

CHAPTER

chapter (chap-⟨schwa⟩-t⟨schwa⟩r). [Law French] Hist. A list of matters drawn up by the king to be pre-sented before the justices in eyre, justices of assise, or justices of the peace. — Also spelled chapitre. Cf. AR-TICLES OF THE EYRE .

CHAPTER 7

Chapter 7. 1. The chapter of the United States Bankruptcy Code allowing a trustee to collect and liquidate a debtor's nonexempt property, either voluntarily or by court order, to satisfy creditors. [Cases: Bankruptcy 2251. C.J.S. Bankruptcy § 50.] 2. A bankruptcy case filed under this chapter. • An individual debtor who undergoes this type of liquidation (the most common type of bankruptcy) usu. gets a fresh financial start by receiving a discharge of all debts. — Also termed (in sense 2) straight bankruptcy; liquidation bankruptcy.

“A Chapter 7 case has five stages: (1) getting the debtor into bankruptcy court; (2) collecting the debtor's property; (3) selling this property; (4) distributing the proceeds of the sale to creditors; and (5) determining whether the debtor is discharged from further liability to these creditors.” David G. Epstein et al., *Bankruptcy* § 1–7, at 9 (1993).

CHAPTER 9

Chapter 9. 1. The chapter of the United States Bankruptcy Code governing the adjustment of a municipality's debts. [Cases: Bankruptcy 3481.C.J.S. Bankruptcy §§ 361–367.] 2. A bankruptcy case filed under this chapter.

CHAPTER 11

Chapter 11. 1. The chapter of the United States Bankruptcy Code allowing an insolvent business, or one that is threatened with insolvency, to reorganize its capital structure under court supervision (and subject to creditor approval) while continuing its normal operations. • Although the Code permits individual nonbusiness debtors to use Chapter 11, the vast majority of Chapter 11 cases involve business debtors. [Cases: Bankruptcy 3501.C.J.S. Bankruptcy § 368.] 2. A business reorganization conducted under this chapter; REORGANIZATION(1).

CHAPTER 12

Chapter 12. 1. The chapter of the United States Bankruptcy Code providing for a court-approved debt-payment relief plan for family farmers with a regular income, allowing a farmer's net income to be collected by a trustee and paid to creditors. [Cases: Bankruptcy 3671. C.J.S. Bankruptcy § 416.] 2. A bankruptcy case filed under this chapter. — Also termed (in sense 2) family-farmer bankruptcy; farmer bankruptcy.

CHAPTER 13

Chapter 13. 1. The chapter of the United States Bankruptcy Code allowing a person's earnings to be collected by a trustee and paid to creditors by means of a court-approved debt-repayment plan if the person has a regular income. • A plan filed under Chapter 13 is sometimes called a wage-earner's plan, a wage-earner plan, or an income-based plan. Chapter 13 allows the debtor to propose a plan of rehabilitation to extend or reduce the balance of any obligations and to receive a discharge from unsecured debts upon completion of the payments under the plan. A plan made in good faith will be confirmed if the creditors receive what they would have received under Chapter 7, and if the plan pledges all of the debtor's disposable income for three years. [Cases: Bankruptcy 3701. C.J.S. Bankruptcy § 433.] 2. A bankruptcy case filed under this chapter.

CHAPTER 20

Chapter 20.Slang. Bankruptcy. A debtor who files a Chapter 7 petition and receives a discharge, and then immediately files a Chapter 13 petition to deal with remaining nondischargeable or secured debts.

CHAPTER 22

Chapter 22. Slang. Bankruptcy. A debtor, usu. a corporation, that files a second Chapter 11 petition shortly after a previous Chapter 11 petition has failed, because the debtor has become insolvent again or is again threatened with insolvency.

CHAPTER-SURFING

chapter-surfing.Slang. A debtor's movement from a filing under one United States Bankruptcy Code chapter to a filing under another. [Cases: Bankruptcy 2235. C.J.S. Bankruptcy § 48.]

CHARACTER EVIDENCE

character evidence.See EVIDENCE.

CHARACTERIZATION

characterization. 1.Conflict of laws. The classification, qualification, and interpretation of laws that apply to the case. — Also termed qualification; classification; interpretation. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

“In a conflict-of-laws situation, a court must determine at the outset whether the problem presented to it for solution relates to torts, contracts, property, or some other field, or to a matter of substance or procedure, in order to refer to the appropriate law. In other words, the court must initially, whether consciously or not, go through the process of determining the nature of the problem; otherwise, the court will not know which choice-of-law rule to apply to the case. This process is generally called ‘characterization,’ and sometimes ‘classification,’ ‘qualification,’ or ‘interpretation.’ ” 16 Am. Jur. 2d Conflict of Laws § 3, at 12 (1998).

2.Family law. The process of classifying property accumulated by spouses as either separate or marital property (or community property).

CHARACTER LOAN

character loan.See LOAN.

CHARACTER-REFORMATION CONDITION

character-reformation condition.See conditional bequest under BEQUEST.

CHARACTER WITNESS

character witness.See WITNESS.

CHARGE

charge, n.1. A formal accusation of an offense as a preliminary step to prosecution <a murder charge>. — Also termed criminal charge. [Cases: Criminal Law 208.1.] 2. An instruction or command <a mother's charge to her son>.3.JURY CHARGE <review the charge for appealable error>.4. An assigned duty or task; a responsibility <the manager's charge to open and close the office>.5. An encumbrance, lien, or claim <a charge on property>.6. A person or thing entrusted to another's care <a charge of the estate>.7. Price, cost, or expense <free of charge>.

delinquency charge.A charge assessed against a borrower for failing to timely make a payment.

finance charge.See FINANCE CHARGE.

late charge.An additional fee assessed on a debt when a payment is not received by the due date.

noncash charge.A cost (such as depreciation or amortization) that does not involve an outlay of cash.

special charge.An ordinary cost of business excluded from income calculations. • The term is meaningless under generally accepted accounting principles because “special charge” expenses do not meet the GAAP test for ex-traordinary items. — Also termed one-time charge; unusual charge; exceptional charge. See extraordinary expense under EXPENSE; operating earnings under EARNINGS.

8.Parliamentary law. A deliberative assembly's mandate to a committee. — Also termed committee jurisdiction.

charge, vb. 1. To accuse (a person) of an offense <the police charged him with murder>.2. To instruct or command <the dean charged the students to act ethically>.3. To instruct a jury on matters of law <the judge charged the jury on self-defense>. [Cases: Criminal Law 769; Trial 182, 213. C.J.S. Criminal Law §§ 1302–1305; Trial §§ 484–486, 488, 492, 498, 500, 548.] 4. To impose a lien or claim; to encumber <charge the land with a tax lien>.5. To entrust with responsibilities or duties <charge the guardian with the ward's care>.6. To demand a fee; to bill <the clerk charged a small filing fee>.

CHARGEABLE

chargeable, adj. (Of an act) capable or liable of being charged as a criminal offense <taking that money for personal use would be chargeable>.

CHARGE ACCOUNT

charge account.A credit arrangement by which a customer purchases goods and services and pays for them periodically or within a specified time. See CREDIT(4).

CHARGE AND DISCHARGE

charge and discharge.Equity practice. Court-ordered account filings by a plaintiff and a

defendant. • The plaintiff's account (charge) and the defendant's response (discharge) were filed with a master in chancery.

CHARGE AND SPECIFICATION

charge and specification. Military law. A written description of an alleged offense. [Cases: Armed Services 47(2); Military Justice 950–971. C.J.S. Armed Services § 164; Military Justice §§ 180–191.]

CHARGE-BACK

charge-back, n. A bank's deducting of sums it had provisionally credited to a customer's account, occurring usu. when a check deposited in the account has been dishonored. UCC § 4-214. [Cases: Banks and Banking 126, 127, 142, 158. C.J.S. Banks and Banking §§ 322, 362–363, 383–384, 395–397, 399, 402, 404.]

CHARGE BARGAIN

charge bargain. See PLEA BARGAIN.

CHARGE CONFERENCE

charge conference. A meeting between a trial judge and the parties' attorneys to develop a jury charge. — Also termed prayer conference. [Cases: Trial 263. C.J.S. Trial §§ 679, 711, 713–714.]

CHARGÉ D'AFFAIRES

chargé d'affaires (shahr-zhay d<<schwa>>-fair). [French “one in charge of affairs”] A diplomat who is the second in command in a diplomatic mission (hence, subordinate to an ambassador or minister). — Also spelled chargé des affaires. Pl. chargés d'affaires. [Cases: Ambassadors and Consuls 3. C.J.S. Ambassadors and Consuls §§ 15–23.]

acting chargé d'affaires. A chargé d'affaires who performs mission functions when the leader of the mission is not available to do so or when the position is vacant. — Also termed chargés d'affaires ad interim.

permanent chargé d'affaires. A chargé d'affaires with a high enough rank to head a mission (if there is no ambassador or minister). — Also termed chargé d'affaires en pied; chargé d'affaires en titre.

CHARGED WITH NOTICE

charged with notice. Imputed with knowledge or awareness that is legally binding <the defendant was charged with notice of the defect yet failed to act before the plaintiff was injured by it>. — Also termed put on notice.

CHARGE

chargee (chahr-jee). 1. The holder of a charge on property or of a security on a loan. 2. One charged with a crime.

CHARGE OFF

charge off,vb. To treat (an account receivable) as a loss or expense because payment is unlikely; to treat as a bad debt. See bad debt under DEBT.

CHARGE SHEET

charge sheet. 1. A police record showing the names of all persons brought into custody, the nature of the accusations, and the identity of the accusers. 2.Military law. A four-part charging instrument containing (1) information about the accused and the witnesses, (2) the charges and specifications, (3) the preferring of charges and their referral to a summary, special, or general court-martial for trial, and (4) for a summary court-martial, the trial record. [Cases: Armed Services 47(2); Military Justice 950. C.J.S. Armed Services § 164; Military Justice § 180.]

CHARGING INSTRUMENT

charging instrument.A formal document — usu. either an indictment or an information — that sets forth an accusation of a crime. — Also termed accusatory instrument.

CHARGING LIEN

charging lien.See LIEN.

CHARGING ORDER

charging order.Partnership. A statutory procedure whereby an individual partner's creditor can satisfy its claim from the partner's interest in the partnership. [Cases: Partnership 186. C.J.S. Partnership § 181.]

CHARITABLE

charitable,adj.1. Dedicated to a general public purpose, usu. for the benefit of needy people who cannot pay for benefits received <charitable contribution>. [Cases: Charities 1–50; Taxation 241.1. C.J.S. Charities §§ 2–70; Taxation §§ 323–338.] 2. Involved in or otherwise relating to charity <charitable foundation>.

CHARITABLE BEQUEST

charitable bequest.See BEQUEST.

CHARITABLE CONTRIBUTION

charitable contribution. 1. A contribution of money or property to an organization engaged in charitable activities. 2. A contribution to a qualified nonprofit charitable organization. • Charitable contributions are deductible for certain tax purposes.

CHARITABLE CORPORATION

charitable corporation.See CORPORATION.

CHARITABLE DEDUCTION

charitable deduction. See DEDUCTION.

CHARITABLE GIFT

charitable gift. See GIFT.

CHARITABLE IMMUNITY

charitable immunity. See IMMUNITY(2).

CHARITABLE LEAD TRUST

charitable lead trust. See TRUST.

CHARITABLE ORGANIZATION

charitable organization. Tax. A tax-exempt organization that (1) is organized and operated exclusively for religious, scientific, literary, educational, athletic, public-safety, or community-service purposes, (2) does not distribute earnings for the benefit of private individuals, and (3) does not participate in any way in political candidate campaigns, or engage in substantial lobbying. IRC (26 USCA) § 501(c)(3). — Also termed charity; 501(c)(3) organization. [Cases: Charities 1–50; Internal Revenue 4048–4069. C.J.S. Charities §§ 2–70; Internal Revenue §§ 462–464, 466–468, 470, 472–474.]

CHARITABLE PURPOSE

charitable purpose. Tax. The purpose for which an organization must be formed so that it qualifies as a charitable organization under the Internal Revenue Code. — Also termed charitable use. [Cases: Internal Revenue 4048, 4172(2). C.J.S. Internal Revenue § 533.]

CHARITABLE REMAINDER

charitable remainder. See REMAINDER.

CHARITABLE-REMAINDER ANNUITY TRUST

charitable-remainder annuity trust. See TRUST.

CHARITABLE-REMAINDER TRUST

charitable-remainder trust. See TRUST.

CHARITABLE-REMAINDER-TRUST RETIREMENT FUND

charitable-remainder-trust retirement fund. See charitable-remainder annuity trust under TRUST.

CHARITABLE TRUST

charitable trust. See TRUST.

CHARITABLE USE

charitable use. 1. CHARITABLE PURPOSE. 2. See charitable trust under TRUST.

 CHARITY

charity, n. 1. CHARITABLE ORGANIZATION. 2. Aid given to the poor, the suffering, or the general community for religious, educational, economic, public-safety, or medical purposes. 3. Goodwill.

CHARLATAN

charlatan (shahr-l<<schwa>>-t<<schwa>>n), n. A person who pretends to have more knowledge or skill than he or she actually has; a quack or faker. — charlatanism, charlatanry, n.

CHARTA

charta (kahr-t<<schwa>>). [Law Latin] Hist. 1. A charter or deed. 2. A token by which an estate is held. 3. A royal grant of privileges or liberties.

CHARTA DE FORESTA

Charta de Foresta. Hist. A charter that defined the extent of the Crown's rights and privileges in the royal forests, granted the common people some rights to use the forests, and reduced the penalties for crimes such as poaching. • The charter was first promulgated in 1217 and revised in 1225. — Also termed Carta de Foresta; Carta Forestae.

CHARTAE LIBERTATUM

chartae libertatum (kahr-tee lib-<<schwa>>r-tay-t<<schwa>>m). [Latin] Charters of liberties. • This term refers to the two great sources of English liberties: Magna Carta and the Charta de Foresta.

CHARTEL

chartel. See CARTEL.

CHARTER

charter, n. 1. An instrument that establishes a body politic or other organization, or that grants rights, liberties, or powers to its citizens or members <Charter of the United Nations>. 2. An instrument by which a municipality is incorporated, specifying its organizational structure and its highest laws; specif., a written document making the persons residing within a fixed boundary, along with their successors, a corporation and body politic for and within that boundary, and prescribing the powers, privileges, and duties of the corporation. • A city charter trumps all conflicting ordinances. — Also termed municipal charter. [Cases: Municipal Corporations 8. C.J.S. Municipal Corporations §§ 14, 17–18.]

“Municipal Charters. — The charter issued to a municipality is in the nature of a constitution to it, being superior to all ordinances enacted by that municipality, though inferior in rank to all State laws of every kind.” Frank Hall Childs, *Where and How to Find the Law* 8 (1922).

home-rule charter. A local government's organizational plan or framework, analogous to a constitution, drawn by the municipality itself and adopted by popular vote of the citizenry. See

HOME RULE. [Cases: Municipal Corporations 65. C.J.S. Municipal Corporations §§ 122, 140–141, 143.]

3. A governmental act that creates a business or defines a corporate franchise; also, the document evidencing this act.

bank charter. A document issued by a governmental authority permitting a bank to conduct business. [Cases: Banks and Banking 5–6. C.J.S. Banks and Banking §§ 8, 15–18.]

corporate charter. 1. CERTIFICATE OF INCORPORATION(1). 2. A document that one files with the secretary of state upon incorporating a business. • The corporate charter is often the articles of incorporation. [Cases: Corporations 18. C.J.S. Corporations §§ 26, 33–35, 41, 559.]

special charter. Hist. A legislative act creating a private corporation as opposed to a public, charitable, or educational corporation. • Special charters were common until the 19th century, when legislatures enacted general incorporation laws that allowed private corporations to be formed without legislative action.

4. The organic law of an organization; loosely, the highest law of any entity. Cf. ARTICLES OF INCORPORATION. 5. A governing document granting authority or recognition from a parent organization to a subordinate or constituent organization, such as a local affiliate or chapter, organized under the first organization's authority; or the instrument granting such authority or recognition. See governing document under DOCUMENT(1). 6. Hist. The writing that accompanies a livery of seisin. • Rather than being an operative element of transfer, the writing was merely evidence of it. 7. The leasing or hiring of an airplane, ship, or other vessel. [Cases: Shipping 34–58. C.J.S. Shipping §§ 74–146, 148, 379.] 8. CHARTER PARTY.

bareboat charter. A charter under which the shipowner surrenders possession and control of the vessel to the charterer, who then succeeds to many of the shipowner's rights and obligations. • The charterer, who provides the personnel, insurance, and other materials necessary to operate the vessel, is known either as a demise charterer or as an owner pro hac vice. — Also termed demise charter. [Cases: Shipping 41. C.J.S. Shipping §§ 92–101.]

“The ‘demise’ or ‘bareboat’ charter is conceptually the easiest to understand. The charterer takes possession and operates the ship during the period of the charter as though the vessel belonged to the charterer. The bareboat charter is thus analogous to the driver who leases a car for a specified period or a tenant who rents a house for a term of years. The charterer provides the vessel's master and crew (much as the lessee–driver personally drives the car) and pays the operating expenses (much as the lessee–driver buys the gasoline).” David W. Robertson, Steven F. Friedell & Michael F. Sturley, *Admiralty and Maritime Law in the United States* 371–72 (2001).

demise charter. See bareboat charter.

gross charter. A charter under which the shipowner provides all personnel and pays all expenses.

slot charter. A charter for one or more slots on a container vessel. • Each slot accommodates a 20-foot container. A slot charter is a form of vessel-sharing agreement. Cf. space charter.

“Slot charters (and vessel-sharing agreements) have become increasingly popular in the container trades, as they enable two or more carriers to combine their capacities and offer more frequent service on their routes. If three carriers all serve the New York to Rotterdam route, for example, and each devotes one vessel to the route every three weeks, they can implicitly (with slot charters) join forces and each offer weekly service.” David W. Robertson, Steven F. Friedell & Michael F. Sturley, *Admiralty and Maritime Law in the United States* 377 (2001).

space charter.A charter for a part of a vessel's capacity, such as a specified hold or deck or a specified part of the vessel's carrying capacity. • A space charter is a form of vessel-sharing agreement. Cf. slot charter.

time charter.A charter for a specified period, rather than for a specific task or voyage; a charter under which the shipowner continues to manage and control the vessel, but the charterer designates the ports of call and the cargo carried. • Each party bears the expenses related to its functions and for any damage it causes. Cf. voyage charter. [Cases: Shipping 40. C.J.S. Shipping §§ 92–101.]

voyage charter.A charter under which the shipowner provides a ship and crew, and places them at the disposal of the charterer for the carriage of cargo to a designated port. • The voyage charterer may lease the entire vessel for a voyage or series of voyages — or may (by “space charter”) lease only part of the vessel. Cf. time charter. [Cases: Shipping 41. C.J.S. Shipping §§ 92–101.]

“The fundamental difference between voyage and time charters is how the freight or ‘charter hire’ is calculated. A voyage charter party specifies the amount due for carrying a specified cargo on a specific voyage (or series of voyages), regardless of how long a particular voyage takes. A time charter party specifies the amount due for each day that the vessel is ‘on hire,’ regardless of how many voyages are completed.” David W. Robertson, Steven F. Friedell & Michael F. Sturley, *Admiralty and Maritime Law in the United States* 377 (2001).

charter,vb.1. To establish or grant by charter <charter a bank>.2. To hire or rent for temporary use <charter a boat>.

CHARTER AGREEMENT

charter agreement.See CHARTERPARTY.

CHARTERED LIFE UNDERWRITER

chartered life underwriter.See UNDERWRITER.

CHARTERED SHIP

chartered ship.See SHIP.

CHARTER-LAND

charter-land.Hist. See BOOKLAND.

CHARTER MEMBER

charter member. See MEMBER.

CHARTER OF AFFREIGHTMENT

charter of affreightment. See AFFREIGHTMENT.

CHARTERPARTY

charterparty. A contract by which a ship, or a principal part of it, is leased by the owner, esp. to a merchant for the conveyance of goods on a predetermined voyage to one or more places or for a specified period of time; a special contract between the shipowner and charterer, esp. for the carriage of goods at sea. — Often shortened to charter. — Also written charter-party; charter party. — Also termed charter agreement. [Cases: Shipping 37. C.J.S. Shipping §§ 76–77.]

“Charter partie (charta partita) is nothing but that which we call a paire of indentures, containing the covenants and agreements made between merchants, or sea faring men touching their marine affaires.” John Cowell, *The Interpreter* (1607).

“The instrument by which a vessel is leased is a charter party. The term is derived from charta partita, i.e., a deed of writing divided; in earlier times the charta partita, like the indenture agreement, was prepared in two parts, the ship owner retaining one part and the charterer the other... While a charter party need not be in writing, most charters today are detailed written documents drawn to accommodate the particular needs of shipper and carrier in a certain type of trade or commerce.” Frank L. Maraist, *Admiralty in a Nutshell* 44–45 (3d ed. 1996).

CHARTIS REDDENDIS

chartis reddendis (kahr-tis ri-den-dis). [Latin “for returning charters”] Hist. A writ seeking the return of a charter of feoffment from a person who has been entrusted with the charter but who has refused to deliver it as instructed. See FEOFFMENT.

CHARTOPHYLAX

chartophylax (kahr-tof-<<schwa>>-laks). Hist. A keeper of records or public instruments; a registrar.

CHASE

chase. Hist. A franchise granted by the Crown empowering the grantee to keep, within a certain district, animals for hunting, i.e., the objects of the chase. • This franchise was also known as a free chase to contrast it with a chase royal — a chase held by the Crown.

common chase. A chase in which everyone is entitled to hunt.

CHATTEL

chattel (chat-<<schwa>>l). (usu. pl.) Movable or transferable property; personal property; esp., a physical object capable of manual delivery and not the subject matter of real property.

“That Money is not to be accounted Goods or Chattels, because it is not of it self valuable Chattels are either personal or real. Personal, may be so called in two respects: One,

because they belong immediately to the person of a Man, as a Bow, Horse, etc. The other, for that being any way injuriously withheld from us, we have no means to recover them, but Personal Actions. Chattels real, are such as either appertain not immediately to the person, but to some other thing, by way of dependency, as a Box with Charters of Land, Apples upon a Tree, or a Tree it self growing on the Ground.... [O]r else such as are issuing out of some immoveable thing to a person, as a Lease or Rent for the term of years.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

chattel personal. A tangible good or an intangible right (such as a patent). — Also termed personal chattel. [Cases: Property 4. C.J.S. Property §§ 14–21, 23.]

chattel real. A real-property interest that is less than a freehold or fee, such as a leasehold estate. • The most important chattel real is an estate for years in land, which is considered a chattel because it lacks the indefiniteness of time essential to real property. — Also termed real chattel. [Cases: Property 4. C.J.S. Property §§ 14–21, 23.]

chattel vegetable. A movable article of a vegetable origin, such as timber, undergrowth, corn, or fruit.

local chattel. Personal property that is affixed to land; FIXTURE.

personal chattel. See chattel personal.

real chattel. See chattel real.

unique chattel. A chattel that is absolutely irreplaceable because it is one of a kind.

CHATTEL LIEN

chattel lien. See mechanic's lien under LIEN.

CHATTEL MORTGAGE

chattel mortgage. See MORTGAGE.

CHATTEL-MORTGAGE BOND

chattel-mortgage bond. See BOND(3).

CHATTEL PAPER

chattel paper. A writing that shows both a monetary obligation and a security interest in or a lease of specific goods. UCC § 9-102(a)(11). • Chattel paper is generally used in a consumer transaction when the consumer buys goods on credit. The consumer typically promises to pay for the goods by executing a promissory note, and the seller retains a security interest in the goods. See SECURITY AGREEMENT. [Cases: Secured Transactions 88, 142. C.J.S. Secured Transactions §§ 59, 90.]

“ ‘Chattel paper’ means a record or records that evidence both a monetary obligation and a security interest in or a lease of specific goods or of specific goods and software used in the goods.

The term does not include a charter or other contract involving the use or hire of a vessel. If a transaction is evidenced both by a security agreement or lease and by an instrument or series of instruments, the group of records taken together constitutes chattel paper.” UCC § 9-102(a)(8).

electronic chattel paper.Chattel paper evidenced by a record or records consisting of information stored in an electronic medium and retrievable in perceivable form. UCC § 9-102(a)(31).

tangible chattel paper.Chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium. UCC § 9-102(a)(78).

CHATTEL PERSONAL

chattel personal.See CHATTEL.

CHATTEL REAL

chattel real.See CHATTEL.

CHATTEL VEGETABLE

chattel vegetable.See CHATTEL.

CHAUD-MEDLEY

chaud-medley (showd-med-lee). See CHANCE-MEDLEY.

CHAUNTRY

chauntry (chon-tree), n. See CHANTRY.

CHEAPGILD

cheapgild.Hist. See ORFGILD(1). — Also spelled cheapegild.

CHEAT

cheat,n.1.CHEATING. 2. A person who habitually cheats; a swindler.

cheat,vb. To defraud; to practice deception.

CHEATER

cheater. 1. A person who cheats. 2.ESCHEATOR.

CHEATING

cheating. The fraudulent obtaining of another's property by means of a false symbol or token, or by other illegal practices. — Also termed cheating at common law; common-law cheat; cheat. See FRAUD.

cheating by false pretenses.The intentional obtaining of both the possession and ownership of money, goods, wares, or merchandise by means of misrepresentations, with the intent to defraud. See FALSE PRETENSES. Cf. larceny by trick under LARCENY. [Cases: False Pretenses 1;

Larceny 14. C.J.S. Larceny §§ 7, 36, 50.]

CHECK

check,n. A draft signed by the maker or drawer, drawn on a bank, payable on demand, and unlimited in nego-tiability. • Under UCC § 3-104(f), an instrument may be a check even though it is described on its face by another term, such as “money order.” — Also spelled cheque. See DRAFT. [Cases: Banks and Banking 137; Bills and Notes 15, 149. C.J.S. Banks and Banking §§ 328, 330; Bills and Notes; Letters of Credit §§ 6, 9, 18, 133.]

bad check.A check that is not honored because the account either contains insufficient funds or does not exist. — Also termed hot check; worthless check; rubber check; bounced check; cold check; bogus check; false check; dry check.

blank check.A check signed by the drawer but left blank as to the payee or the amount, or both.

bogus check.See bad check.

bounced check.See bad check.

canceled check.A check bearing a notation that it has been paid by the bank on which it was drawn. • A canceled check is often used as evidence of payment. — Also spelled cancelled check.

cashier's check.A check drawn by a bank on itself, payable to another person, and evidencing the payee's au-thorization to receive from the bank the amount of money represented by the check; a draft for which the drawer and drawee are the same bank, or different branches of the same bank. [Cases: Banks and Banking 189. C.J.S. Banks and Banking §§ 452–458.]

certified check.A depositor's check drawn on a bank that guarantees the availability of funds for the check. • The guarantee may be by the drawee's signed agreement to pay the draft or by a notation on the check that it is certified. [Cases: Banks and Banking 145. C.J.S. Banks and Banking §§ 364–368.]

cold check.See bad check.

crossed check.A check that has lines drawn across its face and writing that specifies the bank to which the check must be presented for payment. • The same effect is achieved by stamping the bank's name on the check. The negotiability of the check at that bank is unaffected, but no other bank can honor it. Cf. open check.

depository-transfer check.An unsigned, nonnegotiable check that is used by a bank to transfer funds from its branch to the collection bank.

dry check.See bad check.

e-check. A paper check that is supplied by a consumer to a payee (usu. a merchant) who uses the check to make an electronic funds transfer. • The payee electronically scans the check's magnetic-ink character-recognition coding to obtain the bank-routing, account, and serial numbers, then enters the amount of the check. This is usu., but not always, done at a point-of-sale terminal.

Cf. e-money under MONEY.

false check.See bad check.

hot check.See bad check.

memorandum check.A check that a borrower gives to a lender for the amount of a short-term loan, with the understanding that it is not to be presented for payment but will be redeemed by the borrower when the loan falls due.

open check.A check that may be cashed by any bank. Cf. crossed check.

personal check.A check drawn on a person's own account.

postdated check.A check that bears a date after the date of its issue and is payable on or after the stated date.

raised check.A check whose face amount has been increased, usu. without the knowledge of the issuer — an act that under the UCC is considered an alteration. UCC § 3-407. See RAISING AN INSTRUMENT.

registered check.A check purchased at a bank and drawn on bank funds that have been set aside to pay that check.

rubber check.See bad check.

stale check.A check that has been outstanding for an unreasonable time — more than six months under the UCC. • Banks in jurisdictions adopting the UCC may choose not to honor such a check. UCC § 4-404. [Cases: Banks and Banking 137; Bills and Notes 404. C.J.S. Banks and Banking §§ 328, 330; Bills and Notes; Letters of Credit § 208.]

teller's check.A draft drawn by a bank on another bank or payable at or through a bank. [Cases: Banks and Banking 189. C.J.S. Banks and Banking §§ 452–458.]

traveler's check.A cashier's check that must be signed by the purchaser at the time of purchase and countersigned when cashed; an instrument that (1) is payable on demand, (2) is drawn on or payable at or through a bank, (3) is designated by the term “traveler's check” or by a substantially similar term, and (4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument. UCC § 3-104(i). • Traveler's checks, which are available in various denominations, are typically purchased from a bank or financing company. [Cases: Banks and Banking 189. C.J.S. Banks and Banking §§ 452–458.]

worthless check.See bad check.

check,vb.1. To control or restrain <handcuffs checked the defendant's movement>.2. To verify or audit <an accountant checked the invoices>.3. To investigate <the police checked up on the suspect>. • In this sense, check is typically used with up, on, or out. 4. To leave for safekeeping with an attendant <the diner checked her coat at the door>.

CHECK-KITING

check-kiting. The illegal practice of writing a check against a bank account with insufficient funds to cover the check, in the hope that the funds from a previously deposited check will reach the account before the bank debits the amount of the outstanding check. — Also termed kiting; check-flashing. [Cases: Banks and Banking 150. C.J.S. Banks and Banking §§ 349–352, 358.]

“Check kiting consists of drawing checks on an account in one bank and depositing them in an account in a second bank when neither account has sufficient funds to cover the amounts drawn. Just before the checks are returned for payment to the first bank, the kiter covers them by depositing checks drawn on the account in the second bank.” *United States v. Stone*, 954 F.2d 1187, 1188 n.1 (6th Cir. 1992).

CHECK-OFF SYSTEM

check-off system. The procedure by which an employer deducts union dues directly from the employees' wages and remits those dues to the union.

CHECKPOINT SEARCH

checkpoint search. See SEARCH.

CHECKS AND BALANCES

checks and balances. The theory of governmental power and functions whereby each branch of government has the ability to counter the actions of any other branch, so that no single branch can control the entire government. • For example, the executive branch can check the legislature by exercising its veto power, but the legislature can, by a sufficient majority, override any veto. See SEPARATION OF POWERS.

CHEFE

chefe (chef). [Law French fr. French chef “head”] See WERGILD.

CHEQUE

cheque. See CHECK.

CHERRY-STEM ANNEXATION

cherry-stem annexation. See ANNEXATION.

CHEVAGE

chevage (chee-vij). [fr. French chef “head”] Hist. An annual tribute payment from a villein to a lord. • Chevage was commonly exacted from villeins for permission to marry or permission to work outside a lord's domain. — Also spelled chivage; chiefage.

“Chevage, (chevagium) commeth of the French (chef. i. caput). It signifieth with us, a summe of money paid by villeins to their Lords, in acknowledgment of their slaverie.... It seemeth also to be used, for a summe of a mony, yearely given by a man to another of might & power, for his avowement, maintenance, and protection, as to their head or leader.” John Cowell, *The Interpreter* (1607).

CHEVANTIA

chevantia (ch<<schwa>>-van-shee-<<schwa>>). [Law French] Hist. A loan of money.

CHEVISANCE

chevisance (chev-<<schwa>>-zints). [Law French] Hist. 1. A composition; an agreement between a creditor and a debtor. See COMPOSITION. 2. An unlawful or usurious contract; esp., a contract intended to evade the statutes prohibiting usury.

CHEVRON<TT> DEFERENCE

Chevron deference. A two-part test under which a court will uphold a federal agency's construction of a federal statute if (1) the statute is ambiguous or does not address the question at issue, and (2) the agency's interpretation of the statute is reasonable. • If the court finds that the legislature's intent is clearly expressed in the statute, then that intent is upheld. The U.S. Supreme Court enunciated the rule in *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 2781–82 (1984).

CHEZE

cheze (shayz). [French chez “at the home of”] Hist. 1. HOMESTEAD. 2. A homestall; a farmyard.

CHICAGO BOARD OF TRADE

Chicago Board of Trade. The commodities exchange where futures contracts in a large number of agricultural products are made. — Abbr. CBT; CBOT. [Cases: Commodity Futures Trading Regulation 3–31. C.J.S. Securities Regulation §§ 453–468, 470, 477, 479–480, 482.]

CHICAGO BOARD OPTIONS EXCHANGE

Chicago Board Options Exchange. The predominant organized marketplace in the United States for trading options. — Abbr. CBOE.

CHICANERY

chicanery (shi-kay-n<<schwa>>r-ee), n. Trickery; deception. — Also termed chicane. — chicanerous, adj.

CHIEF

chief, n. 1. A person who is put above the rest; the leader <chief of staff>. 2. The principal or most important part or position <commander-in-chief>. — chief, adj.

CHIEF ADMINISTRATIVE PATENT JUDGE

chief administrative patent judge. See JUDGE.

CHIEFAGE

chiefage. See CHEVAGE.

CHIEF BARON

chief baron.Hist. The presiding judge of the English Court of Exchequer. • Upon the death of Chief Baron Kelly in 1880, the office was abolished. Through the Judicature Act of 1925, the Lord Chief Justice of England became the presiding judge. See BARONS OF THE EXCHEQUER.

CHIEF EXECUTIVE

chief executive.See EXECUTIVE.

CHIEF EXECUTIVE OFFICER

chief executive officer.A corporation's highest-ranking administrator, who manages the firm day by day and reports to the board of directors. — Abbr. CEO. [Cases: Corporations 300. C.J.S. Corporations § 469.]

CHIEF FINANCIAL OFFICER

chief financial officer.The executive in charge of making a company's accounting and fiscal decisions. — Abbr. CFO.

CHIEF INFORMATION OFFICER

chief information officer.The executive who supervises a company's informational infrastructure, including the system for retaining and destroying records. — Abbr. CIO.

CHIEF JUDGE

chief judge.See JUDGE.

CHIEF JUSTICE

chief justice.See JUSTICE(2).

CHIEF JUSTICE OF ENGLAND

Chief Justice of England.The former title of the Lord Chief Justice of England.

CHIEF JUSTICE OF THE COMMON PLEAS

Chief Justice of the Common Pleas.Hist. Formerly, the presiding judge in the Court of Common Pleas. • The Judicature Act of 1875 reduced the Court of Common Pleas to the Common Pleas Division. In 1881 the last Chief Justice of the Common Pleas, Lord Coleridge, was appointed Lord Chief Justice of England, merging the Common Pleas Division and the Queen's Bench Division. The Lord Chief Justice of England now exercises the powers formerly belonging to the Chief Justice of the Common Pleas. Cf. LORD CHIEF JUSTICE OF ENGLAND.

CHIEF JUSTICE OF THE UNITED STATES

Chief Justice of the United States.The formal title of the officer who is the Chief Justice of the Supreme Court of the United States. — Often shortened to the Chief Justice.

CHIEF JUSTICIAR

chief justiciar.See JUSTICIARY(2).

CHIEF LEASE

chief lease.See HEADLEASE.

CHIEF LORD

chief lord.Hist. The immediate lord of a fee, to whom the tenants were directly and personally responsible.

CHIEF MAGISTRATE

chief magistrate.See MAGISTRATE(1).

CHIEF OF PROTOCOL

Chief of Protocol.An officer in the U.S. Department of State responsible for managing the Office of Protocol and advising the President, Vice President, Secretary of State, and other U.S. officials on matters of diplomatic procedure governed by law or international custom and practice.

CHIEF OPERATING OFFICER

chief operating officer.A manager who supervises a company's day-to-day operations and who usu. reports to the chief executive officer. — Abbr. COO.

CHIEF RENTS

chief rents.Hist. A small, fixed, annual rent payable to the lord by a freeholder of a manor; annual quit rent. • Chief rents were abolished in 1922. See QUIT RENT.

CHIEFRY

chiefry (cheef-ree).Hist. A small rent paid to the sovereign by a feudal landholder. — Also spelled chiefrie; chiefery.

CHIEF USE

chief use.A standard for determining a proper tariff classification in which a commodity's use is understood by examining the intended users as a whole, rather than individually.

CHILD

child. 1. A person under the age of majority. 2.Hist. At common law, a person who has not reached the age of 14. 3. A boy or girl; a young person. 4. A son or daughter.

“The word ‘children’ is normally used to denote issue of the first generation only.”
Restatement of Property § 267 cmt. c (1940).

5. A baby or fetus. See JUVENILE; MINOR. Pl. children.

abortive child.Civil law. A stillborn child or a child born so prematurely that it cannot and

does not survive 24 hours.

abused child.A child who has been subjected to physical or mental neglect or harm. See child abuse under ABUSE.

adopted child.A child who has become the son or daughter of a parent or parents by virtue of legal or equitable adoption; ADOPTEE. See ADOPTION.

afterborn child.A child born after execution of a will or after the time in which a class gift closes. — Also spelled after-born child. See afterborn heir under HEIR. Cf. posthumous child. [Cases: Wills 524. C.J.S. Wills §§ 980–989, 991–993, 995–1004.]

battered child.A child upon whom physical or sexual abuse has been inflicted, usu. by a relative, caregiver, or close family friend. See child abuse under ABUSE; domestic violence under VIOLENCE; BATTERED-CHILD SYNDROME.

biological child.See natural child.

child in need of supervision.A child who has committed an offense that only children can commit, such as being ungovernable and disobedient to parents, running away from home, violating a curfew, being habitually truant from school, violating age restrictions on the purchase or possession of liquor or tobacco, or the like. — Also termed person in need of supervision; minor in need of supervision. — Abbr. CHINS.

child out of wedlock.See illegitimate child.

child with disabilities.Under the Individuals with Disabilities Education Act, a child who needs special-education or related services because of (1) mental retardation, (2) a hearing, language, or visual impairment, (3) a serious emotional disturbance, or (4) another health impairment or specific learning disability. See INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

delinquent child.A child who has committed an offense that would be a crime if committed by an adult. • A delinquent child may not be subject to the jurisdiction of the juvenile court if the child is under a statutory age. Cf. child in need of supervision. Cf. JUVENILE DELINQUENT. [Cases: Infants 153. C.J.S. Infants §§ 33–35, 41–42, 64, 67.]

dependent child.A needy child who has been deprived of parental support or care because of the parent's or other responsible person's death, absence from the home, physical or mental incapacity, or (in some cases) unemployment. • This definition was formerly found in Aid to Families with Dependent Children (AFDC), 42 USCA § 606(a). When that program was replaced with Temporary Assistance to Needy Families (TANF), the definition was eliminated although sections of TANF refer to it (see, e.g., 42 USCA § 672(h)).

deprived child.A child who (1) lacks proper parental care or control, subsistence, education, or other care and control for his or her physical, mental, or emotional well-being, (2) has been placed for care or adoption in violation of the law, (3) has been abandoned, or (4) is without a parent, guardian, or legal custodian. Unif. Juvenile Delinquency Act, 18 USCA §§ 5031 et seq. Cf.

neglected child.

disobedient child. See incorrigible child.

foster child. A child whose care and upbringing are entrusted to an adult other than the child's natural or adoptive parents, usu. by an agency. • A foster child may receive informal, voluntary care by someone (often a grandparent, other relative, or neighbor) who enters into an agreement with the parent or who simply substitutes for the parent as necessary to ensure the child's protection. More formally, the child may be part of the federal–state foster-care program that identifies, trains, and pays caregivers who will provide family care for children who lack parents or cannot safely remain with their biological parents. — Also termed (archaically) fosterling. See foster parent under PARENT. [Cases: Infants 226. C.J.S. Adoption of Persons §§ 10–12.]

genetic child. See natural child (1).

handicapped child. A child who is mentally retarded, deaf or hearing-impaired, speech-impaired, blind or visually disabled, seriously emotionally disturbed, or orthopedically impaired, or who because of specific learning disabilities requires special education.

illegitimate child. A child who was not conceived or born in lawful wedlock, nor later legitimated. • At common law, such a child was considered the child of nobody (*nullius filius*) and had no name except one that was gained by reputation. Being no one's child, an illegitimate child could not inherit, even from the mother, but all states now allow maternal inheritance. In cases such as *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509 (1968), and *Glonn v. American Guar. & Liab. Ins. Co.*, 391 U.S. 73, 88 S.Ct. 1515 (1968), the Supreme Court held that limitations on a child's right to inherit from his or her mother were unconstitutional. As a result, states changed their laws to permit full maternal inheritance. Full paternal inheritance is permitted if the child can prove paternity in accordance with state law (the proof varies from state to state). This burden of proof, uniquely imposed on an illegitimate child, is constitutionally permissible. *Lalli v. Lalli*, 439 U.S. 259, 99 S.Ct. 518 (1978). — Also termed bastard; child out of wedlock; nonmarital child; (archaically) natural child. Cf. BASTARD. [Cases: Children Out-of-Wedlock 1. C.J.S. Children Out-of-Wedlock §§ 2–11.]

incorrigible child. A child who refuses to obey his or her parents or guardians. — Also termed disobedient child.

intended child. The child who is intended to result from a surrogacy contract. See surrogate parent under PARENT; surrogate mother under MOTHER; intentional parent under PARENT; legal father under FATHER; SURROGACY CONTRACT.

legitimate child. 1. At common law, a child conceived or born in lawful wedlock. 2. Modernly, a child conceived or born in lawful wedlock, or legitimated either by the parents' later marriage or by a declaration or judgment of legitimation. [Cases: Children Out-of-Wedlock 1. C.J.S. Children Out-of-Wedlock §§ 2–11.]

mantle child. Hist. A child born out of wedlock and later legitimated when the parents are married, traditionally by standing under a cloak with the parents during the marriage ceremony.

“Our law ... has no need to distinguish between various sorts of illegitimate children. A child is either a legitimate child or a bastard.... In the sharp controversy over this principle ... the champion of what we may call the high-church party alleged that old English custom was in accord with the law of the church as defined by Alexander III. Probably there was some truth in this assertion. It is not unlikely that old custom, though it would not have held that the marriage in itself had any retroactive effect, allowed the parents on the occasion of their marriage to legitimate the already existing offspring of their union. The children were placed under the cloak which was spread over their parents during the marriage ceremony, and became ‘mantle children.’ We hear of this practice in Germany and France and Normandy; but we have here rather an act of adoption than a true legitimation ... and it would not have fully satisfied the church.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 397–98 (2d ed. 1899).

natural child. 1. A child by birth, as distinguished from an adopted child. — Also termed biological child; genetic child. 2. A child that is genetically related to the mother and father as opposed to a child conceived by donor insemination or by egg donation. 3. Archaic. An illegitimate child acknowledged by the father. 4. Archaic. An illegitimate child.

neglected child. 1. A child whose parents or legal custodians are unfit to care for him or her because of cruelty, immorality, or incapacity. [Cases: Infants 156.] 2. A child whose parents or legal custodians refuse to provide the necessary care and medical services for the child. Cf. deprived child.

nonmarital child. See illegitimate child.

posthumous child. A child born after a parent's death. • Ordinarily, the phrase posthumous child suggests one born after the father's death. But in at least one case, a legally dead pregnant woman was kept on life-support machines until the child could be safely delivered; so it is possible for a mother's posthumous child to be born. Cf. afterborn child.

quasi-posthumous child. Civil law. A child who becomes a direct heir of a grandfather or other male ascendant because of the death of the child's father.

special-needs child. 1. A child with medical problems or with a physical or emotional handicap. 2. A child that is likely to be unadoptable because of medical problems or physical or emotional handicaps, or by reason of age or ethnic background. See ADOPTION ASSISTANCE AND CHILD WELFARE ACT.

stepchild. The child of one's spouse by a previous marriage. • A stepchild is generally not entitled to the same legal rights as a natural or adopted child. For example, a stepchild has no right to a share of an intestate stepparent's property. [Cases: Parent and Child 14. C.J.S. Parent and Child §§ 351–356.]

unborn child. A child not yet born, esp. at the happening of some event.

CHILD ABUSE

child abuse. See ABUSE.

CHILD-ABUSE AND -NEGLECT REPORTING STATUTE

child-abuse and -neglect reporting statute.Family law. A state law requiring certain persons, among them healthcare providers, teachers, and child-care workers, to report suspected child abuse. • By 1967, every state had adopted some form of reporting statute. In the Child Abuse Prevention and Treatment Act (42 USCA §§ 5101–5157), Congress provided federal funding for all states that implement federal standards in their reporting statutes and defined child maltreatment broadly. See CHILD ABUSE PREVENTION AND TREATMENT ACT .

CHILD ABUSE PREVENTION AND TREATMENT ACT

Child Abuse Prevention and Treatment Act.Family law. A federal statute that provides limited funding to states for preventing, identifying, and treating child abuse and neglect. • Enacted in 1974, the Act was amended in 1996 to reinforce an emphasis on child safety. The Act established the National Center on Child Abuse and Neglect in the Department of Health and Human Services. Its function is to study child abuse, conduct research into its causes, and make grants to agencies for the study, prevention, and treatment of child abuse. 42 USCA §§ 5101–5157. — Abbr. CAPTA. See CHILD-ABUSE AND -NEGLECT REPORTING STATUTE .

CHILD-ACCESS PREVENTION STATUTE

child-access prevention statute.See SAFE-STORAGE STATUTE.

CHILD- AND DEPENDENT-CARE TAX CREDIT

child- and dependent-care tax credit.See TAX CREDIT.

CHILD APPLICATION

child application.See PATENT APPLICATION.

CHILD-BENEFIT THEORY

child-benefit theory.See STUDENT-BENEFIT THEORY.

CHILD-CARE FUND

child-care fund.Family law. State-government funds set aside to reimburse counties for part of the payments for children's foster care and expenses.

CHILD-CARE RULES

child-care rules.Family law. State administrative rules for the care of foster children. • In most states, depart-ments concerned with social services establish and enforce the rules governing the welfare of foster children. A few states have created agencies expressly dedicated to services for children.

CHILD CUSTODY

child custody.See CUSTODY(2).

CHILD DESTRUCTION

child destruction.1.FETICIDE. 2.INFANTICIDE(1).

CHILD ENDANGERMENT

child endangerment.The placing of a child in a place or position that exposes him or her to danger to life or health. — Also termed endangering the welfare of a child. [Cases: Infants 13, 156. C.J.S. Infants §§ 5, 92–93, 95–98.]

physical child endangerment.Reckless behavior toward a child that has caused or could cause serious physical injury. — Sometimes shortened to physical endangerment.

CHILD IN NEED OF SUPERVISION

child in need of supervision.See CHILD.

CHILD-KIDNAPPING

child-kidnapping. See KIDNAPPING.

CHILD LABOR

child labor.The employment of workers under the age of majority. • This term typically focuses on abusive practices such as exploitative factory work; slavery, sale, and trafficking in children; forced or compulsory labor such as debt bondage and serfdom; and the use of children in prostitution, pornography, drug-trafficking, or anything else that might jeopardize their health, safety, or morals. Some writers restrict the term to activities forbidden by the International Labor Organization's minimum-age conventions. See ILO Minimum Age Convention ch. 138 (1973). See FAIR LABOR STANDARDS ACT. Cf. CHILD WORK.

oppressive child labor.Under the Fair Labor Standards Act, the employment of workers under the age of 16 in any occupation, or the employment of those 16 to 18 years old in particularly hazardous occupations. 29 USCA § 203(1); 29 CFR § 570.1(b). The Secretary of Labor may assess civil penalties of up to \$10,000 per violation. 29 USCA § 216(e). — Also termed harmful child labor.

CHILD-LABOR LAW

child-labor law.A state or federal statute that protects children by prescribing the necessary working conditions for children in a workplace. See FAIR LABOR STANDARDS ACT. [Cases: Infants 14. C.J.S. Infants § 99.]

CHILD MALTREATMENT

child maltreatment.See child abuse under ABUSE.

CHILD MOLESTATION

child molestation.See MOLESTATION.

CHILDNAPPING

childnapping. See child-kidnapping under KIDNAPPING.

CHILD NEGLECT

child neglect. See NEGLECT.

CHILD ONLINE PROTECTION ACT

Child Online Protection Act. A 1998 federal statute designed to control child pornography on the Internet by prohibiting Internet speech that is “harmful to minors.” • Unlike the Communications Decency Act, COPA does not apply to e-mail or chat-room communications. Among other things, COPA applies to sexually explicit material that appears to depict minors, even if the people are actually over 18 or the images are computer-generated and do not depict living people. The Supreme Court struck down portions of the Act in *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 122 S.Ct. 1700 (2002). — Abbr. COPA.

CHILD OUT OF WEDLOCK

child out of wedlock. See illegitimate child under CHILD.

CHILD PORNOGRAPHY

child pornography. See PORNOGRAPHY.

CHILD PROTECTIVE SERVICES

Child Protective Services. A governmental agency with responsibility for investigating allegations of child abuse and neglect, providing family services to the parent or guardian of a child who has been abused or neglected, and administering the foster-care program. — Abbr. CPS. — Also termed (in some states) Department of Social Services.

CHILD-REARING

child-rearing. Family law. The practices and customs followed in the upbringing of children, whether in a particular family or in society generally. — Sometimes written childrearing.

CHILDREN'S COURT

children's court. See juvenile court under COURT.

CHILD'S ATTORNEY

child's attorney. See attorney ad litem under ATTORNEY.

CHILD-SEXUAL-ABUSE ACCOMMODATION SYNDROME

child-sexual-abuse accommodation syndrome. The supposed medical and psychological condition of a child who has suffered repeated instances of sexual abuse, usu. from a relative or family friend. • This so-called “syndrome” has been repudiated by the scientific community. It cannot be validated and thus cannot discriminate between abuse and nonabuse cases. — Abbr. CSAAS. — Also termed child-sexual-abuse syndrome. [Cases: Criminal Law 474.4(4).]

CHILD'S INCOME TAX

child's income tax. See kiddie tax under TAX.

CHILD-SLAYING

child-slaying. See INFANTICIDE.

CHILD'S PART

child's part. An inheritance that, by statute in some states, a widow may claim in lieu of dower or what she would receive under her husband's will. • The amount is calculated by counting the widow as a child of the decedent, sharing equally any entitlement with any other child. [Cases: Descent and Distribution 52–67. C.J.S. Descent and Distribution §§ 60–67.]

CHILD-STEALING

child-stealing. See child-kidnapping under KIDNAPPING.

CHILD SUPPORT

child support. Family law. 1. A parent's legal obligation to contribute to the economic maintenance and education of a child until the age of majority, the child's emancipation before reaching majority, or the child's completion of secondary education. • The obligation is enforceable both civilly and criminally. [Cases: Child Support 22.] 2. In a custody or divorce action, the money legally owed by one parent to the other for the expenses incurred for children of the marriage. • The right to child support is the child's right and cannot be waived, and any di-vorce-decree provision waiving child support is void. Cf. ALIMONY. [Cases: Child Support 1–669. C.J.S. Parent and Child §§ 156–191, 193–256, 359–377.]

decretal child support. Child support provided for in a divorce decree or modification order.

CHILD-SUPPORT-ENFORCEMENT AGENCY

child-support-enforcement agency. Family law. A governmental agency that helps custodial parents collect child support. • Under Title IV(D) of the Social Security Act (42 USCA § 654), states are required to establish child-support-enforcement agencies to collect support for obligee parents. Although the agencies are governed by a set of federal standards, each state has its own central registry. The CSE agency may operate through the state's Department of Human Services, its Department of Justice, its tax agency, or its Attorney General's office. The agency can help locate a missing parent and establish paternity. The agency works to establish support orders and to enforce those orders. — Abbr. CSE agency. — Also termed IV-D agency. See OFFICE OF CHILD-SUPPORT ENFORCEMENT.

CHILD-SUPPORT GUIDELINES

child-support guidelines. Family law. Statutory provisions that govern the amount of child support that an obligor parent must pay. • Child-support guidelines have been developed in every state in response to the creation of the Temporary Assistance to Needy Families program. 42 USCA §§ 601–603a.

CHILD SUPPORT RECOVERY ACT OF 1994

Child Support Recovery Act of 1994. A statute that made it a federal offense for a person to willfully fail to pay past-due child support for a child who lived in another state. • This Act has been replaced by the Deadbeat Parents Punishment Act. 42 USCA § 228. See DEADBEAT PARENTS PUNISHMENT ACT.

CHILDWIT

childwit. Hist. A fine levied by a master on a servant who became pregnant without the master's consent.

CHILD WITH DISABILITIES

child with disabilities. See CHILD.

CHILD WORK

child work. A minor's salutary employment, esp. within the family. • This term is sometimes used in contrast to child labor, the idea being that child work within the family unit can be a positive experience. Some scholars and courts note that child work can facilitate vocational skills and social adaptation, and is often viewed as an ex-expression of family solidarity. Cf. CHILD LABOR.

CHILL

chill, vb. To inhibit or discourage <chill one's free-speech rights>.

CHILLING A SALE

chilling a sale. The act of bidders or others who combine or conspire to discourage others from attempting to buy an item so that they might buy the item themselves for a lower price.

CHILLING EFFECT

chilling effect. 1. Constitutional law. The result of a law or practice that seriously discourages the exercise of a constitutional right, such as the right to appeal or the right of free speech. 2. Broadly, the result when any practice is discouraged. — Also termed chilling bidding; chilling the bidding.

CHILLING THE BIDDING

chilling the bidding. 1. CHILLING EFFECT. 2. CHILLING A SALE.

CHIMEL SEARCH

Chimel search. See protective search under SEARCH.

CHIMNEY MONEY

chimney money. See HEARTH MONEY(1).

CHINESE WALL

Chinese Wall. See ETHICAL WALL.

CHINS

CHINS.abbr.See child in need of supervision under CHILD.

CHIROGRAPH

chirograph (kI-r<<schwa>>-graf), n.1.Civil law. A handwritten instrument. 2. A written deed, subscribed and witnessed. — Also termed cyrographum. 3. Such a deed in two parts from a single original document separated by an indented line through the word chirographum, each party retaining one part. 4.Hist. FOOT OF THE FINE. — Also termed (in sense 4) cyrographarius. — chirographic,adj.

“Formerly, when deeds were more concise than at present, it was usual to write both parts on the same piece of parchment, with some word or letters of the alphabet written between them; through which the parchment was cut, either in a straight or indented line, in such a manner as to leave half the word on one part and half on the other. Deeds thus made were denominated syngrapha by the canonists; and with us chirographa, or hand-writings.” 2 William Blackstone, Commentaries on the Laws of England 295–96 (1766).

CHIROGRAPHER OF FINES

chirographer of fines (kI-rogr-r<<schwa>>-f<<schwa>>r) Hist. A Court of Common Pleas officer who engrossed court-ordered fines and delivered indentures of the fines to the parties. See INDENTURE OF A FINE.

“Chirographer of fynes... signifieth in our common lawe, him in the common bench office, that ingrosseth fines in that court acknowledged, into a perpetuall record, after they be acknowledged, and fully passed by those officers, by whome they are formerly examined; and that writeth and delivereth the indentures of them unto the party. This officer also maketh two indentures, one for the buier, another for the seller; and maketh one other indented peece, containing also the effect of the fine, which he delivereth over to the custos brevium, that is called the foote of the fine.” John Cowell, The Interpreter (1607).

CHIROGRAPHUM

chirographum (kI-rogr-r<<schwa>>-f<<schwa>>m). [Latin fr. Greek] Roman law. A handwritten document, usu. an undertaking or acknowledgment of debt written in the debtor's own hand. Cf. TYPOGRAPHUM. Pl. chiro-grapha.

CHIT

chit. 1. A signed voucher for money received or owed, usu. for food, drink, or the like. 2. A slip of paper with writing on it.

CHIVAGE

chivage. See CHEVAGE.

CHIVALRY

chivalry (shiv-*<<schwa>>l-ree*).Hist. Tenure held by knight-service; tenure in which a person held land in ex-change for military service of the highest order. See KNIGHT-SERVICE.

“Chivalry is a tenure of land by knight's service: for the better understanding whereof it is to be known, that there is no land but is held mediately or immediately of the crown by some service or other; and therefore all our free-holds that are to us and our heirs are called fees, as proceeding from the bounty of the king for some small yearly rent, and the performance of such services as originally were imposed upon the land at the giving thereof... And these services are all by Littleton divided into two sorts, chivalry and soccage: the one martial and military; the other clownish and rustical.” *Termes de la Ley* 83–84 (1st Am. ed. 1812).

CHOATE

choate (koh-it or -ayt), adj.1. Complete in and of itself. 2. Having ripened or become perfected. Cf. INCHOATE. — choateness,n.

CHOATE LIEN

choate lien.See LIEN.

CHOICE

choice. See FREEDOM OF CHOICE.

CHOICE OF EVILS

choice of evils.See NECESSITY(1).

CHOICE-OF-EVILS DEFENSE

choice-of-evils defense.See lesser-evils defense under DEFENSE(1).

CHOICE-OF-EXCLUSIVE-FORUM CLAUSE

choice-of-exclusive-forum clause.See FORUM-SELECTION CLAUSE.

CHOICE OF JURISDICTION

choice of jurisdiction.Conflict of laws. The choice of the state (or country) that should exercise jurisdiction over a case. [Cases: Action 17.C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

CHOICE OF LAW

choice of law.The question of which jurisdiction's law should apply in a given case. Cf. CONFLICT OF LAWS. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

CHOICE-OF-LAW CLAUSE

choice-of-law clause.A contractual provision by which the parties designate the jurisdiction whose law will govern any disputes that may arise between the parties. Cf. FORUM-SELECTION

CLAUSE. [Cases: Contracts 129(1).C.J.S. Contracts §§ 229, 238–240.]

CHOICE VOTING

choice voting. See single transferable vote under VOTE(1).

CHOP-SHOP

chop-shop, n. Criminal law. A garage where stolen automobiles are dismantled so that their parts can be sold separately. [Cases: Receiving Stolen Goods 1. C.J.S. Receiving or Transferring Stolen Goods and Related Offenses §§ 2, 10–12, 15–16.]

CHOREPISCOPI

chorepiscopi. See SUFFRAGAN.

CHOSE

chose (shohz), n. [French] A thing, whether tangible or intangible; a personal article; a chattel. See THING.

chose in action. 1. A proprietary right in personam, such as a debt owed by another person, a share in a joint-stock company, or a claim for damages in tort. [Cases: Property 5.5. C.J.S. Property § 22; Trading Stamps and Coupons § 2.] 2. The right to bring an action to recover a debt, money, or thing. 3. Personal property that one person owns but another person possesses, the owner being able to regain possession through a lawsuit. — Also termed thing in action.

“Chose, or, thing in action is, when a man hath cause, or may bring an action for some duty due to him; as an action of debt ... and because they are things whereof a man is not possessed, but for recovery of them is driven to his action, they are called things in action.” *Termes de la Ley* 85 (1st Am. ed. 1812).

“The term chose in action has been in common use for a long time, but some doubts have been recently raised as to its precise meaning. (See *Law Quarterly Review* for 1893, 1894, 1895.) A Divisional Court, however, has now given us the following definition: ‘“chose in action” is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession.’ *Torkington v. Magee*, [1902] 2 K.B. p. 430. The phrase ‘rights of property’ does not seem a very happy one, but it is quite clear that the court meant to include under the term chose in action rights under a contract and rights of action arising from breach of contract.” *William R. Anson, Principles of the Law of Contract* 362 n.(b) (Arthur L. Corbin ed., 3d Am. ed. 1919).

chose in possession. Personal property for which title and possession unite in the same person. — Also termed thing in possession.

chose local. A fixed chattel.

chose transitory. A movable chattel.

CHRISTIANITATIS CURIA

christianitatis curia (kris-tee-an-<<schwa>>-tay-tis kyoor-ee-<<schwa>>). [Latin "Christian court"] See ec-clesiastical court (2) under COURT.

CHRISTIAN NAME

Christian name. See personal name under NAME.

CHURCH COURT

church court. See ecclesiastical court under COURT.

CHURCH LAW

church law. See CANON LAW(2).

CHURCH RATES

church rates. Hist. Eccles. law. A tax levied on parishioners by churchwardens and other representatives of the parish to raise funds for the repair and maintenance of the parish church. • The power to set and collect such taxes was abolished in England in 1868.

CHURL

churl (ch<<schwa>>rl). See CEORL.

CHURN, BURN, AND BURY

churn, burn, and bury, vb. (Of a stockbroker) to make numerous risky trades in (an account) and, as a result, squander the customer's money. • The term denotes the action involved in particularly reckless churning.

CHURNING

churning, n. 1. Securities. A stockbroker's excessive trading of a customer's account to earn more commissions rather than to further the customer's interests; an abuse of a customer's confidence for personal gain by frequent and numerous transactions, disproportionate to the size and nature of the customer's account. • Under securities laws, the practice is illegal — a violation of § 10(b) of the Exchange Act (15 USCA § 78j(b)). But because the fraud is the activity as a whole and there is no communication between the broker and the customer about a specific sale of securities, there is not normally a right of action for fraud based on churning. [Cases: Brokers 21; Securities Regulation 60.32(3). C.J.S. Brokers § 52; Securities Regulation §§ 164, 197–198, 217, 222.] 2. Tax. A transfer of property that does not result in a significant change of ownership or use of the property, usu. to make the property eligible for amortization or a more favorable method of depreciation. See ANTICHURNING RULE . — churn, vb.

CIA

CIA. abbr. CENTRAL INTELLIGENCE AGENCY.

CID

CID. abbr. CIVIL INVESTIGATIVE DEMAND.

CIF

CIF.abbr.COST, INSURANCE, AND FREIGHT.

CIF DESTINATION

CIF destination.See COST, INSURANCE, AND FREIGHT.

CIF PLACE OF DESTINATION

CIF place of destination.See CIF destination under COST, INSURANCE, AND FREIGHT .

CINQUE PORTS

Cinque Ports (singk ports). [Fr. "five ports"] The five English ports — Hastings, Romney, Hythe, Dover, and Sandwich — that were important defenses against French invasion. • They received special privileges and were obliged to furnish a certain number of ships for use in war. See COURT OF SHEPWAY.

"Cinque ports ... are those special havens that lie towards France, and therefore have been thought by our kings to be such as ought most vigilantly to be preserved [sic] against invasion. In which respect they have a special Governor or Keeper, called by his office, Lord Warden of the Cinque Ports." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* [n.p.] (1670).

"[M]ost of the seaport towns, or at least the more important ones, had local, as distinguished from national or centrally controlled, courts with jurisdiction over the administration of the local sea law. Among these ports was one group which was particularly notable, called the Cinque Ports, or Five Ports — 'cinque' being the French word for five. These five ports were of particular importance as naval bases because of their nearness to the continent. In exchange for special naval assistance to the king in time of war, they were not only permitted to acquire but also to keep a position of special importance in the field of maritime law, and with it a considerable measure of local, independent jurisdiction, which served as a reminder in later centuries of the original local character of English admiralty jurisdiction." Charles Herman Kinnane, *A First Book on Anglo-American Law* 362 (2d ed. 1952).

CIO

CIO.abbr.1. The Congress of Industrial Organizations, which merged with the AFL in 1955. See AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS . 2.CHIEF INFORMATION OFFICER.

CIP

CIP.abbr.1.CONTINUATION-IN-PART. 2.CARRIAGE AND INSURANCE PAID TO.

CIPPI

cippi (sip-I). [Law Latin] Hist. See STOCKS.

CIRCA

circa (s<<schwa>>r-k<<schwa>>), prep. [Latin] About or around (a date, esp. an ancient one); approximately <the book was written circa 1938–1941>. — Abbr. ca.; c.

CIRCLE CONSPIRACY

circle conspiracy. See wheel conspiracy under CONSPIRACY.

CIRCUIT

circuit, n. 1. A judicial division in which hearings occur at several locations, as a result of which judges often travel to different locations. [Cases: Courts 45. C.J.S. Courts § 105.] 2. A judicial division of the United States — that is, one of the 13 circuits into which the U.S. courts of appeals are organized. 28 USCA § 41.

CIRCUIT COURT

circuit court. See COURT.

CIRCUIT EXECUTIVE

circuit executive. The chief executive officer of a federal judicial circuit responsible for daily administration of the courts. • The circuit executive is the highest-ranking nonjudicial officer within a circuit.

CIRCUIT JUDGE

circuit judge. See JUDGE.

CIRCUIT JUSTICE

circuit justice. See JUSTICE(2).

CIRCUIT MEDIATOR

circuit mediator. An attorney-employee of a U.S. court of appeals who mediates civil cases, usu. before oral argument. — Also termed preargument-conference attorney; settlement counsel.

CIRCUIT-RIDING

circuit-riding, n. The practice of judges' traveling within a legislatively defined circuit to hear cases in one place for a time, then another, and so on. • The American practice of circuit-riding was based on the English eyre system, in which justices rode between the shire towns to hold assizes.

“The Judiciary Act of 1789 required that the justices of the Supreme Court serve also as judges of the circuit courts. The justices complained that circuit riding caused serious physical hardships and diverted them from more important duties in the nation's capital.... Congress in 1801 abolished circuit riding on grounds of efficiency, but a year later a new Jeffersonian Republican majority restored the practice, obliging each justice to hold circuit court along with a district judge. Gradually, however, improved communications, increasing business in the nation's capital, and the strengthening of American nationhood following the Civil War rendered circuit

riding anachro-nistic. Congress in the Judiciary Act of 1869 established a separate circuit court judiciary, although the justices retained nominal circuit riding duties until the Circuit Court of Appeals Act of 1891. Congress officially ended the practice in 1911." The Oxford Companion to the Supreme Court of the United States 145 (Kermit L. Hall ed., 1992).

CIRCUIT-RIDING JUSTICE

circuit-riding justice. See JUSTICE(2).

CIRCUITY OF ACTION

circuitry of action. A procedure allowing duplicative lawsuits, leading to unnecessarily lengthy and indirect liti-gation, as when a defendant fails to bring a counterclaim, but later brings a separate action to recover what could have been awarded in the original lawsuit. • Civil-procedure rules have eliminated many problems associated with circuitry of action. [Cases: Equity 52. C.J.S. Equity § 42.]

"Circuitry of action is, when an action is rightfully brought for a duty, but yet about the bush, as it were, for that it might as well have been otherwise answered and determined, and the suit saved: and because the same action was more than needful, it is called circuitry of action." Termes de la Ley 87 (1st Am. ed. 1812).

CIRCULAR LETTER OF CREDIT

circular letter of credit. See LETTER OF CREDIT.

CIRCULAR NOTE

circular note. See LETTER OF CREDIT.

CIRCULATING CAPITAL

circulating capital. See floating capital under CAPITAL.

CIRCUMDUCTION

circumduction (s<<schwa>>r-k<<schwa>>m-d<<schwa>>k-sh<<schwa>>n). Annulment; cancellation.

CIRCUMDUCTION OF THE TERM

circumduction of the term. Scots law. A judicial declaration that the time allowed for the parties to present evidence has expired.

CIRCUM SACRA

circum sacra (s<<schwa>>r-k<<schwa>>m say-kr<<schwa>>). [Law Latin] Hist. Eccles. law. Concerning sacred things. • The phrase appeared in reference to the church's supreme jurisdiction over questions of doctrine, as distinguished from a civil court's jurisdiction over other ecclesiastical matters.

CIRCUMSPECTE AGATIS

Circumspecte agatis (s<<schwa>>r-k<<schwa>>m-spek-tee <<schwa>>-gay-tis). [Latin “that you act cir-cumspectly”] Hist. A directive from the king to his justices detailing the boundaries of ecclesiastical jurisdiction. • The directive, issued circa 1285, was originally in the form of a writ, but over time acquired statutory authority. The title *Circumspecte agatis* derives from the first few words of the writ: “Rex talibus iudicibus salutem; Cir-cumspecte agatis....”

CIRCUMSTANCE

circumstance, n. (often pl.) An accompanying or accessory fact, event, or condition, such as a piece of evidence that indicates the probability of an event. — circumstantial, adj.

aggravating circumstance. 1. A fact or situation that increases the degree of liability or culpability for a criminal act. 2. A fact or situation that relates to a criminal offense or defendant and that is considered by the court in imposing punishment (esp. a death sentence). • Aggravating circumstances in death-penalty cases are usu. pre-scribed by statute. For a list of aggravating circumstances in a capital-murder case, see Model Penal Code § 210.6(3). — Also termed aggravating element; aggravating factor; aggravator. Cf. mitigating circumstance; MITIGATOR. [Cases: Sentencing and Punishment 53, 589, 1652. C.J.S. Criminal Law §§ 1460, 1465, 1472, 1479, 1492–1493, 1495, 1524, 1526, 1530–1532, 1534–1538, 1541–1543.]

attendant circumstance. A fact that is situationally relevant to a particular event or occurrence. • A fact-finder often reviews the attendant circumstances of a crime to learn, for example, the perpetrator's motive or intent.

exigent circumstances. 1. A situation that demands unusual or immediate action and that may allow people to circumvent usual procedures, as when a neighbor breaks through a window of a burning house to save someone inside. 2. A situation in which a police officer must take immediate action to effectively make an arrest, search, or seizure for which probable cause exists, and thus may do so without first obtaining a warrant. • Exigent cir-cumstances may exist if (1) a person's life or safety is threatened, (2) a suspect's escape is imminent, or (3) evidence is about to be removed or destroyed. — Also termed emergency circumstances; special circumstances.

extenuating circumstance. See mitigating circumstance.

extraordinary circumstances. A highly unusual set of facts that are not commonly associated with a particular thing or event.

incriminating circumstance. A fact or situation showing either that a crime was committed or that a particular person committed it.

mitigating circumstance. 1. A fact or situation that does not justify or excuse a wrongful act or offense but that reduces the degree of culpability and thus may reduce the damages (in a civil case) or the punishment (in a criminal case). [Cases: Damages 59; Sentencing and Punishment 54, 590, 1653. C.J.S. Damages §§ 167, 169–170, 172, 174.] 2. A fact or situation that does not bear on the question of a defendant's guilt but that is considered by the court in imposing punishment and esp. in lessening the severity of a sentence. A court's or jury's power to consider mitigating circumstances cannot be limited by statute. See *Lockett v. Ohio*, 438 U.S. 586, 606, 98

S.Ct. 2954, 2965 (1978). For a list of mitigating circumstances in a capital-murder case, see Model Penal Code § 210.6(4). [Cases: Sentencing and Punishment 54, 590, 1653.] 3.Contracts. An unusual or unpredictable event that prevents performance, such as a labor strike. — Also termed extenuating circumstance. Cf. aggravating circumstance.

CIRCUMSTANTIAL EVIDENCE

circumstantial evidence. See EVIDENCE.

CIRCUMVENTION 1

circumvention. 1.Copyright. The act of bypassing, avoiding, removing, deactivating, or impairing a technological measure or device that controls access to a work protected by U.S. copyright law. • Circumvention of technology that effectively controls access to a work protected by a U.S. copyright is prohibited under 17 USCA § 1201. [Cases: Copyrights and Intellectual Property 67.3. C.J.S. Copyrights and Intellectual Property §§ 41, 45, 55, 97.] 2.Scots law. FACILITY AND CIRCUMVENTION .

CIRLISCUS

cirliscus (s<<schwa>>r-lis-k<<schwa>>s). See CEORL.

CITABLE

citable,adj. Authorized by a court to be used as legal precedent. • In general, published opinions are citable, but unpublished ones are not. — Also written citeable. Cf. NONCITABLE.

CITATIO AD REASSUMENDAM CAUSAM

citatio ad reassumendam causam (sI-tay-shee-oh ad ree-as-yoo-men-d<<schwa>>m kaw-z<<schwa>>m). [Latin “citation to take up a cause again”] Civil law. A citation issued to revive an action that was abated upon one party's death. • The citation issues against the deceased party's heir. Cf. bill of revivor under BILL(2).

CITATION

citation,n.1. A court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so. 2. A police-issued order to appear before a judge on a given date to defend against a stated charge, such as a traffic violation. — Also termed appearance ticket. [Cases: Automobiles 351.1. C.J.S. Motor Vehicles §§ 1344, 1365–1371, 1397–1400, 1443, 1473, 1486–1487, 1496, 1508, 1518, 1526, 1532, 1543–1544, 1546–1547, 1550.] 3. A reference to a legal precedent or authority, such as a case, statute, or treatise, that either substantiates or contradicts a given position. — Often shortened to (in sense 3) cite.

parallel citation.An additional reference to a case that has been reported in more than one reporter. • For example, whereas a Bluebook citation reads “Morgan v. United States, 304 U.S. 1 (1938),” the same reference including parallel citations reads “Morgan v. United States, 304 U.S. 1, 58 S.Ct. 773, 82 L.Ed. 1129 (1938),” in which the main citation is to the U.S. Reports and the

parallel citations are to the Supreme Court Reporter and to the Lawyer's Edition.

pinpoint citation. The page on which a quotation or relevant passage appears, as opposed to the page on which a case or article begins. • For example, the number 217 is the pinpoint citation in *Baker v. Carr*, 369 U.S. 186, 217 (1962). — Also termed jump citation; dictum page; pincite.

4. A reference to another document in support of an argument, as in a patent prosecution in which a party trying to defeat a claim of patentability refers to a previous patent or a publication to show that the invention lacks novelty or nonobviousness. See REFERENCE(4).

front-page citation. Patents. A citation of prior art listed on the front page of a patent application and disclosing a patent or publication that is material to the patentability of any of the application's claims.

textual citation. Patents. A reference to a work containing prior art listed in a patent application's body.

CITATIONAL

citational, adj. Of or relating to a citation (esp. a reference citation) < citational analysis >.

CITATION ORDER

citation order. The appropriate ranking of the various authorities marshaled in support of a legal proposition.

CITATIONS, LAW OF

Citations, Law of. Roman law. An A.D. 426 decree of Emperor Valentinian III listing Papinian, Paul, Gaius, Ulpian, and Modestinus as juristic writers who could be cited authoritatively in court. • If a majority of the writers agreed on an issue, the judge was bound to follow the majority view. The Law of Citations allowed the judge to use discretion only if the writers were equally divided and Papinian (whose view prevailed in a tie) was silent on the issue.

“In 426 came the famous *lex de responsis prudentium* — the Law of Citations.... This law lessened the difficulties of the courts in dealing with juristic literature. It excluded a huge mass of conflicting doctrine, the relative value of which had not been determined, and which yet had to be used by the judges as a source of principle on which to base their decisions.” W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* 33 (Peter Stein ed., 3d ed. 1963).

CITATION SIGNAL

citation signal. See SIGNAL(2).

CITATOR

citator (sI-tay-t<<schwa>>r). A catalogued list of cases, statutes, and other legal sources showing the subsequent history and current precedential value of those sources. • Citators allow researchers to verify the authority of a precedent and to find additional sources relating to a given subject. Citators were originally printed on gummed paper and pasted next to the report of a cited

case. Today, citators are published in volumes and are also available online; the two most popular are Shepard's and KeyCite.

“A citator is a compilation showing where certain cases have been cited in other cases, and whether the provisions of constitutions and statutes have been repealed, amended, or otherwise affected, or have been judicially construed, or have been cited.” Frank Hall Childs, *Where and How to Find the Law* 61 (1922).

CITATORY

citatory (sI-t<<schwa>>-tor-ee), adj. Of, relating to, or having the power of a citation or summons <letters ci-tatory>.

CITE

cite,n. See CITATION(3).

cite,vb.1. To summon before a court of law <the witness was cited for contempt>.2. To refer to or adduce as precedent or authority <counsel then cited the appropriate statutory provision>.3. To commend or honor <the soldier was cited for bravery>.

CITEABLE

citeable. See CITABLE.

CITIZEN

citizen,n.1. A person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges. Cf. RESIDENT; DOMICILIARY. [Cases: Citizens 1. C.J.S. Citizens §§ 7, 12.]

citizen by naturalization.See naturalized citizen.

federal citizen.A citizen of the United States.

natural-born citizen.A person born within the jurisdiction of a national government.

naturalized citizen.A foreign-born person who attains citizenship by law. — Also termed citizen by naturalization. [Cases: Aliens 60–70. C.J.S. Aliens §§ 276–315, 326.]

2. For diversity-jurisdiction purposes, a corporation that was incorporated within a state or has its principal place of business there. 28 USCA § 1332(c)(1). [Cases: Federal Courts 297.]

CITIZEN-INFORMANT

citizen-informant. See INFORMANT.

CITIZEN'S ARREST

citizen's arrest.See ARREST.

CITIZENSHIP

citizenship, n. 1. The status of being a citizen. 2. The quality of a person's conduct as a member of a community.

corporate citizenship. See CORPORATE CITIZENSHIP.

dual citizenship. See DUAL CITIZENSHIP.

CITIZENSHIP CLAUSE

Citizenship Clause. The clause of the U.S. Constitution providing that all persons born or naturalized in the United States are citizens of the United States and the state they reside in. U.S. Const. amend. XIV, § 1, cl. 1. [Cases: Citizens 1–11. C.J.S. Aliens § 281; Citizens §§ 2–13, 19, 21–22, 24–29.]

CITIZEN SUIT

citizen suit. An action under a statute giving citizens the right to sue violators of the law (esp. environmental law) and to seek injunctive relief and penalties. • In the 1970s, during the heyday of antipollution statutes such as the Clean Water Act and the Clean Air Act, legislators believed that regulators sometimes become too close to the industries they oversee and, as a result, lack the aggressiveness that individual citizens bring to litigation. The statutes therefore authorize, among other things, “private attorneys general” (citizens) to protect the environment. This includes not only injunctions to stop pollution but also penalties to be paid to the U.S. Treasury. A federal plaintiff must sue under a statutory citizen-suit provision and also satisfy constitutional-standing requirements. See STANDING. [Cases: Environmental Law 20.]

CITOLOGY

citology. See LEGAL CITOLOGY.

CITRA CAUSAE COGNITIONEM

citra causae cognitionem (sit-r<<schwa>> kaw-zee kog-nish-ee-oh-n<<schwa>>m). [Latin] Hist. Without investigating the cause; absent a judicial investigation.

“*Citra causae cognitionem*.... Formerly all interdiction was judicial, and proceeded upon an investigation of the facts and on its necessity or expediency being made out to the satisfaction of the Court. No other kind of interdiction was allowed, but voluntary interdiction, without such investigation, was afterwards admitted.” John Trayner, *Trayner's Latin Maxims* 78 (4th ed. 1894).

CITY

city. 1. A municipal corporation, usu. headed by a mayor and governed by a city council. [Cases: Municipal Corporations 1.1. C.J.S. Municipal Corporations §§ 2–7.] 2. The territory within a city's corporate limits. 3. Collectively, the people who live within this territory. Cf. TOWN.

CITY ATTORNEY

city attorney. An attorney employed by a city to advise it and represent it in legal matters. —

Also termed mu-nicipal attorney; city counsel; corporation counsel; city solicitor. [Cases: Municipal Corporations 214(3).]

“There may have been a time in this country when the function of the City Attorney of the average city consisted mainly of advising the Council, preparing an occasional ordinance or handling an infrequent lawsuit. The legal business of the average city is no longer so simple, so infrequent and so nonconsuming of the time of the City Attorney. Every action of the City must be justified by its legal powers, and the City Attorney is the municipal officer whose responsibility it is to decide whether any act or action is within the city's legal powers. The demands of citizens for augmented municipal services, and the resulting diversification of city operations have increased the volume of work to the point where the City Attorney, in many cities, has become a central consultant of the city officers and employees on a day-to-day, hour-to-hour basis.” Allen Grimes, *The City Attorney: A Practice Manual* 6 (1978).

CITY CLERK

city clerk. See CLERK(1).

CITY COUNCIL

city council. A city's legislative body, usu. responsible for passing ordinances, levying taxes, appropriating funds, and generally administering city government. — Also termed (in some states) board of aldermen. [Cases: Mu-nicipal Corporations 80. C.J.S. Municipal Corporations §§ 208–210, 213–219.]

CITY COUNSEL

city counsel. See CITY ATTORNEY.

CITY COURT

city court. See municipal court under COURT.

CITY JUDGE

city judge. See municipal judge under JUDGE.

CITY SOLICITOR

city solicitor. See CITY ATTORNEY.

CIV. CT.

Civ. Ct. See civil court under COURT.

CIVIC

civic, adj. 1. Of or relating to citizenship or a particular citizen <civic responsibilities>. 2. Of or relating to a city <civic center>.

CIVIL

civil,adj.1. Of or relating to the state or its citizenry <civil rights>.2. Of or relating to private rights and remedies that are sought by action or suit, as distinct from criminal proceedings <civil litigation>. [Cases: Action 18. C.J.S. Actions § 68.] 3. Of or relating to any of the modern legal systems derived from Roman law <Louisiana is a civil-law jurisdiction>.

CIVIL ACTION

civil action.See ACTION(4).

CIVIL ARREST

civil arrest.See ARREST.

CIVIL ASSAULT

civil assault.See ASSAULT.

CIVIL-AUTHORITY CLAUSE

civil-authority clause.Insurance. A clause, esp. in a fire-insurance policy, insuring against damages caused by firefighters, police, or other civil authority. [Cases: Insurance 2157, 2163. C.J.S. Insurance § 1074.]

CIVIL BAIL

civil bail.See BAIL(1).

CIVIL CODE

civil code. 1. A comprehensive and systematic legislative pronouncement of the whole private, noncommercial law in a legal system of the continental civil-law tradition. 2. (cap.) The code that embodies the law of France, from which a great part of the Louisiana civil code is derived. — Abbr. CC. — Also termed Code Civil. See NAPOLEONIC CODE. 3. A codification of noncriminal statutes.

CIVIL COGNATION

civil cognation.See COGNATION.

CIVIL COMMITMENT

civil commitment. 1. A commitment of a person who is ill, incompetent, drug-addicted, or the like, as contrasted with a criminal sentence. [Cases: Chemical Dependents 10; Mental Health 31. C.J.S. Chemical Dependents §§ 10–11; Insane Persons §§ 45, 47, 53.] 2. A public demonstration by two people of their intent to be bound together in a marriage-like relationship. • The demonstration is usu. in the form of a ceremony, often identical to a wedding, but the relationship is usu. not legally recognized and can be dissolved without legal formalities. See CIVIL UNION .

CIVIL-COMMITMENT STATUTE

civil-commitment statute.A law that provides for the confinement of a person who is mentally

ill, incompetent, drug-addicted, or the like, often a sexually violent predator. • Unlike criminal incarceration, civil commitment is for an indefinite period.

CIVIL COMMOTION

civil commotion. A public uprising by a large number of people who, acting together, cause harm to people or property. • A civil commotion usu. involves many more people than a riot. — Sometimes shortened to commotion. Cf. RIOT. [Cases: Riot 1. C.J.S. Riot; Insurrection §§ 2–10.]

CIVIL CONSPIRACY

civil conspiracy. See CONSPIRACY.

CIVIL CONTEMPT

civil contempt. See CONTEMPT.

CIVIL CORPORATION

civil corporation. See CORPORATION.

CIVIL COURT

civil court. See COURT.

CIVIL-DAMAGE LAW

civil-damage law. See DRAM-SHOP ACT.

CIVIL DAY

civil day. See artificial day under DAY.

CIVIL DEATH

civil death. See DEATH.

CIVIL DEFENSE

civil defense. 1. The practice of protecting civilians from dangers caused by hostilities or disasters and helping them recover from the immediate effects of such events. 2. The policies that underlie this practice.

CIVIL DISABILITY

civil disability. See DISABILITY(3).

CIVIL DISOBEDIENCE

civil disobedience. A deliberate but nonviolent act of lawbreaking to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or morality.

“Social protest and even civil disobedience serve the law's need for growth. Ideally, reform

would come according to reason and justice without self-help and disturbing, almost violent, forms of protest.... Still, candor compels one here again to acknowledge the gap between the ideal and the reality. Short of the millennium, sharp changes in the law depend partly upon the stimulus of protest." Archibald Cox, *Civil Rights, the Constitution, and the Courts*, 40 N.Y. State B.J. 161, 169 (1968).

CIVIL DISORDER

civil disorder. A public disturbance involving three or more people who commit violent acts that cause immediate danger or injury to people or property. See RIOT. [Cases: Riot 1. C.J.S. Riot; Insurrection §§ 2–10.]

CIVIL EMBARGO

civil embargo. See EMBARGO(2).

CIVIL FORFEITURE

civil forfeiture. See FORFEITURE.

CIVIL FRAUD

civil fraud. See FRAUD.

CIVIL FRUIT

civil fruit. See FRUIT.

CIVILIAN

civilian, n. 1. A person not serving in the military. 2. A lawyer practicing in a civil-law jurisdiction. — Also termed *civilista*. 3. A scholar in civil or Roman law. — *civilian*, adj.

CIVIL IMPEDIMENT

civil impediment. See IMPEDIMENT.

CIVIL IMPRISONMENT

civil imprisonment. Hist. See IMPRISONMENT FOR DEBT.

CIVIL INFRACTION

civil infraction. See INFRACTION.

CIVIL INJURY

civil injury. See INJURY.

CIVIL INVESTIGATIVE DEMAND

civil investigative demand. 1. A request for information served by the U.S. Attorney General on any person who may have documents or information relevant to a civil antitrust investigation or to an investigation authorized by § 3 of the International Antitrust Enforcement Assistance Act

(15 USCA § 6202). • A civil investigative demand can be issued before a civil or criminal action is begun, and can be served on anyone — not just potential defendants — thought to possess information pertinent to the investigation. If the Attorney General begins a civil or criminal action, this demand may not be served on persons within the scope of the proceeding. 2. A similar request for information served by a different governmental entity, esp. a state attorney general. — Abbr. CID.

CIVILIS

civilis (s<<schwa>>-vI-lis), adj.[Latin] Of or according to civil law.

CIVILISTA

civilista (siv-<<schwa>>-lis-t<<schwa>>). [Latin] Hist. See CIVILIAN(2).

CIVILITER

civiliter (s<<schwa>>-vil-<<schwa>>-t<<schwa>>r), adv.[Latin “civilly”] 1. By a civil, as distinguished from a criminal, proceeding. Cf. CRIMINALITER. 2. Civilly; as a citizen.

civiliter mortuus (s<<schwa>>-vil-<<schwa>>-t<<schwa>>r mor-choo-<<schwa>>s). [Latin] Civilly dead <the wife of a man civiliter mortuus had similar rights>. See civil death (1) under DEATH.

CIVILIZATION

civilization. The transformation of a criminal matter to a civil one by law or judgment. Cf. CRIMINALIZATION(1).

CIVIL JUSTICE

civil justice. The methods by which a society redresses civil wrongs. Cf. CRIMINAL JUSTICE(1).

CIVIL LAW

civil law. 1. (usu. cap.) One of the two prominent legal systems in the Western World, originally administered in the Roman Empire and still influential in continental Europe, Latin America, Scotland, and Louisiana, among other parts of the world; ROMAN LAW. • In reference to Romans, civil law (commonly referred to as jus civile) denotes the whole body of Roman law, from whatever source derived. But it is also used to denote that part of Roman law peculiar to the Romans, as opposed to the common law of all peoples (jus gentium). — Also termed jus civile; Roman law; Romanesque law. Cf. COMMON LAW(2). 2. The body of law imposed by the state, as opposed to moral law. 3. The law of civil or private rights, as opposed to criminal law or administrative law. — Abbr. CL.

“The difference between civil law ... and criminal law turns on the difference between two different objects which the law seeks to pursue — redress or punishment. The object of civil law is the redress of wrongs by compelling compensation or restitution: the wrongdoer is not punished, he only suffers so much harm as is necessary to make good the wrong he has done. The person

who has suffered gets a definite benefit from the law, or at least he avoids a loss. On the other hand, in the case of crimes, the main object of the law is to punish the wrongdoer; to give him and others a strong inducement not to commit the same or similar crimes, to reform him if possible, and perhaps to satisfy the public sense that wrongdoing ought to meet with retribution." William Geldart, *Introduction to English Law* 146 (D.C.M. Yardley ed., 9th ed. 1984).

CIVIL LIABILITY

civil liability. See LIABILITY.

CIVIL-LIABILITY ACT

civil-liability act. See DRAM-SHOP ACT.

CIVIL LIBERTY

civil liberty. (usu. pl.) Freedom from undue governmental interference or restraint. • This term usu. refers to freedom of speech or religion. In American law, early civil liberties were promulgated in the *Laws and Liberties of Massachusetts* (1648) and the *Bill of Rights* (1791). In English law, examples are found in *Magna Carta* (1215), the *Petition of Right* (1628), and the *Bill of Rights* (1689). — Also termed civil right. [Cases: Civil Rights 1027. C.J.S. Civil Rights §§ 4–5, 8, 13.]

CIVIL LIST

civil list. An annual sum granted by Parliament for the expenses of the royal household.

CIVIL MARRIAGE

civil marriage. See MARRIAGE(3).

CIVIL MONTH

civil month. See MONTH(1).

CIVIL OBLIGATION

civil obligation. See conventional obligation under OBLIGATION.

CIVIL OFFENSE

civil offense. See public tort under TORT.

CIVIL PARTNERSHIP

civil partnership. See CIVIL UNION.

CIVIL PENALTY

civil penalty. See PENALTY(1).

CIVIL POSSESSION

civil possession. See POSSESSION.

CIVIL POWER

civil power. See POLITICAL POWER.

CIVIL PROCEDURE 1

civil procedure. 1. The body of law — usu. rules enacted by the legislature or courts — governing the methods and practices used in civil litigation. • An example is the Federal Rules of Civil Procedure. 2. A particular method or practice used in carrying on civil litigation.

CIVIL PROCESS

civil process. See PROCESS.

CIVIL REMEDY

civil remedy. See REMEDY(1).

CIVIL RIGHT

civil right. (usu. pl.) 1. The individual rights of personal liberty guaranteed by the Bill of Rights and by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act. • Civil rights include esp. the right to vote, the right of due process, and the right of equal protection under the law. [Cases: Civil Rights 1027. C.J.S. Civil Rights §§ 4–5, 8, 13.] 2. CIVIL LIBERTY.

“At common law a person convicted of a felony became an outlaw. He lost all of his civil rights and all of his property became forfeited. This harsh rule no longer prevails. Under modern jurisprudence the civil rights of a person convicted of a crime, be it a felony or misdemeanor, are in nowise affected or diminished except insofar as express statutory provisions so prescribe.” Alexander Holtzoff, “Civil Rights of Criminals,” in *Encyclopedia of Criminology* 55 (Vernon C. Branham & Samuel B. Kutash eds., 1949).

CIVIL-RIGHTS ACT

civil-rights act. One of several federal statutes enacted after the Civil War (1861–1865) and, much later, during and after the civil-rights movement of the 1950s and 1960s, for the purpose of implementing and giving further force to the basic rights guaranteed by the Constitution, and esp. prohibiting discrimination in employment and education on the basis of race, sex, religion, color, or age. [Cases: Civil Rights 1002, 1102. C.J.S. Civil Rights §§ 2–5, 7–9, 11–13, 18, 22, 26–27, 30–31, 33–34, 37, 41–42, 44, 67.]

CIVIL-RIGHTS REMOVAL

civil-rights removal. See REMOVAL.

CIVIL SERVICE

civil service, n. 1. The administrative branches of a government. [Cases: Officers and Public Employees 11. C.J.S. Officers and Public Employees §§ 63–65, 71–74.] 2. The group of people employed by these branches. — civil servant, n.

CIVIL SERVICE COMMISSION

Civil Service Commission.A former independent federal agency that supervised the government's personnel system. • The agency was created in 1883 and abolished by Reorganization Plan No. 2 of 1978. Its functions were transferred to the Merit Systems Protection Board and the Office of Personnel Management. See **MERIT SYSTEMS PROTECTION BOARD; OFFICE OF PERSONNEL MANAGEMENT** . [Cases: Officers and Public Employees 72.20. C.J.S. Officers and Public Employees §§ 143, 195.]

CIVIL-SERVICE REFORM

civil-service reform.The use of business principles and methods instead of the spoils system in the conduct of the civil service, esp. in awarding contracts and appointing officials.

CIVIL SOCIETY

civil society.See **SOCIETY**.

CIVIL TERM

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

CIVIL UNION

civil union.Family law. A marriage-like relationship, often between members of the same sex, recognized by civil authorities within a jurisdiction. • Vermont was the first state to recognize civil unions. In December 1999, the Vermont Supreme Court ruled that denying gay couples the benefits of marriage amounted to unconstitutional discrimination. *Baker v. State*, 744 A.2d 864 (Vt. 1999). Several months later the legislature passed a civil-unions law, which took effect on July 1, 2000. — Also termed civil partnership. Cf. **DOMESTIC PARTNERSHIP**; same-sex marriage under **MARRIAGE(1)**.

CIVIL WAR

civil war.See **WAR**.

CIVIL WRONG

civil wrong.1.**WRONG**. 2.**TORT**. 3.**DELICT**.

CIVIS

civis (siv-is). [Latin] Roman law. A Roman citizen; a person entitled to the public and private rights associated with Roman citizenship. • Female citizens had only private rights. — Also termed *civis Romanus*; *civis Romana*.

CIVITAS

civitas (siv-<<schwa>>-tas), n. [Latin] Roman law. 1. A state. 2. An organized community; a territorial unit.

CIVITATIS AMISSIO

civitatis amissio (siv-i-tay-tis <<schwa>>-mish-ee-oh). [Latin] Hist. Loss of citizenship.

C.J.

C.J.abbr.1. See chief justice under JUSTICE(2).2. See chief judge under JUDGE. 3. See circuit judge under JUDGE. 4.CORPUS JURIS.

CJC

CJC.abbr.CODE OF JUDICIAL CONDUCT.

CJE

CJE.abbr.CONTINUING JUDICIAL EDUCATION.

C.J.S.

C.J.S.abbr. Corpus Juris Secundum. — Also written CJS.

CL

CL.abbr.CIVIL LAW.

CLAFLIN TRUST

Clafin trust.See indestructible trust under TRUST.

CLAFLIN<TT>-TRUST PRINCIPLE

Clafin-trust principle.The doctrine that a trust cannot be terminated by the beneficiaries if the termination would defeat one of the settlor's material purposes in establishing the trust, even if all the beneficiaries seek its termination. • The Clafin rule, which derives from Clafin v. Clafin, 20 N.E. 454 (Mass. 1889), is often cited as the purest illustration of “deadhand control,” in which the wishes of the now-dead settlor prevail over the wishes and needs of living beneficiaries. If the settlor is alive and consents to the modification or termination of the trust, the trust may usu. be terminated, unless it is irrevocable. Trusts in the Clafin category are spendthrift trusts, support trusts, trusts in which the trustee has discretion to make distributions, and trusts in which the beneficiary is entitled to income until a certain age, at which point the beneficiary will receive the principal.

CLAIM

claim,n.1. The aggregate of operative facts giving rise to a right enforceable by a court <the plaintiff's short, plain statement about the crash established the claim>. — Also termed claim for relief. 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional <the spouse's claim to half the lottery winnings>.3. A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for. [Cases: Federal Civil Procedure 680; Pleading 72. C.J.S. Pleading §§ 110–115.]

donation claim.Property law. A claim for ownership of land under a donation act or

bounty-land warrant. See DONATION ACT; BOUNTY-LAND WARRANT.

honest claim. A claim made by someone who believes, however unreasonably, that he or she has a right to something or that there is a chance that such a right exists.

liquidated claim. 1. A claim for an amount previously agreed on by the parties or that can be precisely determined by operation of law or by the terms of the parties' agreement. 2. A claim that was determined in a judicial proceeding. — Also termed liquidated demand. [Cases: Accord and Satisfaction 10; Interest 39(2.15). C.J.S. Accord and Satisfaction §§ 44–45.]

matured claim. A claim based on a debt that is due for payment.

stale claim. A claim that is barred by the statute of limitations or the defense of laches. — Also termed stale demand. [Cases: Equity 67; Limitation of Actions 1, 165. C.J.S. Equity §§ 128–132; Limitations of Actions §§ 2–4, 10–11.]

unliquidated claim. A claim in which the amount owed has not been determined. [Cases: Accord and Satisfaction 10; Interest 39(2.15). C.J.S. Accord and Satisfaction §§ 44–45.]

4. An interest or remedy recognized at law; the means by which a person can obtain a privilege, possession, or enjoyment of a right or thing; CAUSE OF ACTION(1) <claim against the employer for wrongful termination>.

ancillary claim. A claim that is collateral to, dependent on, or auxiliary to another claim, such as a state-law claim that is sufficiently related to a federal claim to permit federal jurisdiction over it. • The concept of ancillary federal jurisdiction is now contained in the supplemental-jurisdiction statute, 28 USCA § 1367. See ancillary jurisdiction and supplemental jurisdiction under JURISDICTION. [Cases: Federal Courts 14, 20.]

colorable claim. 1. A claim that is legitimate and that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law). 2. A claim in which the debtor and property holder are, as a matter of law, not adverse. • One example of a colorable claim is one made by a person holding property as an agent or bailee of the bankrupt.

contingent claim. A claim that has not yet accrued and is dependent on some future event that may never happen.

counterclaim. See COUNTERCLAIM.

cross-claim. See CROSS-CLAIM.

frivolous claim. A claim that has no legal basis or merit, esp. one brought for an unreasonable purpose such as harassment. Fed. R. Civ. P. 11(b).

supplemental claim. A claim for further relief based on events occurring after the original claim was made.

5. Bankruptcy. A right to payment or to an equitable remedy for breach of performance if the breach gives rise to a right to payment. • It does not matter whether the right has been reduced to

judgment or whether it is liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, or secured or unsecured.

creditor's claim.Bankruptcy. A claim that a creditor has against a debtor. [Cases: Bankruptcy 2825.]

involuntary gap claim.Bankruptcy. A claim that accrues in the ordinary course of business after an involuntary bankruptcy petition has been filed but before the order for relief or the appointment of a trustee. • The Bankruptcy Code gives priority to creditors with claims of this type to encourage creditors to continue dealing with a debtor until the debtor has a chance to challenge the involuntary petition. [Cases: Bankruptcy 2833. C.J.S. Bankruptcy § 240.]

priority claim.Bankruptcy. An unsecured claim that, under bankruptcy law, must be paid before other unsecured claims. • The Bankruptcy Code sets forth nine classes of claims, to be paid in order of priority: (1) administrative expenses of the bankruptcy estate, (2) involuntary gap claims, (3) wage claims, (4) contributions to employee benefit plans, (5) claims of grain farmers and fishermen, (6) consumer deposits, (7) alimony, maintenance, and child-support claims, (8) tax claims, and (9) capital requirements of an insured depository institution. [Cases: Bankruptcy 2951–2972. C.J.S. Bankruptcy §§ 201–202, 255–267, 287, 351, 353, 259.]

secured claim.A claim held by a creditor who has a lien or a right of setoff against the debtor's property. [Cases: Secured Transactions 1. C.J.S. Secured Transactions §§ 3, 7–9, 23, 37.]

unsecured claim. 1. A claim by a creditor who does not have a lien or a right of setoff against the debtor's property. 2. A claim by a creditor to the extent that its lien on or right of setoff against the debtor's property is worth less than the amount of the debt.

6.Patents. PATENT CLAIM.

CLAIM AND DELIVERY

claim and delivery.A claim for the recovery of specific personal property wrongfully taken or detained, as well as for any damages caused by the taking or detention. • This claim derives from the common-law action of replevin. See REPLEVIN. — Sometimes written claim-and-delivery. [Cases: Replevin 1. C.J.S. Replevin §§ 2–7.]

CLAIMANT

claimant,n. One who asserts a right or demand, esp. formally; esp., one who asserts a property interest in land, chattels, or tangible things.

occupying claimant.See OCCUPYING CLAIMANT.

CLAIM CHECK

claim check.A receipt obtained for bailed or checked property and surrendered by the holder when the bailee returns the property.

CLAIM DIFFERENTIATION

claim differentiation. Patents. A canon of construction presuming that each claim in a patent is different in scope and meaning from all other claims; the presumption that different terms in separate claims must have different meanings if one of the claims would otherwise be rendered superfluous. • The doctrine cannot be used by the patentee to broaden claims, and a court will ignore it when convinced that its interpretation of the claims is correct. The presumption is strongest when a different interpretation would be the only way to make a dependent claim more limiting than the independent claim it refers to. — Also termed doctrine of claim differentiation. [Cases: Patents 165(5). C.J.S. Patents §§ 283, 287, 290, 293.]

CLAIM DILUTION

claim dilution. Bankruptcy. The reduction in the likelihood that a debtor's claimants will be fully repaid, including considerations of the time value of money.

CLAIM FOR RELIEF

claim for relief. See CLAIM(1).

CLAIM IN EQUITY

claim in equity. Hist. A summary proceeding created to eliminate protracted pleading procedure in simple cases. • The claim in equity was established in England in 1850 and abolished in 1860.

CLAIM-JUMPING

claim-jumping. 1. The extension of the borders of a mining claim to infringe on other areas or claims. [Cases: Mines and Minerals 26. C.J.S. Mines and Minerals §§ 101–107.] 2. The filing of a duplicate claim to take advantage of a flaw in the original claim.

CLAIM LIMITATION

claim limitation. Patents. In a patent application, a statement that describes the means for performing a specified function without reciting the structure, materials, or acts that support that function. • Claim limitations define the invention by distinguishing it from prior art. [Cases: Patents 101(3).]

CLAIM OF APPEAL

claim of appeal. See NOTICE OF APPEAL.

CLAIM OF COGNIZANCE

claim of cognizance. Hist. An intervention seeking the return of a case to the claimant's own court. • Cognizance may be claimed by a person, city, or public corporation granted the right to hold court. — Also termed claim of conusance. See COGNIZANCE; CONUSANCE.

CLAIM OF CONUSANCE

claim of conusance. See CLAIM OF COGNIZANCE.

CLAIM OF LIBERTY

claim of liberty.Hist. A petition to the Crown, filed in the Court of Exchequer, seeking the Attorney General's confirmation of liberties and franchises.

CLAIM OF OWNERSHIP

claim of ownership. 1. The possession of a piece of property with the intention of claiming it in hostility to the true owner. [Cases: Adverse Possession 68. C.J.S. Adverse Possession §§ 61–63, 65, 67–69.] 2. A party's manifest intention to take over land, regardless of title or right. — Also termed claim of right; claim of title.

CLAIM OF PRIORITY

claim of priority.See **BENEFIT OF AN EARLIER FILING DATE**.

CLAIM OF RIGHT

claim of right. 1.Hist. A criminal plea, usu. to a theft charge, by a defendant asserting that the property was taken under the honest (but mistaken) belief that the defendant had a superior right to the property. • The claim of right could also be raised in defense against bigamy if a defendant honestly believed that an earlier marriage had been legally dissolved. It has been superseded by a defense of honesty. 2.Hist. An owner's action to recover unjustly taken land in fee simple by employing a writ of course. See **WRIT OF COURSE**. 3.**CLAIM OF OWNERSHIP**.

CLAIM-OF-RIGHT DOCTRINE

claim-of-right doctrine.Tax. The rule that any income constructively received must be reported as income, whether or not the taxpayer has an unrestricted claim to it. [Cases: Internal Revenue 3086, 3118. C.J.S. Internal Revenue §§ 53–54, 63.]

CLAIM OF TITLE

claim of title.See **CLAIM OF OWNERSHIP**.

CLAIM PRECLUSION

claim preclusion.See **RES JUDICATA**.

“[T]he principal distinction between claim preclusion and issue preclusion is ... that the former forecloses litigation of matters that have never been litigated. This makes it important to know the dimensions of the ‘claim’ that is foreclosed by bringing the first action, but unfortunately no precise definition is possible.” Charles Alan Wright, *The Law of Federal Courts* § 100A, at 723 (5th ed. 1994).

CLAIM-PROPERTY BOND

claim-property bond.See replevin bond under **BOND(2)**.

CLAIMS ADJUSTER

claims adjuster.See insurance adjuster under **ADJUSTER**.

CLAIMS-CONSCIOUSNESS

claims-consciousness, n. The quality characterizing a legal culture in which people have firm expectations of justice and are willing to take concrete steps to see that justice is done <claims-consciousness in the United States has resulted from certain social changes, not from any character deficiency>. — Also termed rights-consciousness. — claims-conscious, adj.

CLAIMS COURT

claims court. See court of claims under COURT.

CLAIMS COURT, U.S.

Claims Court, U.S. See UNITED STATES COURT OF FEDERAL CLAIMS.

CLAIMS-MADE POLICY

claims-made policy. See INSURANCE POLICY.

CLAIM THE FLOOR

claim the floor. Parliamentary law. To address the chair for the purpose of being recognized as entitled to speak. See FLOOR(1).

CLAM

clam (klam), adv. [Latin] Roman & civil law. Secretly; covertly. • Under Roman law, an act (such as occupying or altering the condition of someone else's property) was committed clam when it was done with the intent to conceal it in an effort to avoid liability. See INTERDICTUM QUOD VI AUT CLAM.

CLAMEA ADMITTENDA IN ITINERE PER ATTORNATUM

clamea admittenda in itinere per attornatum (klay-mee-<<schwa>> ad-m<<schwa>>-ten-d<<schwa>> in I-tin-<<schwa>>-ree p<<schwa>>r <<schwa>>-tor-nay-t<<schwa>>m). [Latin "claim to be admitted at the eyre by an attorney"] Hist. A writ from the king commanding the justices in eyre to permit by attorney the claim of a person employed in the king's service who cannot attend court in person.

CLAMEUR DE HARO

clameur de haro (klay-m<<schwa>>r dah-roh). [French] An outcry recognized in the Channel Islands as a protest against trespass to land. • The clameur de haro is a legal remnant of when the Duchy of Normandy held the islands before England took control in the 13th century. The victim's cry of haro (repeated 3 times) is popularly supposed to be an abbreviation of Ha Rollo, the first Duke of Normandy. The full cry, Haro, Haro, Haro, a l'aide, mon prince, on me fait tort, when registered at the local records office, enjoins the offender from possessing the land. See HARROW; HUE AND CRY; GRAND COUTUMIER DE PAYS ET DUCHÉ DE NORMANDIE .

CLAMOR 1

clamor. 1.Hist. A lawsuit; a claim. 2.HUE AND CRY(1).3.Civil law. A claimant. 4.Civil law. The thing claimed from another.

CLANDESTINE

clandestine (klan-des-tin), adj. Secret or concealed, esp. for illegal or unauthorized purposes.

CLANDESTINE MARRIAGE

clandestine marriage.See MARRIAGE(1).

CLARE CONSTAT

clare constat (klair-ee kon-stat). [Law Latin] Scots law. It clearly appears. • The phrase appeared in reference to a precept, later a writ, for the grant of seisin to a vassal's heir, so called because the opening lines in the declaration stated that it clearly appeared that the grantee was the proper heir.

“A Precept of Clare Constat is a deed executed by a subject-superior, for the purpose of completing the title of his vassal's heir to the lands held by the deceased vassal, under the granter of the precept.... The precept of clare constat proceeded on any evidence, whether judicial or not, which satisfies the superior that the person claiming the entry is heir of the last vassal.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 185 (George Watson ed., 7th ed. 1890).

CLARITY

Clarity. An international association of lawyers and other professionals who advocate plain language in legal and official documents. • Founded in 1983, it has members in more than 25 countries and a system of country representatives. It publishes a journal called *Clarity*.

CLASS

class,n.1. A group of people, things, qualities, or activities that have common characteristics or attributes <a class of common-stock shares> <the upper-middle class>.

protected class.A class of people who benefit from protection by statute, such as Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, sex, national origin, or religion. [Cases: Civil Rights 1007, 1107, 1152, 1165. C.J.S. Civil Rights §§ 2–5, 7–9, 11–13, 18, 22, 26–27, 30–31, 33–37, 41–42, 44, 67, 88.]

2. The order or rank that people or things are arranged in <she flew first class to Chicago>.3. A group of people, uncertain in number <a class of beneficiaries>.

testamentary class (tes-t<<schwa>>-men-t<<schwa>>-ree or -tree). A group of beneficiaries who are uncertain in number but whose number will be ascertainable in the future, when each will take an equal or other proportionate share of the gift. [Cases: Wills 521. C.J.S. Wills § 967.]

4.Civil procedure. A group of people who have a common legal position, so that all their claims can be efficiently adjudicated in a single proceeding <a class of asbestos plaintiffs>. [Cases: Federal Civil Procedure 161–189; Parties 35.1. C.J.S. Parties § 28.]

opt-out class. A plaintiff class, certified under Federal Rule of Civil Procedure 23(b)(3), from which class members may choose to exclude themselves if they do not want to be bound by the decisions or settlements reached in the case. • Rule 23(e) permits courts to dismiss class members who request exclusion. Class members may wait until the settlement's terms are announced before choosing to opt out.

settlement class. Numerous similarly situated people for whom a claimant's representative and an adversary propose a contract specifying the payment terms for the class members' claims in exchange for the release of all claims against the adversary. • During the 1980s and 1990s, mass-tort defendants began using settlement classes as a means of foreclosing claims by some unknown number of existing and future claimants. See, e.g., *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 117 S.Ct. 2231 (1997).

CLASS ACTION

class action. A lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group; specif., a lawsuit in which the convenience either of the public or of the interested parties requires that the case be settled through litigation by or against only a part of the group of similarly situated persons and in which a person whose interests are or may be affected does not have an opportunity to protect his or her interests by appearing personally or through a personally selected representative, or through a person specially appointed to act as a trustee or guardian. • Federal procedure has several prerequisites for maintaining a class action: (1) the class must be so large that individual suits would be impracticable, (2) there must be legal or factual questions common to the class, (3) the claims or defenses of the representative parties must be typical of those of the class, and (4) the representative parties must adequately protect the interests of the class. Fed. R. Civ. P. 23. — Also termed class suit; representative action. [Cases: Federal Civil Procedure 161–189; Parties 35.1–35.89. C.J.S. Parties §§ 28–38, 40, 55.]

“The class action was an invention of equity ... mothered by the practical necessity of providing a procedural device so that mere numbers would not disable large groups of individuals, united in interest, from enforcing their equitable rights nor grant them immunity from their equitable wrongs.... By rule 23 the Supreme Court has ex-tended the use of the class action device to the entire field of federal civil litigation by making it applicable to all civil actions.” *Montgomery Ward & Co. v. Langer*, 168 F.2d 182, 187 (8th Cir. 1948).

hybrid class action. Hist. A type of action in which the rights to be enforced were several and varied, but the object was to adjudicate claims that affected or might have affected the specific property in the action. [Cases: Federal Civil Procedure 166; Parties 35. C.J.S. Parties § 73.]

spurious class action. Hist. A former category of class action in which the interests of class members are several, not interdependent, and joinder is allowed to avoid multiplicity of suits. [Cases: Federal Civil Procedure 166; Parties 35. C.J.S. Parties § 73.]

CLASS-BASED ANIMUS

class-based animus. See ANIMUS(1).

CLASS DIRECTOR

class director. See DIRECTOR.

CLASS GIFT

class gift. See GIFT.

CLASSIFICATION

classification. See CHARACTERIZATION(1).

CLASSIFICATION OF PATENTS

classification of patents. Patents. 1. The sorting of inventions by type into broad classes and narrow subclasses, as an aid in patent searches. 2. Any one of the several classes into which the inventions are sorted. — Also termed (in both senses) office classification; (in sense 2) field of invention; field of search.

CLASSIFIED BOARD OF DIRECTORS

classified board of directors. See staggered board of directors under BOARD OF DIRECTORS .

CLASSIFIED INFORMATION

classified information. Data or material that, having been designated as secret or confidential, only a limited number of authorized persons may know about.

CLASSIFIED RISK

classified risk. See RISK.

CLASSIFIED TAX

classified tax. See TAX.

CLASS LEGISLATION

class legislation. See local and special legislation under LEGISLATION.

CLASS LOTTERY

class lottery. See Dutch lottery under LOTTERY.

CLASS OF STOCK

class of stock. A category of corporate shares used when more than one type of stock is issued. See preferred stock and common stock under STOCK. [Cases: Corporations 62. C.J.S. Corporations §§ 126, 128, 148–151.]

CLASS-ONE INSURED

class-one insured. See INSURED.

CLASS RATE

class rate. See RATE.

CLASS REPRESENTATIVE

class representative. See REPRESENTATIVE.

CLASS SUIT

class suit. See CLASS ACTION.

CLASS-TWO INSURED

class-two insured. See INSURED.

CLASS VOTING

class voting. See VOTING.

CLAUSA REBUS SIC STANTIBUS

clausa rebus sic stantibus (klawz-<<schwa>> ree-b<<schwa>>s sik stan-t<<schwa>>-b<<schwa>>s). [Law Latin] Int'l law. 1. A treaty provision stating that the treaty is binding only as long as the circumstances in existence when the treaty was signed remain substantially the same. 2. A doctrine by which the law supplies such a provision to a treaty that does not expressly contain one; REBUS SIC STANTIBUS. • The doctrine may be invoked when a fundamental change in circumstances (1) alters the essential basis for the parties' consent to be bound by the treaty, and (2) radically transforms the extent of the parties' performances under the treaty. But the doctrine does not apply to treaties establishing boundaries. Vienna Convention on the Law of Treaties art. 62 (1155 U.N.T.S. 331, 8 I.L.M. 679 (1969)). — Often shortened to clausa. — Also termed clausula rebus sic stantibus; clausula.

CLAUSE

clause, n. 1. A distinct section or provision of a legal document or instrument. 2. ITEM(3). — clausal, adj.

enacting clause. The part of a statute stating the legislative authority by which it is made and often the date when it will take effect. • A typical enacting clause begins with the words "Be it enacted that...." The enacting clause of a federal statute is, "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled." Some state constitutions specify the enacting clause for legislation, without which the legislation is void. In codifications of statutes, enacting clauses generally appear not in the text of the statutes but in historical or legislative notes. [Cases: Statutes 210.]

operative clause. A provision under an enacting or resolving clause; a provision that is not a mere recital or preamble. See resolving clause.

resolving clause. The clause that introduces a resolution's operative text, usu. beginning with "Resolved, That...." • A resolving clause is comparable to a statute's enacting clause. — Also

termed operative clause. See enacting clause; RESOLUTION(1). Cf. PREAMBLE(1).

whereas clause. 1. RECITAL(2). 2. PREAMBLE(1).

CLAUSED BILL OF LADING

cloused bill of lading. See BILL OF LADING.

CLAUSE OF ACCRUAL

clause of accrual. A provision, usu. found in a gift by will or in a deed between tenants in common, that grants a predeceasing beneficiary's shares to the surviving beneficiary. — Also termed clause of accruer.

CLAUSE PARAMOUNT

clause paramount. Maritime law. A provision in a charterparty that specifies what jurisdiction's law will govern the agreement, typically incorporating the Carriage of Goods by Sea Act into the charter. See CHARTERPARTY; CARRIAGE OF GOODS BY SEA ACT . [Cases: Shipping 39(1). C.J.S. Shipping §§ 85, 88, 9.]

CLAUSE POTESTATIVE

clause potestative (poh-tes-tay-tiv). French law. A contractual provision in which one party reserves the right to annul the contract.

CLAUSE ROLLS

clause rolls. Hist. Sealed rolls containing royal writs (close writs) and other documents that the sovereign deemed inappropriate for the public record. — Also termed close rolls. See close writ under WRIT.

CLAUSULA

clausula (klawz-y<<schwa>>-l<<schwa>>), n. [Latin] A clause; a sentence or part of a sentence in a written instrument or statute.

clausula codicillaris (klawz-y<<schwa>>-l<<schwa>> kod-<<schwa>>-si-lair-is). [Latin] Roman law. A codi-cillary clause; a codicil that, having been confirmed by a will (even in advance), operated as part of the will. • An unconfirmed codicil created directives that could be effective even in the absence or failure of a will. See FI-DEICOMMISSUM.

clausula derogativa (klawz-y<<schwa>>-l<<schwa>> d<<schwa>>-rog-<<schwa>>-tI-v<<schwa>>). [Latin] See DEROGATORY CLAUSE.

clausula derogatoria (klawz-y<<schwa>>-l<<schwa>> d<<schwa>>-rog-<<schwa>>-tor-ee-<<schwa>>). See DEROGATORY CLAUSE.

clausula rebus sic stantibus (klawz-y<<schwa>>-l<<schwa>> ree-b<<schwa>>s sik stan-t<<schwa>>-b<<schwa>>s). See CLAUSA REBUS SIC STANTIBUS.

clausula tenoris (klawz-y<<schwa>>-l<<schwa>> te-nor-is). [Law Latin] Hist. The clause of

tenure — that is, the clause in a charter describing the nature of a tenure.

CLAUSUM

clausum (klawz-⟨⟨schwa⟩⟩m). [Latin “close; closed”] Hist. 1.CLOSE(1). — Also termed clausura. 2. See close writ under WRIT.

CLAUSUM FREGIT

clausum fregit (klawz-⟨⟨schwa⟩⟩m free-jit). [Latin “he broke the close”] See TRESPASS QUARE CLAUSUM FREGIT.

CLAUSURA

clausura (klaw-zhuur-⟨⟨schwa⟩⟩). See CLAUSUM(1).

CLAWBACK

clawback,n.1. Money taken back. 2. The retrieval or recovery of tax allowances by additional forms of taxation. — claw back,vb.

CLAYTON ACT

Clayton Act.A federal statute — enacted in 1914 to amend the Sherman Act — that prohibits price discrimination, tying arrangements, and exclusive-dealing contracts, as well as mergers and interlocking directorates, if their effect might substantially lessen competition or create a monopoly in any line of commerce. 15 USCA §§ 12–27. [Cases: Monopolies 12, 17, 17.5, 20.5. C.J.S. Monopolies §§ 19, 26–27, 62–63, 99, 104–105, 167.]

CL. CT.

Cl. Ct.abbr.1.UNITED STATES COURT OF FEDERAL CLAIMS. 2.United States Court of Claims Reporter.

CLE

CLE.abbr.CONTINUING LEGAL EDUCATION.

CLEAN BILL

clean bill.See BILL(3).

CLEAN BILL OF LADING

clean bill of lading.See BILL OF LADING.

CLEAN DRAFT

clean draft.See DRAFT.

CLEAN-HANDS DOCTRINE

clean-hands doctrine.The principle that a party cannot seek equitable relief or assert an equitable defense if that party has violated an equitable principle, such as good faith. • Such a

party is described as having “unclean hands.” For example, § 8 of the Uniform Child Custody Jurisdiction Act contains an unclean-hands provision that forbids a court from exercising jurisdiction in a child-custody suit in certain situations, as when one party has wrongfully removed a child from another state, has improperly retained custody of a child after visitation, or has wrongfully removed a child from the person with custody. The clean-hands doctrine evolved from the discretionary nature of equitable relief in English courts of equity, such as Chancery. — Also termed unclean-hands doctrine. [Cases: Equity 65.C.J.S. Equity § 102.]

CLEAN HOUSE

clean house,vb. Slang.1. To discharge a considerable number of employees, usu. in management, so that new employees may be brought in. 2. To sell securities not meeting an investor's requirements.

CLEAN LETTER OF CREDIT

clean letter of credit.See LETTER OF CREDIT.

CLEAN-SLATE RULE

clean-slate rule.Criminal procedure. The doctrine that the double-jeopardy prohibition does not apply to the retrial of a defendant who appealed and obtained a reversal of an earlier conviction. [Cases: Double Jeopardy 107.1.]

CLEANUP CLAUSE

cleanup clause.In a loan agreement, a clause that calls for a loan to be repaid in full within a given period, after which no further loans will be afforded the debtor for a specified “cleanup” period.

CLEANUP DOCTRINE

cleanup doctrine.The jurisdictional principle that once an equity court has acquired jurisdiction over a case, it may decide both equitable and legal issues as long as the legal issues are ancillary to the equitable ones. [Cases: Equity 39. C.J.S. Equity § 73.]

CLEAR

clear,adj.1. Free from encumbrances or claims. 2. Free from doubt; sure. 3. Unambiguous.

clear,vb.1. To acquit or exonerate <she was cleared of all wrongdoing>.2. (Of a drawee bank) to pay (a check or draft) out of funds held on behalf of the maker <the bank cleared the employee's check>.3. (Of a check or draft) to be paid by the drawee bank out of funds held on behalf of the maker <the check cleared yesterday>.4.Maritime law. To settle (customs, harbor dues, etc.) and obtain official permission to leave the port.

CLEARANCE

clearance. 1.Maritime law. The right of a ship to leave port, or the certificate issued by the port collector evidencing the ship's right to leave port. [Cases: Shipping 7, 15. C.J.S. Shipping

§§ 11, 18–20.] 2. The time that must elapse between runs of the same movie within a particular area; a theater's exclusive right of exhibition over competing theaters.

CLEARANCE CARD

clearance card. A letter given by an employer to a departing employee, stating the duration and nature of the employment and reasons for leaving. • The clearance card is not necessarily a recommendation.

CLEAR AND CONVINCING EVIDENCE

clear and convincing evidence. See EVIDENCE.

CLEAR AND CONVINCING PROOF

clear and convincing proof. See clear and convincing evidence under EVIDENCE.

CLEAR-AND-PRESENT-DANGER TEST

clear-and-present-danger test. Constitutional law. The doctrine allowing the government to restrict the First Amendment freedoms of speech and press if necessary to prevent immediate and severe danger to interests that the government may lawfully protect. • This test was formulated by Justice Oliver Wendell Holmes in *Schenck v. United States*, 249 U.S. 47, 39 S.Ct. 247 (1919). — Also termed clear-and-present-danger doctrine. [Cases: Constitutional Law 90(3). C.J.S. Constitutional Law §§ 502, 542, 546–550.]

“The ‘clear and present danger’ doctrine is concerned with distinguishing protected advocacy from unprotected incitement of violent or illegal conduct.... The conventional wisdom of the day was that speech was punishable as an attempt if the natural and reasonable tendency of what was said would be to bring about a forbidden effect. In addition, the criminal defendant must have used the words with an intent to bring about that effect, although such specific intent could be inferred from the tendency of the words on the presumption that one intends the consequences of one's speech. The formula announced by Justice Holmes easily fits within this framework. ‘The question in every case is whether the words used are used in circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.’ ” Laurence H. Tribe, *American Constitutional Law* 608 (1978) (quoting *Schenck v. United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 249 (1919)).

CLEAR ANNUAL VALUE

clear annual value. See VALUE(2).

CLEAR CHANCE

clear chance. See LAST-CLEAR-CHANCE DOCTRINE.

CLEAR DAY

clear day. See DAY.

CLEAR ERROR

clear error. See ERROR(2).

CLEARFIELD TRUST DOCTRINE

Clearfield Trust doctrine. The doctrine describing the federal courts' power to make federal common law when there is both federal lawmaking power to do so and a strong federal interest in a nationally uniform rule. *Clearfield Trust Co. v. United States*, 318 U.S. 363, 63 S.Ct. 573 (1943). Cf. ERIE DOCTRINE . [Cases: Federal Courts 374.]

CLEARING

clearing. 1. Banking. The exchanging of checks and balancing of accounts. 2. Maritime law. The departure of a ship from port, after complying with customs, health laws, and other local regulations. See CLEARANCE(1). [Cases: Shipping 7, 15. C.J.S. Shipping §§ 11, 18–20.]

CLEARING ACCOUNT

clearing account. Banking. An account (usu. a temporary one) containing amounts to be transferred to another account before the end of an accounting period.

CLEARING AGENT

clearing agent. See AGENT(2).

CLEARING AGREEMENT

clearing agreement. A contract whose purpose is to facilitate the collective settlement of monetary claims between creditors and debtors in different currency areas, without resort to foreign-exchange reserves.

CLEARING CORPORATION

clearing corporation. See CORPORATION.

CLEARINGHOUSE

clearinghouse. 1. A place where banks exchange checks and drafts and settle their daily balances; an association of banks or other payors regularly clearing items. See UCC § 4-104(a)(4). [Cases: Banks and Banking 318–323. C.J.S. Banks and Banking §§ 647–649.] 2. A stock-and-commodity exchange where the daily transactions of the brokers are cleared. 3. Any place for the exchange of specialized information. — Also written clearing house.

CLEARING LOAN

clearing loan. See LOAN.

CLEARINGS

clearings. Banking. Checks or other items drawn on a local bank and presented for payment through a clearing-house or directly to the drawee bank. See CLEARINGHOUSE(1). [Cases: Banks and Banking 137, 168, 320. C.J.S. Banks and Banking §§ 327–328, 330, 406–407, 420, 422–424, 649.]

CLEARLY-ERRONEOUS STANDARD

clearly-erroneous standard. The standard of review that an appellate court usu. applies in judging a trial court's treatment of factual issues. • Under this standard, a judgment will be upheld unless the appellate court is left with the firm conviction that an error has been committed. [Cases: Appeal and Error 1008.1(5), 1009(1); Criminal Law 1158(1). C.J.S. Appeal and Error §§ 805, 810, 814–816.]

CLEAR MARKET VALUE

clear market value. See fair market value under VALUE(2).

CLEAR-REFLECTION-OF-INCOME STANDARD

clear-reflection-of-income standard. Tax. An income-accounting method that the IRS can force on a taxpayer if the method used does not clearly reflect income. IRC (26 USCA) § 446(b). [Cases: Internal Revenue 3095, 3103. C.J.S. Internal Revenue §§ 21, 24, 26, 39–40, 52.]

CLEAR RESIDUE

clear residue. The income deriving from funds used to pay a decedent's debts, administration expenses, and general legacies. — Also termed true residue.

CLEAR TITLE

clear title. See TITLE(2).

CLEAR-TO-USE SEARCH

clear-to-use search. See INFRINGEMENT SEARCH.

CLEAR VALUE

clear value. See VALUE(2).

CLEAR-VIEW DOCTRINE

clear-view doctrine. See PLAIN-VIEW DOCTRINE.

CLEMENCY

clemency (klem-*<<schwa>>*n-see), n. Mercy or leniency; esp., the power of the President or a governor to pardon a criminal or commute a criminal sentence. — Also termed executive clemency. See PARDON; COMMUTATION. [Cases: Pardon and Parole 21. C.J.S. Pardon and Parole §§ 1–2, 5.] — clement (klem-*<<schwa>>*nt), adj.

CLEMENTINES

Clementines (klem-*<<schwa>>*n-tinz or -tInz or -teenz). Eccles. law. A collection of decretals of Pope Clement V, published in 1317 by his successor, Pope John XXII, and forming the fourth of the six parts of the Corpus Juris Canonici, completed in 1502. — Also termed Clementine Constitutions.

CLERGY, BENEFIT OF

clergy, benefit of. See BENEFIT OF CLERGY.

CLERGYABLE

clergyable, adj. Archaic. 1. (Of an offense) not triable if benefit of clergy is claimed. 2. (Of a person) eligible to claim benefit of clergy.

CLERGYMAN–PENITENT PRIVILEGE

clergyman–penitent privilege. See priest–penitent privilege under PRIVILEGE (3).

CLERGY PRIVILEGE

clergy privilege. See BENEFIT OF CLERGY(1).

CLERICALE PRIVILEGIUM

clericale privilegium (kler-⟨schwa⟩-kay-lee priv-⟨schwa⟩-lee-jee-⟨schwa⟩m). [Law Latin “clerical privilege”] See BENEFIT OF CLERGY.

CLERICAL ERROR

clerical error. See ERROR(2).

CLERICAL MISPRISION

clerical misprision. See MISPRISION.

CLERICI DE CANCELLARIA

clerici de cancellaria (kler-⟨schwa⟩-sI dee kan-s⟨schwa⟩-lair-ee-⟨schwa⟩). [Law Latin “clerks of the chancery”] *Cursitors*. — Also termed *clerici de cursu*. See *CURSITOR*.

CLERICI PRAENOTARII

clerici praenotarii (kler-⟨schwa⟩-sI pree-n⟨schwa⟩-tair-ee-I). [Law Latin “prenotary clerks”] See *SIX CLERKS*.

CLERICO CAPTO PER STATUTUM MERCATORIIUM

clerico capto per statutum mercatorium. See *DE CLERICO CAPTO PER STATUTUM MERCATORIIUM DELIBERANDO*.

CLERICO CONVICTO COMMISSO GAOLAE IN DEFECTU ORDINARII DELIBERANDO

clerico convicto commisso gaolae in defectu ordinarii deliberando (kler-⟨schwa⟩-koh k⟨schwa⟩n-vik-toh k⟨schwa⟩-mis-oh jay-[⟨schwa⟩]-lee in di-fek-t[y]oo or-d⟨schwa⟩-nair-ee-I di-lib-⟨schwa⟩-ran-doh). [Law Latin “for delivering a cleric convicted and committed to gaol in defect of his ordinary”] *Hist.* A writ ordering the delivery of a clerk to the ordinary (i.e., a superior) after the clerk was convicted of a felony, and without the

ordinary's questioning the clerk's right to claim benefit of clergy. — Also termed *de clerico convicto commisso gaolae in defectu ordinarii deliberando*. See ORDINARY(1); BENEFIT OF CLERGY(1).

CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM<TT>

clerico infra sacros ordines constituto, non eligendo in officium. See DE CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM .

CLERICUS

clericus (kler-*<<schwa>>-k<<schwa>>s*). [Law Latin “clergyman”] Hist. 1. Eccles. law. A person in holy orders; a priest or deacon. 2. A court clerk or officer of the royal household. 3. AMANUENSIS.

CLERICUS MERCATI

clericus mercati (kler-*<<schwa>>-k<<schwa>>s m<<schwa>>r-kay-tl*). [Law Latin] See CLERK OF THE MARKET.

CLERK

clerk, n. 1. A public official whose duties include keeping records or accounts.

city clerk. A public official who records a city's official proceedings and vital statistics. [Cases: Municipal Corporations 170. C.J.S. Municipal Corporations §§ 391–405.]

town clerk. An officer who keeps the records, issues calls for town meetings, and performs the duties of a secretary to the town's political organization. [Cases: Towns 30. C.J.S. Towns §§ 120–125.]

2. A court officer responsible for filing papers, issuing process, and keeping records of court proceedings as generally specified by rule or statute. — Also termed clerk of court. [Cases: Clerks of Courts 1. C.J.S. Courts § 236.]

district clerk. The clerk of a district court within a state or federal system. See district court under COURT. [Cases: Clerks of Courts 1. C.J.S. Courts § 236.]

3. An employee who performs general office work. 4. A law student or recent law-school graduate who helps a lawyer or judge with legal research, writing, and other tasks. — Also termed law clerk; extern; or (depending on the time of year) summer clerk; summer associate. See INTERN. [Cases: Courts 55. C.J.S. Courts §§ 107–109.] 5. A lawyer who assists a judge with research, writing, and case management. — Also termed briefing attorney; research attorney; staff attorney. [Cases: Courts 55. C.J.S. Courts §§ 107–109.] “[M]odern American judging in all courts of national significance — the federal courts and the more prominent state appellate courts — staggers along despite the burden of bloated caseloads and the shortcomings of distinctly human judges only by the delegation of a great deal of the labor of judging to law clerks: subordinate, anonymous, but often quite powerful lawyers who function as the noncommissioned

officers in the army of the judiciary." John Bilyeu Oakley & Robert S. Thompson, *Law Clerks and the Judicial Process* 2 (1980).

6.Hist. A cleric."Eventually the rule was established that 'clerks' of all kinds, who committed any of the serious crimes termed felonies, could be tried only in an ecclesiastical court, and therefore were only amenable to such punishments as that court could inflict. Any clerk accused of such crime was accordingly passed over to the bishop's court. He was there tried before a jury of clerks by the oaths of twelve compurgators; a mode of trial which usually ensured him an acquittal." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 75 (16th ed. 1952).

7.SECRETARY(3).

reading clerk.A legislative officer charged with reading bills to the body.

clerk,vb. To work as a clerk <she clerked for a Chicago law firm last summer>.

CLERK OF ARRAIGNS

clerk of arraigns (<<schwa>>-raynz).Hist. A deputy of the clerk of assize responsible for arraigning defendants and putting the formal questions to the jurors as they deliver their verdict. • The office was abolished in England in 1946.

CLERK OF ASSIZE

clerk of assize (<<schwa>>-sIz).Hist. An assize associate responsible for record-keeping and other clerical and administrative functions. See ASSOCIATE(3).

CLERK OF COURT

clerk of court.See CLERK(2).

CLERK OF ENROLLMENTS

clerk of enrollments.Hist. The former chief of the Enrollment Office, which the British Parliament abolished in 1879, reassigning its duties to the Central Office. See ENROLLMENT OFFICE; CENTRAL OFFICE.

CLERK OF INDICTMENT

clerk of indictment.Hist. An officer of England's Central Criminal Court, responsible for preparing indictments and assisting the Clerk of Arraigns. • The office was abolished in 1946, when its duties were moved to the Central Office. See CENTRAL OFFICE.

CLERK OF NICHILS

Clerk of Nichils.See NICHIL.

CLERK OF RECORDS AND WRITS

clerk of records and writs.Hist. Officers of the English Court of Chancery responsible for filing documents and sealing bills of complaint and writs of execution. • The office was abolished in 1879, when its duties were moved to the Central Office. See CENTRAL OFFICE.

CLERK OF THE CORPORATION

clerk of the corporation. See SECRETARY(2).

CLERK OF THE CROWN IN CHANCERY

Clerk of the Crown in Chancery. The head of the permanent staff of the Crown Office in Chancery (of the Central Office), responsible for reading the title of Bills in the House of Lords, sending out writs of summons to peers, and issuing election writs.

CLERK OF THE HOUSE OF COMMONS

Clerk of the House of Commons. An officer of the House of Commons who keeps the House journal, signs orders, indorses bills sent to the House of Lords, and has custody of all records. • The Clerk is appointed for life by the Crown.

CLERK OF THE MARKET

clerk of the market. Hist. The overseer of a public market, responsible for witnessing oral contracts, inquiring into weights and measures, measuring land, and settling disputes between people dealing there. • The office has become obsolete as a result of various statutes regulating weights and measures.

CLERK OF THE PARLIAMENTS

Clerk of the Parliaments. The principal permanent official of the House of Lords, responsible for the House's minutes and documents, and for advising the members on procedure.

CLERK OF THE PEACE

Clerk of the Peace. Hist. An officer of the Quarter Sessions responsible for maintaining the courts' records, preparing indictments, entering judgments, issuing process, and other clerical and administrative functions. • The office was abolished in England in 1971, when the Quarter Sessions' jurisdiction was transferred to the Crown Courts. See quarter session under SESSION(1).

CLERK OF THE PELLIS

Clerk of the Pells. Hist. An Exchequer officer who entered tellers' bills on the parchment rolls (pells), one for receipts and the other for disbursements. — Also termed Master of the Pells.

CLERK OF THE PIPE

Clerk of the Pipe. Hist. An Exchequer officer responsible for the Pipe Rolls. • The office was abolished in 1833. — Also termed Engrosser of the Great Roll. See PIPE ROLLS.

CLERK OF THE PRIVY SEAL

Clerk of the Privy Seal (priv-ee seal). Hist. An officer responsible for preparing documents for the Lord Privy Seal. • The use of the Privy Seal was abolished in 1884. See PRIVY SEAL.

CLERK OF THE SIGNET

Clerk of the Signet (sig-nit).Hist. An officer who kept the privy signet and attended the sovereign's principal secretary. • The signet was used to seal royal letters and other documents not requiring the Great Seal of the Realm. The office was abolished in England in 1851. See great seal (3) under SEAL; PRIVY SIGNET.

CLERKSHIP

clerkship. 1. A type of internship in which a law student or recent law-school graduate assists a lawyer or judge with legal writing, research, and other tasks. • In many common-law jurisdictions, recent law-school graduates are required to complete clerkships as a condition of admission to the bar. [Cases: Courts 55. C.J.S. Courts §§ 107–109.] 2.Hist. A law student's employment as an attorney's apprentice before gaining admission to the bar. • Until shortly before WWII, in many states a person could be admitted to the bar without attending law school merely by passing the bar exam.

CLERK'S RECORD

clerk's record.See RECORD(4).

CLICK-WRAP AGREEMENT

click-wrap agreement.See POINT-AND-CLICK AGREEMENT.

CLICK-WRAP LICENSE

click-wrap license.See POINT-AND-CLICK AGREEMENT.

CLIENS

cliens (kII-enz), n. [Latin “client”] Roman law. A dependent; a person who depended on another for defense in suits at law and other difficulties. • A cliens was often a freed slave or immigrant. Pl. clientes (kII-en-teez).

CLIENT

client,n. A person or entity that employs a professional for advice or help in that professional's line of work. — cliental,adj.

CLIENTELA

clientela (kII-<<schwa>>n-tee-l<<schwa>>), n. [Latin] Roman law. 1. Clientship; the relationship between a cliens and a patron. 2. A person's dependents.

CLIENT-SECURITY FUND

client-security fund.See FUND(1).

CLIENT'S PRIVILEGE

client's privilege.See attorney–client privilege under PRIVILEGE(3).

CLIENT STATE

client state. See STATE.

CLIENT TRUST ACCOUNT

client trust account. A bank account, usu. interest-bearing, in which a lawyer deposits money belonging to a client (e.g., money received from a client's debtor, from the settlement of a client's case, or from the client for later use in a business transaction). — Also termed trust account.

CLIFFORD TRUST

Clifford trust. See TRUST.

CLINCH

clinch, vb. Parliamentary law. To preclude further action on (an adopted motion or series of motions) by moving at once for reconsideration and then defeating that motion. • The clincher motion in a legislative body usu. takes the form of a motion to “reconsider and lay on the table [the motion to reconsider].” Since the motion has just been debated and passed, there are almost always enough votes to defeat a motion to reconsider. — clincher, n.

CLINICAL DIAGNOSIS

clinical diagnosis. See DIAGNOSIS.

CLINICAL LEGAL STUDIES

clinical legal studies. Law-school training in which students participate in actual cases under the supervision of a practicing attorney or law professor. • This training was first introduced in the late 1960s under the leadership of Gary Bellow and others. It provided law students with a substitute for traditional apprenticeship programs. — Often shortened to clinical studies. Cf. CLERKSHIP(1).

CLINICAL PNEUMOCONIOSIS

clinical pneumoconiosis. See PNEUMOCONIOSIS.

CLOG ON THE EQUITY OF REDEMPTION

clog on the equity of redemption. An agreement or condition that prevents a defaulting mortgagor from getting back the property free from encumbrance upon paying the debt or performing the obligation for which the security was given. See EQUITY OF REDEMPTION. [Cases: Mortgages 591(3). C.J.S. Mortgages §§ 997–998, 1000, 1003, 1005.]

CLOSE

close, n. 1. An enclosed portion of land. 2. The interest of a person in a particular piece of land, enclosed or not. 3. The final price of a stock at the end of the exchange's trading day.

close, vb. 1. To conclude; to bring to an end <the case was closed>. 2. To conclude discussion or negotiation about <close on a house>. See CLOSING.

CLOSE-CONNECTEDNESS DOCTRINE

close-connectedness doctrine. A doctrine used by some courts to deny an assignee of a negotiable note holder-in-due-course status if the assignee is too closely connected to the original holder-mortgagee. — Also termed close-connection doctrine. [Cases: Bills and Notes 341. C.J.S. Bills and Notes; Letters of Credit §§ 177, 191.]

CLOSE CORPORATION

close corporation. See CORPORATION.

CLOSED

closed, adj. 1. (Of a class or organization) confined to a limited number <a closed mass-tort class> <nonunion workers were excluded from the closed shop>. 2. (Of a proceeding or gathering) conducted in secrecy <a closed hearing> <a closed shareholders' meeting>.

CLOSED ACCOUNT

closed account. See ACCOUNT.

CLOSED ADOPTION

closed adoption. See ADOPTION.

CLOSED CORPORATION

closed corporation. See close corporation under CORPORATION.

CLOSED COURT

closed court. 1. Hist. The English Court of Common Pleas, open only to serjeants-at-law. • The monopoly of the serjeants-at-law was abolished in 1845. 2. See closed session (3) under SESSION(1).

CLOSE DEBATE

close debate. Parliamentary law. To pass a motion that ends debate and amendment of a pending question or series of questions. • The synonymous shorthand “previous question,” a somewhat archaic and misleading term that several parliamentary manuals still use for this motion, has evolved over time. Two centuries ago, the motion was invented for suppressing an undesirable debate: if the original form — “Shall the main question be put?” — passed in the negative, then the body immediately stopped considering the pending question. The motion's form later became “that the main question shall now be put,” which if passed in the affirmative brought the pending question to an immediate vote, and if passed in the negative had no effect. — Also termed vote immediately. See CLOTURE. Cf. EXTEND DEBATE; LIMIT DEBATE.

CLOSED-ENDED CLAIM

closed-ended claim. See PATENT CLAIM.

CLOSED-END FUND

closed-end fund. See MUTUAL FUND.

CLOSED-END MORTGAGE

closed-end mortgage.See MORTGAGE.

CLOSED-END MORTGAGE BOND

closed-end mortgage bond.See BOND(3).

CLOSED INSURANCE CONTRACT

closed insurance contract.See closed policy under INSURANCE POLICY.

CLOSED MORTGAGE

closed mortgage.See closed-end mortgage under MORTGAGE.

CLOSED NONUNION SHOP

closed nonunion shop.See SHOP.

CLOSED POLICY

closed policy.See INSURANCE POLICY.

CLOSED SESSION

closed session.See SESSION(1).

CLOSED SHOP

closed shop.See SHOP.

CLOSED-SHOP CONTRACT

closed-shop contract.A labor agreement requiring an employer to hire and retain only union members and to discharge nonunion members. See closed shop under SHOP. [Cases: Labor Relations 251. C.J.S. Labor Relations §§ 10, 230–231, 233, 235–238.]

CLOSED SOURCE

closed source,adj. Of or related to software that does not include the source code and cannot be modified without either damaging the program or violating the software developer's ownership rights. • Proprietary software is usu. closed source.

CLOSED TESTAMENT

closed testament.See mystic will under WILL.

CLOSED TRANSACTION

closed transaction.See TRANSACTION.

CLOSED TRIAL

closed trial.See TRIAL.

CLOSED UNION

closed union. See UNION.

CLOSED UNION SHOP

closed union shop. See closed shop under SHOP.

CLOSED WILL

closed will. See mystic will under WILL.

CLOSE-JAIL EXECUTION

close-jail execution. See EXECUTION.

CLOSELY HELD CORPORATION

closely held corporation. See close corporation under CORPORATION.

CLOSE-NEXUS TEST

close-nexus test. See NEXUS TEST.

CLOSE NOMINATIONS

close nominations. Parliamentary law. To end nominations from the floor by passing a motion.

CLOSE ROLLS

close rolls. See CLAUSE ROLLS.

CLOSE WRIT

close writ. See WRIT.

CLOSING

closing. The final meeting between the parties to a transaction, at which the transaction is consummated; esp., in real estate, the final transaction between the buyer and seller, whereby the conveyancing documents are concluded and the money and property transferred. — Also termed settlement.

CLOSING AGREEMENT

closing agreement. See AGREEMENT.

CLOSING ARGUMENT

closing argument. In a trial, a lawyer's final statement to the judge or jury before deliberation begins, in which the lawyer requests the judge or jury to consider the evidence and to apply the law in his or her client's favor. • After a jury trial, the judge ordinarily instructs the jury on the law that governs the case. — Also termed closing statement; final argument; jury summation; summing up; summation. [Cases: Criminal Law 708.1; Federal Civil Procedure 1973; Trial

111. C.J.S. Trial §§ 293–294.]

CLOSING COSTS

closing costs. Real estate. The expenses that must be paid, usu. in a lump sum at closing, apart from the purchase price and interest.

CLOSING OF ESTATE

closing of estate. Wills & estates. The completion of the administration of a decedent's estate, brought about by the administrator's distribution of estate assets, payment of taxes, and filing of necessary accounts with the probate court.

CLOSING PRICE

closing price. See PRICE.

CLOSING STATEMENT

closing statement. 1. CLOSING ARGUMENT. 2. A written breakdown of the costs involved in a particular real-estate transaction, usu. prepared by a lender or an escrow agent. — Also termed settlement sheet; settlement statement.

CLOSURE

closure. See CLOTURE.

CLOTURE

cloture (kloh-ch<<schwa>>r), n. The procedure of ending debate in a legislative body and calling for an immediate vote. — Also spelled closure. [Cases: United States 18. C.J.S. United States §§ 29, 31.] — cloture, vb.

CLOUD ON TITLE

cloud on title. A defect or potential defect in the owner's title to a piece of land arising from some claim or encumbrance, such as a lien, an easement, or a court order. See action to quiet title under ACTION(4). [Cases: Quieting Title 7. C.J.S. Quieting Title § 12.]

CLS

CLS. abbr. CRITICAL LEGAL STUDIES.

CLSER

CLSer. See CRIT.

CLU

CLU. See chartered life underwriter under UNDERWRITER.

CLUB FED

Club Fed. Slang. A low-security federal prison, usu. for white-collar criminals, that has a

comparatively informal, relaxed atmosphere and, reputedly, luxury facilities. • Some sources claim that “Club Fed” prisons offer weight-lifting equipment, tennis courts, cable television, computers, musical instruments, and even miniature golf.

CLUB-LAW

club-law. Government by clubs (big sticks) or violence; the use of illegal force in place of law.

CLUSTER ZONING

cluster zoning. See ZONING.

CMO

CMO. abbr. 1. CASE-MANAGEMENT ORDER. 2. COLLATERALIZED MORTGAGE OBLIGATION.

CMR

CMR. abbr. 1. Court of Military Review. See COURT OF CRIMINAL APPEALS(1). 2. COURT-MARTIAL REPORTS.

CN

CN. abbr. Code Napoléan. See NAPOLEONIC CODE(1).

CO-

co-, prefix. Jointly or together with <coowner> <codefendant>.

CO.

co. abbr. (usu. cap.) 1. COMPANY. 2. COUNTY.

C/O

c/o. abbr. Care of.

COA

COA. abbr. 1. CONTRACT OF AFFREIGHTMENT. 2. CERTIFICATE OF APPEALABILITY.

COADJUTOR

coadjutor (koh-<<schwa>>-joo-t<<schwa>>r or koh-aj-<<schwa>>-t<<schwa>>r), n. A coworker or assistant, esp. one appointed to assist a bishop who, because of age or infirmity, is unable to perform all duties of the office. — coadjutor, adj.

CO-ADMINISTRATOR

co-administrator. Wills & estates. A person appointed to jointly administer an estate with one or more other administrators.

CO-ADVENTURER

co-adventurer. See COVENTURER.

CO-AGENT

co-agent. See AGENT(2).

COAL NOTE

coal note. See NOTE(1).

COAL NOTICE

coal notice. In Pennsylvania, a notice that must be included in deeds and other instruments relating to the sale of surface property (excepting mortgages or quitclaim deeds) detailing any severance of the ownership of coal under the land.

COASE THEOREM

Coase Theorem (kōhs). An economic proposition describing the relationship between legal rules about entitlements and economic efficiency. • The theorem, innovated by Ronald Coase, holds that if there are no transaction costs — such as the costs of bargaining or acquiring information — then any legal rule will produce an efficient result. Coase's seminal article was *The Problem of Social Cost*, 3 *J. Law & Econ.* 1 (1960).

“Nothing is more central to the study of law and economics nor more responsible for its growth than the Coase Theorem. What the Coase Theorem says, in effect, is that in many instances, the assignment of rights by courts or legal authorities may have little to do with who eventually possesses those rights. In the words of Mark Kelman, ‘the market, like an untameable river, will knock out attempts to alter its mighty course.’ ” Jeffrey L. Harrison, *Law and Economics in a Nutshell* 56 (1995).

CO-ASSIGNEE

co-assignee. A person who, along with one or more others, is an assignee of the same subject matter. [Cases: Assignments 32. C.J.S. Assignments § 44.]

COASTAL-STATE CONTROL

coastal-state control. Maritime law. The exercise of authority under international conventions for a state to stop, board, inspect, and when necessary detain vessels that are under foreign flags while they are navigating in the coastal state's territorial waters. • The purpose is to ensure the safety of the vessels and to enforce environmental regulations. Cf. FLAG-STATE CONTROL; PORT-STATE CONTROL.

COAST GUARD JURISDICTION

Coast Guard jurisdiction. The law-enforcement authority of the United States Coast Guard over the high seas and navigable waters over which the United States has jurisdiction, including the powers of stopping, searching, and seizing property, and arresting persons. See UNITED

STATES COAST GUARD.

COASTING TRADE

coasting trade. Maritime law. Commerce among different coastal ports or navigable rivers of the United States, in contrast to commerce carried on between nations. — Also termed coastwise trade. [Cases: Shipping 14. C.J.S. Shipping § 4.]

COAST WATER

coast water. See WATER.

COASTWISE TRADE

coastwise trade. See COASTING TRADE.

COB CLAUSE

COB clause. Insurance. A coordination-of-benefits clause, which provides that the total sums paid for medical and hospital care will not exceed the benefits receivable from all combined sources of insurance. [Cases: Insurance 2525(1). C.J.S. Insurance § 930.]

COBRA

COBRA (koh-br<<schwa>>). abbr. CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985.

COCONSPIRATOR

coconspirator. A person who engages in a criminal conspiracy with another; a fellow conspirator. — Also spelled co-conspirator. See CONSPIRATOR. [Cases: Conspiracy 1.1, 23.1, 39. C.J.S. Conspiracy §§ 2–3, 8, 14–17, 98, 100–103, 110, 134, 137.]

unindicted coconspirator. A person who has been identified by law enforcement as a member of a conspiracy, but who has not been named in the fellow conspirator's indictment. • Prosecutors typically name someone an unindicted coconspirator because any statement that the unindicted coconspirator has made in the course and furtherance of the conspiracy is admissible against the indicted defendants. — Also termed unindicted conspirator.

COCONSPIRATOR'S EXCEPTION

coconspirator's exception. An exception to the hearsay rule whereby one conspirator's acts and statements, if made during and in furtherance of the conspiracy, are admissible against a defendant even if the statements are made in the defendant's absence. See Fed. R. Evid. 801(d)(2)(E). — Also termed coconspirator's rule. See HEARSAY. [Cases: Criminal Law 422–428; Evidence 253. C.J.S. Criminal Law §§ 972–977, 979–997; Evidence § 452.]

C.O.D.

C.O.D. abbr. 1. Cash on delivery; collect on delivery. • By consenting to this delivery term, the buyer agrees to pay simultaneously with delivery and appoints the carrier as the buyer's agent to

receive and transmit the payment to the seller. With C.O.D. contracts, the practice of carriers has traditionally been to disallow inspection before payment. [Cases: Sales 82(3).] 2. Costs on delivery. 3. Cash on demand. — Sometimes written c.o.d.

CODA

CODA.abbr.CASH OR DEFERRED ARRANGEMENT.

CODE

code. 1. A complete system of positive law, carefully arranged and officially promulgated; a systematic collection or revision of laws, rules, or regulations <the Uniform Commercial Code>. • Strictly, a code is a compilation not just of existing statutes, but also of much of the unwritten law on a subject, which is newly enacted as a complete system of law. — Also termed consolidated laws. See CODIFICATION.

“A code is not only a collection of the existing statutory law, but also of much of the unwritten law on any subject, and is composed partly of such materials as might be at hand from all sources — from statutes, cases, and from customs — supplemented by such amendments, alterations, and additions as are deemed by the codifiers necessary to harmonize and perfect the existing system. In fact, in making a code, new laws may be added and old laws repealed in order to constitute a complete system.” William M. Lile et al., *Brief Making and the Use of Law Books* 18–19 (3d ed. 1914).

2. (usu. cap.) The collection of laws and constitutions made by order of the Roman Emperor Justinian and first authoritatively published in A.D. 529 (with a second edition in 534). • Contained in 12 books, the Code is one of four works that make up what is now called the *Corpus Juris Civilis*. — Also termed (in sense 2) Legal Code. See CODEX; CORPUS JURIS CIVILIS.

CODE CIVIL

Code Civil.The code embodying the civil law of France, dating from 1804. • It was first known as the Code civil des français to distinguish it from the other four codes promoted by Napoleon. From 1807 to 1816 it was called Code Napoléon, a title that was restored by a decree of Louis Napoleon. Since 1870, French statutes have consistently referred simply to the code civil. Cf. NAPOLEONIC CODE. See CIVIL CODE(1).

CODED COMMUNICATIONS

coded communications.Messages that are encoded or enciphered by some method of transposition or substitution so that they become unintelligible to anyone who does not have the key to the code or cipher.

CODE DE COMMERCE

Code de commerce (kohd d<<schwa>> kaw-mairs). A codification of French commercial law, enacted in 1807, dealing with commercial transactions, bankruptcy, and the jurisdiction and procedure of the courts handling these subjects. • This code supplemented the Code Napoléon. See NAPOLEONIC CODE.

CODE DE PROCÉDURE CIVIL

Code de procédure civile (kohd d<<schwa>> praw-se-door see-veel). A French civil-procedure code, enacted in 1806 and appended to the Code Napoléon. See NAPOLEONIC CODE.

CODE D'INSTRUCTION CRIMINELLE

Code d'instruction criminelle (kohd dan-struuk-see-awn kri-mi-nel). A French criminal-procedure code, enacted in 1811 and appended to the Code Napoléon. See NAPOLEONIC CODE.

CODEFENDANT

codefendant. One of two or more defendants sued in the same litigation or charged with the same crime. — Also termed joint defendant. Cf. COMPLAINTIFF.

CODE NAPOLÉON

Code Napoléon (kohd na-poh-lay-awn). See NAPOLEONIC CODE.

CODE NOIR

Code Noir (kohd nwahr). [French “black code”] Hist. A body of laws issued by Louis XIV and applied in French colonies. • The Code regulated slavery and banned Jews and non-Catholic religious practices from the colonies.

CODE OF CONDUCT

code of conduct. A written set of rules governing the behavior of a specified group, such as lawyers, government employees, or corporate employees. [Cases: Attorney and Client 32(2); Officers and Public Employees 110. C.J.S. Attorney and Client § 44; Officers and Public Employees §§ 234–245.]

CODE OF FEDERAL REGULATIONS

Code of Federal Regulations. The annual collection of executive-agency regulations published in the daily Federal Register, combined with previously issued regulations that are still in effect. — Abbr. CFR. [Cases: Administrative Law and Procedure 407. C.J.S. Public Administrative Law and Procedure § 113.]

CODE OF HAMMURABI

Code of Hammurabi (hah-m<<schwa>>-rah-bee or ham-<<schwa>>-). The oldest known written legal code, produced in Mesopotamia during the rule of Hammurabi (who reigned from 1792 to 1750 B.C.). • The code consisted of nearly 300 provisions, arranged under headings such as family, trade, real property, personal property, and labor.

CODE OF JUDICIAL CONDUCT

Code of Judicial Conduct. The body of standards governing the professional ethics and

behavior of judges. • The American Bar Association drafted a Model Code of Judicial Conduct and formally adopted it in 1972. In 1973, the U.S. Judicial Conference used the code as the basis for the Code of Conduct for United States Judges. Portions of the code are also found in federal law (see, e.g., 28 USCA § 455). The 1972 ABA Code has been superseded by the 1990 ABA Model Code of Judicial Conduct. Each state has a code of judicial conduct, based on the 1972 or 1990 model code or a blend of both. A state's highest court is responsible for drafting and enacting the code. — Abbr. CJC.

CODE OF JUSTINIAN

Code of Justinian.See JUSTINIAN CODE.

CODE OF MILITARY JUSTICE

Code of Military Justice.The collection of substantive and procedural rules governing the discipline of members of the armed forces.10 USCA §§ 801 et seq. — Also termed Uniform Code of Military Justice (UCMJ). [Cases: Armed Services 42.1; Military Justice 502. C.J.S. Military Justice § 3.]

CODE OF PROFESSIONAL RESPONSIBILITY

Code of Professional Responsibility.See MODEL CODE OF PROFESSIONAL RESPONSIBILITY .

CODE OF WAR

code of war.Legal rules that regulate international armed conflict. • A code of war may arise from many sources, including custom, treaties, scholarly writings, and domestic legislation. One of the earliest known treatises on rules governing the conduct of war was written by Sun Tzu in the 4th century B.C.

CODE PÉNAL

Code pénal (kohd pay-nal). The fourth of five codes promoted by Napoleon, enacted in 1810, setting forth the penal code of France. See NAPOLEONIC CODE.

CODE PLEADING

code pleading.See PLEADING(2).

CODE STATE

code state.Hist. A state that, at a given time, had already procedurally merged law and equity, so that equity was no longer administered as a separate system; a state in which there is only one form of civil action. • This term was current primarily in the early to mid-20th century. Cf. NONCODE STATE .

CODEX

codex (koh-deks). [Latin] Archaic. 1. A code, esp. the Justinian Code. 2. A book written on paper or parchment; esp., a volume of an ancient text.

CODEX GREGORIANUS

Codex Gregorianus (koh-deks gri-gor-ee-ay-n<<schwa>>s). [Latin] Roman law. A collection of imperial con-stitutions compiled by the Roman jurist Gregorius and published in A.D. 291. — Also termed Gregorian Code.

“The imperial enactments, rapidly increasing in number, covering, at hazard, the whole range of law, and, by reason of difficulties of communication and imperfect methods of promulgation, not always readily ascertainable, created a burden for the practitioner almost as great as that of the unmanageable juristic literature. Something was done to help him by two collections published privately about the end of the third century, the Codex Gregorianus and Codex Hermogenianus. These collections do not now exist: what is known of them is from citations in later literature....” W.W. Buckland, *A Manual of Roman Private Law* 20–21 (2d ed. 1939).

CODEX HERMOGENIANUS

Codex Hermogenianus (koh-deks h<<schwa>>r-m<<schwa>>-jee-nee-ay-n<<schwa>>s). [Latin] Roman law. A collection of imperial constitutions compiled by the Roman jurist Hermogenianus and published in A.D. 295. • The Codex Hermogenianus supplemented the Codex Gregorianus. — Also termed Hermogenian Code.

CODEX JUSTINIANUS

Codex Justinianus. See JUSTINIAN CODE.

CODEX REPETITAE PRAELECTIONIS

Codex Repetitae Praelectionis (koh-deks rep-<<schwa>>-tl-tee pri-lek-shee-oh-nis). [Latin “code of the resumed reading”] Roman law. See JUSTINIAN CODE.

“By the time when the Digest and Institutes had been completed it was obvious that the Codex, published little more than four years earlier, was incomplete, since in the interval Justinian ... had promulgated other new con-stitutions. Tribonian, therefore, was appointed to revise the Code, so as to bring it fully up to date, and at the end of the year A.D. 534 this new Code, known as the Codex Repetitae Praelectionis, was promulgated, and is the only Code which survives to the present day. Justinian seems to have laboured under the erroneous impression that the system he had framed would be adequate for all time. But as there is nothing static about law, further legislative enactments, termed Novellae Constitutiones, were issued during his reign.... In modern times Justinian's various compilations came to be called collectively the Corpus Juris Civilis: the Corpus being regarded as a single work, made up of the Institutes, the Digest, the Codex Repetitae Praelectionis, and the Novels.” R.W. Leage, *Roman Private Law* 44 (C.H. Ziegler ed., 2d ed. 1930).

CODEX THEODOSIANUS

Codex Theodosianus (koh-deks thee-<<schwa>>-doh-shee-ay-n<<schwa>>s). [Latin] See THEODOSIAN CODE.

CODICIL

codicil (kod-*<<schwa>>-s<<schwa>>l* or *-sil*). A supplement or addition to a will, not necessarily disposing of the entire estate but modifying, explaining, or otherwise qualifying the will in some way. • When admitted to probate, the codicil becomes a part of the will. [Cases: Wills 99.C.J.S. Wills § 214.]

“A Schedule or supplement to a Will, or some other writing; some Writers, conferring a Testament, and a Codicil together, call a Testament a great Will, and a Codicil a little one; and compare a Testament to a Ship, and the Codicil to the Boat tied to the Ship.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

“A codicil, from *codicillus*, a small codex, a little book or writing, may be defined as a writing by the testator intended as a supplement or addition to his will, the effect of which may be either to enlarge or restrict it, or to annul or revoke it altogether. It may add to or subtract from provisions of the will, may explain or alter, confirm or revoke them wholly or in part; or, when the will itself is invalid, may by a valid re-execution and republication revive and renew the will.” 1 H.C. Underhill, *A Treatise on the Law of Wills* § 7, at 11 (1900).

CODICILLARY

codicillary (kod-*<<schwa>>-sil<<schwa>>-ree*), adj. Of or relating to a codicil.

CODICILLUS

codicillus (kod-*<<schwa>>-sil<<schwa>>s*), n. [Latin “little document”] Roman law. 1. An informal document instructing an heir to carry out a certain performance, usu. the payment of money or the transfer of property to a third person. • During the reign of Augustus (27 B.C.–A.D. 14), directives (*fideicommissa*) contained in *codicilli* became legally binding. See *FIDEICOMMISSUM*. 2. An imperially granted appointment or special privilege.

CODIFICATION

codification (kod-*<<schwa>>-fi-kay-sh<<schwa>>n*), n.1. The process of compiling, arranging, and systema-tizing the laws of a given jurisdiction, or of a discrete branch of the law, into an ordered code. 2. The code that results from this process. [Cases: Statutes 144–148, 231. C.J.S. Statutes §§ 266–275, 374–375.] — codify (kod-*<<schwa>>-fl*), vb. — codifier (kod-*<<schwa>>-fl<<schwa>>r*), n.

CODIFYING STATUTE

codifying statute. See *STATUTE*.

COEFFICIENT CLAUSE

Coefficient Clause. See *NECESSARY AND PROPER CLAUSE*.

COEMPTIO

coemptio (koh-emp-shee-oh), n. [Latin] Roman law. A form of civil marriage in which the husband “purchased” from a woman's father — by fictitious sale — the right to exercise marital power (*manus*) over the woman. • The father conveyed his daughter to her husband through the

technical procedure of a sale of *res mancipi*. The imaginary sale took place in the presence of five adult Roman citizens and a balance-holder (*libripens*). The husband or fictitious purchaser was termed the *coemptionator* or *coemptior*. The importance of *coemptio* as a method of civil marriage had faded by the end of the Republic period. Pl. *coemptiones* (koh-emp-shee-oh-nee-z). Cf. *CONFARREATIO*; *USUS*(3).

COEMPTION

coemption (koh-emp-sh<<schwa>>n), n.1. The act of purchasing the entire quantity of any commodity. 2.COEMPTIO. — coemptional, coemptive,adj.

COERCE

coerce (koh-<<schwa>>rs), vb. To compel by force or threat <coerce a confession>.

COERCED CONFESSION

coerced confession.See *CONFESSION*.

COERCION

coercion (koh-<<schwa>>r-zh<<schwa>>n), n.1. Compulsion by physical force or threat of physical force. • An act such as signing a will is not legally valid if done under coercion. And since a valid marriage requires voluntary consent, coercion or duress is grounds for invalidating a marriage.

criminal coercion.Coercion intended to restrict another's freedom of action by: (1) threatening to commit a criminal act against that person; (2) threatening to accuse that person of having committed a criminal act; (3) threatening to expose a secret that either would subject the victim to hatred, contempt, or ridicule or would impair the victim's credit or goodwill; or (4) taking or withholding official action or causing an official to take or withhold action. [Cases: Extortion and Threats 1, 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.]

implied coercion.See *UNDUE INFLUENCE*(1).

moral coercion.See *UNDUE INFLUENCE*(1).

2. Conduct that constitutes the improper use of economic power to compel another to submit to the wishes of one who wields it. — Also termed economic coercion. 3.Hist. A husband's actual or supposed control or influence over his wife's actions. • Under the common-law doctrine of coercion, a wife who committed a crime in her husband's presence was presumed to have been coerced by him and thus had a complete defense. Courts have abolished this doctrine. — Also termed doctrine of coercion. — coercive,adj. — coercer,n.“Although as an abstract statement any action or restraint imposed upon one by another may be spoken of as coercion, there has been a tendency in the criminal law to employ the word ‘compulsion’ for the general field and to reserve the word ‘coercion’ to indicate the exercise of such influence (actual or presumed) over a married woman by her husband. And since the latter is not merely a specific instance of the former, but is something which differs from it in kind so far as common-law consequences are concerned, there are important reasons for retaining this difference in the meaning to be assigned to these terms.”

Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1018 (3d ed. 1982).

COERCIVE RELIEF

coercive relief. See RELIEF.

COEXECUTOR

coexecutor (koh-eg-zek-y<<schwa>>-t<<schwa>>r). See joint executor under EXECUTOR.

COEXISTENCE

coexistence. Int'l law. The peaceful continuation of nations, peoples, or other entities or groups within an effective political-military equilibrium.

COEXISTING MOTION

coexisting motion. See MOTION(2).

COGENT

cogent (koh-j<<schwa>>nt), adj. Compelling or convincing <cogent reasoning>. — cogency, n.

COGNATE

cognate, adj. See COGNATIC.

cognate, n. One who is kin to another. • In Roman law, the term means a blood relationship and implies that the kinship derives from a lawful marriage. In Scots and later civil law, the term implies kinship from the mother's side. Cf. AGNATE.

COGNATE NUISANCE

cognate nuisance. See NUISANCE.

COGNATE OFFENSE

cognate offense. See OFFENSE(1).

COGNATI

cognati. See COGNATUS.

COGNATIC

cognatic (kog-nat-ik), adj. (Of a relationship) existing between cognates. — Also termed cognate.

COGNATIO

cognatio (kog-nay-shee-oh), n. [Latin] Roman law. The relationship between people having a common ancestor; a blood relationship; cognates. Cf. AGNATIO.

COGNATION

cognition (kog-nay-sh<<schwa>>n), n.1. Relationship by blood rather than by marriage; relationship arising through common descent from the same man and woman, whether the descent is traced through males or females.

“ ‘Cognition’ is ... a relative term, and the degree of connexion in blood which it indicates depends on the particular marriage which is selected as the commencement of the calculation.” Henry S. Maine, *Ancient Law* 122 (17th ed. 1901).

2.Civil law. A relationship existing between two people by blood, by family, or by both.

civil cognition.A relationship arising by law, such as that created by adoption.

mixed cognition.A relationship that combines the ties of blood and family, such as that existing between brothers who are born of the same marriage.

natural cognition.A blood relationship, usu. arising from an illicit connection.

3. Relationship between persons or things of the same or similar nature; likeness.

COGNATUS

cognatus (kog-nay-t<<schwa>>s), n. & adj.[Latin] Roman law. A cognatic relative; a person related to another by a common ancestor. — Also termed cognate. Cf. AGNATUS. Pl. cognati.

COGNITIO

cognitio (kog-nish-ee-oh), n. [fr. Latin cognoscere “to know”] 1.Hist. The acknowledgment of a fine, or the certificate of such an acknowledgment. 2.Roman law. See COGNITIO EXTRAORDINARIA. Pl. cognitiones (kog-nish-ee-oh-nee-z).

COGNITIO EXTRAORDINARIA

cognitio extraordinaria (kog-nish-ee-oh ek-stror-di-nair-ee-<<schwa>> or ek-str<<schwa>>-or-). [Latin] Roman law. A type of legal proceeding, arising at the beginning of the Empire, in which a government official controlled the conduct of a trial from beginning to end, as opposed to the earlier formulary system in which a magistrate shaped the issues and then turned the issues of fact and law over to a lay judge (a *judex*). — Sometimes shortened to *cognitio*. — Also termed *cognitio extra ordinem* (kog-nish-ee-oh ek-str<<schwa>> or-d<<schwa>>-n<<schwa>>m).

“The *cognitio extra ordinem* or *cognitio extraordinaria* is a collective name for all those legal procedures in which the trial consists of one stage only and in which judgment is given by the emperor or by an imperial official acting on behalf of the emperor. The disputes that were settled by means of the cognition procedure could be of very different kinds: not only could they be about matters concerning private law and criminal law, but they could also be disputes between citizens and government officials.” Olga Tellegen-Couperus, *A Short History of Roman Law* 90 (1993).

COGNITIONIBUS MITTENDIS

cognitionibus mittendis (kog-nish-ee-oh-n<<schwa>>-b<<schwa>>s mi-ten-dis). [Latin

“cognizance of pleas to be released”] Hist. A writ ordering a justice of the Common Pleas to certify a fine that the justice had imposed but refused to certify.

COGNITIONIS CAUSA TANTUM

cognitionis causa tantum (kog-nish-ee-oh-nis kaw-z<<schwa>> tan-t<<schwa>>m). [Latin “for the purpose of ascertaining a debt against the estate”] Scots law. A creditor's action against a deceased debtor's estate to ascertain the amount of the debt.

COGNITIVE TEST

cognitive test. Criminal law. A test of the defendant's ability to know certain things, specif., the nature of his or her conduct and whether the conduct was right or wrong. • This test is used in assessing whether a defendant may rely on an insanity defense. [Cases: Criminal Law 48.]

COGNITOR

cognitor (kog-ni-tor), n. Roman law. A person formally appointed to represent another in a civil trial. Cf. PROCURATOR(1).

COGNIZABLE

cognizable (kog-ni- or kog-nI-z<<schwa>>-b<<schwa>>l), adj. 1. Capable of being known or recognized <for purposes of establishing standing, a plaintiff must allege a judicially cognizable injury>. 2. Capable of being identified as a group because of a common characteristic or interest that cannot be represented by others <American Indians qualify as a cognizable group for jury-selection purposes>. 3. Capable of being judicially tried or examined before a designated tribunal; within the court's jurisdiction <the tort claims are not cognizable under the consumer-protection statute>.

COGNIZANCE

cognizance (kog-ni-z<<schwa>>ns), n. 1. A court's right and power to try and to determine cases; JURISDICTION. [Cases: Courts 2. C.J.S. Courts § 16–17.] 2. The taking of judicial or authoritative notice. [Cases: Evidence 1. C.J.S. Evidence §§ 8–11, 106.] 3. Acknowledgment or admission of an alleged fact; esp. (hist.), acknowledgment of a fine. See FINE(1); FINE SUR COGNIZANCE DE DROIT. 4. Common-law pleading. In a replevin action, a plea by the defendant that the goods are held in bailment for another. Cf. AVOWRY. [Cases: Replevin 64.]

COGNIZEE

cognizee (kog-ni-zee). Hist. The grantee of land in a conveyance by fine. — Also termed conusee; conuzee. See FINE(1).

COGNIZOR

cognizor (kog-ni-z<<schwa>>r or -zor). Hist. The grantor of land in a conveyance by fine. — Also termed conusor; conuzor. See FINE(1).

“Next comes the concord, or agreement itself, after leave obtained from the court; which is

usually an acknowledgment ... that the lands in question are the right of the complainant. And from this acknowledgment, or recognition of right, the party levying the fine is called the cognizor, and he to whom it is levied the cognizee.” 2 William Blackstone, *Commentaries on the Laws of England* 350–51 (1766).

COGNOVIT

cognovit (kog-noh-vit). [Latin “he has conceded (a debt or an action)”] An acknowledgment of debt or liability in the form of a confessed judgment. • Formerly, credit contracts often included a cognovit clause in which the consumer relinquished, in advance, any right to be notified of court hearings in any suit for nonpayment — but such clauses are now generally illegal. See *CONFESSION OF JUDGMENT*. Cf. *WARRANT OF ATTORNEY*. [Cases: Federal Civil Procedure 2396; Judgment 54. C.J.S. Judgments §§ 140, 143–144, 170.]

“A cognovit is an instrument signed by a defendant in an action actually commenced confessing the plaintiff's demand to be just, and empowering the plaintiff to sign judgment against him in default of his paying the plaintiff the sum due to him within the time mentioned in the cognovit.” John Indermaur, *Principles of the Common Law* 8 (Edmund H. Bennett ed., 1st Am. ed. 1878).

COGNOVIT ACTIONEM

cognovit actionem (kog-noh-vit ak-shee-oh-n<<schwa>>m). [Law Latin “he has confessed the action”] A de-fendant's written acknowledgment of the plaintiff's claim, authorizing the plaintiff to take a judgment for a named sum; a cognovit.

COGNOVIT CLAUSE

cognovit clause. A contractual provision by which a debtor agrees to jurisdiction in certain courts, waives notice requirements, and authorizes the entry of an adverse judgment in the event of a default or breach. • Cognovit clauses are outlawed or restricted in most states. [Cases: Federal Civil Procedure 2396; Judgment 54. C.J.S. Judgments §§ 140, 143–144, 170.]

COGNOVIT JUDGMENT

cognovit judgment. See *JUDGMENT*.

COGNOVIT NOTE

cognovit note. A promissory note containing a cognovit clause. — Also termed judgment note. [Cases: Federal Civil Procedure 2396; Judgment 54. C.J.S. Judgments §§ 140, 143–144, 170.]

COGSA

COGSA. 1. abbr. *CARRIAGE OF GOODS BY SEA ACT*. 2. Maritime law. A country's enactment of the inter-national convention popularly known as the Hague Rules. • The acronym is used even when the country's statute has a different title; for example, the Canadian Carriage of Goods by Water Act is referred to as the “Canadian COGSA.”

COHABITATION

cohabitation (koh-hab-*<<schwa>>-tay-sh<<schwa>>n*), n. The fact or state of living together, esp. as partners in life, usu. with the suggestion of sexual relations. [Cases: Marriage 13, 22. C.J.S. Marriage §§ 10, 19–20, 24–25.] — cohabit (koh-hab-it), vb. — cohabitative (koh-hab-*<<schwa>>-tay-tiv*), adj. — cohabitant (koh-hab-*<<schwa>>-t<<schwa>>nt*), cohabitor (koh-hab-*<<schwa>>-t<<schwa>>r*), n.

illicit cohabitation. 1. The offense committed by an unmarried man and woman who live together as husband and wife and engage in sexual intercourse. • This offense, where it still exists, is seldom prosecuted. 2. The condition of a man and a woman who are not married to one another and live together in circumstances that make the arrangement questionable on grounds of social propriety, though not necessarily illegal. — Also termed lascivious cohabitation; lewd and lascivious cohabitation. Cf. FORNICATION. [Cases: Criminal Law 45.40; Lewd-ness 1. C.J.S. Criminal Law §§ 7.10; Lewdness §§ 2–9.]

lascivious cohabitation. See illicit cohabitation.

matrimonial cohabitation. The living together of husband and wife.

notorious cohabitation. Archaic. Illicit cohabitation in which the parties make no attempt to hide their living arrangements. — Also termed open and notorious cohabitation. See illicit cohabitation. [Cases: Lewdness 1. C.J.S. Lewdness §§ 2–9.]

COHABITATION AGREEMENT

cohabitation agreement. A contract outlining the property and financial arrangements between persons who live together. — Also termed living-together agreement. Cf. PRENUPTIAL AGREEMENT.

COHABITING UNMARRIED PERSON OF THE OPPOSITE SEX

cohabiting unmarried person of the opposite sex. See CUPOS.

COHAN<TT> RULE

Cohan rule (koh-han). Tax. A former rule that a taxpayer may approximate travel and entertainment expenses when no records exist if the taxpayer has taken all possible steps to provide documentation. • Since 1962, travel and entertainment expenses have been only partly deductible and must be carefully documented, but courts may apply the Cohan reasoning to other items. *Cohan v. Commissioner*, 39 F.2d 540 (2d Cir. 1930). [Cases: Internal Revenue 3377, 4536. C.J.S. Internal Revenue §§ 647, 671, 673, 799.]

COHEIR

coheir (koh-air). See HEIR.

COHEIRESS

coheiress (koh-air-is). Hist. A female coheir.

COHEN<TT> DOCTRINE

Cohen doctrine (koh-<<schwa>>n). See COLLATERAL-ORDER DOCTRINE.

COHERES

coheres (koh-heer-eez), n. Roman law. A coheir. Pl. coheredes (koh-heer-<< schwa>>-deez).

COHORT ANALYSIS

cohort analysis (koh-hort). A method of measuring discrimination in the workplace by comparing, at several points in time, the pay and promotions of employees of different cognizable groups. • Cohort analyses are often used in employment-discrimination cases. [Cases: Civil Rights 1543. C.J.S. Civil Rights § 170.]

COIF

coif (koyf).1. A white linen headpiece formerly worn by serjeants-at-law (barristers of high standing) in com-mon-law courts. 2. The rank or order of serjeants-at-law. See ORDER OF THE COIF.

COINAGE CLAUSE

Coinage Clause.The provision in the U.S. Constitution (art. I, § 8, cl. 5) granting to Congress the power to coin money. [Cases: United States 34. C.J.S. United States §§ 162–163.]

COINCIDENT INDICATOR

coincident indicator.See INDICATOR.

COINDICTEE

coindictee. One of two or more persons who have been jointly indicted. See joint indictment under INDICTMENT.

COINED MARK

coined mark.See fanciful trademark under TRADEMARK.

COINED-NAME CLAIM

coined-name claim.See PATENT CLAIM.

COINED TERM

coined term.See fanciful trademark under TRADEMARK.

COINED TRADEMARK

coined trademark.See fanciful trademark under TRADEMARK.

COINSURANCE

coinsurance. See INSURANCE.

COINSURANCE CLAUSE

coinsurance clause. A provision in an insurance policy requiring a property owner to carry separate insurance up to an amount stated in the policy to qualify for full coverage. — Also termed contribution clause. [Cases: Insurance 2170. C.J.S. Insurance § 1110.]

COINSURER

coinsurer. An insurer who shares losses sustained under an insurance policy. See coinsurance under INSURANCE. [Cases: Insurance 2285. C.J.S. Insurance §§ 1137–1143.]

COJUDICES

cojudices. Archaic. In England, associate judges.

COLA

COLA. abbr. COST-OF-LIVING ADJUSTMENT.

COLD BLOOD

cold blood. A killer's state of mind when committing a willful and premeditated homicide <a shooting in cold blood>. See COOL BLOOD. Cf. HEAT OF PASSION.

COLD CHECK

cold check. See bad check under CHECK.

COLD-COMFORT LETTER

cold-comfort letter. See COMFORT LETTER(1).

COLD-WATER ORDEAL

cold-water ordeal. See ordeal by water (1) under ORDEAL.

COLEGATEE

colegatee (koh-le-g<<schwa>>-tee). A joint legatee; one of two or more persons who receive a legacy under a will. Cf. LEGATEE. [Cases: Wills 708–872. C.J.S. Wills §§ 88–92, 96, 99–101, 451–452, 1613–1620, 1622–1808, 1822–2025.]

COLI

COLI. See corporate-owned life insurance under LIFE INSURANCE.

COLIBERTUS

colibertus (kol-i-b<<schwa>>r-t<<schwa>>s). [Law Latin] Hist. A serf in free socage; that is, a serf who is nominally freed but is still subject to certain servile conditions. • A colibertus occupied a position in society between servile and free tenants. — Also spelled collibertus. Pl. coliberti. See SOCAGE.

COLLAPSIBLE CORPORATION

collapsible corporation. See CORPORATION.

COLLAPSIBLE PARTNERSHIP

collapsible partnership. See PARTNERSHIP.

COLLATE

collate (k<<schwa>>-layt), vb. Civil law. To return (inherited property) to an estate for division <the grandchildren collated the property they had received>. [Cases: Executors and Administrators 294. C.J.S. Executors and Administrators § 545.]

COLLATERAL

collateral (k<<schwa>>-lat-<<schwa>>r-<<schwa>>l), adj. 1. Supplementary; accompanying, but secondary and subordinate to <whether the accident victim was wearing a seat belt is a collateral issue>. 2. Not direct in line, but on a parallel or diverging line of descent; of or relating to persons who are related by blood but are neither ancestors nor descendants <an uncle is in a collateral, not a direct, line>. Cf. LINEAL. — collaterality (k<<schwa>>-lat-<<schwa>>r-al-<<schwa>>-tee), n.

collateral (k<<schwa>>-lat-<<schwa>>r-<<schwa>>l), n. 1. A person collaterally related to a decedent. [Cases: Descent and Distribution 37; Wills 499. C.J.S. Descent and Distribution §§ 44–49; Wills §§ 909, 915–916.] 2. Property that is pledged as security against a debt; the property subject to a security interest or agricultural lien. See UCC § 9-102(a)(12). — Also termed (in sense 2) collateral security. [Cases: Secured Transactions 11, 115. C.J.S. Secured Transactions §§ 3, 11, 84.]

as-extracted collateral. 1. Oil, gas, or other minerals that are subject to a security interest that is created by a debtor having an interest in the minerals before extraction and that attaches to the minerals as they are extracted. UCC § 9-102(a)(6)(A). 2. An account arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction. UCC § 9-102(a)(6)(B).

cash collateral. Collateral consisting of cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents. 11 USCA § 363(a).

cross-collateral. 1. Security given by all parties to a contract. 2. Bankruptcy. Bargained-for security that in addition to protecting a creditor's postpetition extension of credit protects the creditor's prepetition unsecured claims, which, as a result of that security, obtain priority over other creditors' prepetition unsecured claims. • Some courts allow this procedure, which is known as cross-collateralization. [Cases: Bankruptcy 3037.]

COLLATERAL ACT

collateral act. Any act (usu. excluding the payment of money) for which a bond or recognizance is given as security.

COLLATERAL AFFINITY

collateral affinity. See AFFINITY.

COLLATERAL-AGREEMENT DOCTRINE

collateral-agreement doctrine. See **COLLATERAL-CONTRACT DOCTRINE**.

COLLATERAL ANCESTOR

collateral ancestor. See collateral ascendant under **ASCENDANT**.

COLLATERAL ASCENDANT

collateral ascendant. See **ASCENDANT**.

COLLATERAL ASSIGNEE

collateral assignee. See **ASSIGNEE**.

COLLATERAL ASSIGNMENT

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

COLLATERAL ASSURANCE

collateral assurance. See **ASSURANCE**.

COLLATERAL ATTACK

collateral attack. An attack on a judgment in a proceeding other than a direct appeal; esp., an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective. • A petition for a writ of habeas corpus is one type of collateral attack. — Also termed indirect attack. Cf. **DIRECT ATTACK(1)**. [Cases: Judgment 470–523. C.J.S. Judgments §§ 499–533.]

COLLATERAL-BENEFIT RULE

collateral-benefit rule. See **COLLATERAL-SOURCE RULE**.

COLLATERAL CONDITION

collateral condition. See **CONDITION(2)**.

COLLATERAL CONSANGUINITY

collateral consanguinity. See **CONSANGUINITY**.

COLLATERAL CONSEQUENCE

collateral consequence. A penalty for committing a crime, in addition to the penalties included in the criminal sentence. • An example is the loss of a professional license. When a collateral consequence exists, a defendant's appeal of a conviction does not become moot when the criminal sentence is completed.

COLLATERAL CONTRACT

collateral contract. See **CONTRACT**.

COLLATERAL-CONTRACT DOCTRINE

collateral-contract doctrine. The principle that in a dispute concerning a written contract, proof of a second (usu. oral) agreement will not be excluded under the parol-evidence rule if the oral agreement is independent of and not inconsistent with the written contract, and if the information in the oral agreement would not ordinarily be expected to be included in the written contract. — Also termed collateral-agreement doctrine. [Cases: Evidence 440. C.J.S. Evidence §§ 1249–1251, 1283.]

COLLATERAL COVENANT

collateral covenant. See COVENANT(1).

COLLATERAL DEFENSE

collateral defense. See DEFENSE(1).

COLLATERAL DESCENDANT

collateral descendant. See DESCENDANT.

COLLATERAL DESCENT

collateral descent. See DESCENT.

COLLATERAL ESTOPPEL

collateral estoppel (e-stop-<<schwa>>1). 1. The binding effect of a judgment as to matters actually litigated and determined in one action on later controversies between the parties involving a different claim from that on which the original judgment was based. 2. A doctrine barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one. — Also termed issue preclusion; issue estoppel; direct estoppel; estoppel by judgment; estoppel by record; estoppel by verdict; cause-of-action estoppel; technical estoppel; estoppel per rem judicatam. Cf. RES JUDICATA. [Cases: Judgment 634, 713, 948(1). C.J.S. Judgments §§ 697–703, 707, 779–782, 803–806, 834, 930–931, 933.]

administrative collateral estoppel. Estoppel that arises from a decision made by an agency acting in a judicial capacity. [Cases: Administrative Law and Procedure 501. C.J.S. Public Administrative Law and Procedure §§ 155–156.]

defensive collateral estoppel. Estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff. [Cases: Judgment 632. C.J.S. Judgments §§ 828, 831, 834–836, 841.]

nonmutual collateral estoppel. Estoppel asserted either offensively or defensively by a nonparty to an earlier action to prevent a party to that earlier action from relitigating an issue determined against it.

offensive collateral estoppel. Estoppel asserted by a plaintiff to prevent a defendant from relitigating an issue previously decided against the defendant. [Cases: Judgment 632. C.J.S.

Judgments §§ 828, 831, 834–836, 841.]

COLLATERAL FACT

collateral fact. See **FACT**.

COLLATERAL FRAUD

collateral fraud. See **extrinsic fraud** (1) under **FRAUD**.

COLLATERAL HEIR

collateral heir. See **HEIR**.

COLLATERAL-INHERITANCE TAX

collateral-inheritance tax. See **TAX**.

COLLATERAL ISSUE

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

COLLATERALIZE

collateralize (k<<schwa>>-lat-<<schwa>>r-<<schwa>>l-iz), vb. 1. To serve as collateral for <the purchased property collateralized the loan agreement>. 2. To make (a loan) secure with collateral <the creditor insisted that the loan be collateralized>. [Cases: Secured Transactions 1. C.J.S. Secured Transactions §§ 3, 7–9, 23, 37.] — collateralization (k<<schwa>>-lat-<<schwa>>r-<<schwa>>l-<<schwa>>-zay-sh<<schwa>>n), n.

COLLATERALIZED MORTGAGE OBLIGATION

collateralized mortgage obligation. **Securities**. A bond secured by a group of mortgage obligations or pass-through securities and paid according to the payment schedule of its class (or tranche). • CMOs are issued by the Federal Home Loan Mortgage Corporation, and benefit from predictable payments of interest and principal. — Abbr. CMO. See **pass-through security** under **SECURITY**; **TRANCHE**.

COLLATERAL LIMITATION

collateral limitation. See **LIMITATION**.

COLLATERAL LINE

collateral line. See **LINE**.

COLLATERAL LOAN

collateral loan. See **secured loan** under **LOAN**.

COLLATERAL MATTER

collateral matter. **Evidence**. Any matter on which evidence could not have been introduced for a relevant purpose. • If a witness has erred in testifying about a detail that is collateral to the

relevant facts, then another party cannot call witnesses to contradict that point — cross-examination alone must suffice. [Cases: Evidence 99; Witnesses 405. C.J.S. Evidence §§ 2–5, 197–199, 204, 206; Witnesses § 770.]

COLLATERAL MISTAKE

collateral mistake. See unessential mistake under MISTAKE.

COLLATERAL MORTGAGE

collateral mortgage. See MORTGAGE.

COLLATERAL NEGLIGENCE

collateral negligence. See NEGLIGENCE.

COLLATERAL-NEGLIGENCE DOCTRINE

collateral-negligence doctrine. The rule holding that one who engages an independent contractor is not liable for physical harm that the contractor causes if (1) the contractor's negligence consists solely of the improper manner in which the contractor's work is performed, (2) the risk of harm created is not normal to the work, and (3) the employer had no reason to contemplate the contractor's negligence when the contract was made. [Cases: Master and Servant 315, 319. C.J.S. Employer–Employee Relationship §§ 231–236, 239–240, 242, 244–246, 248, 251–252, 254–255.]

COLLATERAL NOTE

collateral note. See secured note under NOTE(1).

COLLATERAL OBLIGATION

collateral obligation. A liability undertaken by a person who becomes bound for another's debt. — Also termed accessory obligation.

COLLATERAL-ORDER DOCTRINE

collateral-order doctrine. A doctrine allowing appeal from an interlocutory order that conclusively determines an issue wholly separate from the merits of the action and effectively unreviewable on appeal from a final judgment. — Also termed Cohen doctrine (fr. *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221 (1949)). See appealable decision under DECISION. [Cases: Appeal and Error 72; Federal Courts 572.1. C.J.S. Appeal and Error §§ 89, 109, 113.]

COLLATERAL POWER

collateral power. See POWER(5).

COLLATERAL PROCEEDING

collateral proceeding. See PROCEEDING.

COLLATERAL PROMISE

collateral promise. See PROMISE.

COLLATERAL RELATIVE

collateral relative. See RELATIVE.

COLLATERAL SECURITY

collateral security. See SECURITY.

COLLATERAL-SOURCE RULE

collateral-source rule. Torts. The doctrine that if an injured party receives compensation for the injuries from a source independent of the tortfeasor, the payment should not be deducted from the damages that the tortfeasor must pay. • Insurance proceeds are the most common collateral source. — Also termed collateral-benefit rule. [Cases: Damages 59. C.J.S. Damages §§ 167, 169–170, 172, 174.]

COLLATERAL TRUST BOND

collateral trust bond. See BOND(3).

COLLATERAL TRUST CERTIFICATE

collateral trust certificate. See collateral trust bond (1) under BOND(3).

COLLATERAL USE

collateral use. See USE(1).

COLLATERAL WARRANTY

collateral warranty. See WARRANTY(1).

COLLATIO BONORUM

collatio bonorum (k<<schwa>>-lay-shee-oh b<<schwa>>-nor-<<schwa>>m). [Latin “collation of goods”] Civil law. The bringing into hotchpot of goods or money advanced by a parent to a child, so that the parent's personal estate will be equally distributed among the parent's children. Pl. collationes bonorum. See HOTCHPOT.

“[I]f the estates so given them, by way of advancement, are not quite equivalent to the other shares, the children so advanced shall now have so much as will make them equal. This just and equitable provision hath been also said to be derived from the collatio bonorum of the imperial law: which it certainly resembles in some points, though it differs widely in others. But it may not be amiss to observe, that, with regard to goods and chattels, this is part of ... the common law of England, under the name of hotchpot.” 2 William Blackstone, Commentaries on the Laws of England 516–17 (1766).

COLLATION

collation (k<<schwa>>-lay-sh<<schwa>>n), n.1. The comparison of a copy with its original to ascertain its correctness; the report of the officer who made the comparison. 2. The taking into account of the value of ad-vancements made by an intestate to his or her children so that the estate may be divided in accordance with the intestacy statute. Cf. HOTCHPOT. [Cases: Descent and Distribution 93–118. C.J.S. Descent and Distribu-tion §§ 69, 95–111, 116.] 3.Eccles. law. The act (by a bishop) of conferring a benefice in which the bishop holds the right of advowson, thus combining the acts of presentation and institution. — Also termed collation to a benefice. See advowson collative under ADVOWSON. — collate (k<<schwa>>-layt), vb. — collator (k<<schwa>>-lay-t<<schwa>>r), n.

COLLATIONE FACTA UNI POST MORTEM ALTERIUS

collatione facta uni post mortem alterius (k<<schwa>>-lay-shee-oh-nee fak-t<< schwa>>yoo-nI pohst mor-t<<schwa>>m al-teer-ee-<<schwa>>s [or awl-]). [Law Latin “by collation to a benefice made to one after the death of the other”] Hist. A writ directed to the Court of Common Pleas, requesting that the court order a bishop to appoint a clerk in place of another who had died pending appointment.

COLLATIONE HEREMITAGII

collatione heremitagii (k<<schwa>>-lay-shee-oh-nee her-<<schwa>>-m<<schwa>>-tay-jee-I). [Law Latin “by collation of hermitage”] Hist. A writ by which the Crown conferred the keeping of a hermitage on a clerk.

COLLATION TO A BENEFICE

collation to a benefice.See COLLATION.

COLLATIO SIGNORUM

collatio signorum (k<<schwa>>-lay-shee-oh sig-nor-<<schwa>>m). [Law Latin “comparison of signs”] Hist. A method of testing a seal's genuineness by comparing it with another known to be genuine.

COLLATIVE FACT

collative fact.See investitive fact under FACT.

COLLECTABILITY

collectability. The ability of a judgment creditor to make a judgment debtor pay the amount of the judgment; the degree to which a judgment can be satisfied through collection efforts against the defendant.

COLLECTING BANK

collecting bank.See BANK.

COLLECTION

collection.Banking. The process through which an item (such as a check) passes in a payor

bank. See payor bank under BANK(1). [Cases: Banks and Banking 156–175. C.J.S. Banks and Banking §§ 317, 319, 322–325, 327, 372–374, 379, 382–400, 402–412, 414, 416, 419–428, 430–432, 434, 437–438.]

COLLECTION INDORSEMENT

collection indorsement. See restrictive indorsement under INDORSEMENT.

COLLECTION ITEM

collection item. An item (such as a documentary draft) taken by a bank for a customer's account, but not credited until payment for the item has actually been received. See documentary draft under DRAFT(1). [Cases: Banks and Banking 158, 161(1). C.J.S. Banks and Banking §§ 317, 319, 322, 327, 383, 385–386, 388–392, 395–397, 399, 402, 404, 407, 409–410, 414.]

COLLECTIVE BARGAINING

collective bargaining. Negotiations between an employer and the representatives of organized employees to determine the conditions of employment, such as wages, hours, discipline, and fringe benefits. See CONCESSION BARGAINING. [Cases: Labor Relations 171. C.J.S. Labor Relations § 148.]

“Collective bargaining means the joint determination by employees and employers of the problems of the employment relationship. Such problems include wage rates and wage systems, hours and overtime, vacations, discipline, work loads, classification of employees, layoffs, and worker retirement. The advent of collective bargaining does not give rise to these problems. Rather they are germane to the industrial relations environment, and exist with or without unionization.” Benjamin J. Taylor & Fred Whitney, *Labor Relations Law* 3 (1971).

COLLECTIVE-BARGAINING AGREEMENT

collective-bargaining agreement. Labor law. A contract between an employer and a labor union regulating employment conditions, wages, benefits, and grievances. — Abbr. CBA. — Also termed labor agreement; labor contract; union contract; collective-labor agreement; trade agreement. [Cases: Labor Relations 241. C.J.S. Labor Relations § 217.]

COLLECTIVE-LABOR AGREEMENT

collective-labor agreement. See COLLECTIVE-BARGAINING AGREEMENT.

COLLECTIVE MARK

collective mark. See collective trademark under TRADEMARK.

COLLECTIVE MEASURE

collective measure. Int'l law. An activity undertaken by more than one country to achieve an agreed-upon end. • The countries involved may undertake a collective measure either in an ad hoc manner or through an institutionalized association.

COLLECTIVE PUNISHMENT

collective punishment. A penalty inflicted on a group of persons without regard to individual responsibility for the conduct giving rise to the penalty. • Collective punishment was outlawed in 1949 by the Geneva Convention.

COLLECTIVE TRADEMARK

collective trademark. See TRADEMARK.

COLLECTIVE WORK

collective work. See WORK(2).

COLLECTOR OF DECEDENT'S ESTATE

collector of decedent's estate. A person temporarily appointed by a probate court to collect assets and payments due to a decedent's estate, and to settle other financial matters requiring immediate attention. • A collector is often appointed to look after an estate when there is a will contest or a dispute about who should be appointed administrator. The collector's duties end when an executor or administrator is appointed. [Cases: Executors and Administrators 22. C.J.S. Executors and Administrators §§ 951–952, 954–956.]

COLLEGA

collega (k<<schwa>>-lee-g<<schwa>>), n. [Latin] Roman law. A person invested with joint authority; a colleague or associate. • Collega usu. referred to a member of an association (collegium) or a coheir. See COLLEGIUM.

COLLEGATARIUS

collegatarius (k<<schwa>>-leg-<<schwa>>-tair-ee-<<schwa>>s), n. [Latin] Roman law. A colegatee.

COLLEGATARY

collegatary (k<<schwa>>-leg-<<schwa>>-ter-ee). A colegatee; a person who shares a common legacy with one or more other persons. — Also termed collegatarius (k<<schwa>>-leg-<<schwa>>-ter-ee-<<schwa>>s).

COLLEGE

college. 1. An institution of learning that offers instruction in the liberal arts, humanities, and sciences, but not in the technical arts or in studies preparatory to admission to a profession. [Cases: Colleges and Universities 1. C.J.S. Colleges and Universities §§ 2–3, 9.] 2. An assembly of people, established by law to perform some special function or to promote some common purpose, usu. of an educational, political, ecclesiastical, or scientific nature.

COLLEGE OF ADVOCATES AND DOCTORS OF LAW

College of Advocates and Doctors of Law. See DOCTORS' COMMONS.

COLLEGE OF ARMS

College of Arms. See HERALDS' COLLEGE.

COLLEGE OF JUSTICE

College of Justice. Scots law. The body of judges and lawyers created in 1532 to constitute the Court of Session, the superior civil court of Scotland.

COLLEGIUM

collegium (k<<schwa>>-lee-jee-<<schwa>>m), n. [Latin] Roman law. An association of at least three people having the right to assemble and enact rules concerning membership, organization, and the rights and duties of members. • Collegia were formed for professional, cultural, charitable, and religious purposes. Pl. collegia.

collegium illicitum (k<<schwa>>-lee-jee-<<schwa>>m i-lis-<<schwa>>-t<<schwa>>m). A collegium that either is not sanctioned by law or assembles for some purpose other than that expressed in its charter.

collegium licitum (k<<schwa>>-lee-jee-<<schwa>>m lis-<<schwa>>-t<<schwa>>m). An assemblage of people empowered to act as a juristic person in the pursuit of some useful purpose or business.

COLLISION

collision. Maritime law. 1. The contact of two or more moving vessels. [Cases: Collision 1. C.J.S. Collision §§ 1–2, 5–7.] 2. ALLISION.

COLLISION INSURANCE

collision insurance. See INSURANCE.

COLLITERALES ET SOCII

colliterales et socii (k<<schwa>>-lit-<<schwa>>-ray-leez et soh-shee-I). [Law Latin “assistants and associates”] Hist. In England, the former title of assistants to the Chancery judges (i.e., masters in chancery).

COLLOBIUM

collobium (k<<schwa>>-loh-bee-<<schwa>>m). [Law Latin] Hist. A hood or covering for the shoulders, formerly worn by serjeants-at-law.

COLLOQUIUM

colloquium (k<<schwa>>-loh-kwee-<<schwa>>m). 1. The offer of extrinsic evidence to show that an allegedly defamatory statement referred to the plaintiff even though it did not explicitly mention the plaintiff. [Cases: Libel and Slander 82. C.J.S. Libel and Slander; Injurious Falsehood §§ 4, 129, 137.] 2. The introductory averments in a plaintiff's pleading setting out all the special circumstances that make the challenged words defamatory. [Cases: Libel and Slander 82. C.J.S. Libel and Slander; Injurious Falsehood §§ 4, 129, 137.] Pl. colloquiums, colloquia. Cf. INDUCEMENT(4); INNUENDO(2).

COLLOQUY

colloquy (kol-<<schwa>>-kwee). Any formal discussion, such as an oral exchange between a judge, the prosecutor, the defense counsel, and a criminal defendant in which the judge ascertains the defendant's understanding of the proceedings and of the defendant's rights.

COLLUSION

collusion (k<<schwa>>-loo-zh<<schwa>>n), n.1. An agreement to defraud another or to do or obtain something forbidden by law. [Cases: Fraud 30.] 2. As a defense to divorce, an agreement between a husband and wife to commit or to appear to commit an act that is grounds for divorce. • For example, before the advent of no-fault divorce, a husband and wife might agree to make it appear that one of them had committed adultery. Cf. CONNIVANCE(2); CONDONATION(2); RECRIMINATION(1). — collude, vb. — collusive, adj. — colluder, n.

tacit collusion. Antitrust. See CONSCIOUS PARALLELISM.

COLLUSIVE ACTION

collusive action. See ACTION.

COLLUSIVE JOINDER

collusive joinder. See JOINDER.

COLLYER<TT> DOCTRINE

Collyer doctrine (kol-y<<schwa>>r). Labor law. The principle under which the National Labor Relations Board will refer an issue brought before it to arbitration if the issue is arbitrable under the collective-bargaining agreement. *Collyer Insulated Wire*, 192 NLRB 837 (1971). Cf. SPIELBERG DOCTRINE . [Cases: Labor Relations 509. C.J.S. Labor Relations §§ 510, 515–516.]

COLONIAL LAW

colonial law. 1. Law governing a colony or colonies. 2. The body of law in force in the 13 original U.S. colonies before the Declaration of Independence.

COLON–SEMICOLON FORM

colon–semicolon form. Patents. A style of writing patent claims that uses a colon after the preamble and semi-colons between every two elements. Cf. OUTLINE FORM; SINGLE-PARAGRAPH FORM; SUBPARAGRAPH FORM.

COLONUS PARTIARIUS

colonus partiarius (k<<schwa>>-loh-n<<schwa>>s pahr-shee-air-ee-<<schwa>>s). [Latin “tenant farmer sharing produce” or “a sharing landholder”] Roman law. A farmer who gave a fixed portion of the farm's produce as payment (instead of money) to the landlord. Cf. SHARECROPPING.

COLONY

colony,n. Int'l law. 1. A dependent territorial entity subject to the sovereignty of an independent country, but considered part of that country for purposes of relations with third countries. 2. A group of people who live in a new territory but retain ties with their parent country. 3. The territory inhabited by such a group. Cf. MOTHER COUNTRY. — colonize,vb. — colonial,adj.

COLOR

color,n.1. Appearance, guise, or semblance; esp., the appearance of a legal claim to a right, authority, or office <color of title> <under color of state law>.2.Common-law pleading. An apparent, but legally insufficient, right or ground of action, admitted in a defendant's pleading to exist for the plaintiff; esp., a plaintiff's apparent (and usu. false) right or title to property, the existence of which is pleaded by the defendant and then attacked as defective, as part of a confession and avoidance to remove the case from the jury by turning the issue from one of fact to one of law. See GIVE COLOR. [Cases: Pleading 133.]

“It is a rule of pleading, that no man be allowed to plead specially such a plea as amounts only to the general issue, or a total denial of the charge; but in such case he shall be driven to plead the general issue in terms, whereby the whole question is referred to a jury. But if the defendant, in an assise or action of trespass, be desirous to refer the validity of his title to the court rather than the jury, he may state his title specially, and at the same time give colour to the plaintiff, or suppose him to have an appearance or colour of title, bad indeed in point of law, but of which the jury are not competent judges. As if his own true title be, that he claims by feoffment with livery from A, by force of which he entered on the lands in question, he cannot plead this by itself, as it amounts to no more than the general issue ...not guilty in an action of trespass. But he may allege this specially, provided he goes farther and says, that the plaintiff claiming by colour of a prior deed of feoffment, without livery, entered; upon whom he entered; and may then refer himself to the judgment of the court which of these two titles is the best in point of law.” 3 William Blackstone, Commentaries on the Laws of England 309 (1768).

express color.Hist. A defendant's admission that the plaintiff has an apparent right to something coupled with an assertion that the plaintiff's right is legally inferior to the defendant's right to the same thing. • This pleading was typically used in cases of trespass to land by making fictitious allegations that put the plaintiff's ownership of the land in question. For instance, the defendant would admit that the plaintiff had shown apparent ownership of the land by possessing it but then claim that the plaintiff's title was somehow defective, so that the plaintiff did not actually own the land. This pleading was abolished by the Common-Law Procedure Act of 1852, 15 & 16 Vict., ch. 76, § 64.

“Express color is a fictitious allegation, not traversable, to give an appearance of right to the plaintiff, and thus enable the defendant to plead specially his own title, which would otherwise amount to the general issue. It is a licensed evasion of the rule against pleading contradictory matter specially.” Benjamin J. Shipman, Handbook of Common-Law Pleading § 202, at 351 (Henry Winthrop Ballantine ed., 3d ed. 1923).

implied color. 1. A defendant's tacit admission of a plaintiff's prima facie case by failing to deny it. 2. An apparent ground of action that arises from the nature of the defense, as when the defense consists of a confession and avoidance in which the defendant admits the facts but denies their legal sufficiency. • This is a quality inherent in all pleadings in confession and avoidance.

COLORABLE

colorable,adj.1. (Of a claim or action) appearing to be true, valid, or right <the pleading did not state a colorable claim>.2. Intended to deceive; counterfeit <the court found the conveyance of exempt property to be a colorable transfer, and so set it aside>.

COLORABLE ALTERATION

colorable alteration.Intellectual property. A modification that effects no real or substantial change, but is made only to distinguish an invention or work from an existing patent or copyright; a small change made in a product or process solely to avoid literal infringement of an earlier patent's claim. — Also termed colorable deviation. [Cases: Patents 174; Copyrights and Intellectual Property 53(1). C.J.S. Patents § 308.]

COLORABLE CLAIM

colorable claim.See CLAIM(4).

COLORABLE DEVIATION

colorable deviation.See COLORABLE ALTERATION.

COLORABLE IMITATION

colorable imitation.Trademarks. Any mark, whether or not created with an intent to deceive, whose resemblance to a registered mark is likely to cause confusion or mistake. See SIMILARITY. [Cases: Trade Regulation 181.C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 169, 172.]

COLORABLE-IMITATION TEST

colorable-imitation test.Trademarks. A test for a trademark violation in which a court determines whether an ordinary person who is not allowed to compare the two items side by side could recognize the difference between the two. [Cases: Trade Regulation 340.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 89, 91.]

COLORABLE TRANSACTION

colorable transaction.See TRANSACTION.

COLORABLE TRANSFER

colorable transfer.See TRANSFER.

COLORADO RIVER ABSTENTION

Colorado River abstention.See ABSTENTION.

COLOR BOOK

color book. Archaic. Int'l law. An official compilation of diplomatic documents and internal papers and reports of a government, the purpose of which is to inform the legislature and the public about foreign policy, esp. during foreign crises. • Color books reached their height of popularity in the late 19th and early 20th centuries. They are now little used in most countries.

COLORE OFFICII

colore officii (k<<schwa>>-lor-ee <<schwa>>-fish-ee-I). [Latin "by color of office"] See **COLOR OF OFFICE**.

COLOR OF APPARENT ORGANIZATION

color of apparent organization. The appearance of corporate authority, including the assumption and exercise of corporate functions in good faith, even though the corporation's organizers did not fully or substantially comply with the terms of the corporate charter or the statutory requirements for incorporation. See *de facto* corporation under **CORPORATION**.

COLOR OF AUTHORITY

color of authority. The appearance or presumption of authority sanctioning a public officer's actions. • The authority derives from the officer's apparent title to the office or from a writ or other apparently valid process the officer bears. [Cases: Officers and Public Employees 41. C.J.S. Officers and Public Employees §§ 11, 342.]

COLOR OF LAW

color of law. The appearance or semblance, without the substance, of a legal right. • The term *usu.* implies a misuse of power made possible because the wrongdoer is clothed with the authority of the state. State action is synonymous with color of [state] law in the context of federal civil-rights statutes or criminal law. See **STATE ACTION**. [Cases: Civil Rights 1323. C.J.S. Civil Rights §§ 92–94.]

COLOR OF OFFICE

color of office. The authority or power that is inherent in an office, esp. a public office. • Acts taken under the color of an office are vested with, or appear to be vested with, the authority entrusted to that office. [Cases: Officers and Public Employees 121. C.J.S. Officers and Public Employees §§ 329–334.]

“The starting point in the law of bribery seems to have been when a judge, for doing his office or acting under color of his office, took a reward or fee from some person who had occasion to come before him, — and apparently guilt attached only to the judge himself and not to the bribe-giver.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 527 (3d ed. 1982).

COLOR OF PROCESS

color of process. The appearance of validity and sufficiency surrounding a legal proceeding that is later found to be invalid.

COLOR OF TITLE

color of title. A written instrument or other evidence that appears to establish title but does not in fact do so. — Also termed apparent title.

COM

com.abbr.COMPANY.

COMAKER

comaker. One who participates jointly in borrowing money on a promissory note; esp., one who acts as surety under a note if the maker defaults. — Also termed cosigner. Cf. MAKER. [Cases: Bills and Notes 48, 118. C.J.S. Bills and Notes; Letters of Credit §§ 23, 80–82.]

COMBATANT

combatant (k<<schwa>>m-bat-<<schwa>>nt or kom-b<<schwa>>-t<<schwa>>nt). Int'l law. A person who participates directly in hostilities. • “Legitimate” combatants are members of the armed forces or uniformed members of a militia or volunteer corps, under military command and subject to the laws of war. Cf. NON-COMBATANT.

enemy combatant (k<<schwa>>m-bat-<<schwa>>nt). A combatant captured and detained while serving in a hostile force during open warfare. • In general, the separation-of-powers doctrine prevents a U.S. civilian court from interfering with the military's handling of enemy combatants, at least as long as the hostilities continue. An enemy combatant may be detained without charge and does not have the right to legal representation. United States citizenship does not prevent a person from being designated an enemy combatant.

COMBINATION

combination. 1. An alliance of individuals or corporations working together to accomplish a common (usu. economic) goal. See COMBINATION IN RESTRAINT OF TRADE . 2. CONSPIRACY. 3. STRADDLE. 4. Patents. A union of old and new elements in an invention. • The term encompasses not only a combination of mechanical elements but also a combination of substances in a composition claim or steps in a process claim. Cf. AGGREGATION. [Cases: Patents 26. C.J.S. Patents §§ 83–84.] 5. Patents. An invention that uses two or more patented inventions to make a distinct and useful third product. • In the past, an inventor seeking a combination patent had to show “synergism,” a surprising result from the combination. But the Federal Circuit ruled that the term “combination” has no legal effect because most inventions combine and build on existing technology. Today there are no special rules for combination patents. 6. Patents. A union of elements in an invention that work together cooperatively to perform a useful function; the opposite of an aggregation. Cf. AGGREGATION.

exhausted combination. See old combination.

old combination. A combination in which an element works in a different way but performs the same function as the corresponding element in a previously patented combination. • The new element may be patentable, but the combination may not be. — Also termed exhausted

combination.

COMBINATION IN RESTRAINT OF TRADE

combination in restraint of trade. Antitrust. An express or tacit agreement between two or more persons or entities designed to raise prices, reduce output, or create a monopoly. — Also termed combine. [Cases: Monopolies 12(1.3). C.J.S. Monopolies §§ 28–37, 52, 64–66.]

COMBINATION PATENT

combination patent. See PATENT(3).

COMBINE

combine (kom-bIn), n. See COMBINATION IN RESTRAINT OF TRADE.

COMBINED APPLICATION

combined application. See TRADEMARK APPLICATION.

COMBINED § 8 AND § 15 AFFIDAVIT

combined § 8 and § 15 affidavit. Trademarks. A sworn statement that satisfies the requirements of both § 8 and § 15 of the Lanham Act. — Sometimes shortened to § 8 and § 15 affidavit. — Also termed combined § 8 and § 15 declaration. See DECLARATION OF INCONTESTABILITY; DECLARATION OF USE.

COMBUSTIO DOMORUM

combustio domorum (k<<schwa>>m-bus-tee-oh d<<schwa>>-mor-<<schwa>>m). [Latin “houses burning”] Hist. See HOUSEBURNING.

COMES

comes (koh-meez). [Latin] Hist. 1. A count or earl. 2. A person who is part of a high government official's retinue. Pl. comites. See COMITATUS.

COMES AND DEFENDS

comes and defends. Archaic. Traditionally, the standard commencement of a defendant's plea or demurrer. • The phrase, now rarely used, announces the defendant's appearance in court and intent to defend against the action.

COMES NOW

comes now. Archaic. Traditionally, the standard commencement in pleadings < Comes now the plaintiff, Gilbert Lewis, by and through his attorneys of record, and would show unto the court the following>. • For a plural subject, the phrase is come now <Come now the plaintiffs, Bob and Louise Smith>. — Sometimes shortened to comes <Comes the State of Tennessee>. — Also termed now comes.

COMFORT LETTER

comfort letter. 1. Securities. A letter from a certified public accountant certifying that no false or misleading information has been used in preparing a financial statement accompanying a securities offering. • Such a letter usu. has limited effect because the CPA ordinarily attests to certain representations and warranties that the issuer has authorized the CPA to rely on. — Also termed cold-comfort letter. 2. Corporations. A letter, esp. from a parent corporation on behalf of a subsidiary, stating its support (but short of a guarantee) for the activities and commitments of another corporation. — Also termed letter of comfort.

COMFORT OPINION

comfort opinion. See OPINION(2).

COMINGLE

comingle, vb. See COMMINGLE.

COMING-TO-REST DOCTRINE

coming-to-rest doctrine. Insurance. The principle that coverage of shipped goods ends when the goods are unloaded and any cables or other links to the transporting vehicle have been disconnected. • The coming-to-rest doctrine covers only the movement of goods from the shipping vehicle to a place of rest outside the vehicle, in contrast to the broader coverage of the complete-operation rule. Cf. COMPLETE-OPERATION RULE. [Cases: Insurance 2681. C.J.S. Insurance §§ 1060, 1609.]

COMITAS

comitas (kom-*<<schwa>>-t<<schwa>>s*). [Latin “courtesy”] See COMITY.

COMITAS GENTIUM

comitas gentium. See COMITY.

COMITAS LEGUM

comitas legum (kom-*<<schwa>>-t<<schwa>>s lee-g<<schwa>>m*). [Law Latin] Hist. Comity of laws. See COMITY.

COMITATU COMMISSO

comitatu commissio (kom-*<<schwa>>-tay-t[y]oo k<<schwa>>-mis-oh*). [Latin “county commission”] Hist. A writ or commission authorizing a sheriff to take charge of a county.

COMITATU ET CASTRO COMMISSO

comitatu et castro commissio (kom-*<<schwa>>-tay-t[y]oo et kas-troh k<<schwa>>-mis-oh*). [Latin “county and castle commission”] Hist. A writ authorizing a sheriff to take charge of a county and a castle.

COMITATUS

comitatus (kom-*<<schwa>>-tay-t<<schwa>>s*). [Latin] Hist. 1. A county or shire. See

POSSE COMITATUS. 2. The territorial jurisdiction of a count or earl. 3. A county court. 4. The retinue accompanying a prince or high government official.

COMITES

comites (kom-*<<schwa>>-teez*). See COMES.

COMITES PALEYS

comites paleys (kom-*<<schwa>>-teez pa-lays*). [Law French] Hist. Counts or earls palatine; those who exercise royal privileges in a county palatine. See COUNTY PALATINE.

COMITIA

comitia (k*<<schwa>>-mish-ee-<<schwa>>*), n. [Latin “assembly”] Roman law. An assembly of the Roman people, gathered together for legislative or judicial purposes. • Women were excluded from participation.

comitia centuriata (k*<<schwa>>-mish-ee-<<schwa>> sen-tyoor-ee-ay-t<<schwa>>*). (often cap.) An assembly of the entire populace, voting by centuries (that is, military units) empowered to elect magistrates and to act as a court of appeal in a capital matter.

“The Comitia Centuriata, said to have been originated by the sixth King, Servius Tullius, included the whole Roman people arranged in classes according to their wealth, so as to give the preponderating power to the richest. During the regal period it was a military organisation on the basis of property: under the Republic it became a legislative body, ousting the Comitia Curiata.” William A. Hunter, *Introduction to Roman Law* 16 (F.H. Lawson ed., 9th ed. 1934).

comitia curiata (k*<<schwa>>-mish-ee-<<schwa>> kyoor-ee-ay-t<<schwa>>*). (often cap.) An assembly of (originally) patricians whose chief function was to authorize private acts of citizens, such as declaring wills and adoptions. • The comitia curiata engaged in little legislative activity.

“The oldest [of the four assemblies of the Roman people] was the Comitia Curiata. In the regal period this as-sembly consisted of the Populus Romanus in its thirty curies (or family groups): it could meet only by summons of the King; it merely accepted or rejected the proposals submitted by him, without the right of discussion or amendment; nor was any decision by it valid without the authorisation of the Senate. Under the Republic it rapidly fell into the background, though it formally existed, represented by thirty lictors, down into Imperial times: for the private law its main importance lay in its meetings under pontifical presidency to deal with matters of religious significance, such as adrogations and wills.” William A. Hunter, *Introduction to Roman Law* 15–16 (F.H. Lawson ed., 9th ed. 1934).

comitia tributa (k*<<schwa>>-mish-ee-<<schwa>> tri-byoo-t<<schwa>>*). (often cap.) An assembly of tribes convened to elect lower-ranking officials. • The comitia tributa undertook a great deal of legislative activity in the later Roman republic. Cf. CONCILIUM PLEBIS.

“The Comitia Tributa was the assembly of the whole Roman people in their tribes — a regional classification. In this assembly the influence of numbers predominated.” William A.

Hunter, Introduction to Roman Law 16 (F.H. Lawson ed., 9th ed. 1934).

COMITY

comity (kom-*<<schwa>>-tee*).1. A practice among political entities (as nations, states, or courts of different jurisdictions), involving esp. mutual recognition of legislative, executive, and judicial acts. — Also termed *comitas gentium*; *courtoisie internationale*. See FEDERAL-COMITY DOCTRINE; JUDICIAL COMITY. Cf. AB-STENTION.

“ ‘Comity,’ in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 163–64, 16 S.Ct. 139, 143 (1895).

2.INTERNATIONAL LAW. • This sense is considered a misusage: “[I]n Anglo-American jurisprudence, ... the term is also misleadingly found to be used as a synonym for international law.” Peter Macalister-Smith, “Comity,” in 1 Encyclopedia of Public International Law 672 (1992).

COMITY CLAUSE

Comity Clause.The clause of the U.S. Constitution giving citizens of one state the right to all privileges and immunities enjoyed by citizens of the other states. U.S. Const. art. IV, § 2, cl. 1. See PRIVILEGES AND IMMUNITIES CLAUSE . [Cases: Constitutional Law 207. C.J.S. Constitutional Law § 649.]

COMM.

comm.abbr.COMMONWEALTH.

COMMAND

command. 1. An order; a directive. 2. In legal positivism, the sovereign's express desire that a person act or refrain from acting a certain way, combined with the threat of punishment for failure to comply.

“Commands are orders backed by threats. It is in virtue of threatened evils, sanctions, that expressions of desire not only constitute commands but also impose an obligation or duty to act in the prescribed ways.” Martin P. Golding, *Philosophy of Law* 26 (1975).

command,vb. To direct authoritatively; to order.

COMMANDER-IN-CHIEF

commander-in-chief. 1. One who holds supreme or highest command of armed forces. [Cases: Armed Services 1, 4. C.J.S. Armed Services §§ 2–4, 11–12, 14, 16–19, 37.] 2. (cap.) The title of the U.S. President when acting as the constitutionally designated leader of the nation's military.

U.S. Const. art. II, § 2.

COMMANDER IN CHIEF CLAUSE

Commander in Chief Clause. The clause of the U.S. Constitution appointing the President as supreme commander of the military. U.S. Const. art. II, § 2, cl. 1. [Cases: Armed Services 1, 4. C.J.S. Armed Services §§ 2-4, 11-12, 14, 16-19, 37.]

COMMANDMENT

commandment. Hist. 1. An authoritative order of a judge or magisterial officer. 2. The offense of inducing another to commit a crime.

COMMENCEMENT

commencement. See INTRODUCTORY CLAUSE.

COMMENCEMENT OF INFRINGEMENT

commencement of infringement. Copyright. The first of a series of discrete copyright violations, such as the first of many separate sales of infringing items. See INFRINGEMENT. [Cases: Copyrights and Intellectual Property 53(1).]

COMMENDA

commenda (k<<schwa>>-men-d<<schwa>>). A business association in which one person has responsibility for managing all business property.

COMMENDAM

commendam (k<<schwa>>-men-dam or -d<<schwa>>m). 1. Hist. Eccles. law. A vacant benefice held by a clerk until a regular pastor could be appointed. • Bishops and other dignitaries found commendams to be lucrative sources of income. Commendams were abolished in England in 1836. See BENEFICE. 2. Partnership in commendam. See limited partnership under PARTNERSHIP.

COMMENDATION

commendation. Hist. The act of becoming a lord's feudal tenant to receive the lord's protection.

COMMENDATOR

commendator (kom-<<schwa>>n-day-t<<schwa>>r). Eccles. law. A person holding a commendam (a benefice) as a trustee. • Commendators are so called because benefices are commended to their supervision. See COMMENDAM.

COMMENDATUS

commendatus (kom-<<schwa>>n-day-t<<schwa>>s). Hist. A person who, by voluntary oath of homage, was placed under a lord's protection.

COMMENT

comment,n.1.NOTE(2).2. An explanatory statement made by the drafters of a particular statute, code section, or rule. [Cases: Statutes 211.] — commentator,n.

COMMENTATORS

commentators. See POSTGLOSSATORS.

COMMENTER

commenter. One who comments; esp., one who sends comments to an agency about a proposed administrative rule or regulation. See NOTICE-AND-COMMENT PERIOD. [Cases: Administrative Law and Procedure 394. C.J.S. Public Administrative Law and Procedure §§ 104–105.]

COMMENT ON THE EVIDENCE

comment on the evidence.A statement made to the jury by the judge or by counsel on the probative value of certain evidence. Fed. R. Evid. 105. • Lawyers typically make such comments in closing argument, and judges may make such comments in federal court. But most state-court judges are not permitted to do so when examining a witness, instructing the jury, and the like (in which case the comment is sometimes termed an impermissible comment on the evidence). [Cases: Criminal Law 720; Federal Civil Procedure 1973; Trial 121. C.J.S. Criminal Law § 1263; Trial §§ 305–307.]

COMMENT PERIOD

comment period.See NOTICE-AND-COMMENT PERIOD.

COMMERCE

commerce. The exchange of goods and services, esp. on a large scale involving transportation between cities, states, and nations.

internal commerce.See intrastate commerce.

international commerce.Trade and other business activities between nations.

interstate commerce.Trade and other business activities between those located in different states; esp., traffic in goods and travel of people between states. • For purposes of this phrase, most statutory definitions include a territory of the United States as a state. Some statutory definitions of interstate commerce include commerce between a foreign country and a state. — Also termed interstate trade. [Cases: Commerce 5. C.J.S. Commerce §§ 2, 6.]

intrastate commerce.Commerce that begins and ends entirely within the borders of a single state. — Also termed internal commerce. [Cases: Commerce 7. C.J.S. Commerce § 10.]

COMMERCE CLAUSE

Commerce Clause.U.S. Const. art. I, § 8, cl. 3, which gives Congress the exclusive power to

regulate commerce among the states, with foreign nations, and with Indian tribes. [Cases: Commerce 4–6. C.J.S. Commerce §§ 2–3, 5–7.]

Dormant Commerce Clause.The constitutional principle that the Commerce Clause prevents state regulation of interstate commercial activity even when Congress has not acted under its Commerce Clause power to regulate that activity. — Also termed **Negative Commerce Clause**. [Cases: Commerce 10. C.J.S. Commerce § 14.]

COMMERCE COURT

Commerce Court. See **COURT**.

COMMERCE POWER

commerce power. Congress's constitutionally conferred power to regulate trade between the states.

COMMERCIA BELLI

commercia belli (k<<schwa>>-m<<schwa>>r-shee-<<schwa>> bel-I). [Latin “commerce of war”] Commercial dealings or contracts between nations at war, or between the subjects of nations at war, under which arrangements for nonhostile dealings are made.

COMMERCIAL ACQUIESCENCE

commercial acquiescence. See **ACQUIESCENCE**.

COMMERCIAL-ACTIVITY EXCEPTION

commercial-activity exception. An exemption from the rule of sovereign immunity, permitting a claim against a foreign state to be adjudicated in the courts of another state if the claim arises from private acts undertaken by the foreign state, as opposed to the state's public acts. See **RESTRICTIVE PRINCIPLE OF SOVEREIGN IMMUNITY** ; **JURE GESTIONIS**; **JURE IMPERII**. [Cases: International Law 10.33. C.J.S. International Law §§ 46–48.]

COMMERCIAL AGENT

commercial agent. See **AGENT**(2).

COMMERCIAL ASSETS

commercial assets. See **ASSET**.

COMMERCIAL BANK

commercial bank. See **BANK**.

COMMERCIAL BRIBERY

commercial bribery. See **BRIBERY**.

COMMERCIAL BROKER

commercial broker.See BROKER.

COMMERCIAL COURT

commercial court.See COURT.

COMMERCIAL CREDIT COMPANY

commercial credit company.See commercial finance company under FINANCE COMPANY .

COMMERCIAL CRIME

commercial crime.See CRIME.

COMMERCIAL DEFAMATION

commercial defamation.See trade defamation under DEFAMATION.

COMMERCIAL DISPARAGEMENT

commercial disparagement.See TRADE DISPARAGEMENT.

COMMERCIAL DIVISION

commercial division.See business court under COURT.

COMMERCIAL DOMICILE

commercial domicile.See DOMICILE.

COMMERCIAL FINANCE COMPANY

commercial finance company.See FINANCE COMPANY.

COMMERCIAL FRANCHISE

commercial franchise.See FRANCHISE(4).

COMMERCIAL FRUSTRATION

commercial frustration.See FRUSTRATION.

COMMERCIAL GENERAL-LIABILITY POLICY

commercial general-liability policy.See INSURANCE POLICY.

COMMERCIAL IMPRACTICABILITY

commercial impracticability.See IMPRACTICABILITY.

COMMERCIAL INSURANCE

commercial insurance.See INSURANCE.

COMMERCIALIZED OBSCENITY

commercialized obscenity. See OBSCENITY.

COMMERCIAL LAW

commercial law. 1. The substantive law dealing with the sale and distribution of goods, the financing of credit transactions on the security of the goods sold, and negotiable instruments. • Most American commercial law is governed by the Uniform Commercial Code. — Also termed mercantile law.

“Although the term commercial law is not a term of art in American law it has become synonymous in recent years with the legal rules contained in the Uniform Commercial Code.” Jonathan A. Eddy & Peter Winship, *Commercial Transactions* 1 (1985).

2.LAW MERCHANT.

COMMERCIAL-LAW NOTICE

commercial-law notice. See NOTICE.

COMMERCIAL LEASE

commercial lease. See LEASE.

COMMERCIAL LETTER OF CREDIT

commercial letter of credit. See LETTER OF CREDIT.

COMMERCIAL LOAN

commercial loan. See LOAN.

COMMERCIALLY REASONABLE

commercially reasonable, adj. (Of a property sale) conducted in good faith and in accordance with commonly accepted commercial practice. • Under the UCC, a sale of collateral by a secured party must be done in a commercially reasonable manner, or the obligor's liability for any deficiency may be reduced or eliminated. UCC §§ 9-610(b), 9-626. [Cases: Secured Transactions 231. C.J.S. Secured Transactions §§ 151, 169, 171–175.]

COMMERCIALLY SIGNIFICANT NONINFRINGEMENT USE

commercially significant noninfringing use. Intellectual property. The routine use of a product in a way that does not infringe intellectual-property rights; the judicial test for determining whether the sale of a product amounts to contributory infringement. • If the product (such as a videotape recorder) can be used in a way that does not infringe those rights (such as recording a program in order to watch it at a later time), then its sale cannot be enjoined, or its manufacturer subjected to a court-imposed royalty. See *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 442, 104 S.Ct. 774, 789–90 (1984) (Stevens, J.). — Also termed Sony doctrine; substantial noninfringing use. Cf. PRIMARY PURPOSE OR EFFECT.

COMMERCIAL MORALITY

commercial morality. Collectively, fair practices among competitors. • Commercial espionage is often cited by courts as being below accepted standards of commercial morality.

COMMERCIAL NAME

commercial name. See TRADENAME.

COMMERCIAL PAPER

commercial paper. See PAPER.

COMMERCIAL PARTNERSHIP

commercial partnership. See trading partnership under PARTNERSHIP.

COMMERCIAL SET

commercial set. 1. The primary documents covering shipment of goods, usu. including an invoice, bill of lading, bill of exchange, and certificate of insurance. 2. The documents required under a letter of credit.

COMMERCIAL SIGNATURE

commercial signature. Trademarks. A trademark (as commonly described).

COMMERCIAL SPEECH

commercial speech. See SPEECH.

COMMERCIAL SURETY

commercial surety. See compensated surety under SURETY.

COMMERCIAL TORT CLAIM

commercial tort claim. A claim arising in tort when the claimant is either (1) an organization, or (2) an individual whose claim arose in the course of the claimant's business or profession, and the claim does not include damages arising out of personal injury or death. UCC § 9-102(a)(13).

COMMERCIAL-TRAVELER RULE

commercial-traveler rule. Workers' compensation. The principle that an accident will be treated as occurring during the course of employment if it was caused by an employee whose job requires travel, and the employee was not on a personal errand. • The commercial-traveler rule is an exception to the going-and-coming rule. [Cases: Workers' Compensation 714–715. C.J.S. Workmen's Compensation § 428.]

COMMERCIAL TREATY

commercial treaty. See TREATY(1).

COMMERCIAL UNIT

commercial unit. A unit of goods that by commercial usage is a single whole for purposes of

lease and whose division materially impairs its character or value in the relevant market or in use. UCC § 2-105(6). • Under the UCC, “a commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.” Id. [Cases: Sales 129, 180(1). C.J.S. Sales §§ 130, 192.]

COMMETTANT

commettant (kom-*<<schwa>>*-t*<<schwa>>*nt), n.1. An employer. 2. The principal in an agency relationship.

COMMUNICATOR

comminatorium (k*<<schwa>>*-min-*<<schwa>>*-tor-ee-*<<schwa>>*m). [Latin *comminari* “threaten”] Hist. A clause often included at the end of a writ, admonishing the sheriff to be faithful in the writ's execution.

COMMINGLE

commingle, vb.1. To put together (as funds or property) into one mass, as by mixing together a spouse's separate property with marital or community property, or mixing together the separate property of both spouses. 2. (Of a fiduciary) to mix personal funds with those of a beneficiary or client. — Also spelled *comingle*. See COM-MINGLING. Cf. TRACING.

COMMINGLING

commingling (k*<<schwa>>*-ming-gling), n. A mixing together; esp., a fiduciary's mixing of personal funds with those of a beneficiary or client. • Commingling is usu. considered a breach of the fiduciary relationship. Under the Model Rules of Professional Conduct, a lawyer is prohibited from commingling personal funds with those of a client. — Also spelled *comingling*.

COMMISSARY

commissary (kom-i-ser-ee), n.1. A person who is delegated or commissioned to perform some duty, usu. as a representative of a superior. 2. A general store, esp. on a military base; also, a lunchroom. — *commissary*, adj.

COMMISSARY COURT

commissary court. See COURT.

COMMISSION

commission, n.1. A warrant or authority, from the government or a court, that empowers the person named to execute official acts <the student received his commission to the U.S. Navy after graduation>.2. The authority under which a person transacts business for another <the client gave her attorney express commission to sign the contract>.3. A body of persons acting under lawful authority to perform certain public services <the Federal Communications Commission>.

public-service commission. A commission created by a legislature to regulate public utilities

or public-service corporations. [Cases: Public Utilities 141. C.J.S. Public Utilities §§ 60–61.]

4. The act of doing or perpetrating (as a crime) <the perpetrator fled to Mexico after commission of the assault>.5. A fee paid to an agent or employee for a particular transaction, usu. as a percentage of the money received from the transaction <a real-estate agent's commission>. [Cases: Brokers 39–75; Master and Servant 70(2). C.J.S. Brokers §§ 116–188, 190; Employer–Employee Relationship § 140–142, 165.]

double commission.A commission paid by both a seller and a buyer to the same person acting in different capacities. [Cases: Brokers 67. C.J.S. Brokers § 182.]

COMMISSIONAIRE

commissionaire. See AGENT.

COMMISSION BROKER

commission broker.See BROKER.

COMMISSION DAY

commission day.English law. The opening day of the assizes. • On this day the commission that authorizes the judge to act is publicly read. — Also written commission-day.

COMMISSION DEL CREDERE

commission del credere (del kred-*<<schwa>>r-ay*). The commission received by the seller's agent for guaran-teeing a buyer's debt. [Cases: Factors 29.]

COMMISSIONED OFFICER

commissioned officer.See OFFICER(2).

COMMISSIONER

commissioner. 1. A person who directs a commission; a member of a commission. 2. The administrative head of an organization, such as a professional sport. 3. See judicial officer (3) under OFFICER.

bail commissioner.See BAIL COMMISSIONER.

Commissioner for Patents.The chief operating officer of the patents section of the U.S. Patent and Trademark Office. • The commissioner is appointed by the Secretary of Commerce.

Commissioner for Trademarks.The chief operating officer of the trademarks section of the U.S. Patent and Trademark Office. • The commissioner is appointed by the Secretary of Commerce.

commissioner in bankruptcy.English law. A commissioner who is appointed by the Lord Chancellor and em-powered to proceed in corporate-bankruptcy cases.

commissioner of bail.See BAIL COMMISSIONER.

commissioner of circuit court.A court-appointed officer who helps the circuit and district courts by performing judicial and ministerial functions.

commissioner of deeds.An officer authorized by a state to take acknowledgments of deeds and other papers while residing in another state. • The acknowledgments are recognized in the state that licensed the commissioner. Cf. NOTARY PUBLIC. [Cases: Acknowledgment 14. C.J.S. Acknowledgments § 30.]

commissioner of highways.A public officer responsible for overseeing the construction, alteration, and repair of highways. [Cases: Highways 93.]

commissioner of partition.An equity-court-appointed officer who is empowered to examine a request for partition and recommend an action to the court, or to make the partition and report the act to the court.

Commissioner of Patents and Trademarks.See DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

commissioner of woods and forests.Hist. An officer who, by an 1817 Act of Parliament, assumed the jurisdiction of the Chief Justice of the Forest.

county commissioner.A county officer charged usu. with the management of the county's financial affairs, its police regulations, and its corporate business. — Also termed county supervisor. [Cases: Counties 38. C.J.S. Counties § 63.]

court commissioner.An officer appointed by the court esp. to hear and report facts, or to conduct judicial sales. [Cases: Court Commissioners 1. C.J.S. Courts §§ 228–229.]

jury commissioner.An officer responsible for drawing and summoning the panels of potential jurors in a given county. [Cases: Jury 59. C.J.S. Juries § 281.]

public commissioner.See PROSECUTOR(1).

town commissioner.A member of the board of administrative officers charged with managing the town's business. [Cases: Towns 26. C.J.S. Towns §§ 82–93.]

United States Commissioner.Hist. A judicial officer appointed by a U.S. district court to hear a variety of pretrial matters in criminal cases. • Commissioners' duties have been transferred to U.S. Magistrate Judges. Cf. UNITED STATES MAGISTRATE JUDGE.

COMMISSIONER'S COURT

commissioner's court.See COURT.

COMMISSION GOVERNMENT

commission government.A type of municipal government in which the legislative power is in the hands of a few people. [Cases: Municipal Corporations 48(1). C.J.S. Municipal Corporations § 81.]

COMMISSION MERCHANT

commission merchant. See FACTOR.

COMMISSION OF APPRAISEMENT AND SALE

commission of appraisal and sale. Maritime law. A court order requiring the sale of property in an in rem admiralty action. [Cases: Admiralty 99.C.J.S. Admiralty §§ 244–247.]

COMMISSION OF ASSIZE

commission of assize. Hist. A royal authorization empowering a person to hold court and try cases arising while the justices in eyre held court elsewhere. Cf. EYRE.

“[B]oth the presentment of crimes and the conduct of trials by assize or jury — which rapidly became a common feature of royal justice — required the presence of twelve or more men from the vicinity where the matter in question occurred.... The means of achieving this reconciliation was the frequent issue of commissions to perform judicial functions in the country.... [A]ssize commissioners had original jurisdiction to hear a case from beginning to end But the assizes, though moulded into a regular routine, never became a distinct ‘court’ in the permanent sense. The jurisdiction of the judges rested entirely on the commissions which issued for each circuit: the judges could therefore be regularly interchanged, and after 1340 it was quite normal for a Common Plea case to be tried at nisi prius by a King's Bench judge, and vice versa.” J.H. Baker, *An Introduction to English Legal History* 67 (3d ed. 1990).

COMMISSION OF CHARITABLE USES

commission of charitable uses. Hist. An authorization issuing out of the Court of Chancery to a bishop or other person authorizing the appointee to investigate allegations of fraud or other disputed matters concerning charitable land grants.

COMMISSION OF DELEGATES

commission of delegates. Hist. A commission appointing a person (usu. a lord, bishop, or judge) to sit with several other appointees to hear an appeal of an ecclesiastical judgment in the Court of Chancery. • This commission was abolished in 1832, and its functions transferred to the Judicial Committee of the Privy Council.

COMMISSION OF FINE ARTS

Commission of Fine Arts. An independent federal commission that advises the President, Congress, and governmental agencies on the design of public buildings, memorials, and parks in the nation's capital so as to complement historic structures and districts. • The commission was created in 1910.

COMMISSION OF GAOL DELIVERY

Commission of Gaol Delivery. Hist. A royal appointment authorizing a judge to go on the assize circuit and hear all criminal cases of those held in county jails. See JAIL DELIVERY. Cf. COMMISSION OF OYER AND TERMINER.

COMMISSION OF LIEUTENANCY

commission of lieutenancy.Hist. A commission issued to send officers into every county to establish military order over the inhabitants. • This commission superseded the former commission of array, which provided the same powers. The commissions became obsolete with the establishment of the militia system.

COMMISSION OF LUNACY

commission of lunacy.See DE LUNATICO INQUIRENDO.

COMMISSION OF OYER AND TERMINER

Commission of Oyer and Terminer (oy-*<<schwa>>r* an[d] t*<<schwa>>r*-m*<<schwa>>-n<<schwa>>r*). [Law French oyer et terminer “to hear and determine”] Hist. A royal appointment authorizing a judge (often a ser-jeant-at-law) to go on the assize circuit and hear felony and treason cases. Cf. DE AUDIENDO ET TERMINANDO ; COMMISSION OF GAOL DELIVERY; COURT OF OYER AND TERMINER.

“[U]nder the commission of Oyer and Terminer, as the judges are directed to inquire as well as to hear and de-terminer the same, they can only proceed upon an indictment found at the same assize, and before themselves; for they must first inquire by means of the grand jury or inquest, before they are empowered to hear and determine by the intervention of the petit jury.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 142 (2d ed. 1826).

COMMISSION OF PARTITION

commission of partition.An authorization appointing a person to sit with several other appointees for the purpose of dividing land held by tenants in common who desire a partition. [Cases: Partition 91. C.J.S. Partition §§ 129, 131.]

COMMISSION OF REBELLION

commission of rebellion.Hist. An attaching process that empowered a layperson to arrest and bring a defendant to Chancery to enforce obedience to a writ of subpoena or decree. • The commission of rebellion was abolished in 1841. — Also termed writ of rebellion; commissio rebellionis; breve rebellionis.

“Commission of rebellion (Commissio rebellionis) is otherwise called a writte of rebellion, (breve rebellionis) and it hath use, when a man after proclamation made by the Shyreeve upon an order of the channcerie, or court of Starre chamber, under penaltie of his allegiance, to present himselfe to the court by a certaine day, appeareth not. And this commission is directed by way of command to certain persons, to this end, that they ... apprehend, or cause to be apprehended, the party as a rebell and contemner of the kings lawes.” John Cowell, *The Interpreter* (1607).

COMMISSION OF REVIEW

commission of review.Hist. In England, an authorization sometimes granted in an extraordinary case to review a judgment of the Court of Delegates. • The commission of review is no longer used because the Privy Council was substituted for the Court of Delegates as the appellate court in ecclesiastical cases in 1832. See COURT OF DELEGATES.

COMMISSION OF THE PEACE

commission of the peace.Hist. An appointment of a person to keep the peace (i.e., provide police protection) on a local level. • Over time the recipients of these commissions began to acquire judicial responsibilities, and became known as justices of the peace.

COMMISSION OF UNLIVERY

commission of unlivery (<<schwa>>n-liv-<<schwa>>r-ee).Hist. A court order requiring the unloading of goods from a ship so that they may be appraised.

COMMISSION ON CIVIL RIGHTS

Commission on Civil Rights.See UNITED STATES COMMISSION ON CIVIL RIGHTS.

COMMISSION PLAN

commission plan.A form of municipal government whereby both legislative and executive power is vested in a small group of elected officials. • Today, commission plans are used in only a few cities. [Cases: Municipal Corporations 48(1). C.J.S. Municipal Corporations § 81.]

COMMISSION TO EXAMINE A WITNESS

commission to examine a witness.A judicial commission directing that a witness beyond the court's territorial jurisdiction be deposed. • The commission usu. identifies the person to be deposed, when and where the deposition will be taken, and any other information that will help the commissioner to perform. — Also termed commission to take a deposition; commission to take testimony. Cf. LETTER OF REQUEST. [Cases: Pretrial Procedure 96.C.J.S. Discovery §§ 14–15.]

COMMISSION TO TAKE A DEPOSITION

commission to take a deposition.See COMMISSION TO EXAMINE A WITNESS.

COMMISSION TO TAKE TESTIMONY

commission to take testimony.See COMMISSION TO EXAMINE A WITNESS.

COMMISSIO REBELLIONIS

commissio rebellionis.See COMMISSION OF REBELLION.

COMMISSIVE WASTE

commissive waste.See WASTE(1).

COMMISSORIA LEX

commissoria lex.See LEX COMMISSORIA.

COMMIT

commit,vb.1. To perpetrate (a crime).2. To send (a person) to prison or to a mental-health

facility, esp. by court order. 3.Parliamentary law. REFER.

COMMITMENT

commitment,n.1. An agreement to do something in the future, esp. to assume a financial obligation <the shipper made a firm commitment to deliver the goods>.2. The act of entrusting or giving in charge <commitment of money to the bank>.3. The act of confining a person in a prison, mental hospital, or other institution <commitment of the felon to prison>. [Cases: Mental Health 31–37; Sentencing and Punishment 462, 463. C.J.S. Insane Persons §§ 45–47, 49–54, 57, 60–64, 66, 70.] 4. The order directing an officer to take a person to a penal or mental institution; MITTIMUS(1) <the judge signed the commitment after ruling that it was in the best interest of the troubled teen>.

civil commitment.See CIVIL COMMITMENT(1).

diagnostic commitment.Pretrial or presentencing confinement of an individual, usu. to determine the individual's competency to stand trial or to determine the appropriate sentence to be rendered.

discretionary commitment.A commitment that a judge may or may not grant, depending on whether the gov-ernment has proved — usu. by clear and convincing evidence — that the commitment is necessary for the well-being of the defendant or society (as when the defendant is insane and dangerous). • Most states allow discretionary commitment.

mandatory commitment.An automatically required commitment for a defendant found not guilty by reason of insanity. • This type of commitment is required under federal law, but in only a minority of states.

new court commitment.The confinement in prison of a person who is being admitted on a new conviction — that is, someone who is not being returned to prison for a parole violation.

voluntary commitment.A commitment of a person who is ill, incompetent, drug-addicted, or the like, upon the request or with the consent of the person being committed.

COMMITMENT DOCUMENT

commitment document.An order remanding a defendant to prison in order to carry out a judgment and sentence.

COMMITMENT FEE

commitment fee.An amount paid to a lender by a potential borrower for the lender's promise to lend money at a stipulated rate and within a specified time. • Commitment fees are common in real-estate transactions. See LOAN COMMITMENT .

COMMITMENT LETTER

commitment letter. 1. A lender's written offer to grant a mortgage loan. • The letter generally outlines the loan amount, the interest rate, and other terms. — Also termed letter of commitment. [Cases: Mortgages 211.C.J.S. Mortgages §§ 274–276.] 2.LETTER OF INTENT.

COMMITMENT WARRANT

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

COMMITTEE

committee (k<<schwa>>-mit-ee). 1. (k<<schwa>>-mit-ee). A subordinate group to which a deliberative assembly or other organization refers business for consideration, investigation, oversight, or action <the bill was sent to legislative committee>.

“One of the outstanding characteristics of membership organizations the world over is the powerful role played by committees in setting policy and in carrying out their objectives. The Congress, state legislatures, business associations, and countless clubs and societies have traditionally conducted their work through committees of their members.” Lewis Deschler, *Deschler's Rules of Order* § 103, at 189 (1976).

ad hoc committee. See special committee.

arrangements committee. A committee charged with organizing the physical space in which a deliberative assembly meets.

audit committee. A committee appointed by the board of an organization, esp. a corporation, to oversee the financial reporting process, select an independent auditor, and receive the audit. • Ideally, a committee member is financially literate and wholly independent, having no financial interest (direct or indirect) in the company, no executive position, and no familial relationship with any member of the company's management or a major shareholder.

committee of one. A committee with only one member.

committee of the whole. A special committee that comprises all the deliberative assembly's members who are present. • A deliberative assembly may resolve itself into a committee of the whole so that it can take advantage of the greater procedural flexibility that a committee enjoys, usu. presided over by some chair other than the assembly's regular chair. Cf. quasi committee of the whole. [Cases: States 32. C.J.S. States §§ 48–50.]

committee on conference. See conference committee.

committee with full power. See committee with power.

committee with power. A committee to which the referring body has delegated the necessary authority for acting on the business referred, usu. without need for a prior report to the referring body. — Also termed committee with full power.

conference committee. A joint meeting of two legislative committees, one from each house of a bicameral legislature, usu. charged with adjusting differences in a bill passed by both houses in different versions. — Also termed committee on conference. See CONFERENCE(2). [Cases: States 34. C.J.S. States §§ 55–58.]

“A committee on conference from each of the two houses meeting together is not a joint committee but a joint meeting of two committees. The quorum of a committee on conference is a

majority of the members of each committee. In voting in a conference committee, the committee of each house votes separately. The committee on conference from each house submits its report to the house from which it was appointed. The report, upon being received, may be treated like other reports, except that the report of a conference committee is usually given a higher precedence. Under no condition, including suspension of the rules, may the house alter or amend the report of the committee, but must adopt or refuse to adopt the report in the form submitted.” National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 770, at 558–59 (2000).

congressional committee.A committee of the House of Representatives, a committee of the Senate, or a joint committee. [Cases: United States 23. C.J.S. United States § 39.]

credentials committee.A committee charged with preparing a roster of delegates entitled to be seated, examining contested claims to such entitlement, and preparing and issuing credentials to the delegates who appear so entitled. See CREDENTIAL.

executive committee.The committee of principal officers and directors who directly manage an organization's affairs between board meetings. [Cases: Corporations 299.]

joint committee.A legislative committee composed of members of both houses of a legislature.

legislative committee.A group of legislators appointed to help a legislature conduct its business, esp. by providing careful consideration of proposals for new legislation within a particular field so that the entire body can handle its work efficiently without wasting time and effort on unmeritorious submissions. [Cases: States 34. C.J.S. States §§ 55–58.]

membership committee.A committee charged with recruiting and keeping members and getting them involved.

nominating committee.A committee charged with identifying (and perhaps recruiting) and recommending a suitable candidate or candidates for election by a deliberative assembly. — Also termed screening committee.

ordinary committee.A committee other than a committee of the whole.

parent committee.A committee that refers business to a subcommittee. • The parent committee is so called only when considered in relation to the subcommittee. See subcommittee.

permanent committee.See standing committee.

platform committee.A committee charged with developing a comprehensive statement of an organization's, usu. a political party's, public policies and principles.

program committee.The committee that plans a convention's program, usu. including both its formal business and its educational and social events.

quasi committee of the whole.A committee of the whole over which the deliberative assembly's regular chair presides.

reference committee. See resolutions committee.

resolutions committee. A committee charged with screening the original main motions offered for a convention's consideration. — Also termed reference committee; screening committee.

rules committee. A committee charged with drafting rules and an agenda for the orderly conduct of a deliberative assembly's business, particularly that of a legislative body or a convention.

search committee. A committee charged with finding a suitable choice from several options, such as candidates for employment or places for a meeting.

screening committee. 1. See nominating committee. 2. See resolutions committee.

select committee. See special committee.

special committee. A committee established for a particular purpose or a limited time. • A legislature will ordinarily establish a special committee for a nonlegislative purpose, such as writing memorials, procuring chaplains, determining the qualifications of members, and settling election disputes. — Also termed ad hoc committee; select committee; temporary committee. [Cases: States 34. C.J.S. States §§ 55–58.]

standing committee. A committee that is established for ongoing business, that continues to exist from session to session, and that is usu. charged with considering business of a certain recurring kind. • A legislature will ordinarily establish a standing committee concerned with a specific field of legislation. A legislative standing committee usu. considers basic questions of legislative policy, holds hearings on legislation, eliminates unwanted bills, and prepares favored measures for passage. — Also termed permanent committee. [Cases: United States 23. C.J.S. United States § 39.]

subcommittee. A group within a committee to which the committee may refer business, standing in the same relation to its parent committee as the committee stands to the deliberative assembly. See parent committee.

tellers committee. A committee that helps the chair administer an election or other vote by handing out and picking up ballots if necessary, counting the votes or canvassing the ballots, and reporting the result to the chair for announcement. See CANVASS(2).

temporary committee. See special committee.

2. (k<<schwa>>m-i-tee) A person who is civilly committed, usu. to a psychiatric hospital <the board determined that the committee was dangerous and should not be released>. [Cases: Mental Health 36. C.J.S. Insane Persons §§ 49–52.] 3. (k<<schwa>>m-i-tee) The guardian for the person so committed <the patient's lawyer objected to the appointment of the committee>. [Cases: Mental Health 116. C.J.S. Insane Persons §§ 123–125, 129.]

COMMITTEE AMENDMENT

committee amendment. See AMENDMENT(3).

COMMITTEE JURISDICTION

committee jurisdiction. See CHARGE(8).

COMMITTEE REPORT

committee report. See REPORT(1).

COMMITTEE SUBSTITUTE

committee substitute. See clean bill under BILL(3).

COMMITTING MAGISTRATE

committing magistrate. See MAGISTRATE.

COMMITTITUR

committitur (k<<schwa>>-mit-<<schwa>>-t<<schwa>>r). [Latin "he is committed"] Archaic. An order or minute stating that the person named in it is to be committed to the custody of the sheriff.

COMMITTITUR PIECE

committitur piece. Hist. An instrument used to civilly charge a debtor already in prison, esp. by the plaintiff who had brought about the debtor's imprisonment. • The committitur piece was rendered obsolete by the 1869 Debtors Act, which abolished imprisonment for debt.

COMMIXTIO

commixtio (k<<schwa>>-miks-tee-oh), n. [Latin "mixture"] Roman law. A mixture of separable (i.e., dry or solid) items belonging to different owners, the resulting mixture being held in common or divided in proportion to the shares contributed. See CONFUSION OF GOODS. Cf. CONFUSIO(1).

COMMODATARY

commodatary (k<<schwa>>-mohd-<<schwa>>-tair-ee). [fr. Latin commodatarius] Roman & civil law. A bailee in a commodatum; borrower.

COMMODATE

commodate (kom-<<schwa>>-dayt), n. See COMMODATUM.

COMMODATI ACTIO

commodati actio (kom-<<schwa>>-day-tlak-shee-oh). See actio commodati under ACTIO.

COMMODATOR

commodator (kom-<<schwa>>-day-t<<schwa>>r), n. Roman & civil law. A lender or bailor.

COMMODATUM

commodatum (kom-<<schwa>>-day-t<<schwa>>m), n. [Latin commodare “to lend”] Roman & civil law. The gratuitous lending of goods to be used by the borrower and then returned undamaged to the lender. • This arrangement is for the sole benefit of the borrower. It is one of three types of contracts for permissive use, the other two being locatio conductio and mutuum. — Also termed accommodatum; commodate. Pl. commodata.

“Commodatum was loan for use, the borrower being required to return the identical res. This contract was gratuitous, being usually for a limited time and a specific purpose. The borrower must use the greatest care in looking after the res but has not to answer for loss occasioned by fire or accident beyond his control, provided that there was no fault. If, however, the res was put to a use foreign to the terms of the agreement, strict liability might follow, e.g., if the res was wrongfully taken on a journey and lost through attack by enemies or shipwreck.” G.W. Paton, *Bailment in the Common Law* 49–50 (1952).

COMMODITY

commodity. 1. An article of trade or commerce. • The term embraces only tangible goods, such as products or merchandise, as distinguished from services. 2. An economic good, esp. a raw material or an agricultural product. [Cases: Commodity Futures Trading Regulation 7.]

COMMODITY-BACKED BOND

commodity-backed bond. See BOND(3).

COMMODITY CREDIT CORPORATION

Commodity Credit Corporation. A federally chartered corporation responsible for extending credit in order to stabilize farm income and prices. • Incorporated in Delaware in 1933 and operated in affiliation with the Reconstruction Finance Corporation, it was transferred to the U.S. Department of Agriculture in 1939 and chartered in 1948 as a federal corporation. 15 USCA § 714. — Abbr. CCC. [Cases: Agriculture 3.5(1).]

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Trading Commission. A five-member federal commission that regulates trading in futures and options contracts and monitors the activities of commodity-exchange members, brokerage houses, commission-registered salespeople, and others associated with the industry. • The commission began operating in April 1975. 7 USCA § 2(a)(2). — Abbr. CFTC. [Cases: Commodity Futures Trading Regulation 51–61. C.J.S. Securities Regulation §§ 469–478.]

COMMODITY LOAN

commodity loan. See LOAN.

COMMODITY OPTION

commodity option. See OPTION.

COMMODITY PAPER

commodity paper. See PAPER.

COMMON

common, n.1. A legal right to use another person's property, such as an easement. See PROFIT à PRENDRE.

common appendant (<<schwa>>-pen-d<<schwa>>nt). Hist. A tenant's right to graze animals on the landowner's land as a result of long-standing practice. See profit appendant under PROFIT(2).

“The ... common appendant is founded on prescription, and is regularly annexed to arable land.... The tenant was limited to such beasts as were levant and couchant on his estate, because such cattle only were wanting to plough and manure his land. It was deemed an incident to a grant of land, as of common right, and to enable the tenant to use his plough land.” 3 James Kent, Commentaries on American Law *404 (George Comstock ed., 11th ed. 1866).

common appurtenant (<<schwa>>-p<<schwa>>r-t<<schwa>>-n<<schwa>>nt). Hist. A landowner's right to graze animals on another's land as a result of a written grant relating to the ownership or occupancy of land. See profit appurtenant under PROFIT(2).

“Common appurtenant may be affixed to any kind of land It allowed the owner to put in other beasts than such as plough or manure the land; and, not being founded on necessity, like the other rights, ... was not favored in the law.” 3 James Kent, Commentaries on American Law *404 (George Comstock ed., 11th ed. 1866).

common in gross. Hist. A right to graze animals on another's land as a result of a written grant unrelated to ownership or occupancy of land. — Also termed common at large. See profit in gross under PROFIT(2).

common in the soil. Hist. The right to dig and take away earth from another's land. — Also termed common of digging.

common of estovers (e-stoh-v<<schwa>>rz). Hist. A tenant's right to take necessary supplies, esp. wood, from the lord's estate; the right to estovers. See ESTOVER(1).

common of fishery. See common of piscary.

common of pasture. Hist. A right to pasture one's cattle on another's land. • The common of pasture may be appendant, appurtenant, or in gross.

common of piscary (pis-k<<schwa>>-ree). Hist. A right to fish in waters on another's land. — Often shortened to piscary. — Also termed common of fishery.

common of shack. Hist. The right of people occupying land in a common field to release their cattle to graze after harvest.

common of turbary (t<<schwa>>-r-b<<schwa>>-ree). Hist. The right to dig turf (for use as fuel in a house) from another's land.

common without stint.Hist. A right to graze an unlimited number of cattle.

2. A tract of land set aside for the general public's use. [Cases: Common Lands 1. C.J.S. Common Lands §§ 1–5.]

COMMONABLE

commonable,adj.1. (Of an animal) allowed to graze on common land. 2. (Of land) capable of being held in common.

COMMON ADVENTURE

common adventure.See ADVENTURE.

COMMON AGENT

common agent.See AGENT(2).

COMMONALITY TEST

commonality test.The requirement that members of a group certified as a class in a class-action suit share at least one issue of law or fact whose resolution will affect all or a significant number of the putative class members. Cf. COMMON-CHARACTER REQUIREMENT. [Cases: Parties 35.17, 35.61–35.89. C.J.S. Parties §§ 31, 34–35.]

COMMON ANCESTOR

common ancestor.See ANCESTOR.

COMMON AND NOTORIOUS THIEF

common and notorious thief.See common thief under THIEF.

COMMON APPENDANT

common appendant.See COMMON.

COMMON APPURTENANT

common appurtenant.See COMMON.

COMMON AREA

common area. 1.Landlord–tenant law. The realty that all tenants may use though the landlord retains control and responsibility over it. [Cases: Landlord and Tenant 123. C.J.S. Landlord and Tenant §§ 290–291.] 2. An area owned and used in common by the residents of a condominium, subdivision, or planned-unit development. — Also termed common elements. [Cases: Common Lands 1; Condominium 6. C.J.S. Common Lands §§ 1–5; Estates §§ 199, 218.]

COMMON ASSAULT

common assault.1.ASSAULT(1).2.ASSUALT(2).

COMMON ASSUMPSIT

common assumpsit. See general assumpsit under ASSUMPSIT.

COMMON ASSURANCE

common assurance. See MUNIMENT OF TITLE.

COMMON AT LARGE

common at large. See common in gross under COMMON.

COMMON-AUTHORITY RULE

common-authority rule. The principle that a person may consent to a police officer's search of another person's property if both persons use, control, or have access to the property. • Under this rule, the consenting person must have been legally able to permit the search in his or her own right, and the defendant must have assumed the risk that a fellow occupant might permit a search. See *U.S. v. Matlock*, 415 U.S. 164, 171 n.7, 94 S.Ct. 988, 993 n.7 (1974). See THIRD-PARTY CONSENT. [Cases: Searches and Seizures 173.1. C.J.S. Searches and Seizures §§ 113–115.]

COMMON BAIL

common bail. See bail common under BAIL(4).

COMMON BAR

common bar. See BLANK BAR.

COMMON BENCH

Common Bench. Hist. The former name of the English Court of Common Pleas. • The court was so called because it was the forum for the common people, that is, for cases between two or more subjects when the Crown had no interest. — Abbr. C.B.

COMMON-BOND DOCTRINE

common-bond doctrine. The rule that prospective members of a credit union must share some connection (such as common employment) other than a desire to create a credit union. [Cases: Building and Loan Associations 6.C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 31–32, 45.]

COMMON BUSINESS PURPOSE

common business purpose. Related activity by two or more associated businesses. • If one of the businesses comes within the jurisdiction of the Fair Labor Standards Act, then another business that shares a common business purpose will also.

COMMON CALLING

common calling. 1. An ordinary occupation that a citizen has a right to pursue under the Privileges and Immunities Clause. [Cases: Constitutional Law 207(2). C.J.S. Constitutional Law §§ 667, 670.] 2. A commercial enterprise that offers services to the general public, with a legal duty to serve anyone who requests the services. • For example, an innkeeper or a common carrier

engages in a common calling.

“It was only in a very few cases indeed that a person was under a legal obligation to enter into a contract; virtually the only example of such an obligation in fact was the person exercising a ‘common calling’ such as the innkeeper and the common carrier who were (subject to certain safeguards) legally bound to contract with any member of the public who required their services.” P.S. Atiyah, *An Introduction to the Law of Contract* 8 (3d ed. 1981).

COMMON CARRIER

common carrier. See CARRIER.

COMMON CAUSE

common cause. See common plea under PLEA(3).

COMMON-CHARACTER REQUIREMENT

common-character requirement. The rule that for a group of persons to qualify as a class in a class-action lawsuit, the appointment of the class must achieve economies of time, effort, and expense, and must promote uniformity of decision for persons similarly situated, in addition to sharing common questions of fact and law. Cf. COMMONALITY TEST. [Cases: Parties 35.17. C.J.S. Parties §§ 31, 34.]

COMMON COST

common cost. See indirect cost under COST(1).

COMMON COUNCIL

common council. See COUNCIL.

COMMON COUNT

common count. See COUNT.

COMMON DAY

common day. See DAY.

COMMON DEBTOR

common debtor. See DEBTOR.

COMMON-DEFEASANCE BOND

common-defeasance bond. See penal bond under BOND(2).

COMMON DESCRIPTIVE NAME

common descriptive name. See GENERIC NAME.

COMMON DESIGN

common design. 1. The intention by two or more people to join in committing an unlawful act. [Cases: Criminal Law 59(4). C.J.S. Criminal Law § 134.] 2. An intention to commit more than one crime. 3. The general design or layout of plots of land surrounding a particular tract. — Also termed common scheme; common plan. See ZONING.

COMMON DILIGENCE

common diligence.1. See due diligence (1) under DILIGENCE(2).2. See ordinary diligence under DILIGENCE(2).

COMMON DISASTER

common disaster.An event that causes two or more persons with related property interests (such as an insured and the beneficiary) to die at very nearly the same time, with no way of determining who died first. See UNIFORM SIMULTANEOUS DEATH ACT ; COMMORIENTES. [Cases: Death 5; Insurance 3485. C.J.S. Death §§ 6, 15; Insurance § 1428.]

COMMON-DISASTER CLAUSE

common-disaster clause.A provision in a dispositive instrument, such as an insurance policy or a will, that seeks to cover the situation in which the transferor and transferee die in a common disaster. [Cases: Insurance 3485; Wills 543. C.J.S. Insurance § 1428; Wills § 1034.]

COMMON DUTY OF CARE

common duty of care.A landowner's obligation to take reasonable care under the circumstances to see that a lawful visitor will be reasonably safe in using the premises for the purposes for which the visitor is permitted to be there.

COMMON EASEMENT

common easement.See EASEMENT.

COMMON ELEMENTS

common elements.See COMMON AREA(2).

COMMON-EMPLOYMENT DOCTRINE

common-employment doctrine.See FELLOW-SERVANT RULE.

COMMON-ENEMY DOCTRINE

common-enemy doctrine.Property. The rule that a landowner may repel surface waters as necessary (as during a flood), without having to consider the consequences to other landowners. • The doctrine takes its name from the idea that the floodwater is every landowner's common enemy. [Cases: Waters and Water Courses 116–119. C.J.S. Waters §§ 255, 259–264, 277–279.]

COMMON ENTERPRISE

common enterprise.See JOINT ENTERPRISE.

COMMONER

commoner. 1.BrE. An ordinary citizen; one not a peer. 2.Archaic. A member of the House of Commons. 3.Archaic. A common lawyer. 4.Archaic. A person having a right of common — that is, a right to pasture on a lord's land. 5. A person who shares a right in common.

COMMON ERROR

common error.Copyright. A mistake found both in a copyrighted work and in an allegedly infringing work, the mistake being persuasive evidence of unauthorized copying. [Cases: Copyrights and Intellectual Property 83(3.1).]

COMMON EXTERNAL TARIFF

common external tariff.See TARIFF(2).

COMMON FINE

common fine.See FINE(4).

COMMON FISHERY

common fishery.See FISHERY(2).

COMMON-FUND DOCTRINE

common-fund doctrine.The principle that a litigant who creates, discovers, increases, or preserves a fund to which others also have a claim is entitled to recover litigation costs and attorney's fees from that fund. — Also termed equitable-fund doctrine. [Cases: Attorney and Client 155.C.J.S. Attorney and Client §§ 332–335.]

COMMON GAMBLER

common gambler. 1. One who owns or is employed by a gambling establishment; a bookmaker. 2. A professional gambler. • A person who gambles but not customarily, habitually, or frequently, and who does not rely on gambling for a living, is considered a casual gambler, not a common gambler.

COMMON HERITAGE OF MANKIND

common heritage of mankind.Int'l law. The parts of the earth and cosmos that can be said to belong to all humanity, without regard for geographic location, and that should be protected and administered for its benefit. • The term embraces the ocean floor and its subsoil, and outer space. — Also termed common heritage of humankind.

COMMON HIGHWAY

common highway.See HIGHWAY.

COMMON INFORMER

common informer.A person who sues to recover a penalty in a penal action. • In some

jurisdictions, such an action may be instituted either by the attorney general on behalf of the state or by a common informer. See INFORMER; penal action under ACTION(4).

COMMON IN GROSS

common in gross. See COMMON.

COMMON INTENDMENT

common intendment. See INTENDMENT.

COMMON-INTEREST DOCTRINE

common-interest doctrine. See joint-defense privilege under PRIVILEGE(3).

COMMON IN THE SOIL

common in the soil. See COMMON.

COMMON JURY

common jury. See petit jury under JURY.

COMMON KNOWLEDGE

common knowledge. A fact that is so widely known that a court may accept it as true without proof. See JUDICIAL NOTICE. [Cases: Evidence 5. C.J.S. Evidence § 45.]

COMMON-KNOWLEDGE EXCEPTION

common-knowledge exception. The principle that lay testimony concerning routine or simple medical procedures is admissible to establish negligence in a medical-malpractice action. • This is a narrow exception in some jurisdictions to the rule that a medical-malpractice plaintiff must present expert testimony to establish negligence. [Cases: Health 821(4).]

COMMON LAW

common law, n. [fr. Law French *commen ley* “common law”] 1. The body of law derived from judicial decisions, rather than from statutes or constitutions; CASELAW <federal common law>. Cf. STATUTORY LAW. [Cases: Common Law 1. C.J.S. Common Law §§ 1–4, 21.]

“Historically, [the common law] is made quite differently from the Continental code. The code precedes judgments; the common law follows them. The code articulates in chapters, sections, and paragraphs the rules in accordance with which judgments are given. The common law on the other hand is inarticulate until it is expressed in a judgment. Where the code governs, it is the judge's duty to ascertain the law from the words which the code uses. Where the common law governs, the judge, in what is now the forgotten past, decided the case in accordance with morality and custom and later judges followed his decision. They did not do so by construing the words of his judgment. They looked for the reason which had made him decide the case the way he did, the *ratio decidendi* as it came to be called. Thus it was the principle of the case, not the words, which went into the common law. So historically the common law is much less fettering

than a code.” Patrick Devlin, *The Judge* 177 (1979).

federal common law. The body of decisional law derived from federal courts when adjudicating federal questions and other matters of federal concern, such as disputes between the states and foreign relations, but excluding all cases governed by state law. • An example is the nonstatutory law applying to interstate streams of commerce. [Cases: Federal Courts 374.]

“Notwithstanding *Erie*, the federal common law still lives in a number of areas. In some, such as admiralty, ... the power to create common law has been inferred from a constitutional or statutory grant of jurisdiction, where a federal common law has appeared necessary to accomplish the purposes of the grant. In other cases, on more or less persuasive evidence, the [Supreme] Court has inferred implicit damage remedies on behalf of injured parties from federal statutes imposing duties for their protection, or has found an implicit congressional delegation of authority to make common law, as in actions on collective-bargaining agreements affecting commerce under the Taft–Hartley Act, § 301.” David P. Currie, *Federal Jurisdiction in a Nutshell* 226 (3d ed. 1990).

general federal common law. Hist. In the period before *Erie v. Tompkins* (304 U.S. 64, 58 S.Ct. 817 (1938)), the judge-made law developed by federal courts in deciding disputes in diversity-of-citizenship cases. • Since *Erie*, a federal court has been bound to apply the substantive law of the state in which it sits. So even though there is a “federal common law,” there is no longer a general federal common law applicable to all disputes heard in federal court.

2. The body of law based on the English legal system, as distinct from a civil-law system; the general An-glo-American system of legal concepts, together with the techniques of applying them, that form the basis of the law in jurisdictions where the system applies <all states except Louisiana have the common law as their legal system>. Cf. CIVIL LAW(1).

American common law. 1. The body of English law that was adopted as the law of the American colonies and supplemented with local enactments and judgments. 2. The body of judge-made law that developed during and after the United States' colonial period, esp. since independence. — Also termed Anglo-American common law.

“Every country has its common law. Ours is composed partly of the common law of England and partly of our own usages. When our ancestors emigrated from England, they took with them such of the English principles as were convenient for the situation in which they were about to place themselves. It required time and experience to ascertain how much of the English law would be suitable to this country. By degrees, as circumstances demanded, we adopted the English usages, or substituted others better suited to our wants, until at length, before the time of the Revolution, we had formed a system of our own, founded in general on the English Constitution, but not without considerable variations.” *Guardians of the Poor v. Greene*, 5 Binn. 554, 557 (Pa. 1813).

3. General law common to the country as a whole, as opposed to special law that has only local application <the issue is whether the common law trumps our jurisdiction's local rules>. — Also termed *jus commune*. “In its historical origin the term common law (*jus commune*) was identical in meaning with the term general law The *jus commune* was the general law of the

land — the *lex terrae* — as opposed to *jus speciale*. By a process of historical development, however, the common law has now become, not the entire general law, but only the residue of that law after deducting equity and statute law. It is no longer possible, therefore, to use the expression common law and general law as synonymous.” John Salmond, *Jurisprudence* 97 (Glanville L. Williams ed., 10th ed. 1947).

“[I]t is necessary to dispose briefly of a problem of nomenclature. European equivalents of the expression ‘common law’ have been used, especially in Germany, to describe an emergent system of national law, based on the Roman model, that came into existence before national parliaments undertook to enact laws for the nation as a whole. In this use, ‘the common law’ (*gemeines Recht*) was used to distinguish the commonly shared tradition of Roman law from local statutes and customs.” Lon L. Fuller, *Anatomy of the Law* 133 (1968).

4. The body of law deriving from law courts as opposed to those sitting in equity <a mortgage founded in common law>. • The common law of England was one of the three main historical sources of English law. The other two were legislation and equity. The common law evolved from custom and was the body of law created by and administered by the king's courts. Equity developed to overcome the occasional rigidity and unfairness of the common law. Originally the king himself granted or denied petitions in equity; later the task fell to the chancellor, and later still to the Court of Chancery.

COMMON-LAW ACTION

common-law action. See ACTION(4).

COMMON-LAW ASSIGNMENT

common-law assignment. See ASSIGNMENT(2).

COMMON-LAW BOND

common-law bond. See BOND(2).

COMMON-LAW CHEAT

common-law cheat. See CHEATING.

COMMON-LAW CONTEMPT

common-law contempt. See criminal contempt under CONTEMPT.

COMMON-LAW COPYRIGHT

common-law copyright. See COPYRIGHT.

COMMON-LAW CORPORATION

common-law corporation. See corporation by prescription under CORPORATION.

COMMON-LAW CRIME

common-law crime. See CRIME.

COMMON-LAW DEDICATION

common-law dedication. See DEDICATION.

COMMON-LAW EXTORTION

common-law extortion. See EXTORTION(1).

COMMON-LAW FRAUD

common-law fraud. See promissory fraud under FRAUD.

COMMON-LAW HUSBAND

common-law husband. See HUSBAND.

COMMON-LAW JURISDICTION

common-law jurisdiction. See JURISDICTION.

COMMON-LAW LAWYER

common-law lawyer. A lawyer who is versed in or practices under a common-law system. — Also termed common lawyer.

COMMON-LAW LIEN

common-law lien. See LIEN.

COMMON-LAW MALICE

common-law malice. See actual malice (2) under MALICE.

COMMON-LAW MARRIAGE

common-law marriage. See MARRIAGE(1).

COMMON-LAW MORTGAGE

common-law mortgage. See deed of trust under DEED.

COMMON-LAW PLEADING

common-law pleading. See PLEADING(2).

COMMON-LAW-PROPERTY STATE

common-law-property state. See COMMON-LAW STATE(2).

COMMON-LAW RULE

common-law rule. 1. A judge-made rule as opposed to a statutory one. [Cases: Common Law 1. C.J.S. Common Law §§ 1–4, 21.] 2. A legal as opposed to an equitable rule. 3. A general rule as opposed to one deriving from special law (such as a local custom or a rule of foreign law that, based on choice-of-law principles, is applied in place of domestic law). 4. An old rule of English

law.

COMMON-LAW SEAL

common-law seal. See SEAL(1).

COMMON-LAW SPECIALTY

common-law specialty. 1. See contract under seal under CONTRACT. 2. SPECIALTY (1).

COMMON-LAW STATE

common-law state. 1. See NONCODE STATE. 2. Any state that has not adopted a community-property regime. • The chief difference today between a community-property state and a common-law state is that in a common-law state, a spouse's interest in property held by the other spouse does not vest until (1) a divorce action has been filed, or (2) the other spouse has died. Cf. COMMUNITY-PROPERTY STATE.

COMMON-LAW TRUST

common-law trust. See business trust under TRUST.

COMMON-LAW WIFE

common-law wife. See WIFE.

COMMON LAWYER

common lawyer. See COMMON-LAW LAWYER.

COMMON MARKET

common market. See MARKET.

Common Market. The European Economic Community. • Common Market is a colloquial term — not a formal designation. See EUROPEAN UNION.

COMMON MISTAKE

common mistake. See mutual mistake (2) under MISTAKE.

COMMON MONEY BOND

common money bond. See BOND(2).

COMMON-NUCLEUS-OF-OPERATIVE-FACT TEST

common-nucleus-of-operative-fact test. The doctrine that a federal court will have pendent jurisdiction over state-law claims that arise from the same facts as the federal claims providing a basis for subject-matter jurisdiction. [Cases: Federal Courts 14.]

“The modern doctrine of pendent jurisdiction, as announced by the Supreme Court in *United Mine Workers v. Gibbs* (1966), is much broader.... Pendent jurisdiction, the Court said, existed whenever ‘the state and federal claims ... derive from a common nucleus of operative fact,’ and

when considerations of judicial economy dictate having a single trial.” David P. Currie, *Federal Jurisdiction in a Nutshell* 106 (3d ed. 1990).

COMMON NUISANCE

common nuisance. See public nuisance under NUISANCE.

COMMON OCCUPANT

common occupant. See general occupant under OCCUPANT.

COMMON OF DIGGING

common of digging. See common in the soil under COMMON.

COMMON OF ESTOVERS

common of estovers. See COMMON.

COMMON OF FISHERY

common of fishery. See common of piscary under COMMON.

COMMON OF PASTURE

common of pasture. See COMMON.

COMMON OF PISCARY

common of piscary. See COMMON.

COMMON OF SHACK

common of shack. See COMMON.

COMMON OF TURBARY

common of turbary. See COMMON.

COMMON ORDER

common order. See conditional judgment under JUDGMENT.

COMMON PARLIAMENTARY LAW

common parliamentary law. See PARLIAMENTARY LAW.

COMMON PLAN

common plan. See COMMON DESIGN.

COMMON PLEA

common plea. See PLEA(3).

COMMON PLEAS, COURT OF

Common Pleas, Court of. See COURT OF COMMON PLEAS.

COMMON PROPERTY

common property. See PROPERTY.

COMMON RECOVERY

common recovery. Hist. An elaborate proceeding, full of legal fictions, by which a tenant in tail disentailed a fee-tail estate. • The action facilitated land transfer by allowing a potential transferee who was barred by law from receiving land to “recover” the land by suing the actual owner. Common recoveries, which were abolished early in the 19th century, were originally concocted by the clergy as a way to avoid the land-conveyance restrictions imposed by mortmain acts. — Also termed feigned recovery. See MORTMAIN STATUTE. Cf. CESSIO IN JURE; praecipe quod reddat under PRAECIPE.

“Here's how [the common recovery] worked. B, with the connivance of A, would bring a real action against A claiming falsely that he, B, owned the land and demanding recovery of it. A responded by claiming, just as falsely, that he had acquired the land from C and that C had warranted title to the land. When A demanded of C, also an accomplice of A, that he defend the title, C admitted falsely that he had, indeed, warranted the title. C allowed B to take a default judgment against A for the recovery of the land, and allowed A to obtain a default judgment against himself, C, for the recovery of land of equal value. The result of this fancy feudal footwork was to leave B with title to the land in fee simple and to leave A with his judgment against C. The judgment against C was viewed by the court as an adequate substitute for the entailed land. But when it came time for O or A's lineal heirs to enforce the judgment, it would transpire that C had been selected by A because he had no land at all! (Why else would C have played along?) Did the court have any suspicion that A, B, and C were colluding? Of course they did — but how else, in the face of De Donis, could they unshackle land from the chains of the fee tail?” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 31–32 (2d ed. 1984).

COMMON-RETURN DAYS

common-return days. See dies communes in banco under DIES.

COMMON RULE EX PARTE

common rule ex parte. Hist. A court-docket entry reflecting that the case would be decided by a majority vote and would proceed even if a notified party did not appear. See *Billington v. Sprague*, 22 Me. 34 (1842).

COMMON SCHEME

common scheme. See COMMON DESIGN.

COMMON SCHOOL

common school. See public school under SCHOOL.

COMMON SCOLD

common scold.See SCOLD.

COMMON SERJEANT

common serjeant.A judicial officer, appointed by the city of London, who helps the recorder in criminal trials.

COMMON-SITUS PICKETING

common-situs picketing.See PICKETING.

COMMON-SOURCE DOCTRINE

common-source doctrine.The principle that a defendant in a trespass-to-try-title action who claims under a source common to both the defendant and the plaintiff may not demonstrate title in a third source that is paramount to the common source because doing so amounts to an attack on the source under which the defendant claims title. [Cases: Trespass to Try Title 11.C.J.S. Trespass to Try Title § 17.]

COMMON STOCK

common stock.See STOCK.

COMMON-STOCK EQUIVALENT

common-stock equivalent.A security that is exchangeable for common stock, and thus is considered to be the same as common stock. • Common-stock equivalents include certain types of convertible securities, stock options, and warrants.

COMMON-STOCK FUND

common-stock fund.See MUTUAL FUND.

COMMON-STOCK RATIO

common-stock ratio.The relationship of outstanding common stock to the corporation's total capitalization. • The common-stock ratio measures the relative claims of stockholders to earnings (earnings per share and payout ratio), cash flow (cash flow per share), and equity (book value per share). Cf. PAYOUT RATIO.

COMMON SUBSTITUTION

common substitution.See SUBSTITUTION(4).

COMMON SUIT

common suit.See common plea under PLEA(3).

COMMON TENANCY

common tenancy.See tenancy in common under TENANCY.

COMMON THIEF

common thief. See THIEF.

COMMON TRAVERSE

common traverse. See TRAVERSE.

COMMON TRUST FUND

common trust fund. See TRUST FUND.

COMMON VENTURE

common venture. See common adventure under ADVENTURE.

COMMON WALL

common wall. See party wall under WALL.

COMMONWEAL

commonweal (kom-*<<schwa>>*n-weel). The general welfare; the common good.

COMMONWEALTH

commonwealth. 1. A nation, state, or other political unit <the Commonwealth of Pennsylvania>. [Cases: States 1. C.J.S. States §§ 2, 16.] 2. A political unit that has local autonomy but is voluntarily united with the United States <Puerto Rico and the Northern Mariana Islands are commonwealths>. Cf. DEPENDENCY(1); INSULAR AREA; TERRITORY(2). 3. A loose association of countries that recognize one sovereign <the British Commonwealth>. • In this context, in Great Britain, the term British has been dropped from British Commonwealth; BrE speakers refer simply to the Commonwealth. — Abbr. Commw.; comm. 4. The central (federal) power in Australia. — Abbr. (in sense 4) Cwth.

COMMONWEALTH ATTORNEY

commonwealth attorney. A prosecutor in some jurisdictions, such as Virginia.

COMMONWEALTH COURT

commonwealth court. See COURT.

COMMON WITHOUT STINT

common without stint. See COMMON.

COMMORANCY

commorancy (kom-*<<schwa>>*-r*<<schwa>>*n-see). 1. Temporary residency. 2. English law. Permanent residency in a certain place.

COMMORANT

commorant (kom-*<<schwa>>*-r*<<schwa>>*nt). 1. A person who dwells in a place temporarily. 2. English law. A person who resides permanently in a certain place.

COMMORIENTES

commorientes (k<<schwa>>-mor-ee-en-teez). [fr. Latin commorior “to die together”] 1. (pl.) Persons who die at the same time, often of the same cause, such as spouses who die in an accident. [Cases: Death 5.C.J.S. Death §§ 6, 15.] 2. Civil law. The rule establishing presumptions of survivorship for purposes of succession regarding such persons. See simultaneous death under DEATH; UNIFORM SIMULTANEOUS DEATH ACT.

COMMOTION

commotion. See CIVIL COMMOTION.

COMMUNE

commune (kom-yoon), n. A community of people who share property and responsibilities.

COMMUNE FORUM

commune forum (k<<schwa>>-myoo-nee for-<<schwa>>m). [Latin “common place of justice”] Hist. The seat of the principal English courts, esp. those that do not go on circuit.

COMMUNE PLACITUM

commune placitum (k<<schwa>>-myoo-nee plas-<<schwa>>-t<<schwa>>m). [Latin “common plea”] Hist. A common plea between persons, as opposed to a plea of the Crown (i.e., a criminal action). Pl. communia placita.

COMMUNE VINCULUM

commune vinculum (k<<schwa>>-myoo-nee ving-ky<<schwa>>-l<<schwa>>m). [Latin “common bond”] Hist. A relationship or tie between persons; esp., the bond between lord and tenant, or the relationship between blood relatives.

COMMUNIA

communia (k<<schwa>>-myoo-nee-<<schwa>>). [Latin] Hist. Things owned in common, such as running water, the air, and the sea.

COMMUNIA PLACITA NON TENENDA IN SCACCARIO

communia placita non tenenda in scaccario
(k<<schwa>>-myoo-nee-<<schwa>>plas-<<schwa>>-t<<schwa>> non
t<<schwa>>-nen-d<<schwa>> in sk<<schwa>>-kair-ee-oh). [Law Latin “common pleas are not
held in the Exchequer”] Hist. A writ directed to the Treasurer and Barons of the Exchequer,
forbidding them from holding pleas between common persons, i.e., pleas in which the Crown was
not a party.

COMMUNIA PRECEPTA

communia precepta (k<<schwa>>-myoo-nee-<<schwa>> pree-sep-t<<schwa>>). [Latin]
Hist. Common precepts; common rules.

COMMUNIBUS ANNIS

communibus annis (k<<schwa>>-myoo-ni-b<<schwa>>s an-is). [Latin] Hist. On the average of years; on the annual average.

“[T]he money arising from corn rents is, communibus annis, almost double to the rents reserved in money.” 2 William Blackstone, Commentaries on the Laws of England 322 (1766).

COMMUNICATION

communication. 1. The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception. 2. The information so expressed or exchanged.

conditionally privileged communication. A defamatory statement made in good faith by a person with an interest in a subject to someone who also has an interest in the subject, as an employer giving a negative but accurate job review of a former employee to a potential future employer. • The privilege may be lost upon a showing of malice or bad faith. [Cases: Libel and Slander 40. C.J.S. Libel and Slander; Injurious Falsehood §§ 57, 59, 64–65.]

confidential communication. A communication made within a certain protected relationship and legally protected from compelled disclosure in a legal proceeding. • Among confidential communications are those between husband and wife, attorney and client, and priest and penitent. See PRIVILEGE(3). [Cases: Witnesses 184–223. C.J.S. Witnesses §§ 297–389.]

ex parte communication. A communication between counsel and the court when opposing counsel is not present. • Such communications are ordinarily prohibited. [Cases: Trial 18. C.J.S. Trial §§ 91–92.]

privileged communication. A communication that is protected by law from compelled disclosure in a legal proceeding, or that cannot be used against the person who made it. • Examples include an informant's communication to a government agency and statements made in a legislative session by a legislator. See PRIVILEGE(3). [Cases: Witnesses 84–223. C.J.S. Witnesses §§ 297–389.]

COMMUNICATION RIGHT

communication right. Copyright. The power of a copyright owner to authorize or prohibit the transmission of a work to the public by way of interactive on-demand systems such as the Internet. • This right is included in the WIPO Copyright Treaty and the European Commission's Directive on the Information Society.

COMMUNICATIVE EVIDENCE

communicative evidence. See testimonial evidence under EVIDENCE.

COMMUNI CONSENSU

communi consensu (k<<schwa>>-myoo-nI k<<schwa>>n-sen-s[y]oo). [Latin] By common consent.

COMMUNI DIVIDUNDO

communi dividundo. See actio de communi dividundo under ACTIO.

COMMUNINGS

communings (k<<schwa>>-myoo-nings), n. Scots law. Contract negotiations.

COMMUNIO BONORUM

communio bonorum (k<<schwa>>-myoo-nee-oh b<<schwa>>-nor-<<schwa>>m). [Latin "community of goods"] Civil law. Commonly owned goods, esp. those held in common by a husband and wife. Pl. communiones bonorum.

COMMUNIS ERROR

communis error (k<<schwa>>-myoo-nis e-ror). [Latin] Scots law. A common error; esp., a long-standing error in practice that the court would uphold even though the practice has no legal basis. — Also termed communis error facet jus.

COMMUNISM

communism. 1. A political doctrine, based on Marxism, advocating the abolition of capitalism by ground-roots revolution; specif., a social and political doctrine advocating the abolition of private ownership in favor of common ownership of the means of production and the goods produced, each person contributing as able and receiving as needed. Cf. CAPITALISM. 2. Totalitarian government.

COMMUNIS OPINIO

communis opinio (k<<schwa>>-myoo-nis <<schwa>>-pin-ee-oh). [Latin "common opinion"] Hist. A generally accepted belief about a point of law. • If held unanimously by those learned in the law, this common belief had the force of law in classical Rome.

"Communis opinio is evidence of what the law is, — not where it is an opinion merely speculative and theoretical, floating in the minds of persons, but where it has been made the ground-work and substratum of practice." 1 Alexander M. Burrill, *A Law-Dictionary and Glossary* 330 (2d ed. 1867) (quoting Lord Ellenborough).

COMMUNIS OPINIO DOCTORUM

communis opinio doctorum (k<<schwa>>-myoo-nis <<schwa>>-pin-ee-oh dok-tor-<<schwa>>m). [Latin "learned common opinion"] Hist. Scholarly agreement on points of Roman law, collected by the glossators of Justinian's texts in the later Middle Ages.

COMMUNIS PARIES%

communis paries (k<<schwa>>-myoo-nis par-ee-eez). [Latin "common wall"] Civil law. See party wall under WALL. Pl. communes parietes.

COMMUNIS PATRIA

communis patria (k<<schwa>>-myoo-nis pay-tree-<<schwa>>). [Law Latin] Hist. The common country; a place deemed home to all.

“Under the old diligence of apprising, directed against heritable rights, the messenger executing the diligence held his court in the head borough of the shire where the lands lay, but afterwards it became the practice to hold these courts in Edinburgh as communis patria to all Scotland.” John Trayner, *Trayner's Latin Maxims* 86 (4th ed. 1894).

COMMUNIS SCRIPTURA

communis scriptura (k<<schwa>>-myoo-nis skrip-t[y]oor-<<schwa>> or k<<schwa>>m-myoo-n<<schwa>>s skrip-tyuur-<<schwa>>). [Latin “common writing”] Hist. See CHIROGRAPH.

COMMUNIS STIPES

communis stipes (k<<schwa>>-myoo-nis stI-peeZ). [Latin “common trunk”] Hist. A common ancestor.

COMMUNITIZATION

communitization (k<<schwa>>-myoo-n<<schwa>>-t<<schwa>>-zay-sh<<schwa>>n), n. Oil & gas. The ag-gregating of small tracts sufficient for the granting of a well permit under applicable well-spacing rules; POOLING. Cf. UNITIZATION. [Cases: Mines and Minerals 92.78. C.J.S. Mines and Minerals §§ 349, 357–359, 361, 384–386.] — communitize (k<<schwa>>-myoo-n<<schwa>>-tIz), vb.

COMMUNITY

community. 1. A neighborhood, vicinity, or locality. 2. A society or group of people with similar rights or interests. 3. Joint ownership, possession, or participation.

COMMUNITY ACCOUNT

community account. See ACCOUNT.

COMMUNITY CONTROL

community control. A criminal sentence whose terms include intensive and strict supervision of an offender in the community, as by restricting the offender's movements and activities and conducting electronic surveillance, and providing severe sanctions for violations of any of the sentence's terms.

COMMUNITY CORRECTIONAL CENTER

community correctional center. See JAIL.

COMMUNITY DEBT

community debt. See DEBT.

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION FUND

Community Development Financial Institution Fund. A fund in the U.S. Department of the Treasury created to expand available credit, investment capital, and financial services in distressed urban and rural communities. — Abbr. CDFI Fund.

COMMUNITY ESTATE

community estate. In a community-property state, the total of the assets and debts making up a married couple's property owned in common. Cf. COMMUNITY PROPERTY .

COMMUNITY GRANT

community grant. See GRANT.

COMMUNITY LEASE

community lease. See LEASE.

COMMUNITY MARK

Community mark. See Community trademark under TRADEMARK.

COMMUNITY-NOTIFICATION LAW

community-notification law. See MEGAN'S LAW.

COMMUNITY OBLIGATION

community obligation. See OBLIGATION.

COMMUNITY OF INTEREST

community of interest. 1. Participation in a joint venture characterized by shared liability and shared opportunity for profit. See JOINT VENTURE. [Cases: Joint Ventures 1.2(7).] 2. A common grievance that must be shared by all class members to maintain the class action. See CLASS ACTION. [Cases: Federal Civil Procedure 165; Parties 35.17. C.J.S. Parties §§ 31, 34.] 3. Labor law. A criterion used by the National Labor Relations Board in deciding whether a group of employees should be allowed to act as a bargaining unit. • The Board considers whether the employees have similar duties, wages, hours, benefits, skills, training, supervision, and working conditions. See BARGAINING UNIT.

COMMUNITY OF PROFITS

community of profits. The right of partners to share in the partnership's profits.

COMMUNITY PATENT

Community patent. See PATENT(3).

COMMUNITY PATENT CONVENTION

Community Patent Convention. A 1975 treaty that, for patent purposes, treats the European Union as a single state and allows a patent applicant to obtain patent protection in all European Union nations through a single blanket filing and examination procedure. • If the application is

approved, the European Patent Office issues a single Community patent. The treaty's full name is the Convention for the European Patent for the Common Market.

COMMUNITY POLICING

community policing. A law-enforcement technique in which police officers are assigned to a particular neighborhood or area to develop relationships with the residents for the purpose of enhancing the chances of detecting and thwarting criminal activity.

COMMUNITY PROPERTY

community property. Assets owned in common by husband and wife as a result of its having been acquired during the marriage by means other than an inheritance or a gift to one spouse, each spouse generally holding a one-half interest in the property. • Only nine states have community-property systems: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. See marital property under PROPERTY; TITLE DIVISION. Cf. COMMUNITY ESTATE; SEPARATE PROPERTY. [Cases: Husband and Wife 246–276(9).]

quasi-community property. Personal property that, having been acquired in a non-community-property state, would have been community property if acquired in a community-property state. • If a community-property state is the forum for a divorce or administration of a decedent's estate, state law may allow the court to treat quasi-community property as if it were community property when it determines the spouses' interests.

COMMUNITY-PROPERTY STATE

community-property state. A state in which spouses hold property that is acquired during marriage (other than property acquired by inheritance or individual gift) as community property. See COMMUNITY PROPERTY. Cf. COMMON-LAW STATE E (2). [Cases: Husband and Wife 246–276(9).]

COMMUNITY SERVICE

community service. Socially valuable work performed without pay. • Community service is often required as part of a criminal sentence, esp. one that does not include incarceration.

COMMUNITY TRADEMARK

Community trademark. See TRADEMARK.

COMMUNITY TRADEMARK TREATY

Community Trademark Treaty. A 1996 agreement allowing a trademark registrant to file a single application with the European Trademark Office for trademark protection in all European Union nations instead of filing a separate application in each country. • The trademark registrant does not have to be a citizen of a member nation to file an application.

COMMUNITY TRUST

community trust. An agency organized to administer funds placed in trust for public-health,

educational, and other charitable purposes in perpetuity.

COMMUTATION

commutation (kom-y<<schwa>>-tay-sh<<schwa>>n), n.1. An exchange or replacement.
 2.Criminal law. The executive's substitution in a particular case of a less severe punishment for a more severe one that has already been judicially imposed on the defendant. Cf. PARDON; REPRIEVE. [Cases: Pardon and Parole 28. C.J.S. Pardon and Parole §§ 4, 34–41.]
 3.Commercial & civil law. The substitution of one form of payment for the other. — commute,vb. — commutative,adj.

COMMUTATION OF PAYMENTS

commutation of payments.Workers' compensation. A substitution of lump-sum compensation for periodic payments. • The lump sum is equal to the present value of the future periodic payments.

COMMUTATION OF TAXES

commutation of taxes.A tax exemption resulting from a taxpayer's paying either a lump sum or a specific sum in lieu of an ad valorem tax. [Cases: Taxation 200. C.J.S. Taxation § 273.]

COMMUTATION OF TITHES ACT

Commutation of Tithes Act.Hist. An act of Parliament that permitted tithes to be levied and collected in the form of cash rents rather than labor and goods in kind.

COMMUTATION TAX

commutation tax.See TAX.

COMMUTATIVE CONTRACT

commutative contract.See CONTRACT.

COMMUTATIVE JUSTICE

commutative justice.See JUSTICE(1).

COMMUTED VALUE

commuted value.See VALUE(2).

COMMW.

Commw.abbr.COMMONWEALTH.

COMPACT

compact (kom-pakt), n. An agreement or covenant between two or more parties, esp. between governments or states.

family compact.An agreement to further common interests made between related people or

within a group that behaves as a family. • Historically, some international treaties among nations ruled by monarchs have been called family compacts because of intermarriage among the royal houses.

interstate compact.A voluntary agreement between states enacted into law in the participating states upon federal congressional approval. Cf. INTERSTATE AGREEMENT. [Cases: States 6. C.J.S. States §§ 31–32, 143.]

COMPACT CLAUSE

Compact Clause.U.S. Const. art. I, § 10, cl. 3, which forbids a state from entering into a contract with another state or a foreign country without congressional approval. [Cases: States 6. C.J.S. States §§ 31–32, 143.]

COMPANION BILL

companion bill.See BILL(3).

COMPANIONSHIP SERVICES

companionship services.Assistance provided to someone who needs help with personal matters such as bathing and dressing. • This type of service (in contrast to housecleaning) is exempt from the Federal Labor Standards Act's minimum-wage and overtime requirements.

COMPANY

company. 1. A corporation — or, less commonly, an association, partnership, or union — that carries on a commercial or industrial enterprise. 2. A corporation, partnership, association, joint-stock company, trust, fund, or organized group of persons, whether incorporated or not, and (in an official capacity) any receiver, trustee in bankruptcy, or similar official, or liquidating agent, for any of the foregoing. Investment Company Act § 2(a)(8) (15 USCA § 80a-2(a)(8)). — Abbr. co.; com.

bonding company.A company that insures a party against a loss caused by a third party.

controlled company.A company that is under the control of an individual, group, or corporation that owns most of the company's voting stock. Cf. subsidiary corporation under CORPORATION.

dead-and-buried company.A business that has dissolved, leaving no assets.

deposit company.An institution whose business is the safekeeping of securities or other valuables deposited in boxes or safes leased to the depositors. See DEPOSITARY; DEPOSITORY.

development-stage company.Securities. A company that devotes substantially all of its efforts to establishing a new business in which the principal operations either have not yet begun or have begun but are not generating significant revenue.

diversified holding company.A holding company that controls several unrelated companies or businesses.

diversified investment company. An investment company that by law must invest 75% of its assets, but may not invest more than 5% of its assets in any one company or hold more than 10% of the voting shares in any one company.

face-amount certificate company. An investment company that is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or that has been engaged in this business and has such a certificate outstanding. See investment company.

growth company. A company whose earnings have increased at a rapid pace and that usually directs a high proportion of income back into the business.

guaranty company. See surety company.

holding company. A company formed to control other companies, usually confining its role to owning stock and supervising management. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

investment company. A company formed to acquire and manage a portfolio of diverse assets by investing money collected from different sources. • The Investment Company Act of 1940 defines the term as an issuer of securities that (1) is, holds itself out to be, or proposes to be engaged primarily in the business of investing, reinvesting, or trading in securities; (2) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in this business and has such a certificate outstanding; or (3) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of the issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis. 15 USCA § 80a-2(a)(16). — Also termed investment trust. See REAL-ESTATE INVESTMENT TRUST; MUTUAL FUND. [Cases: Securities Regulation 211–222. C.J.S. Securities Regulation §§ 332–359.]

joint-stock company. 1. An unincorporated association of individuals possessing common capital, the capital being contributed by the members and divided into shares, of which each member possesses a number of shares proportionate to the member's investment. [Cases: Joint-Stock Companies and Business Trusts 5. C.J.S. Business Trusts § 14; Joint Stock Companies § 7.] 2. A partnership in which the capital is divided into shares that are transferable without the express consent of the partners. — Also termed joint-stock association; stock association. [Cases: Partnership 224. C.J.S. Partnership § 222.]

“The joint stock association or company developed early in English company law, the term being used to distinguish companies which operated on a joint account and with a ‘joint stock’ (in trade) of their members from companies (now obsolete) each member of whom traded on one's separate account with one's own stock in trade.... In American jurisdictions, the joint stock association is generally an unincorporated business enterprise with ownership interests represented by shares of stock.” Henry G. Henn & John R. Alexander, *Laws of Corporations* § 50, at 109 (3d ed. 1983).

limited company. A company in which the liability of each shareholder is limited to the

amount individually invested. • A corporation is the most common example of a limited company.

limited-liability company. A company — statutorily authorized in certain states — that is characterized by limited liability, management by members or managers, and limitations on ownership transfer. — Abbr. L.L.C. — Also termed limited-liability corporation. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

management company. Any investment company that is neither a face-amount certificate company nor a unit-investment trust. See investment company; face-amount certificate company; unit-investment trust under TRUST.

mutual company. A company that is owned by its customers rather than by a separate group of stockholders. • Many insurance companies are mutual companies, as are many federal savings-and-loan associations. See MUTUAL INSURANCE COMPANY. [Cases: Building and Loan Associations 1; Corporations 3; Insurance 1121. C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 2–4; Corporations §§ 5–7, 62; Insurance §§ 99, 109.]

parent company. See parent corporation under CORPORATION.

personal holding company. A holding company that is subject to special taxes and that usually has a limited number of shareholders, with most of its revenue originating from passive income such as dividends, interest, rent, and royalties. [Cases: Internal Revenue 3850.1–3858, 4120. C.J.S. Internal Revenue §§ 383–386.]

railroad company. See railroad corporation under CORPORATION.

reporting company. A company that, because it issues publicly traded securities, must comply with the reporting requirements of the Securities Exchange Act of 1934. [Cases: Securities Regulation 35.23. C.J.S. Securities Regulation §§ 115–116.]

safe-deposit company. See DEPOSITARY(1).

small-business investment company. See SMALL-BUSINESS INVESTMENT COMPANY.

surety company. A company authorized to engage in the business of entering into guaranty and suretyship contracts and acting as a surety on bonds, esp. bail, fidelity, and judicial bonds. — Also termed guaranty company. [Cases: Bail 60; Principal and Surety 52. C.J.S. Bail; Release and Detention Pending Proceedings §§ 3, 101; Principal and Surety §§ 292, 295.]

title company. A company that examines real-estate titles for any encumbrances, claims, or other flaws, and issues title insurance. — Also termed title-guaranty company. See TITLE SEARCH. [Cases: Abstracts of Title 2. C.J.S. Abstracts of Title § 4.]

trust company. A company that acts as a trustee for people and entities and that sometimes also operates as a commercial bank. — Also termed (if incorporated) trust corporation. See TITLE(1), (2). [Cases: Banks and Banking 310–323. C.J.S. Banks and Banking §§ 625–649.]

COMPANY-RUN DIVIDEND-REINVESTMENT PLAN

company-run dividend-reinvestment plan. See DIVIDEND-REINVESTMENT PLAN.

COMPANY'S PAPER

company's paper. See commercial paper under PAPER.

COMPANY UNION

company union. See UNION.

COMPARABLE

comparable (kom-p<<schwa>>r-<<schwa>>-b<<schwa>>l), n. (usu. pl.) A piece of property used as a comparison to determine the value of a similar piece of property. [Cases: Evidence 113, 142. C.J.S. Evidence §§ 227, 234–238, 774–775, 780–781.] — comparable, adj.

COMPARABLE ACCOMMODATION

comparable accommodation. A standard used for determining the maximum allowable rent in rent-regulated housing. • In applying this standard, a court reviews the prevailing rent for substantially similar housing units in the same area. [Cases: Landlord and Tenant 200.24.]

COMPARABLE WORTH

comparable worth. 1. The analogous value that two or more employees bring to a business through their work. 2. The idea that employees who perform identical work should receive identical pay, regardless of their sex; the doctrine that men and women who perform work of equal value should receive comparable pay. [Cases: Civil Rights 1175; Labor Relations 1333. C.J.S. Civil Rights § 43; Labor Relations § 1184.]

COMPARATIO LITERARUM

comparatio literarum (kom-p<<schwa>>-ray-shee-oh lit-<<schwa>>-rair-<<schwa>>m). [Latin “comparison of writings”] Hist. The act of comparing writings to ascertain authorship. • Even under Roman law, handwriting experts (comparatores) sometimes testified about a document's authenticity.

COMPARATIST

comparatist. A comparative-law scholar.

COMPARATIVE ADVERTISING

comparative advertising. See ADVERTISING.

COMPARATIVE CRIMINOLOGY

comparative criminology. See CRIMINOLOGY.

COMPARATIVE DISPARITY

comparative disparity. Constitutional law. The percentage of underrepresentation of a particular group among potential jurors on a venire, in comparison with the group's percentage of

the general population. • Comparative disparity is calculated by subtracting a group's percentage of representation on the venire from the group's percentage of the population — that is, calculating the group's absolute-disparity representation — then dividing that percentage by the group's percentage-representation in the population, and multiplying the result by 100. For example, if African-Americans make up 12% of a county's population, and 8% of the potential jurors on the venire, the absolute disparity of African-Americans is 4%. And the comparative disparity is 33%, because 4 divided by 12 is .33, or 33%. Many courts criticize the comparative-disparity analysis, and favor an absolute-disparity analysis, because the comparative-disparity analysis is said to exaggerate the deviation. The reason for calculating the disparity is to analyze a claim that the jury was not impartial because it was not selected from a pool of jurors that fairly represented the makeup of the jurisdiction. See DUREN TEST; FAIR-CROSS-SECTION REQUIREMENT; STATISTICAL-DECISION THEORY Y. Cf. ABSOLUTE DISPARITY. [Cases: Jury 33(1.1). C.J.S. Juries §§ 269–273, 279, 306.]

COMPARATIVE FAULT

comparative fault. See comparative negligence under NEGLIGENCE.

COMPARATIVE HISTORY OF LAW

comparative history of law. See descriptive comparative law under COMPARATIVE LAW .

COMPARATIVE-IMPAIRMENT TEST

comparative-impairment test. Conflict of laws. A test that asks which of two or more forums would have its policies most impaired by not having its law applied in the case. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

COMPARATIVE INTERPRETATION

comparative interpretation. See INTERPRETATION.

COMPARATIVE JURISPRUDENCE

comparative jurisprudence. See COMPARATIVE LAW.

COMPARATIVE LAW

comparative law. The scholarly study of the similarities and differences between the legal systems of different jurisdictions, such as between civil-law and common-law countries. — Also termed comparative jurisprudence. See INTERNATIONAL LAW.

“What is known as comparative jurisprudence — namely, the study of the resemblances and differences between different legal systems — is not a separate branch of jurisprudence co-ordinate with the analytical, historical, and ethical, but is merely a particular method of that science in all its branches. We compare English law with Roman law either for the purpose of analytical jurisprudence, in order the better to comprehend the conceptions and principles of each of those systems; or for the purpose of historical jurisprudence, in order that we may better

understand the course of development of each system; or for the purpose of ethical jurisprudence, in order that we may better judge the practical merits and demerits of each of them. Apart from such purposes the comparative study of law would be merely futile." John Salmond, *Jurisprudence* 7–8 n.(c) (Glanville L. Williams ed., 10th ed. 1947).

descriptive comparative law. The inventory of legal systems (past and present) as a whole, as well as of individual rules that these systems establish for several categories of legal relations. • Descriptive comparative law is sometimes considered one of three subsets of comparative law, the other two being comparative legislation and comparative history of law. See COMPARATIVE LEGISLATION; COMPARATIVE LEGAL HISTORY.

COMPARATIVE LEGAL HISTORY

comparative legal history. A species of comparative law seeking to establish a universal history of law, so that the succession of social phenomena influencing the evolution of the legal world might be better understood. • This field is closely allied to ethnological jurisprudence, folklore, legal sociology, and jurisprudence. — Also termed comparative history of law. Cf. descriptive comparative law under COMPARATIVE LAW; COMPARATIVE LEGISLATION.

COMPARATIVE LEGISLATION

comparative legislation. A species of comparative law seeking to define the common link for modern statutory doctrines, concerned with the development of legal study as a social science and with awakening an international legal consciousness. Cf. descriptive comparative law under COMPARATIVE LAW; COMPARATIVE LEGAL HISTORY.

COMPARATIVE NEGLIGENCE

comparative negligence. See NEGLIGENCE.

COMPARATIVE-NEGLIGENCE DOCTRINE

comparative-negligence doctrine. Torts. The principle that reduces a plaintiff's recovery proportionally to the plaintiff's degree of fault in causing the damage, rather than barring recovery completely. • Most states have statutorily adopted the comparative-negligence doctrine. See NEGLIGENCE. Cf. CONTRIBUTORY-NEGLIGENCE DOCTRINE. [Cases: Negligence 549.C.J.S. Negligence §§ 262–264.]

COMPARATIVE NOMOGENETICS

comparative nomogenetics. The study of the development of the world's legal ideas and systems. • This term, like comparative nomoscopy and comparative nomothetics, was devised by John Henry Wigmore. See John Henry Wigmore, *A Panorama of the World's Legal Systems* 1121 (libr. ed. 1936).

COMPARATIVE NOMOSCOPY

comparative nomoscopy. The description of the world's legal systems.

COMPARATIVE NOMOTHETICS

comparative nomothetics. The analysis of the merits of legal systems.

COMPARATIVE RECTITUDE

comparative rectitude. Family law. Archaic. The degree to which one spouse is less culpable than the other in damaging the marriage, so that even though both spouses are at fault, the less culpable spouse may successfully petition for a separation or divorce. • Comparative rectitude tempers the doctrine of recrimination by making a divorce possible even though both parties are at fault. Comparative rectitude is now virtually obsolete because of the prevalence of no-fault divorce. See RECRIMINATION(1). [Cases: Divorce 53.]

COMPARATIVE-SALES APPROACH

comparative-sales approach. See MARKET APPROACH.

COMPARATOR

comparator (k<<schwa>>m-par-<<schwa>>-t<<schwa>>r or kom-p<<schwa>>-ray-t<<schwa>>r). Something with which something else is compared <the female plaintiffs alleged illegal wage discrimination and contrasted their pay with that of male comparators>.

COMPARUIT AD DIEM

comparuit ad diem (k<<schwa>>m-pair-oo-wit ad dī-<<schwa>>m), n. [Latin “he appeared to the day”] Hist. A plea averring that the defendant appeared in court as required and did not forfeit the bail bond.

COMPASSING

compassing (k<<schwa>>m-p<<schwa>>-sing). Hist. The act of contriving or plotting, esp. of something un-derhanded. • The Treason Act of 1351 criminalized the act of compassing the sovereign's death. — Also termed imagining.

COMPEL

compel, vb. 1. To cause or bring about by force, threats, or overwhelming pressure <a lawyer cannot be compelled to testify about a privileged communication>. 2. (Of a legislative mandate or judicial precedent) to convince (a court) that there is only one possible resolution of a legal dispute <the wording of the statute compels us to affirm>.

COMPELLABLE

compellable, adj. Capable of or subject to being compelled, esp. to testify <an accused person's spouse is not a compellable witness for the prosecution>.

COMPELLATIVUS

compellativus (k<<schwa>>m-pel-<<schwa>>-tī-v<<schwa>>s). [fr. Latin compellare “to accuse”] Hist. An adversary or accuser.

COMPELLING-STATE-INTEREST TEST

compelling-state-interest test. Constitutional law. A method for determining the constitutional validity of a law, whereby the government's interest in the law and its purpose is balanced against an individual's constitutional right that is affected by the law. • Only if the government's interest is strong enough will the law be upheld. The compelling-state-interest test is used, e.g., in equal-protection analysis when the disputed law requires strict scrutiny. See STRICT SCRUTINY. [Cases: Constitutional Law 213.1(2). C.J.S. Constitutional Law §§ 714, 716, 718.]

COMPENSABLE

compensable (k<<schwa>>m-pen-s<<schwa>>-b<<schwa>>l), adj. Able or entitled to be compensated for <a compensable injury>. — Also termed recompensable.

COMPENSABLE DEATH

compensable death. See DEATH.

COMPENSABLE INJURY

compensable injury. See INJURY.

COMPENSATE

compensate (kom-p<<schwa>>n-sayt), vb. 1. To pay (another) for services rendered <the lawyer was fairly compensated for her time and effort>. 2. To make an amendatory payment to; to recompense (for an injury) <the court ordered the defendant to compensate the injured plaintiff>.

COMPENSATED SURETY

compensated surety. See SURETY.

COMPENSATING BALANCE

compensating balance. The amount of money that a borrower from a bank is required to keep on deposit as a condition for a loan or a line of credit.

COMPENSATIO

compensatio (kom-pen-say-shee-oh), n. [Latin “weighing; balancing”] Roman law. A defendant's claim to have the plaintiff's demand reduced by the amount that the plaintiff owes the defendant. See SETOFF(2).

COMPENSATIO CRIMINIS

compensatio criminis (kom-pen-say-shee-oh krim-<<schwa>>-nis). [Latin] Eccles. law. A defendant's plea in a divorce action, alleging that the complainant is guilty of the same conduct that the defendant is charged with, esp. adultery. See RECRIMINATION(1).

“The compensatio criminis is the standard canon law of England in questions of divorce, and it is founded on the principle that a man cannot be permitted to complain of the breach of a contract which he had first violated; and the same principle, it is to be presumed, prevails in the United States. So, if the injured party, subsequently to the adultery, cohabits with the other, or is

otherwise reconciled to the other, after just grounds of belief in the fact, it is, in judgment of law, a remission of the offense, and a bar to the divorce.” 4 James Kent, Commentaries on American Law *100–01 (George Comstock ed., 11th ed. 1866).

COMPENSATIO INJURIARUM

compensatio injuriarum (kom-pen-say-shee-oh in-juur-ee-air-*<<schwa>>m*). [Latin “the compensation of wrongs”] Scots law. The setoff in a defamation action.

COMPENSATION

compensation (kom-p*<<schwa>>n*-say-sh*<<schwa>>n*), n.1. Remuneration and other benefits received in return for services rendered; esp., salary or wages. [Cases: Master and Servant 68–72.5. C.J.S. Employer–Employee Relationship §§ 132–133, 138–153, 155–156, 163–172, 174–176.]

“Compensation consists of wages and benefits in return for services. It is payment for work. If the work contracted for is not done, there is no obligation to pay. [Compensation] includes wages, stock option plans, profit-sharing, commissions, bonuses, golden parachutes, vacation, sick pay, medical benefits, disability, leaves of absence, and expense reimbursement.” Kurt H. Decker & H. Thomas Felix II, *Drafting and Revising Employment Contracts* § 3.17, at 68 (1991).

2. Payment of damages, or any other act that a court orders to be done by a person who has caused injury to another. • In theory, compensation makes the injured person whole. [Cases: Damages 15. C.J.S. Damages §§ 21–22.] 3.SETOFF(2). — compensatory, (k*<<schwa>>m*-pen-s*<<schwa>>-tor*-ee), compensational (kom-p*<<schwa>>n*-say-sh*<<schwa>>-n**<<schwa>>l*), adj.

accrued compensation. Remuneration that has been earned but not yet paid.

adequate compensation. See just compensation.

deferred compensation. 1. Payment for work performed, to be paid in the future or when some future event occurs. [Cases: Master and Servant 72. C.J.S. Employer–Employee Relationship §§ 146–152, 155, 175.] 2. An employee's earnings that are taxed when received or distributed rather than when earned, such as contributions to a qualified pension or profit-sharing plan.

just compensation. Under the Fifth Amendment, a payment by the government for property it has taken under eminent domain — usu. the property's fair market value, so that the owner is theoretically no worse off after the taking. — Also termed adequate compensation; due compensation; land damages. [Cases: Eminent Domain 122–150. C.J.S. Eminent Domain §§ 71–72, 86, 116–141, 144–146, 148, 151, 153, 155–156, 159–170, 172–177.]

unemployment compensation. Compensation paid at regular intervals by a state agency to an unemployed person, esp. one who has been laid off. [Cases: Social Security and Public Welfare 251. C.J.S. Social Security and Public Welfare §§ 146–150, 211.]

unreasonable compensation. Tax. Compensation that is not deductible as a business expense

because the compensation is out of proportion to the services actually rendered or because it is in excess of statutorily defined limits. IRC (26 USCA) § 162. [Cases: Internal Revenue 3323. C.J.S. Internal Revenue § 162.]

COMPENSATION CLAUSE

Compensation Clause. The clause of the U.S. Constitution providing for federal judges to be paid. U.S. Const. art. III, § 1, cl. 2.

COMPENSATION PERIOD

compensation period. The time fixed by unemployment or workers'-compensation law during which an unemployed or injured worker is entitled to receive compensation. [Cases: Social Security and Public Welfare 728; Workers' Compensation 836–868. C.J.S. Social Security and Public Welfare § 292; Workmen's Compensation §§ 545–574, 582.]

COMPENSATORY DAMAGES

compensatory damages. See DAMAGES.

COMPENSATORY PAYMENT

compensatory payment. Family law. A postmarital spousal payment made by the richer ex-spouse to the poorer one and treated as an entitlement rather than as a discretionary award. • Compensatory payments are set by statute and are based on a formula using the length of the marriage, differences in postdivorce income, role as primary caregiver, and other factors. The purpose is to compensate somewhat for disparate income levels after a failed marriage. Cf. ALIMONY.

COMPENSATORY TIME

compensatory time. See COMP TIME.

COMPERENDINATIO

comperendinatio (kom-p<<schwa>>r-en-d<<schwa>>-nay-shee-oh), n. [Latin “to remand to the next day but one”] Roman law. An adjournment of an action, particularly one of the actiones legis, to hear the parties or their advocates a second time; a second hearing of the parties to a case. • The judge (judex) would decide the case at the conclusion of the second hearing. See LEGIS ACTIO.

COMPETENCE

competence, n. 1. A basic or minimal ability to do something; qualification, esp. to testify <competence of a witness>. [Cases: Witnesses 35. C.J.S. Witnesses §§ 87–88, 90, 92.] 2. The capacity of an official body to do something <the court's competence to enter a valid judgment>. 3. Authenticity <the documents were supported by a business-records affidavit, leaving their competence as evidence beyond doubt>. [Cases: Evidence 369. C.J.S. Evidence § 819.] Cf. COMPETENCY. — competent, adj.

COMPETENCY

competency,n.1. The mental ability to understand problems and make decisions. [Cases: Mental Health 3. C.J.S. Insane Persons §§ 2, 6.] 2. A criminal defendant's ability to stand trial, measured by the capacity to understand the proceedings, to consult meaningfully with counsel, and to assist in the defense. — Also termed competency to stand trial. [Cases: Mental Health 432. C.J.S. Criminal Law §§ 549–554.] Cf. COMPETENCE. — competent,adj.

COMPETENCY HEARING

competency hearing.See PATE HEARING.

COMPETENCY PROCEEDING

competency proceeding.See PROCEEDING.

COMPETENCY TO STAND TRIAL

competency to stand trial.See COMPETENCY.

COMPETENT CONTRACTOR

competent contractor.See CONTRACTOR.

COMPETENT COURT

competent court.See court of competent jurisdiction under COURT.

COMPETENT EVIDENCE

competent evidence.See EVIDENCE.

COMPETENT JURISDICTION

competent jurisdiction.See JURISDICTION(2).

COMPETENT WITNESS

competent witness.See WITNESS.

COMPETITION

competition. The struggle for commercial advantage; the effort or action of two or more commercial interests to obtain the same business from third parties.

fair competition.Open, equitable, and just competition between business competitors.

horizontal competition.Competition between a seller and its competitors. • The Sherman Act prohibits unreasonable restraints on horizontal competition, such as price-fixing agreements between competitors. — Also termed primary-line competition.

perfect competition.A completely efficient market situation characterized by numerous buyers and sellers, a homogeneous product, perfect information for all parties, and complete freedom to move in and out of the market. • Perfect competition rarely if ever exists, but antitrust

scholars often use the theory as a standard for measuring market performance.

primary-line competition. See horizontal competition.

vertical competition. Competition between participants at different levels of distribution, such as manufacturer and distributor. — Also termed secondary-line competition.

COMPETITIVE ADVANTAGE

competitive advantage. The potential benefit from information, ideas, or devices that, if kept secret by a business, might be economically exploited to improve the business's market share or to increase its income.

COMPETITIVE ADVERTISING

competitive advertising. See ADVERTISING.

COMPETITIVE BID

competitive bid. See BID(2).

COMPETITIVE CIVIL-SERVICE EXAMINATION

competitive civil-service examination. A test designed to evaluate a person's qualifications for a civil-service position. • This type of examination may be open to all those seeking civil-service employment, or it may be restricted to those civil servants seeking a promotion. See CIVIL SERVICE. [Cases: Officers and Public Employees 11.3. C.J.S. Officers and Public Employees §§ 80–85, 125, 128–129.]

COMPETITIVE INJURY

competitive injury. A wrongful economic loss at the hands of a commercial rival, such as the loss of sales due to unfair competition; a disadvantage in a plaintiff's ability to compete with a defendant, caused by the defendant's unfair competition. • Most courts require the plaintiff to show a competitive injury as an element of a misappropriation action, or to have standing to prosecute a false-advertising action under 15 USCA § 1125(a)(1)(B). — Also termed competitive harm. [Cases: Trade Regulation 409. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 110.]

COMPILATION

compilation (kom-p<<schwa>>-lay-sh<<schwa>>n), n. 1. Copyright. A collection of literary works arranged in an original way; esp., a work formed by collecting and assembling preexisting materials or data that are selected, coordinated, or arranged in such a way that the resulting product constitutes an original work of authorship. • An author who creates a compilation owns the copyright of the compilation but not of the component parts. See 17 USCA § 101. Cf. collective work, derivative work under WORK(2). [Cases: Copyrights and Intellectual Property 12(3).] 2. A collection of statutes, updated and arranged to facilitate their use. — Also termed compiled statutes. [Cases: Statutes 144. C.J.S. Statutes §§ 266–267, 272.] 3. A financial statement that does not have an accountant's assurance of conformity with generally accepted

accounting principles. • In preparing a compilation, an accountant does not gather evidence or verify the accuracy of the information provided by the client; rather, the accountant reviews the compiled reports to ensure that they are in the appropriate form and are free of obvious errors. — compile,vb.

COMPILED STATUTES

compiled statutes.1.COMPILED(2).2.STATUTE.

COMPLAINANT

complainant (k<<schwa>>m-playn-<<schwa>>nt).1. The party who brings a legal complaint against another; esp., the plaintiff in a court of equity or, more modernly, a civil suit.

“A suit in equity, under the procedure of the English Court of Chancery, which was generally adopted in the American States prior to the code, is instituted by the plaintiff filing a bill of complaint. The plaintiff is usually called the complainant, in the Federal courts the complainant or plaintiff indifferently. The bill is in substance a petition to the chancellor, or judge of the court of equity, setting forth at large the grounds of the suit, and praying the process of the court, its subpoena, to bring the defendant into court and compel him to answer the plaintiff's bill, and, also, for such relief by decree or interlocutory remedy, by way of injunction, etc., as the plaintiff supposes himself entitled to.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 55 (2d ed. 1899).

2. A person who, under oath, signs a statement (called a “complaint”) establishing reasonable grounds to believe that some named person has committed a crime. — Also termed affiant. [Cases: Criminal Law 210. C.J.S. Criminal Law § 326.]

COMPLAINANTLESS CRIME

complainantless crime.See victimless crime under CRIME.

COMPLAINT

complaint. 1. The initial pleading that starts a civil action and states the basis for the court's jurisdiction, the basis for the plaintiff's claim, and the demand for relief. • In some states, this pleading is called a petition. [Cases: Federal Civil Procedure 671; Pleading 38.5. C.J.S. Pleading §§ 94–95.] 2.Criminal law. A formal charge accusing a person of an offense. Fed. R. Crim. P. 3. Cf. INDICTMENT; INFORMATION. [Cases: Indictment and Information 54. C.J.S. Indictments and Informations §§ 68–69.]

amended complaint.A complaint that modifies and replaces the original complaint by adding relevant matters that occurred before or at the time the action began. Fed. R. Civ. P. 15(d). • In some circumstances, a party must obtain the court's permission to amend its complaint. Fed. R. Civ. P. 15(a). — Also termed substituted complaint. Cf. supplemental complaint. [Cases: Federal Civil Procedure 839; Pleading 233, 242. C.J.S. Pleading §§ 332, 334, 355–358.]

complaint for modification.See motion to modify under MOTION.

fresh complaint. See FRESH COMPLAINT.

preliminary complaint. A complaint issued by a court to obtain jurisdiction over a criminal suspect for a hearing on probable cause or on whether to bind the suspect over for trial. [Cases: Criminal Law 208. C.J.S. Criminal Law §§ 324, 327.]

substituted complaint. See amended complaint.

supplemental complaint. An additional complaint that either corrects a defect in the original complaint or adds relevant matters that occurred after the action began. • Generally, a party must obtain the court's permission to file a supplemental complaint. Fed. R. Civ. P. 15(d). Cf. amended complaint. [Cases: Federal Civil Procedure 864; Pleading 279. C.J.S. Pleading §§ 461, 463–464, 466.]

third-party complaint. A complaint filed by the defendant against a third party, alleging that the third party may be liable for some or all of the damages that the plaintiff is trying to recover from the defendant. Fed. R. Civ. P. 14. [Cases: Federal Civil Procedure 281; Parties 49; Pleading 149. C.J.S. Parties § 127; Pleading § 203.]

well-pleaded complaint. An original or initial pleading that sufficiently sets forth a claim for relief — by including the grounds for the court's jurisdiction, the basis for the relief claimed, and a demand for judgment — so that a defendant may draft an answer that is responsive to the issues presented. • In federal court, a well-pleaded complaint must raise a controlling issue of federal law, or else the court will not have federal-question jurisdiction over the lawsuit. [Cases: Federal Civil Procedure 673; Pleading 48. C.J.S. Pleading §§ 116–124, 132–133.]

COMPLEMENTARY GOODS

complementary goods. Trademarks. Products that are typically used together, such as pancake syrup and pancake mix, or motion-picture projectors and film. • Trademark law may prevent the use of a similar mark on complementary goods because consumers may be confused into thinking that the goods come from a common source. The patent-misuse doctrine may provide a defense in an infringement suit if the plaintiff has used its patent rights to gain market control over unpatented complementary goods. — Also termed complementary products. See AUNT JEMIMA DOCTRINE; PATENT-MISUSE DOCTRINE. [Cases: Trade Regulation 182.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 170, 172, 185.]

COMPLEMENTARY PRODUCTS

complementary products. See COMPLEMENTARY GOODS.

COMPLETED-CONTRACT ACCOUNTING METHOD

completed-contract accounting method. See ACCOUNTING METHOD.

COMPLETED GIFT

completed gift. See GIFT.

COMPLETE DIVERSITY

complete diversity. See DIVERSITY OF CITIZENSHIP.

COMPLETED-OPERATIONS POLICY

completed-operations policy. See INSURANCE POLICY.

COMPLETE IN ITSELF

complete in itself, adj. (Of a legislative act) fully covering an entire subject.

COMPLETE INTEGRATION

complete integration. See INTEGRATION(2).

COMPLETE INTERDICTION

complete interdiction. See full interdiction under INTERDICTION(3).

COMPLETE JURISDICTION

complete jurisdiction. See JURISDICTION.

COMPLETELY INTEGRATED CONTRACT

completely integrated contract. See INTEGRATED CONTRACT.

COMPLETENESS DOCTRINE

completeness doctrine. See RULE OF OPTIONAL COMPLETENESS.

COMPLETE-OPERATION RULE

complete-operation rule. Insurance. The principle that goods are covered against damage at any time during the shipping process, including the loading and unloading of the goods. See WAREHOUSE-TO-WAREHOUSE COVER. Cf. COMING-TO-REST DOCTRINE E. [Cases: Insurance 2681. C.J.S. Insurance §§ 1060, 1609.]

COMPLETE OWNERSHIP

complete ownership. See perfect ownership under OWNERSHIP.

COMPLETE-PREEMPTION DOCTRINE

complete-preemption doctrine. The rule that a federal statute's preemptive force may be so extraordinary and all-encompassing that it converts an ordinary state-common-law complaint into one stating a federal claim for purposes of the well-pleaded-complaint rule. See well-pleaded complaint under COMPLAINT. [Cases: Federal Courts 241.]

COMPLETE PROPERTY

complete property. See PROPERTY.

COMPLETE VOLUNTARY TRUST

complete voluntary trust. See executed trust under TRUST.

COMPLETION BOND

completion bond. See PERFORMANCE BOND.

COMPLEX LITIGATION

complex litigation. See LITIGATION.

COMPLEX TRUST

complex trust. See TRUST.

COMPLIANCE AUDIT

compliance audit. See AUDIT.

COMPLICATED LARCENY

complicated larceny. See mixed larceny under LARCENY.

COMPLICE

complice (kom-plis). Archaic. An accomplice or accessory to a crime or immoral behavior.

COMPLICITY

complicity (k<<schwa>>m-plis-<<schwa>>-tee), n. Association or participation in a criminal act; the act or state of being an accomplice. • Under the Model Penal Code, a person can be an accomplice as a result of either that person's own conduct or the conduct of another (such as an innocent agent) for which that person is legally ac-countable. Model Penal Code § 2.06. See ACCOMPLICE; innocent agent under AGENT. [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.] — complicitous (k<<schwa>>m-plis-<<schwa>>-t<< schwa>>s), adj.

COMPOSITE MARK

composite mark. See composite trademark under TRADEMARK.

COMPOSITE STATE

composite state. See STATE.

COMPOSITE TRADEMARK

composite trademark. See TRADEMARK.

COMPOSITE WORK

composite work. See WORK(2).

COMPOSITION

composition, n. 1. An agreement between a debtor and two or more creditors for the adjustment or discharge of an obligation for some lesser amount; an agreement among the debtor and two or more creditors that the debtor will pay the creditors less than their full claims in full

satisfaction of their claims. • The preexisting-duty rule is not a defense to this type of agreement because consideration arises from the agreement by each creditor with each other to take less than full payment. Through the performance of this agreement, the debtor is discharged in full for the debts of the participating creditors. — Also termed composition with creditors; creditors' composition; at-termoiement. [Cases: Bankruptcy 3662.100–3662.115; Debtor and Creditor 10. C.J.S. Assignments for Benefit of Creditors § 26; Creditor and Debtor §§ 84–94.] 2. The compensation paid as part of such an agreement. 3.Hist. A payment of money or chattels as satisfaction for an injury. • In Anglo-Saxon and other early societies, a composition with the injured party was recognized as a way to deter acts of revenge by the injured party. — compose,vb.

“[T]he first theory of liability was in terms of a duty to buy off the vengeance of him to whom an injury had been done whether by oneself or by something in one's power. The idea is put strikingly in the Anglo-Saxon proverb, ‘Buy spear from side or bear it,’ that is, buy off the feud or fight it out.... As the social interest in peace and order — the general security in its lowest terms — comes to be secured more effectively by regulation and ultimate putting down of feud as a remedy, payment of composition becomes a duty rather than a privilege The next step is to measure the composition not in terms of the vengeance to be bought off but in terms of the injury. A final step is to put it in terms of reparation.” Roscoe Pound, *An Introduction to the Philosophy of Law* 74 (rev. ed. 1954).

COMPOSITION DEED

composition deed.See DEED.

COMPOSITION OF MATTER

composition of matter.Patents. One of the five types of patentable statutory subject matter, consisting of combinations of natural elements whether resulting from chemical union or from mechanical mixture, and whether the substances are gases, fluids, powders, or solids. • This classification includes chemical compounds such as drugs and fuels, physical products such as plastics and particleboard, and new life forms made by genetic engineering. Its subject matter is always the substance itself, rather than the form or shape. — Often shortened to composition. [Cases: Patents 14. C.J.S. Patents § 22.]

“[A] composition of matter describes what most people imagine to be the goal of the typical laboratory inventor, since it is usually a new chemical invention, although it can be any composition of materials, not limited solely to chemicals.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 21 (2d ed. 1990).

COMPOSITION WITH CREDITORS

composition with creditors.See COMPOSITION(1).

COMPOS MENTIS

compos mentis (kom-p<<schwa>>s men-tis), adj.[Latin “master of one's mind”] Of sound mind; having use of and control over one's own mental faculties. Cf. NON COMPOS MENTIS.

[Cases: Mental Health 3.1.]

COMPOSSESSIO

compossessio (kom-p<<schwa>>-zes[h]-ee-oh). [Latin] Civil law. Possession of a thing in common.

COMPOS SUI

compos sui (kom-p<<schwa>>s s[y]oo-I), adj.[Latin “master of one's self”] (Of a person) having control over one's own limbs, or having the power of bodily motion.

COMPOUND

compound (kom- or k<<schwa>>m-pownd), vb.1. To put together, combine, or construct. 2. To compute (interest) on the principal and the accrued interest. 3. To settle (a matter, esp. a debt) by a money payment, in lieu of other liability; to adjust by agreement. 4. To agree for consideration not to prosecute (a crime). • Compounding a felony in this way is itself a felony. 5. Loosely, to aggravate; to make (a crime, etc.) more serious by further bad conduct.

COMPOUND DUTY

compound duty.See DUTY(4).

COMPOUNDER

compounder (kom- or k<<schwa>>m-pown-d<<schwa>>r).1. One who settles a dispute; the maker of a com-position. — Also termed amicable compounder. See COMPOSITION(1).2. One who knows of a crime by another and agrees, for a promised or received reward, not to prosecute.

COMPOUNDING A CRIME

compounding a crime.The offense of either agreeing not to prosecute a crime that one knows has been com-mitted or agreeing to hamper the prosecution. — Also termed compounding a felony; (archaically) theftbote. See STIFLING OF A PROSECUTION . [Cases: Compounding Offenses 1. C.J.S. Compounding Offenses § 1.]

“If a prosecuting attorney should accept money from another to induce the officer to prevent the finding of an indictment against that person this would be compounding a crime if the officer knew the other was guilty of an offense, but would be bribery whether he had such knowledge or not.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 539 (3d ed. 1982).

COMPOUNDING A FELONY

compounding a felony.See COMPOUNDING A CRIME.

COMPOUND INTEREST

compound interest.See INTEREST(3).

COMPOUND JOURNAL ENTRY

compound journal entry. See ENTRY(2).

COMPOUND LARCENY

compound larceny. 1. See mixed larceny under LARCENY. 2. See aggravated larceny under LARCENY.

COMPOUND OFFENSE

compound offense. See OFFENSE(1).

COMPOUND POLICY

compound policy. See blanket policy under INSURANCE POLICY.

COMPREHENSIVE GENERAL-LIABILITY INSURANCE

comprehensive general-liability insurance. See INSURANCE.

COMPREHENSIVE GENERAL-LIABILITY POLICY

comprehensive general-liability policy. See INSURANCE POLICY.

COMPREHENSIVE INSURANCE

comprehensive insurance. See INSURANCE.

COMPREHENSIVE NONLITERAL SIMILARITY

comprehensive nonliteral similarity. See SIMILARITY.

COMPREHENSIVE ZONING PLAN

comprehensive zoning plan. A general plan to control and direct the use and development of a large piece of property. See ZONING. [Cases: Zoning and Planning 30. C.J.S. Zoning and Land Planning §§ 2, 5, 12, 39.]

COMPRINT

comprint. (kom-print). Copyright. Hist. The surreptitious and supposedly illegal printing of another bookseller's copy of a work. • Despite the word's appearance as a legal term in dictionaries since 1706, no such offense ever existed. The term, which is properly a verb meaning "to share in printing (a book)," was first given this erroneous definition by John Kersey when he produced a new edition of Edward Phillips's *New World of English Words*. It has occasionally been copied by legal lexicographers ever since.

COMPRISING

comprising, adj. Patents. (In the transition between the preamble and the body of a patent claim) including; having. • This term does not limit the claim to the specified elements, so a later patent applicant's product or process cannot avoid infringement by merely adding another claim element. See closed-ended claim under PATENT CLAIM.

COMPROMIS

compromis (kom-pr<<schwa>>-mee). [French] Int'l law. An agreement between two or more countries to submit an existing dispute to the jurisdiction of an arbitrator, an arbitral tribunal, or an international court. See compro-missory arbitration under ARBITRATION.

ad hoc compromis (ad hok kom-pr<<schwa>>-mee). An agreement in which countries submit a particular dispute that has arisen between them to an ad hoc or institutionalized arbitral tribunal or to an international court. — Also termed compromis proper; special agreement.

general compromis. An agreement in which countries submit all or a definite class of disputes that may arise between them to an arbitral institution, a court, or an ad hoc arbitral tribunal by concluding a general arbitration treaty or by including an arbitration clause in a treaty. — Also termed abstract compromis; anticipated com-promis.

COMPROMISE

compromise, n. 1. An agreement between two or more persons to settle matters in dispute between them; an agreement for the settlement of a real or supposed claim in which each party surrenders something in concession to the other. — Also termed compromise and settlement; (erroneously) compromise settlement. [Cases: Com-promise and Settlement 1. C.J.S. Compromise and Settlement § 1.] 2. A debtor's partial payment coupled with the creditor's promise not to claim the rest of the amount due or claimed. Cf. ACCORD; ACCORD AND SATISFACTION. — compromise, vb.

COMPROMISE AND SETTLEMENT

compromise and settlement. See COMPROMISE(1).

COMPROMISE VERDICT

compromise verdict. See VERDICT.

COMPROMIS PROPER

compromis proper. See ad hoc compromis under COMPROMIS.

COMPROMISSARIUS

compromissarius (kom-pr<<schwa>>-mi-sair-ee-<<schwa>>s). [Latin] Roman law. See ARBITRATOR.

COMPROMISSORY ARBITRATION

compromissory arbitration. See ARBITRATION.

COMPROMISSUM

compromissum (kom-pr<<schwa>>-mis-<<schwa>>m), n. [Latin “mutual agreement”] Roman law. An agree-ment to submit a controversy to arbitration.

COMPTE ARRÊTÉ

compte arrêté (kawnt a-ray-tay). [French “settled account”] An account stated in writing, and acknowledged to be correct on its face by the party against whom it is stated.

COMPTER

compter (kown-t<<schwa>>r), n. Hist. A debtor's prison.

COMPTIME

comp time. Time that an employee is allowed to take off from work instead of being paid for overtime already worked. — Also termed compensatory time.

COMPTROLLER

comptroller (k<<schwa>>n-troh-l<<schwa>>r). An officer of a business or a private, state, or municipal corporation who is charged with duties usu. relating to fiscal affairs, including auditing and examining accounts and reporting the financial status periodically. — Also spelled controller. [Cases: Corporations 303; Municipal Corporations 172. C.J.S. Corporations § 471; Municipal Corporations §§ 406–408.]

COMPTROLLER GENERAL OF THE UNITED STATES

Comptroller General of the United States. The officer in the legislative branch of the federal government who heads the General Accounting Office. • The Comptroller General is appointed by the President with the advice and consent of the Senate. See GENERAL ACCOUNTING OFFICE.

COMPTROLLER OF THE CURRENCY

Comptroller of the Currency. See OFFICE OF THE COMPTROLLER OF THE CURRENCY.

COMPULSION

compulsion, n. 1. The act of compelling; the state of being compelled.

“Compulsion can take other forms than physical force; but in whatever form it appears the courts have been indisposed to admit that it can be a defence for any crime committed through yielding to it and the law of the matter is both meagre and vague. It can best be considered under the heads of obedience to orders, martial coercion, duress per minas, and necessity.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 54 (16th ed. 1952).

2. An uncontrollable inclination to do something. 3. Objective necessity; duress. — compel, vb.

COMPULSORY

compulsory (k<<schwa>>m-p<<schwa>>l-s<<schwa>>-ree), adj. Compelled; mandated by legal process or by statute <compulsory counterclaim>.

compulsory, n. Eccles. law. An order that compels the attendance of a witness.

COMPULSORY APPEARANCE

compulsory appearance. See APPEARANCE.

COMPULSORY ARBITRATION

compulsory arbitration. See ARBITRATION.

COMPULSORY-ATTENDANCE LAW

compulsory-attendance law. A statute requiring minors of a specified age to attend school. • Compulsory-attendance laws do not apply to married persons. — Also termed compulsory-school-attendance law. See AMISH EXCEPTION .

COMPULSORY CONDITION

compulsory condition. See CONDITION(2).

COMPULSORY COUNTERCLAIM

compulsory counterclaim. See COUNTERCLAIM.

COMPULSORY-COUNTERCLAIM RULE

compulsory-counterclaim rule. The rule requiring a defending party to present every counterclaim arising out of the same transaction or occurrence that is the basis of the plaintiff's claim. Fed. R. Civ. P. 13(a). • Most courts hold that if a party does not timely bring a compulsory counterclaim, the party is estopped from asserting the claim.

COMPULSORY DISCLOSURE

compulsory disclosure. See DISCLOSURE(2).

COMPULSORY INSURANCE

compulsory insurance. See INSURANCE.

COMPULSORY JOINDER

compulsory joinder. See JOINDER.

COMPULSORY LABOR

compulsory labor. See FORCED LABOR.

COMPULSORY LICENSE

compulsory license. See LICENSE.

COMPULSORY NONSUIT

compulsory nonsuit. See NONSUIT(2).

COMPULSORY PILOT

compulsory pilot. See PILOT.

COMPULSORY PILOTAGE

compulsory pilotage. See PILOTAGE.

COMPULSORY POOLING

compulsory pooling. See POOLING.

COMPULSORY PROCESS

compulsory process. See PROCESS.

COMPULSORY PROCESS CLAUSE

Compulsory Process Clause. The clause of the Sixth Amendment to the U.S. Constitution giving criminal defendants the subpoena power for obtaining witnesses in their favor. [Cases: Witnesses 2. C.J.S. Criminal Law §§ 469–485.]

COMPULSORY PURCHASE

compulsory purchase. Rare. 1. EMINENT DOMAIN. 2. EXPROPRIATION(1).

COMPULSORY SALE

compulsory sale. See SALE.

COMPULSORY-SCHOOL-ATTENDANCE LAW

compulsory-school-attendance law. See COMPULSORY-ATTENDANCE LAW.

COMPULSORY SURRENDER

compulsory surrender. 1. EMINENT DOMAIN. 2. EXPROPRIATION(1).

COMPULSORY UNITIZATION

compulsory unitization. See UNITIZATION.

COMPURGATION

compurgation (kom-p<<schwa>>r-gay-sh<<schwa>>n), n. [Latin con- “together” + purgare “to clear or purge”] Hist. A trial by which a defendant could have supporters (called compurgators), frequently 11 in number, testify that they believed the defendant was telling the truth. — Also termed wager of law; trial by oath. — compurgatory, adj.

“If a defendant on oath and in a set form of words will deny the charge against him, and if he can get a certain number of other persons (compurgators) to back his denial by their oaths, he will win his case. If he cannot get the required number, or they do not swear in proper form, ‘the oath bursts,’ and he will lose. Though oaths were used in the Roman law of procedure, this institution of compurgation was not known to it. It was, however, common to the laws of many of the barbarian tribes who overran the Roman empire. Because it was so common and so widespread the church adopted it.... The case of King v. Williams in 1824 was the last instance of its use. It was finally abolished in 1833.” 1 William Holdsworth, A History of English Law 305–08 (7th ed.

1956).

COMPURGATOR

compurgator (kom-p<<schwa>>r-gay-t<<schwa>>r).Hist. A person who appeared in court and made an oath in support of a civil or criminal defendant. — Also termed oath-helper. See COMPURGATION.

COMPUTER CRIME

computer crime.See CRIME.

COMPUTER-INFORMATION TRANSACTION

computer-information transaction.Copyright. An agreement whose primary purpose is to create, modify, transfer, or license computer information or rights in computer information.

COMPUTER MATCHING

computer matching.The comparing of computer records in two separate systems to determine whether the same record exists in both systems. • The government, for example, uses computer matching to find persons who are both employed and receiving welfare payments and to find instances in which both divorced parents are claiming the same child on their income-tax returns. See COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1988.

COMPUTER MATCHING AND PRIVACY PROTECTION ACT OF 1988

Computer Matching and Privacy Protection Act of 1988.An act that allows governmental agencies, with certain limitations, to compare computerized records to establish or verify eligibility for benefits or to recoup payments on benefits. 5 USCA § 552a. See COMPUTER MATCHING.

COMPUTER PROGRAMS DIRECTIVE

Computer Programs Directive.See DIRECTIVE ON THE LEGAL PROTECTION OF COMPUTER PROGRAMS .

COMPUTER SOFTWARE PROTECTION ACT OF 1980

Computer Software Protection Act of 1980.Copyright. An amendment to the Copyright Act of 1976, defining “computer program” as a literary work for copyright purposes and qualifying the exclusive rights of copy-righted-software owners. 17 USCA § 117.

COMPUTER SOFTWARE PROTECTION ACT OF 1984

Computer Software Protection Act of 1984.Copyright. An amendment to the Copyright Act of 1976, enacted to protect copyrighted computer programs against illegal copying. 17 USCA § 109.

COMPUTER SOFTWARE RENTAL AMENDMENTS ACT

Computer Software Rental Amendments Act.Copyright. A 1990 statute prohibiting

computer-program purchasers from leasing, renting, or lending the software for commercial gain. 17 USCA §§ 801–805.

COMPUTUS

computus (kom-py<<schwa>>-t<<schwa>>s). [Latin computo “to count up; to reckon”] Hist. A writ to compel a guardian, bailiff, receiver, or accountant to render an accounting. — Also spelled compotus.

COMSTOCKERY

comstockery (kom-stok-<<schwa>>r-ee). (often cap.) Censorship or attempted censorship of art or literature that is supposedly immoral or obscene.

COMSTOCK LAW

Comstock law (kom-stok). An 1873 federal statute that tightened rules against mailing “obscene, lewd, or lascivious” books or pictures, as well as “any article or thing designed for the prevention of conception or procuring of abortions.” • Because of the intolerance that led to this statute, the law gave rise to an English word roughly equivalent to prudery — namely, comstockery. [Cases: Postal Service 31.1.]

CON

con.abbr.1. Confidence <con game>.2. Convict <ex-con>.3. Contra <pros and cons>.4. (cap.) Constitutional <Con. law>.

con,n. See CONFIDENCE GAME.

CONATUS

conatus (k<<schwa>>-nay-t<<schwa>>s). [Latin] Hist. An attempt, esp. to commit a crime.

CONCEALED DEBTOR

concealed debtor.See DEBTOR.

CONCEALED WEAPON

concealed weapon.See WEAPON.

CONCEALMENT

concealment,n.1. The act of refraining from disclosure; esp., an act by which one prevents or hinders the discovery of something; a cover-up. 2. The act of removing from sight or notice; hiding. 3.Insurance. The insured's intentional withholding from the insurer material facts that increase the insurer's risk and that in good faith ought to be disclosed. Cf. NONDISCLOSURE. [Cases: Insurance 2961. C.J.S. Insurance §§ 538, 591–593, 693, 701, 757, 771, 774.] — conceal,vb.

“Concealment is an affirmative act intended or known to be likely to keep another from learning of a fact of which he would otherwise have learned. Such affirmative action is always

equivalent to a misrepresentation and has any effect that a misrepresentation would have” Restatement (Second) of Contracts § 160 cmt. a (1979).

active concealment.The concealment by words or acts of something that one has a duty to reveal. [Cases: Fraud 16.]

fraudulent concealment.The affirmative suppression or hiding, with the intent to deceive or defraud, of a material fact or circumstance that one is legally (or, sometimes, morally) bound to reveal. — Also termed hidden fraud. [Cases: Fraud 16.]

passive concealment.The act of maintaining silence when one has a duty to speak. [Cases: Fraud 16.]

CONCEALMENT RULE

concealment rule.The principle that a defendant's conduct that hinders or prevents a plaintiff from discovering the existence of a claim tolls the statute of limitations until the plaintiff discovers or should have discovered the claim. — Also termed fraudulent-concealment rule. [Cases: Limitation of Actions 104.]

CONCEDO

concedo (k<<schwa>>n-see-doh). [Latin] Hist. I grant. • This was formerly a term of conveyance.

CONCENTRATION ACCOUNT

concentration account.A single centralized bank account into which funds deposited at or collected at out-of-area locations are periodically transferred.

CONCEPTION OF INVENTION

conception of invention.Patents. The formation in the inventor's mind of a definite and permanent idea of a complete invention that is thereafter applied in practice. • Courts usu. consider conception when determining priority of invention. [Cases: Patents 90(1). C.J.S. Patents §§ 120–122.]

CONCEPTUM

conceptum (k<<schwa>>n-sep-t<<schwa>>m). [Latin “seized”] Civil law. A theft in which the stolen item was searched for and found in someone's possession and in the presence of witnesses. See furtum conceptum under FURTUM.

CONCERTED ACTION

concerted action.An action that has been planned, arranged, and agreed on by parties acting together to further some scheme or cause, so that all involved are liable for the actions of one another. — Also termed concert of action. [Cases: Conspiracy 2, 24(1). C.J.S. Conspiracy §§ 9–15, 17, 113–116.]

CONCERTED ACTIVITY

concerted activity. Labor law. Action by employees concerning wages or working conditions. • Concerted activity is protected by the National Labor Relations Act and cannot be used as a basis for disciplining or discharging an employee. [Cases: Labor Relations 281. C.J.S. Labor Relations §§ 263–264.]

“Typical protected concerted activity involves union organizing, the discussion of unionization among employees, or the attempt by one employee to solicit union support from another employee. But concerted activity need not involve a union. Activities by groups of employees unaffiliated with a union to improve their lot at their work place are deemed protected concerted activities.” Douglas L. Leslie, *Labor Law in a Nutshell* 84 (3d ed. 1992).

CONCERTED REFUSAL TO DEAL

concerted refusal to deal. Antitrust. An agreement between two or more persons or firms to not do business with a third party. • The parties to the agreement may or may not be competitors. Concerted refusals to deal may violate § 1 of the Sherman Act and are analyzed under either the per se rule or the rule of reason, depending on the nature of the agreement. See BOYCOTT; PER SE RULE; RULE OF REASON.

CONCERT OF ACTION

concert of action. See CONCERTED ACTION.

CONCERT-OF-ACTION RULE

concert-of-action rule. See WHARTON'S RULE.

CONCESSI

concessi (k<<schwa>>n-ses-I). [Latin] Hist. I have granted. • Concessi creates a covenant in a lease for years; it does not warrant title. Concessi often appeared in the phrase demisi, concessi, et ad firmam tradidi (“demised, granted, and let to farm”). Cf. DEDI.

“Concessi (a word much used in Conveyances). In Law it creates a Covenant, as Dedi does a Warranty.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

CONCESSIMUS

concessimus (k<<schwa>>n-ses-<<schwa>>-m<<schwa>>s). [Latin] Hist. We have granted. • Concessimus is a term of conveyance that creates a joint covenant on the part of the grantors.

CONCESSIO

concessio (k<<schwa>>n-sesh-ee-oh). [Latin] Hist. A grant. • This is a term of conveyance used to convey in-corporeal property. Pl. concessiones.

“Grants, concessiones; the regular method by the common law of transferring the property of incorporeal here-ditaments, or, such things whereof no livery can be had. For which reason all corporeal hereditaments, as lands and houses, are said to lie in livery; and the others, as advowsons, commons, rents, reversions, etc., to lie in grant.... These therefore pass merely by the

delivery of the deed.” 2 William Blackstone, Commentaries on the Laws of England 317 (1766).

CONCESSION

concession, n. 1. A government grant for specific privileges. 2. The voluntary yielding to a demand for the sake of a settlement. 3. A rebate or abatement. 4. Int'l law. A contract in which a country transfers some rights to a foreign enterprise, which then engages in an activity (such as mining) contingent on state approval and subject to the terms of the contract. [Cases: Treaties 8. C.J.S. Treaties § 6.] — concede, vb. — concessive, adj.

CONCESSION BARGAINING

concession bargaining. Labor law. A type of collective bargaining in which the parties negotiate the employees' giving back previously gained improvements in wages, benefits, or working conditions in exchange for some form of job security, such as protection against layoffs. — Also termed employee givebacks; union givebacks. See COLLECTIVE BARGAINING.

CONCESSIT SOLVERE

concessit solvere (k<<schwa>>n-ses-it sol-v<<schwa>>-ree). [Latin “he agreed to pay”] Hist. A form of debt action on a simple contract. • The plaintiff alleged that the defendant had granted and agreed to pay to the plaintiff the sum sued for, but had not done so. The defendant responded with a plea of nunquam indebitatus (“never indebted”). See indebitatus assumpsit under ASSUMPSIT; NUNQUAM INDEBITATUS; common count under COUNT.

CONCESSOR

concessor (k<<schwa>>n-ses-<<schwa>>r). Hist. A grantor. Cf. CONCESSUS.

CONCESSUM

concessum (k<<schwa>>n-ses-<<schwa>>m), p.pl. [fr. Latin concedere “to grant”] Hist. Granted. • Judges used this term to signify their assent to a point made in argument; for example, a court might state that a particular proposition was concessum per totam curiam (“granted by the whole court”).

CONCESSUS

concessus (k<<schwa>>n-ses-<<schwa>>s). Hist. A grantee. Cf. CONCESSOR.

CONCILIATION

conciliation, n. 1. A settlement of a dispute in an agreeable manner. 2. A process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved; esp., a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences. • Some jurisdictions, such as California, have Family Conciliation Courts to help resolve problems within the family. — Also termed (in sense 2) facilitation; conciliation procedure. Cf. MEDIATION; ARBITRATION. — conciliate, vb. — conciliative, conciliatory, adj. — conciliator, n.

CONCILIATION COURT

conciliation court. See small-claims court under COURT.

CONCILIATION PROCEDURE

conciliation procedure. See CONCILIATION(2).

CONCILIIUM

concilium (k<<schwa>>n-sil-ee-<<schwa>>m). [Latin “council”] 1.Hist. The sitting of a court to hear argument in a case; a motion requesting a day to present an argument. 2.CONCILIIUM PLEBIS.

CONCILIIUM PLEBIS

concilium plebis (k<<schwa>>n-sil-ee-<<schwa>>m plee-bis). [Latin “assembly of the people”] Roman law. An assembly of the plebs gathered together to enact legislation. — Often shortened to concilium. See PLEBISCITUM. Cf. comitia tributa under COMITIA.

“Legislation was carried on to some extent by the Comitia Tributa and in an increasing degree by the assembly of the plebs alone, concilium plebis, which, in historical times, was also based on the tribunal organisation. This assembly, presided over by a tribune of the plebs, was active from early times and there was early legislation on constitutional questions, enacted by that body and approved by the Senate, which was regarded as binding on the whole community. Its enactments, plebiscita, were often called, as binding the whole community, leges” W.W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian* 4 (Peter Stein ed., 3d ed. 1963).

“The pressure of plebeian agitation had led to the creation of tribunes of the plebs (494 B.C.) for the protection of individual citizens from oppression, with the right to hold meetings of an assembly called the Concilium Plebis, which eventually became identical with the Comitia Tributa, except that it comprised only the plebeian members of the Roman people, without the patricians. The resolutions of this assembly (plebiscita) at first bound the plebeians only, but by an obscure development culminating in the passing of the Lex Hortensia of 287 B.C., they came to be binding as laws on the whole people, patricians and plebeians alike.” William A. Hunter, *Introduction to Roman Law* 16 (F.H. Lawson ed., 9th ed. 1934).

CONCILIIUM REGIS

concilium regis (k<<schwa>>n-sil-ee-<<schwa>>m ree-jis). [Latin “assembly of the king”] Hist. A tribunal that, during the reigns of Edward I and Edward II, heard cases of extraordinary difficulty.

CONCLUDE

conclude, vb. 1. To ratify or formalize (a treaty, convention, or contract) <it can be difficult to amend a contract that the parties have already concluded>. 2. To bind; estop <the admissions concluded the party as a matter of law>. 3. Scots law. To sign (a contract, letter, etc.) for the sale of

real property. • This term most commonly appears in the phrase conclude missives.

CONCLUSION

conclusion,n.1. The final part of a speech or writing (such as a jury argument or a pleading).2. A judgment arrived at by reasoning; an inferential statement. 3. The closing, settling, or final arranging of a treaty, contract, deal, etc. See OPINION(2).4.Archaic.An act by which one estops oneself from doing anything inconsistent with the act.

“Conclusion is, when a man by his own act upon record hath charged himself with a duty or other thing So if the sheriff, upon a capias to him directed, returns that he hath taken the body, and yet hath not the body in court at the day of the return, he shall be amerced” Termes de la Ley 102–03 (1st Am. ed. 1812).

CONCLUSIONAL

conclusional,adj. See CONCLUSORY.

CONCLUSIONARY

conclusionary,adj. See CONCLUSORY.

CONCLUSION OF FACT

conclusion of fact.A factual deduction drawn from observed or proven facts; an evidentiary inference. Cf. FINDING OF FACT.

CONCLUSION OF LAW

conclusion of law.An inference on a question of law, made as a result of a factual showing, no further evidence being required; a legal inference. Cf. FINDING OF FACT; LEGAL CONCLUSION.

CONCLUSION TO THE COUNTRY

conclusion to the country.Archaic. The closing part of a pleading that requests the trial of an issue by a jury. Cf. GOING TO THE COUNTRY.

CONCLUSIVE

conclusive,adj. Authoritative; decisive; convincing <her conclusive argument ended the debate>. Cf. CON-CLUSORY.

CONCLUSIVE EVIDENCE

conclusive evidence.See EVIDENCE.

CONCLUSIVE PRESUMPTION

conclusive presumption.See PRESUMPTION.

CONCLUSIVE PROOF

conclusive proof. See conclusive evidence (1) under EVIDENCE.

CONCLUSORY

conclusory (k<<schwa>>n-kloo-z<<schwa>>-ree or -s<<schwa>>-ree), adj. Expressing a factual inference without stating the underlying facts on which the inference is based <because the plaintiff's allegations lacked any supporting evidence, they were merely conclusory>. — Also termed conclusional; conclusionary. Cf. CON-CLUSIVE.

CONCOMITANT

concomitant (k<<schwa>>n-kom-<<schwa>>-t<<schwa>>nt), adj. Accompanying; incidental <concomitant actions>. — concomitant, n.

CONCOMITANT EVIDENCE

concomitant evidence. See EVIDENCE.

CONCORD

concord (kon-kord or kong-), n. 1. An amicable arrangement between parties, esp. between peoples or nations; a compact or treaty. 2. Archaic. An agreement to compromise and settle an action in trespass.

“Concord is an Agreement made between two or more, upon a Trespass committed; and is divided into Concord executory, and Concord executed... ; one binds not, as being imperfect, but the other is absolute, and ties the Party.” Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

3. Archaic. An in-court agreement in which a person who acquired land by force acknowledges that the land in question belongs to the complainant. See DEFORCE. “Next comes the concord, or agreement itself, after leave obtained from the court; which is usually an acknowledgment from the deforcians (or those who keep the other out of possession) that the lands in question are the right of the complainant.” 2 William Blackstone, *Commentaries on the Laws of England* 350 (1766).

4. Hist. The settlement of a dispute.

final concord. A written agreement between the parties to an action by which they settle the action in court, with the court's permission. — Also termed finalis concordia; final peace.

CONCORDAT

concordat (kon- or k<<schwa>>n-kor-dat). 1. An agreement between a government and a church, esp. the Roman Catholic Church. [Cases: Religious Societies 29. C.J.S. Religious Societies §§ 36–37.]

“The qualification of a treaty as a concordat depends only upon its object and purpose, not upon the name or outward form chosen by the parties. Although the term originally was also used for treaties between States, it has increasingly become restricted to only those treaties concluded with the Holy See.” Heribert Franz Köck, “Concordats,” in 1 *Encyclopedia of Public*

International Law 164 (1992).

2.Hist. Eccles. law. An agreement between ecclesiastical persons concerning a benefice, such as a resignation or promotion. See BENEFICE. 3. An agreement between secular persons or entities.

CONCORDATORY

concordatory (k<<schwa>>n-kor-d<<schwa>>-tor-ee), adj. Of or relating to a concordat, esp. one between church and state in France.

CONCORDIA DISCORDANTIUM CANONUM

Concordia discordantium canonum (kon-kor-dee-<<schwa>> dis-kor-dan-shee-<<schwa>>m k<<schwa>>-nohn-<<schwa>>m). [Latin “the harmony of the discordant canons”] Hist. A collection of eccle-siastical authorities compiled by Gratian, an Italian monk, ca. 1140. • Gratian analyzed questions of law by drawing conclusions from side-by-side comparisons of a variety of texts. Later canonist scholarship usu. pro-ceeded from Gratian's work. — Also termed *Decretum Gratiani*; *Decretum*.

“Another body of jurisprudence was coming into being. From humble beginnings the canon law had grown into a mighty system. Already it asserted its right to stand beside or above the civil law. The civil law might be the law of earth, *ius soli*; here was the law of heaven, *ius poli*.... Many men had been endeavouring to state that law, but the fame of earlier labourers was eclipsed by that of Gratian. A monk of Bologna, that city which was the centre of the new secular jurisprudence, he published ... a book which he called *Concordia discordantium canonum*, but which was soon to become for all mankind simply the *Decretum Gratiani*, or yet more simply the *Decretum*. It is a great law-book. The spirit which animated its author was not that of a theologian, not that of an ecclesiastical ruler, but that of a lawyer.... The *Decretum* soon became an authoritative text-book and the canonist seldom went behind it.... The canonist had for it rather that reverence which English lawyers have paid to Coke upon Littleton” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 112–13 (2d ed. 1898).

CONCOURSE

concourse (kon-kors orkong-).Scots law. 1. The simultaneous existence of two actions based on the same facts, esp. a civil action and a criminal action; the concurrence of a public prosecutor in a private prosecution. 2. The concurrence of the public prosecutor to a criminal prosecution by a private person.

“A private party may prosecute for the punishment of an offence perpetrated against himself, and for which the public prosecutor may refuse to prosecute at the public expense; but the concurrence of the public prosecutor is necessary, and it cannot be refused; or if refused, the case may proceed at the instance of the private party. Concourse is distinguished from Instance. In the former case the public prosecutor merely concurs or consents, whilst in the latter case he is also a principal party prosecuting for the public interest.” Hugh Barclay, *A Digest of the Law of Scotland* 162 (3d ed. 1865).

3. A conflict among creditors or claimants. See CONCURSUS(1).

CONCUBINAGE

concubinage (kon-kyoo-b<<schwa>>-nij), n.1. The relationship of a man and woman who cohabit without the benefit of marriage. [Cases: Marriage 22. C.J.S. Marriage §§ 24–25.] 2. The state of being a concubine. 3.Hist. A plea in a dower action made by a defendant who asserts that the plaintiff is the defendant's concubine rather than wife.

“Concubinage, in common Acceptation is the Keeping of a Whore or Concubine: But in a legal Sense, it is used as an Exception against her that sueth for Dower, alledging thereby that she was not a Wife lawfully married to the Party, in whose Lands she seeks to be endowed, but his Concubine.” Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

CONCUBINATUS

concubinatus (kon-kyoo-bi-nay-t<<schwa>>s), n. [Latin “concubinage”] Roman law. A permanent, mono-gamous union of a man and a woman who are not legally married. • Concubinatus was not prohibited by law, but carried fewer benefits than a legal marriage. Cf. JUSTAE NUPTIAE.

“[C]oncubinage (concubinatus) ... was something to which we have no precise analogue in modern law, for, so far from being prohibited by the law, it was regulated thereby, being treated as a lawful connexion. It is almost a sort of unequal marriage (and is practically so described by some of the jurists) existing between persons of different station — the man of superior rank, the woman of a rank so much inferior that it is not to be presumed that his union with her was intended to be a marriage.” James Bryce, “Marriage and Divorce under Roman and English Law,” in *3 Select Essays in Anglo-American Legal History* 806–07 (1909).

CONCUBINE

concubine (kong-ky<<schwa>>-bIn).1.Archaic. A woman who cohabits with a man to whom she is not married. • A concubine is often considered a wife without title. A concubine's status arises from the permanent cohabitation of a man and a woman as husband and wife although without the benefit of marriage. Cf. common-law wife under WIFE; COURTESAN. [Cases: Marriage 54. C.J.S. Marriage §§ 43–44.] 2.Hist. Eccles. law. A secondary or inferior wife, usu. in a polygamous marriage, who lacks the full rights and privileges of the first wife. • Although a concubine was expected to serve all the functions of a legitimate wife, she had no authority in the family or household, and was denied certain legal protections. For instance, her husband could easily disown her, she had no dower rights, and her children could not inherit from their father if he had children by his first wife. A concubine was also barred from certain spiritual comforts, such as churching after the birth of a child.

CONCUBITOR

concubitor (k<<schwa>>n-kyoo-bi-tohr), n. One who keeps a concubine.

CONCUR

concur (k<<schwa>>n-k<<schwa>>r), vb.1. To agree; to consent. 2. In a judicial opinion, to agree with the judgment in the case (usu. as expressed in the opinion of another judge), or the opinion of another judge, but often for different reasons or through a different line of reasoning. 3. (Of a house in a bicameral legislature) to accept an amendment passed by the other house.

“When a bill has been amended in the second house and passed with the amendment, it is returned by that house to the house of its origin with a message stating the facts and requesting the house where the bill originated to concur in the amendment.” National Conference of State Legislatures, Mason's Manual of Legislative Procedure § 766, at 553 (2000).

4.Civil law. To join with other claimants in presenting a demand against an insolvent estate.

CONCURATOR

concurator (kon- or k<<schwa>>n-kyuur-<<schwa>>-t<<schwa>>r).Civil law. A joint guardian or co-curator. See CURATOR.

CONCURRENCE

concurrence. 1. Agreement; assent. 2. A vote cast by a judge in favor of the judgment reached, often on grounds differing from those expressed in the opinion or opinions explaining the judgment. 3. A separate written opinion explaining such a vote. — Also termed (in sense 3) concurring opinion. [Cases: Courts 108. C.J.S. Courts § 175.] 4. Acceptance by one house in a bicameral legislature of an amendment passed by the other house.

CONCURRENCY

concurrency,n.1.Archaic. The quality or fact of being concurrent in jurisdiction; joint right or authority. 2.Criminal procedure. An identical duration for two or more criminal sentences assessed against the same de-fendant.

CONCURRENT

concurrent,adj.1. Operating at the same time; covering the same matters < concurrent interests>.2. Having au-thority on the same matters <concurrent jurisdiction>. [Cases: Courts 472, 489, 510; Federal Courts 1131. C.J.S. Courts §§ 186, 203, 222, 225.]

CONCURRENT CAUSE

concurrent cause.See CAUSE(1).

CONCURRENT CONDITION

concurrent condition.See CONDITION(2).

CONCURRENT CONSIDERATION

concurrent consideration.See CONSIDERATION(1).

CONCURRENT COVENANT

concurrent covenant.See COVENANT(1).

CONCURRENT ESTATE

concurrent estate. See ESTATE(1).

CONCURRENT FINDING

concurrent finding. See FINDING OF FACT.

CONCURRENT INTEREST

concurrent interest. See concurrent estate under ESTATE(1).

CONCURRENT JURISDICTION

concurrent jurisdiction. See JURISDICTION.

CONCURRENT LEASE

concurrent lease. See LEASE.

CONCURRENT LIEN

concurrent lien. See LIEN.

CONCURRENT NEGLIGENCE

concurrent negligence. See NEGLIGENCE.

CONCURRENT POLICY

concurrent policy. See INSURANCE POLICY.

CONCURRENT POWER

concurrent power. See POWER(3).

CONCURRENT REGISTRATION

concurrent registration. Trademarks. The approved recording of identical or similar marks by multiple owners if each mark was commercially used before the owners applied for registration and the risk of consumer confusion is slight. • The U.S. Patent and Trademark Office may impose restrictions on each mark's use to prevent consumer confusion. [Cases: Trade Regulation 152. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 148, 153, 156–157, 160, 173–174.]

CONCURRENT REMEDY

concurrent remedy. See REMEDY.

CONCURRENT REPRESENTATION

concurrent representation. See REPRESENTATION(2).

CONCURRENT RESOLUTION

concurrent resolution. See RESOLUTION(1).

CONCURRENT-SENTENCE DOCTRINE

concurrent-sentence doctrine. The principle that an appellate court affirming a conviction and sentence need not hear a challenge to a conviction on another count if the conviction on the other count carries a sentence that is equal to or less than the affirmed conviction. [Cases: Criminal Law 1177.C.J.S. Criminal Law § 1723.]

CONCURRENT SENTENCES

concurrent sentences. See SENTENCE.

CONCURRENT TORTFEASORS

concurrent tortfeasors. See TORTFEASOR.

CONCURRENT WRIT

concurrent writ. See WRIT.

CONCURRING OPINION

concurring opinion. See CONCURRENCE(3).

CONCURSO

concurso (kon- or k<<schwa>>n-k<<schwa>>r-soh), n. [Latin lit. "to run hither and thither"] Civil law. An action in which a creditor seeks to enforce a claim against an insolvent debtor.

CONCURSUS

concursum (kon- or k<<schwa>>n-k<<schwa>>r-s<<schwa>>s). [Latin "a running together"] 1. Civil & Scots law. A proceeding in which two or more creditors claim, usu. adversely to each other, an interest in a fund or estate so that they can sort out and adjudicate all the claims on the fund. See CONCOURSE (3). 2. Civil law. INTER-PLEADER. 3. Eccles. law. An examination to determine a person's fitness for parochial office.

CONCURSUS DEBITI ET CREDITI

concursum debiti et crediti (k<<schwa>>n-k<<schwa>>r-s<<schwa>>s deb-i-ti et cred-i-ti). [Law Latin] Scots law. A running together of debt and credit. • The phrase appears in reference to requirements for supporting a plea of compensation.

"Concursum debiti et crediti This is necessary to found a plea of compensation, for the parties must be debtor and creditor, each in his own right and at the same time. Thus, if A sue B for payment of a debt due by him, B may plead in compensation a debt due to him by A, and here there is the necessary concurrence. But, if the firm of which A is a partner suing B for a debt due by him to them, be met by the plea of compensation by B, on the ground of a private debt due by A, the plea will not be sustained, for there is no concursum; a company being regarded by the law as a separate person." John Trayner, Trayner's Latin Maxims 88–89 (4th ed. 1894).

CONCURSUS IN DELICTO

concurus in delicto (kon- or k<<schwa>>n-k<<schwa>>r-s<<schwa>>s in d<<schwa>>-lik-toh). [Latin] Cooperation in crime.

CONCUSSIO

concussio (k<<schwa>>n-k<<schwa>>sh-ee-oh), n. [Latin] Roman law. The offense of extorting money or gifts by threat of violence. • In modern civil-law contexts, the term is often anglicized to concussion. — concuss,vb.

CONCUSSIONARY

concussionary.Archaic. A person who extorts from others under guise of authority; one who practices concussion.

CONDEDIT

condedit (k<<schwa>>n-dee-dit or -ded-it). [Latin “he made (a will)”] Eccles. law. A defensive plea filed by a party in response to an ecclesiastical-court libel (i.e., complaint) questioning the veracity of a will. — Also spelled condidit.

CONDEMN

condemn,vb.1. To judicially pronounce (someone) guilty. 2. To determine and declare (property) to be assigned to public use. See EMINENT DOMAIN. 3. To adjudge (a building) as being unfit for habitation. 4. To adjudge (food or drink) as being unfit for human consumption. 5.Maritime law. To declare (a vessel) to be forfeited to the government, to be a prize, or to be unfit for service.

CONDEMNATION

condemnation (kon-dem-nay-sh<<schwa>>n), n.1. The act of judicially pronouncing someone guilty; conviction. 2. The determination and declaration that certain property (esp. land) is assigned to public use, subject to reasonable compensation; the exercise of eminent domain by a governmental entity. See EMINENT DOMAIN.

excess condemnation.A taking of land in excess of the boundaries of the public project as designed by the con-demnor. [Cases: Eminent Domain 58. C.J.S. Eminent Domain §§ 68–69.]

inverse condemnation.An action brought by a property owner for compensation from a governmental entity that has taken the owner's property without bringing formal condemnation proceedings. — Also termed constructive condemnation; reverse condemnation. [Cases: Eminent Domain 266. C.J.S. Eminent Domain §§ 375, 377, 381.]

quick condemnation.The immediate taking of possession of private property for public use, whereby the esti-mated compensation is deposited in court or paid to the condemnee until the actual amount of compensation can be established. — Also termed quick-take. [Cases: Eminent Domain 187, 188. C.J.S. Eminent Domain §§ 210–212, 221.]

3. An official pronouncement that a building is unfit for habitation; the act of making such a pronouncement. 4. The official pronouncement that a thing (such as food or drink) is unfit for use

or consumption; the act of making such a pronouncement. [Cases: Health 392. C.J.S. Limitations of Actions § 88.] 5. Maritime law. The declaration that a vessel is forfeited to the government, is a prize, or is unfit for service.

CONDEMNATION BLIGHT

condemnation blight. 1. The reduction in value that the property targeted for condemnation suffers in anticipation of the taking. 2. The physical deterioration of property targeted for condemnation in anticipation of the taking.

CONDEMNATION MONEY

condemnation money. 1. Damages that a losing party in a lawsuit is condemned to pay. 2. Compensation paid by an expropriator of land to the landowner for taking the property.

CONDEMNATORY

condemnatory (k<<schwa>>n-dem-n<<schwa>>-tor-ee), adj. 1. Condemning; expressing condemnation or censure. 2. Of or relating to the use of eminent domain or expropriation.

CONDEMNEE

condemnee (kon-dem-nee). One whose property is expropriated for public use or taken by a public-works project.

CONDEMNOR

condemnor (kon-dem-noror k<<schwa>>n-dem-n<<schwa>>r). A person or entity that expropriates property for public use. — Also spelled condemner (k<<schwa>>n-dem-n<<schwa>>r).

CONDENSATE

condensate. See DISTILLATE(1).

CONDESCENDENCE

condescendence (kon-di-sen-d<<schwa>>nts), n. Scots law. A statement of facts in a civil pleading, set out in consecutively numbered paragraphs, that the claimant relies on to justify the claim.

CONDICTIO

condictio (k<<schwa>>n-dik-shee-oh), n. [fr. Latin *condicere* “to demand back”] Roman & civil law. A personal action in the nature of demanding something back; an action of debt. • In the sense here used, debt must be understood broadly to cover not only contractual but also quasi-contractual or tort claims. *Condictio* is usu. founded on an obligation to give or do a certain thing or service. — In English termed *condiction*; action of debt. Pl. *condictiones* (k<<schwa>>n-dik-shee-oh-neeZ). — *condictitious*, *condictious*, adj.

“*Condition* was a form of legal procedure ... first applied to the recovery of a loan of a

definite sum of money, and afterwards applied to a loan of other things ('fungibles') where the return of the loan was required in quantity and quality, but not the identical things; in fact, where the borrower undertook to repay not this, but so much of the article and quality received. When condition was applied to such things, it was said to be called *triticaria* ('relating to wheat') from one of the most important subjects, but this action (*condictio triticaria*) was afterwards extended so as to include all cases where things certain, other than coined money, were redemanded. In practice the term *triticaria* was not used, or Justinian has cut it out." 2 Henry John Roby, *Roman Private Law* 76 (1902).

"The principal *actio stricti juris* was the *condictio*, a general term with many applications. It might be brought for a certain sum of money (*condictio certae pecuniae*), or for some other certain thing (*condictio triticaria*), or to assert an illiquid claim (*condictio incerti*). The various forms of *condictio* were also distinguished according to the cause which gave rise to them, as *condictio furtiva*, *condictio indebiti*, and others" R.W. Lee, *The Elements of Roman Law* 435 (4th ed. 1956).

condictio causa data, causa non secuta (k<<schwa>>n-dik-shee-oh kaw-z<< schwa>> day-t<<schwa>>, kaw-z<<schwa>> non si-kyoo-t<<schwa>>). [Latin "claim for recovery, consideration having been given but consideration not having followed"] Roman & civil law. An action for recovery of money paid when the consideration for the payment has not been furnished.

- The classic case in Scotland concerned an advance payment for ship's engines: war broke out, the engines were requisitioned but never supplied, and the payment was held to be recoverable. Pl. *conditiones causa data, causa non secuta*.

condictio certi (k<<schwa>>n-dik-shee-oh s<<schwa>>r-tI). [Latin "claim for recovery of a certain sum or thing"] An action based on a promise to do a thing, where the promise is certain.

condictio ex causa furtiva (k<<schwa>>n-dik-shee-oh eks kaw-z<<schwa>> f<<schwa>>r-tI-v<<schwa>>). See *condictio rei furtivae*.

condictio ex lege (k<<schwa>>n-dik-shee-oh eks lee-jee). [Latin "claim for recovery under a statute"] An action arising where a statute creates an obligation but provides no remedy.

condictio furtiva (k<<schwa>>n-dik-shee-oh f<<schwa>>r-tI-v<<schwa>>). See *condictio rei furtivae*.

condictio incerti (k<<schwa>>n-dik-shee-oh in-s<<schwa>>r-tI). [Latin "claim for recovery of an uncertain amount"] An action to recover an uncertain amount.

condictio indebiti (k<<schwa>>n-dik-shee-oh in-deb-<<schwa>>-tI). [Latin "claim for recovery of something not due"] An action to prevent the unjust enrichment of a defendant who had received money or property from the plaintiff by mistake. — Also termed *actio condictio indebiti* (though strictly speaking this is a solecism).

condictio ob rem dati, re non secuta (k<<schwa>>n-dik-shee-oh ahb rem day-tI, ree non si-kyoo-t<<schwa>>). [Latin "personal claim based on a transfer made for a purpose that has failed"] Roman law. A condition for something handed over for a purpose that has failed, as for

the settlement of a lawsuit when in fact the lawsuit has nevertheless continued.

condictio ob turpem vel injustam causam (k<<schwa>>n-dik-shee-oh ahb t<<schwa>>r-p<<schwa>>m vel in-j<<schwa>>s-t<<schwa>>m kaw-z<<schwa>>m). [Latin "personal claim based on an immoral or illegal cause"] Roman law. A personal claim by an innocent party to recover money or property paid for an immoral or illegal purpose. — Sometimes shortened to condictio ob turpem causam.

"The condictio ob turpem vel iniustam causam lay where the payment or conveyance had been made for an immoral or illegal purpose (e.g. to induce the recipient not to commit a crime, or to return what he had borrowed and was wrongfully refusing to return). But the plaintiff must not be equally tainted by the 'turpitude,' as he would be, for example, if the payment had been made to induce the recipient to commit a crime." Barry Nicholas, *An Introduction to Roman Law* 230 (1962).

condictio rei furtivae (k<<schwa>>n-dik-shee-oh ree-I f<<schwa>>r-tI-vee). [Latin "claim for recovery of a stolen thing"] An action to recover a stolen thing or its value if the thing could not be returned. • A condictio rei furtivae could be brought by an owner or pledgee against the thief or the thief's heirs. — Also termed condictio furtiva; condictio ex causa furtiva.

condictio sine causa (k<<schwa>>n-dik-shee-oh sI-nee kaw-z<<schwa>>). [Latin "claim for recovery of money or a thing given without consideration"] An action for the recovery of property transferred without consideration and in contemplation of a specific event that did not occur, such as a dowry made in view of a marriage that does not take place.

condictio triticaria (k<<schwa>>n-dik-shee-oh trI-ti-kair-ee-<<schwa>>). [Latin "claim for recovery of wheat"] An action for the recovery of a specified quantity of a named commodity.

CONDITIO

conditio (k<<schwa>>n-dish-ee-oh). [Latin] A condition.

CONDITIO SINE QUA NON

conditio sine qua non. See SINE QUA NON.

CONDITIO SI SINE LIBERIS DECESSERIT

conditio si sine liberis decesserit (k<<schwa>>n-dish-ee-oh sIsI-nee lib-<<schwa>>r-is di-ses-<<schwa>>r-it). [Latin "the condition if he should have died childless"] Roman law. An express or implied clause in a will providing that if the heir or legatee dies childless, the property is to go to another person, such as the testator's own descendants.

CONDITION

condition, n.1. A future and uncertain event on which the existence or extent of an obligation or liability depends; an uncertain act or event that triggers or negates a duty to render a promised performance. • For example, if Jones promises to pay Smith \$500 for repairing a car, Smith's failure to repair the car (an implied or constructive condition) relieves Jones of the promise to pay.

[Cases: Contracts 218–227. C.J.S. Architects § 16; Contracts §§ 355–358, 362, 444–445, 450, 557–560.]

“ ‘Condition’ is used in this Restatement to denote an event which qualifies a duty under a contract. It is recognized that ‘condition’ is used with a wide variety of other meanings in legal discourse. Sometimes it is used to denote an event that limits or qualifies a transfer of property. In the law of trusts, for example, it is used to denote an event such as the death of the settlor that qualifies his disposition of property in trust. Sometimes it is used to refer to a term in an agreement that makes an event a condition, or more broadly to refer to any term in an agreement (e.g., ‘standard conditions of sale’). For the sake of precision, ‘condition’ is not used here in these other senses.” Restatement (Second) of Contracts § 224 cmt. a (1981).

“Strictly, a condition is a fact or event on the occurrence of which some legal right or duty comes into existence; a party may promise that this fact is so, or that the event will take place, but it is equally possible that no party to the contract promises this. An insurance company promises to pay £ 10,000 to an insured person if his house is destroyed by fire; the destruction of the house by fire is a condition of the insurer's promise to pay, but neither party promises to burn the house.” P.S. Atiyah, *An Introduction to the Law of Contract* 146 (3d ed. 1981).

“Promises and the duties they generate can be either unconditional (‘I promise to pay you \$100,000’) or conditional (‘I promise to pay you \$100,000 if your house burns down’). Lawyers use condition in several senses. Sometimes they use it to refer to the term in the agreement that makes the promise conditional.... However, lawyers also use condition to refer to an operative fact rather than to a term. According to the Restatement Second a condition is ‘an event, not certain to occur, which must occur, unless occurrence is excused, before performance under a contract becomes due.’ This use of the word has the support of leading writers.” E. Allan Farnsworth, *Contracts* § 8.2, at 519–20 (3d ed. 1999).

2. A stipulation or prerequisite in a contract, will, or other instrument, constituting the essence of the instrument. • If a court construes a contractual term to be a condition, then its untruth or breach will entitle the party to whom it is made to be discharged from all liabilities under the contract. [Cases: Contracts 218–227; Wills 639–668. C.J.S. Architects § 16; Contracts §§ 355–358, 362, 444–445, 450, 557–560; Wills §§ 1380–1424.]

affirmative condition. See positive condition.

casual condition. Civil law. A condition that depends on chance; one that is not within the power of either party to an agreement.

collateral condition. A condition that requires the performance of an act having no relation to an agreement's main purpose.

compulsory condition. A condition expressly requiring that a thing be done, such as a tenant's paying rent on a certain day.

concurrent condition. A condition that must occur or be performed at the same time as another condition, the performance by each party separately operating as a condition precedent; a

condition that is mutually dependent on another, arising when the parties to a contract agree to exchange performances simultaneously. — Also termed condition concurrent. [Cases: Contracts 225. C.J.S. Contracts § 362.]

“Conditions concurrent are acts that the parties to a contract are under duties of performing concurrently, the act of each party being separately operative as a condition precedent. The act is not concurrent with the legal relation affected, but only with the act of the other party.” William R. Anson, *Principles of the Law of Contract* 412–13 (Arthur L. Corbin ed., 3d Am. ed. 1919).

condition implied by law. See constructive condition.

condition implied in law. See constructive condition.

condition precedent (pre-schwa-see-nt also pres-d-schwa-nt). An act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises. • If the condition does not occur and is not excused, the promised performance need not be rendered. The most common condition contemplated by this phrase is the immediate or unconditional duty of performance by a promisor. [Cases: Contracts 221. C.J.S. Contracts §§ 356, 444–445, 450.]

“Before one gets too confused by the precedent and subsequent classifications, it might be helpful to know that in contract law there is no substantive difference between the two.... However, in the area of pleading and procedure significance may be placed upon the difference between a condition precedent and subsequent in terms of who has the burden of pleading and proof, the party seeking to enforce the promise usually being required to plead and prove a condition precedent and the party seeking to avoid liability for breach of promise sometimes being required to plead and prove the occurrence of the condition subsequent that would terminate his duty.” Claude Rohwer & Gordon D. Schaber, *Contracts in a Nutshell* 313 (4th ed. 1997).

condition subsequent. A condition that, if it occurs, will bring something else to an end; an event the existence of which, by agreement of the parties, discharges a duty of performance that has arisen. [Cases: Contracts 226. C.J.S. Architects § 16; Contracts § 357.]

“If ... the deed or will uses such words as ‘but if,’ ‘on condition that,’ ‘provided, however,’ or ‘if, however,’ it will generally be assumed that a condition subsequent was intended.” Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 50 (2d ed. 1984).

constructive condition. A condition contained in an essential contractual term that, though omitted by the parties from their agreement, a court has supplied as being reasonable in the circumstances; a condition imposed by law to do justice. • The cooperation of the parties to a contract, for example, is a constructive condition. — Also termed implied-in-law condition; condition implied by law; condition implied in law. Cf. implied-in-fact condition. [Cases: Contracts 220. C.J.S. Contracts § 355.]

“[C]onstructive conditions are imposed by law to do justice.... The dividing line between an express condition ... and constructive conditions is often quite indistinct. Yet, the distinction is often of crucial importance. The general rule governing an express condition is that it must be

strictly performed. The general rule as to constructive conditions is that substantial compliance is sufficient.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 11.8, at 402 (4th ed. 1998).

copulative condition (kop-y<<schwa>>-l<<schwa>>-tiv or -lay-tiv). A condition requiring the performance of more than one act. Cf. disjunctive condition; single condition.

dependent condition. A mutual covenant that goes to the consideration on both sides of a contract.

disjunctive condition. A condition requiring the performance of one of several acts. Cf. copulative condition; single condition.

dissolving condition. See resolutive condition.

express condition. 1. A condition that is the manifested intention of the parties. [Cases: *Contracts* 219.]

“[E]xpress conditions ... are conditions created through the agreement of the parties. This is so whether the intention to have the duty subject to a condition be manifested in words, or through any other conduct or type of utterance.” John Edward Murray Jr., *Murray on Contracts* § 143, at 290 (2d ed. 1974).

2. A condition that is explicitly stated in an instrument; esp., a contractual condition that the parties have reduced to writing.

implied condition. A condition that is not expressly mentioned, but is imputed by law from the nature of the transaction or the conduct of the parties to have been tacitly understood between them as a part of the agreement. See constructive condition; implied-in-fact condition. [Cases: *Contracts* 220. C.J.S. *Contracts* § 355.]

implied-in-fact condition. A contractual condition that the parties have implicitly agreed to by their conduct or by the nature of the transaction. Cf. constructive condition. [Cases: *Contracts* 220. C.J.S. *Contracts* § 355.]

implied-in-law condition. See constructive condition.

inherent condition. A condition that is an intrinsic part of an agreement; a condition that is not newly imposed but is already present in an agreement.

lawful condition. A condition that can be fulfilled without violating the law.

mixed condition. Civil law. A condition that depends either on the will of one party and the will of a third person, or on the will of one party and the happening of a causal event.

negative condition. A condition forbidding a party from doing a certain thing, such as prohibiting a tenant from subletting leased property; a promise not to do something, usu. as part of a larger agreement. — Also termed restrictive condition. See negative easement under EASEMENT.

positive condition. A condition that requires some act, such as paying rent. — Also termed affirmative condition.

potestative condition (poh-tes-t<<schwa>>-tiv). Civil law. A condition that will be fulfilled only if the obligated party chooses to do so. • Louisiana no longer uses this term, instead providing that this type of condition will render the obligation null. La. Civ. Code art. 1770. Cf. suspensive condition; resolutive condition. [Cases: Contracts 10. C.J.S. Contracts § 108.]

preexisting condition. Insurance. A physical or mental condition evident during the period before the effective date of a medical-insurance policy. • Typically, coverage for later treatment for such a condition is excluded if symptoms of the condition were present during the period before the policy was effective. [Cases: Insurance 2475.]

promissory condition. A condition that is also a promise.

“The distinction between a condition which is also a promise, and a condition which is not the subject of a promise, is often one of great difficulty and importance, especially where the term is implied and not expressed, and it is unfortunate that legal usage has sanctioned the word ‘condition’ for two such different concepts. It would at least be desirable if lawyers could be persuaded to refer to conditions which are the subject of a promise as ‘promissory conditions’, a usage which it is proposed to adopt here.” P.S. Atiyah, *An Introduction to the Law of Contract* 147 (3d ed. 1981).

resolutive condition (r<<schwa>>-zol-y<<schwa>>-tor-ee). Civil law. A condition that upon fulfillment terminates an already enforceable obligation and entitles the parties to be restored to their original positions. — Also termed resolutive condition; dissolving condition. Cf. potestative condition.

restrictive condition. See negative condition.

single condition. A condition requiring the performance of a specified thing. Cf. copulative condition; disjunctive condition.

suspensive condition. Civil law. A condition that makes an obligation mandatory only if a specified but uncertain event occurs. Cf. potestative condition. [Cases: Contracts 222. C.J.S. Contracts §§ 356–357.]

testamentary condition. A condition that must be satisfied before a gift made in a will becomes effective.

triggering condition. A circumstance that must exist before a legal doctrine applies; esp., in criminal law, a circumstance that must exist before an actor will be entitled to a justification defense.

unlawful condition. A condition that cannot be fulfilled without violating the law.

3. Loosely, a term, provision, or clause in a contract. [Cases: Sales 85(1); Vendor and Purchaser 79. C.J.S. Sales §§ 99–101, 154; Vendor and Purchaser §§ 125, 141.] “This term condition is generally used to describe any fact, subsequent to the formation of a contract, which

operates to make the duty of a promisor immediately active and compelling. Such a fact may be described as such in a term of the contract or it may not. In either event, the term of the contract should not itself be called the condition.... It is not uncommon, popularly, to speak of a condition of the contract as synonymous with term or provision of the contract. This should be avoided.” William R. Anson, *Principles of the Law of Contract* 226 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“The word ‘condition’ is used in the law of property as well as in the law of contract and it is sometimes used in a very loose sense as synonymous with ‘term,’ ‘provision,’ or ‘clause.’ In such a sense it performs no useful service.” *Id.* at 409.

4. A qualification attached to the conveyance of property providing that if a particular event does or does not take place, the estate will be created, enlarged, defeated, or transferred. 5. A state of being; an essential quality or status. — condition,vb.

artificial condition.A physical characteristic of real property, brought about by a person's affirmative act instead of by natural forces.

dangerous condition. 1. A property defect creating a substantial risk of injury when the property is used in a reasonably foreseeable manner. • A dangerous condition may result in waiver of sovereign immunity. [Cases: Automobiles 258; Municipal Corporations 847; Negligence 1086. C.J.S. Motor Vehicles §§ 443, 448–449, 451, 463–464, 467; Municipal Corporations §§ 805–807; Negligence §§ 469–470, 573–574, 580.] 2. A property risk that children, because of their immaturity, cannot appreciate or avoid. [Cases: Negligence 1016, 1067. C.J.S. Negligence §§ 472–495, 513.]

CONDITIONAL

conditional,adj. Subject to or dependent on a condition <a conditional sale>.

CONDITIONAL ACCEPTANCE

conditional acceptance.See ACCEPTANCE(4).

CONDITIONAL ADJOURNMENT

conditional adjournment.See ADJOURNMENT.

CONDITIONAL ADMISSIBILITY

conditional admissibility.See ADMISSIBILITY.

CONDITIONAL ASSAULT

conditional assault.See ASSAULT.

CONDITIONAL ASSIGNMENT

conditional assignment.See ASSIGNMENT(2).

CONDITIONAL BEQUEST

conditional bequest.See BEQUEST.

CONDITIONAL CONTRABAND

conditional contraband.See CONTRABAND.

CONDITIONAL CONTRACT

conditional contract.See CONTRACT.

CONDITIONAL CONVEYANCE

conditional conveyance.See CONVEYANCE.

CONDITIONAL COVENANT

conditional covenant.See COVENANT(1).

CONDITIONAL CREDITOR

conditional creditor.See CREDITOR.

CONDITIONAL DELIVERY

conditional delivery.See DELIVERY.

CONDITIONAL DEVISE

conditional devise.See DEVISE.

CONDITIONAL DIVORCE

conditional divorce.See conversion divorce under DIVORCE.

CONDITIONAL DUTY

conditional duty.See DUTY(1).

CONDITIONAL ESTATE

conditional estate.See estate on condition under ESTATE(1).

CONDITIONAL FEE

conditional fee. 1. See fee simple conditional under FEE SIMPLE. 2.CONTINGENT FEE .

CONDITIONAL GUARANTY

conditional guaranty.See GUARANTY.

CONDITIONAL INDORSEMENT

conditional indorsement.See INDORSEMENT.

CONDITIONAL JUDGMENT

conditional judgment.See JUDGMENT.

CONDITIONAL LEGACY

conditional legacy. See LEGACY.

CONDITIONAL LIMITATION

conditional limitation. See LIMITATION.

CONDITIONALLY PRIVILEGED COMMUNICATION

conditionally privileged communication. See COMMUNICATION.

CONDITIONAL OBLIGATION

conditional obligation. See OBLIGATION.

CONDITIONAL PARDON

conditional pardon. See PARDON.

CONDITIONAL PAYMENT

conditional payment. See PAYMENT.

CONDITIONAL PLEA

conditional plea. See PLEA(1).

CONDITIONAL PRESUMPTION

conditional presumption. See rebuttable presumption under PRESUMPTION.

CONDITIONAL PRIVILEGE

conditional privilege. See qualified privilege under PRIVILEGE(1).

CONDITIONAL PROMISE

conditional promise. See PROMISE.

CONDITIONAL PROOF

conditional proof. See PROOF.

CONDITIONAL PURPOSE

conditional purpose. 1. An intention to do something, conditions permitting. 2. Criminal law. A possible defense against a crime if the conditions make committing the crime impossible (e.g., "I will steal the money if it's there," and the money is not there).

CONDITIONAL RELEASE

conditional release. See RELEASE.

CONDITIONAL REVOCATION

conditional revocation. See DEPENDENT RELATIVE REVOCATION.

CONDITIONAL RIGHT

conditional right. See RIGHT.

CONDITIONAL SALE

conditional sale. See SALE.

CONDITIONAL SALES CONTRACT

conditional sales contract. See INSTALLMENT CONTRACT.

CONDITIONAL SENTENCE

conditional sentence. See SENTENCE.

CONDITIONAL USE

conditional use. See USE(1).

CONDITIONAL-USE PERMIT

conditional-use permit. See SPECIAL-USE PERMIT.

CONDITIONAL WILL

conditional will. See WILL.

CONDITIONAL ZONING

conditional zoning. See ZONING.

CONDITION CONCURRENT

condition concurrent. See concurrent condition under CONDITION(2).

CONDITION IMPLIED BY LAW

condition implied by law. See constructive condition under CONDITION(2).

CONDITION IMPLIED IN LAW

condition implied in law. See constructive condition under CONDITION(2).

CONDITIONING THE MARKET

conditioning the market. See GUN-JUMPING.

CONDITION OF EMPLOYMENT

condition of employment. A qualification or circumstance required for obtaining or keeping a job.

CONDITION PRECEDENT

condition precedent. See CONDITION(2).

CONDITIONS OF SALE

conditions of sale. The terms under which auctions are to be conducted. • The conditions of sale are usu. placed in the auction room for public viewing before the sale. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8.]

CONDITION SUBSEQUENT

condition subsequent. See CONDITION(2).

CONDOMINIA

condominia (kon-d<<schwa>>-min-ee-<<schwa>>). Civil law. Coownerships or limited ownerships. • Condo-minia are considered part of the dominium of the property, and thus are more than mere rights in the property (i.e., jure in re aliena); examples of condominiums include emphyteusis, superficies, pignus, hypotheca, usufructus, usus, and habitatio.

CONDOMINIUM

condominium (kon-d<<schwa>>-min-ee-<<schwa>>m). 1. Ownership in common with others. 2. A single real-estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas. Pl. (for sense 2) condominiums. Cf. COOPERATIVE(2). [Cases: Condominium 1. C.J.S. Estates §§ 193–195, 200, 203.]

“The condominium concept is not new, despite its relatively recent introduction in the United States. Ownership of individual units in buildings can be traced back to ancient Babylon; it was quite common in ancient Rome and in medieval Europe. The earliest condominium statute is Article 664 of the Code Napoleon of 1804, a very brief provision which was later substantially expanded. Condominium statutes were adopted in most nations in Europe, and in Central and South America, before any were adopted in the United States.” Roger A. Cunningham et al., *The Law of Property* § 2.2, at 34 n.26 (2d ed. 1993).

3. Joint sovereignty by two or more nations. 4. A politically dependent territory under such sovereignty. Pl. condominiums (senses 3 & 4).

CONDONATION

condonation (kon-d<<schwa>>-nay-sh<<schwa>>n), n. 1. A victim's express or (esp.) implied forgiveness of an offense, esp. by treating the offender as if there had been no offense. • Condonation is not usu. a valid defense to a crime. 2. One spouse's express or implied forgiveness of a marital offense by resuming marital life and sexual intimacy. • For example, one spouse might impliedly forgive the other spouse's infidelity by continuing to live with him or her. If adultery is charged as a ground for divorce and condonation is proved, the forgiving spouse is barred from proof of that offense. Cf. COLLUSION(2); CONNIVANCE(2); RECRIMINATION(1); RECONCILIATION. [Cases: Divorce 47. C.J.S. Divorce § 80.]

CONDONE

condone (k<<schwa>>n-dohn), vb. To voluntarily pardon or overlook (esp. an act of adultery). — condonable (k<<schwa>>n-dohn-<<schwa>>-b<<schwa>>l), adj.

CONDOCERE ALIQUID FACIENDUM

conducere aliquid faciendum (k<<schwa>>n-d[y]oo-s<<schwa>>-ree al-i-kwid fay-shee-en-d<<schwa>>m). [Latin] Roman law. To bind oneself to perform work for pay. Cf. LOCARE ALIQUID FACIENDUM.

CONDOCERE ALIQUID UTENDUM

conducere aliquid utendum (k<<schwa>>n-d[y]oo-s<<schwa>>-ree al-i-kwid yoo-ten-d<<schwa>>m). [Latin] Roman law. To pay for the use of an object; to hire. Cf. LOCARE ALIQUID UTENDUM.

CONDUCT

conduct, n. Personal behavior, whether by action or inaction; the manner in which a person behaves. • Conduct does not include the actor's natural death or a death that results from behavior consciously engaged in but not reasonably expected to have this result. — conduct, vb.

“The word ‘conduct’ ... covers both acts and omissions.... In cases in which a man is able to show that his conduct, whether in the form of action or of inaction, was involuntary, he must not be held liable for any harmful result produced by it” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 13 n.2, 24 (16th ed. 1952).

active conduct. Behavior that involves a person doing something by exerting will on the external world. Cf. passive conduct.

assertive conduct. Evidence. Nonverbal behavior that is intended to be a statement, such as pointing one's finger to identify a suspect in a police lineup. • Assertive conduct is a statement under the hearsay rule, and thus it is not admissible unless a hearsay exception applies. Fed. R. Evid. 801(a)(2). — Also termed implied assertion. [Cases: Criminal Law 419(2.10); Evidence 314(1). C.J.S. Criminal Law §§ 869, 871–876; Evidence §§ 259–266, 268, 270–272, 279–280, 283–284, 319.]

contumacious conduct (kon-t[y]oo-may-sh<<schwa>>s). A willful disobedience of a court order. See CON-TUMACY. [Cases: Contempt 20. C.J.S. Contempt §§ 14, 17.]

disorderly conduct. Behavior that tends to disturb the public peace, offend public morals, or undermine public safety. See BREACH OF THE PEACE. [Cases: Disorderly Conduct 1. C.J.S. Disorderly Conduct §§ 2–5.]

“At common law there was no offense known as disorderly conduct, although the offense of breaching the peace made many public disturbances criminal. In addition, this offense could be based on behavior that might cause another to respond in a violent manner even though the party guilty of the breach of the peace acted quietly or secretly, as when a person challenged someone to

a duel. The enactment of statutes making disorderly conduct punishable went beyond the common-law notion of a breach of the peace by including behavior that merely tended to disturb the safety, health, or morals of others or that was intended only to annoy another. Further definitions were added later.” Francis Barry McCarthy, “Vagrancy and Disorderly Conduct,” in 4 *Encyclopedia of Crime and Justice* 1589, 1589 (Sanford H. Kadish ed., 1983).

disruptive conduct.Disorderly conduct in the context of a governmental proceeding. See CONTEMPT.

nonassertive conduct.Evidence. Nonverbal behavior that is not intended to be a statement, such as fainting while being questioned as a suspect by a police officer. • Nonassertive conduct is not a statement under the hearsay rule, and thus it is admissible. Fed. R. Evid. 801. [Cases: Criminal Law 419(2.10); Evidence 314(1). C.J.S. Criminal Law §§ 869, 871–876; Evidence §§ 259–266, 268, 270–272, 279–280, 283–284, 319.]

outrageous conduct.Conduct so extreme that it exceeds all reasonable bounds of human decency. See EMO-TIONAL DISTRESS. [Cases: Damages 50.10. C.J.S. Damages §§ 95, 98–104; Torts §§ 67–75, 78.]

passive conduct.Behavior that does not involve exerting will on the external world. Cf. active conduct.

tortious conduct.An act or omission that subjects the actor to liability under the principles of tort law.

unprofessional conduct.Behavior that is immoral, unethical, or dishonorable, esp. when judged by the standards of the actor's profession.

unreasonably dangerous conduct.Conduct that involves undue risk under the circumstances. — Sometimes shortened to dangerous conduct. — Also termed unduly dangerous conduct.

wrongful conduct.An act taken in violation of a legal duty; an act that unjustly infringes on another's rights. — Also termed wrongful act. [Cases: Torts 10(3), 12. C.J.S. Torts §§ 53–54, 59–65.]

CONDUCTIO

conductio (k<<schwa>>n-d<<schwa>>k-shee-oh), n. [Latin “a hiring”] Roman law. The hiring or leasing of services or property. Pl. conductiones (k<<schwa>>n-d<<schwa>>k-shee-oh-nee-z). See locatio conductio under LOCATIO.

CONDUCT MONEY

conduct money.See witness fee under FEE(1).

CONDUCTOR

conductor (k<<schwa>>n-d<<schwa>>k-t<<schwa>>r or -tor), n. [Latin “one who hires”] Roman law. 1. A lessee or a person who hires the services of another; a hirer. 2. A person hired to make a specific work; a contractor. • A contractor, esp. for the provision of public services, was

also called manceps or redemptor. See MANCEPS; LOCATOR(1).

CONDUCTOR OPERARUM

conductor operarum (k<<schwa>>n-d<<schwa>>k-t<<schwa>>r [or -tor] op-<<schwa>>-rair-<<schwa>>m). [Latin “a hirer of labor”] Roman law. A person who hires another's labor, esp. manual labor, at a stated price; an employer.

CONDUCTUS

conductus (k<<schwa>>n-d<<schwa>>k-t<<schwa>>s), n. [fr. Latin conducere “to hire”] Roman law. A person or thing hired by a conductor.

CONDUIT TAXATION

conduit taxation. See pass-through taxation under TAXATION.

CONFARREATIO

confarreatio (k<<schwa>>n-far-ee-ay-shee-oh), n. [Latin] Roman law. A religious ceremony used to wed members of the Patrician class in ancient Rome. • By this ceremony, the wife was brought into the husband's family and placed under the husband's protection (manus). Pl. confarreationes (k<<schwa>>n-far-ee-ay-shee-oh-nee). See MANUS(1). Cf. COEMPTIO; USUS(3).

“Anciently, there were three modes in which marriage might be contracted according to Roman usage, one in-volving a religious solemnity, the other two the observance of certain secular formalities. By the religious marriage of Confarreation; by the higher form of civil marriage, which was called Coemption; and by the lower form, which was termed Usus, the Husband acquired a number of rights over the person and property of his wife, which were on the whole in excess of such as are conferred on him in any system of modern jurisprudence. But in what capacity did he acquire them? Not as Husband, but as Father. By the Confarreation, Coemption, and Usus, the woman passed in manum viri, that is, in law she became the Daughter of her husband. She was included in his Patria Potestas.... These three ancient forms of marriage fell, however, gradually into disuse, so that, at the most splendid period of Roman greatness, they had almost entirely given place to a fashion of wedlock — old appar-ently, but not hitherto considered reputable — which was founded on a modification of the lower form of civil marriage.” Henry S. Maine, *Ancient Law* 149 (10th ed. 1884).

“Confarreatio was a religious ceremony performed in the house of the bridegroom, to which the bride had been conveyed in the state, in the presence of at least ten witnesses and the Pontifex Maximus, or one of the higher priests. A set form of words (carmen — verba concepta) was repeated, and a sacred cake made of Far (farreus panis) — whence the term Confarreatio — was either tasted by or broken over the parties who sat during the performance of various rites, side by side, on a wooden seat made of an ox-yoke covered with the skin of the sheep which had previously been offered in sacrifice.” William Ramsay, *A Manual of Roman Antiquities* 295 (Rodolfo Lanciani ed., 15th ed. 1894).

CONFECTIO

confectio (k<<schwa>>n-fek-shee-oh), n. [Latin “a completing”] Hist. The act of making or executing a written instrument. Pl. confectiones (k<<schwa>>n-fek-shee-oh-neeZ).

CONFEDERACY

confederacy, n. 1. A league of states or countries that have joined for mutual support or joint action; an alliance. 2. An association of two or more persons, usu. for unlawful purposes; CONSPIRACY. [Cases: Conspiracy 1.1, 2, 23.1, 24. C.J.S. Conspiracy §§ 2–3, 8–17, 98, 100–103, 110, 113–122, 204.] 3. The fact or condition of being allied or associated.

CONFEDERACY CLAUSE

confederacy clause. Archaic. A clause in a complaint charging that the defendant or defendants have combined with others (who may yet be named as defendants) to defraud or deprive the plaintiff of personal rights.

CONFEDERATE

confederate, n. An ally; esp., a coconspirator or accomplice. [Cases: Conspiracy 39; Criminal Law 59. C.J.S. Conspiracy §§ 134, 137; Criminal Law §§ 127, 998.]

CONFEDERATION

confederation. 1. A league or union of states or nations, each of which retains its sovereignty but also delegates some rights and powers to a central authority. • The United States, for example, was first organized under the Articles of Confederation. Cf. FEDERATION.

“A confederation is a union, more or less complete, of two or more states which before were independent. It aims to secure a common good, external, as mutual protection against powerful neighbors, or internal, as commerce and community of justice by means of common institutions.” Theodore D. Woolsey, *Introduction to the Study of International Law* § 108, at 173 (5th ed. 1878).

confederation of states. A confederation involving a central government that exists and exercises certain powers but does not control all the external relations of the member states. • For international purposes there exists not one but a number of states. Cf. federal state under STATE.

2. An alliance; esp., in a negative sense, a conspiracy.

CONFEREE

conferee (kon-f<<schwa>>r-ee). See MANAGER(2).

CONFERENCE

conference. 1. CONVENTION(3). 2. A meeting between the two houses of a bicameral legislature. See conference committee under COMMITTEE.

“It is proper for either house to request a conference with the other on any matter of difference or dispute between them. When a conference is requested, the subject of the conference

should always be stated. One house may request a conference to inquire or protest concerning an offense or default on the part of a member or officer of the other house. When there is a question concerning procedure, or when an unparliamentary message has been sent, instead of replying directly, a conference should be requested. When there are questions as to procedure between the two houses, the proper procedure is to discuss the matter by a conference committee; also, where one house desires to formally present a question to the other, the question should be submitted through a conference committee." National Conference of State Legislatures, *Mason's Manual of Legislative Procedure* § 764, at 551 (2000).

CONFERENCE COMMITTEE

conference committee. See COMMITTEE.

CONFERENCE OF CHIEF JUSTICES

Conference of Chief Justices. An organization consisting of the highest judicial officers of all the states in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands. • Established in 1949, the organization seeks to improve the administration of justice in various ways, as by supporting adequate judicial funding, promoting the independence and effectiveness of state judicial systems, and advancing professionalism and lawyer competence. Since 1983, the organization has operated as a nonprofit corporation. Abbr. CCJ.

CONFESS

confess, vb. To admit (an allegation) as true; to make a confession. — confessor, n.

CONFESSED JUDGMENT

confessed judgment. See CONFESSOR OF JUDGMENT.

CONFESSING ERROR

confessing error. A plea admitting to an assignment of error. See ASSIGNMENT OF ERROR .

CONFESSIO IN JUDICIO

confessio in iudicio (k<<schwa>>n-fesh-ee-oh in joo-dish-ee-oh). [Latin "confession in court"] Hist. An in-court confession.

CONFESSION

confession, n. A criminal suspect's oral or written acknowledgment of guilt, often including details about the crime. Cf. ADMISSION; STATEMENT(3). [Cases: Criminal Law 516. C.J.S. Criminal Law § 878.]

"A confession is an acknowledgment in express words, by the accused in a criminal case, of the truth of the main fact charged or of some essential part of it." 3 John H. Wigmore, *Evidence in*

Trials at Common Law § 821, at 308 (James H. Chadbourn ed., 4th rev. ed. 1970).

“The distinction between admissions in criminal cases and confessions by the accused is the distinction in effect between admissions of fact from which the guilt of the accused may be inferred by the jury and the express admission of guilt itself.” William P. Richardson, *The Law of Evidence* § 394, at 268 (3d ed. 1928).

coerced confession.A confession that is obtained by threats or force. [Cases: Criminal Law 519, 522. C.J.S. Criminal Law §§ 893, 908.]

direct confession.A statement in which an accused person acknowledges having committed the crime.

extrajudicial confession.A confession made out of court, and not as a part of a judicial examination or investigation. • Such a confession must be corroborated by some other proof of the corpus delicti, or else it is insufficient to warrant a conviction. Cf. judicial confession.

implied confession.A confession in which the person does not plead guilty but invokes the mercy of the court and asks for a light sentence.

indirect confession.A confession that is inferred from the defendant's conduct.

interlocking confessions.Confessions by two or more suspects whose statements are substantially the same and consistent concerning the elements of the crime. • Such confessions are admissible in a joint trial. [Cases: Criminal Law 528. C.J.S. Criminal Law §§ 983, 988–990.]

involuntary confession.A confession induced by the police or other law-enforcement authorities who make promises to, coerce, or deceive the suspect. [Cases: Criminal Law 519–526. C.J.S. Criminal Law §§ 882, 893–897, 901, 903, 906–912, 929–931.]

judicial confession.A plea of guilty or some other direct manifestation of guilt in court or in a judicial proceeding. Cf. extrajudicial confession.

naked confession.A confession unsupported by any evidence that a crime has been committed, and therefore usu. highly suspect. [Cases: Criminal Law 535. C.J.S. Criminal Law § 942.]

oral confession.A confession that is not made in writing. • Oral confessions are admissible, though as a practical matter police interrogators prefer to take written or recorded confessions since juries typically view these as being more reliable.

plenary confession (plee-n<<schwa>>-ree or plen-<<schwa>>-). A complete confession; one that is believed to be conclusive against the person who made it.

relative confession.Hist. A confession of guilt coupled with an accusation against another person as a participant in the crime. • If the accusation against the other person was proved, the accusing defendant was pardoned. If not, the defendant was convicted on the confession. See *State v. Willis*, 41 A. 820, 825 (Conn. 1898). See AP-PROVER(1).

threshold confession.A spontaneous confession made promptly after arrest and without interrogation by the police. • The issue whether the defendant's statement is a threshold confession

usu. arises when the defendant challenges the admissibility of the confession on grounds that he or she suffered an impermissibly long delay before being brought before a magistrate. Courts generally admit this type of confession into evidence if the confession was given before the delay occurred.

voluntary confession. A confession given freely, without any benefit or punishment promised, threatened, or expected.

CONFESSION AND AVOIDANCE

confession and avoidance. A plea in which a defendant admits allegations but pleads additional facts that deprive the admitted facts of an adverse legal effect. • For example, a plea of contributory negligence (before the advent of comparative negligence) was a confession and avoidance. — Also termed avoidance; plea in confession and avoidance; plea of confession and avoidance. [Cases: Pleading 130. C.J.S. Pleading § 197.]

CONFESSION OF JUDGMENT

confession of judgment. 1. A person's agreeing to the entry of judgment upon the occurrence or nonoccurrence of an event, such as making a payment. [Cases: Federal Civil Procedure 2396; Judgment 29. C.J.S. Judgments §§ 138, 152–153, 169.] 2. A judgment taken against a debtor by the creditor, based on the debtor's written consent. [Cases: Federal Civil Procedure 2396; Judgment 29–70. C.J.S. Judgments §§ 138–181, 363–369.] 3. The paper on which the person so agrees, before it is entered. — Also termed confessed judgment; cognovit judgment; statement of confession; warrant of confession; judgment by confession. See COGNOVIT. Cf. WARRANT OF ATTORNEY.

CONFIDENCE

confidence. 1. Assured expectation; firm trust; faith <the partner has confidence in the associate's work>. 2. Reliance on another's discretion; a relation of trust <she took her coworker into her confidence>. 3. A communication made in trust and not intended for public disclosure; specif., a communication protected by the attorney–client or similar privilege <the confidences between lawyer and client>. • Under the ABA Code of Professional Responsibility, a lawyer cannot reveal a client's confidence unless the client consents after full disclosure. DR 4–101. Cf. SECRET(2). [Cases: Witnesses 189–223. C.J.S. Witnesses §§ 302–312, 314–389.] — confide, vb.

CONFIDENCE GAME

confidence game. A means of obtaining money or property whereby a person intentionally misrepresents facts to gain the victim's trust so that the victim will transfer money or property to the person. — Also termed con game; con. Cf. BUNCO. [Cases: False Pretenses 16.]

CONFIDENCE MAN

confidence man. One who defrauds a victim by first gaining the victim's confidence and then, through trickery, obtaining money or property; a swindler. • The equivalent term confidence

woman is exceptionally rare, even though women are often involved in confidence games. — Often shortened to con man. See CONFIDENCE GAME. Cf. BUNCO-STEERER.

CONFIDENTIAL

confidential,adj.1. (Of information) meant to be kept secret <confidential settlement terms>.2. (Of a relationship) characterized by trust and a willingness to confide in the other <a confidential relationship between attorney and client>.

CONFIDENTIAL ADOPTION

confidential adoption.See closed adoption under ADOPTION.

CONFIDENTIAL COMMUNICATION

confidential communication.See COMMUNICATION.

CONFIDENTIALITY

confidentiality,n.1. Secrecy; the state of having the dissemination of certain information restricted. 2. The relation between lawyer and client or guardian and ward, or between spouses, with regard to the trust that is placed in the one by the other. [Cases: Witnesses 184–223. C.J.S. Witnesses §§ 297–389.]

CONFIDENTIALITY AGREEMENT

confidentiality agreement.See NONDISCLOSURE AGREEMENT.

CONFIDENTIALITY STATUTE

confidentiality statute.A law that seals adoption records and prevents an adopted child from learning the identity of his or her biological parent and prevents the biological parent from learning the identity of the adoptive parents. — Also termed sealed-record statute.

CONFIDENTIAL MARRIAGE

confidential marriage.See MARRIAGE(1).

CONFIDENTIAL RELATIONSHIP

confidential relationship.See RELATIONSHIP.

CONFIDENTIAL SOURCE

confidential source.A person who provides information to a law-enforcement agency or to a journalist on the express or implied guarantee of anonymity. • Confidentiality is protected both under the Federal Freedom of Information Act (for disclosures to law enforcement) and under the First Amendment (for disclosures to jour-nalists). [Cases: Witnesses 196.1, 216(4).C.J.S. Witnesses §§ 358, 365.]

CONFINEE

confinee. A person held in confinement.

CONFINEMENT

confinement, n. The act of imprisoning or restraining someone; the state of being imprisoned or restrained <solitary confinement>. See SOLITARY CONFINEMENT. — confine, vb.

CONFIRM

confirm, vb. 1. To give formal approval to <confirm the bankruptcy plan>. [Cases: Bankruptcy 3566.1, 3683.1, 3715(1). C.J.S. Bankruptcy § 449.] 2. To verify or corroborate <confirm that the order was signed>. 3. To make firm or certain <the judgment confirmed the plaintiff's right to possession>.

CONFIRMATIO

confirmatio (kon-f<<schwa>>r-may-shee-oh). [Latin “confirmation”] Hist. A confirmation of a voidable estate. See CONFIRMATION(3).

confirmatio crescens (kon-f<<schwa>>r-may-shee-oh kres-enz). [Latin “growing confirmation”] A confirmation that enlarges an estate.

confirmatio diminuens (kon-f<<schwa>>r-may-shee-oh di-min-yoo-enz). [Latin “diminishing confirmation”] A confirmation that decreases the services that a tenant must perform.

confirmatio perficiens (kon-f<<schwa>>r-may-shee-oh p<<schwa>>r-fish-ee-enz). [Latin “perfecting confirmation”] A confirmation that ratifies a wrongful and defeasible title, or makes a conditional estate absolute.

CONFIRMATIO AD OMISSA VEL MALE APPRETIATA

confirmatio ad omissa vel male appretiata (kon-f<<schwa>>r-may-shee-oh ad oh-mis-<<schwa>> vel mal-ee <<schwa>>-pree-shee-ay-t<<schwa>>). [Law Latin] Scots law. Confirmation (by an executor) of subjects omitted or wrongly valued in a previously provided inventory.

CONFIRMATIO CHARTARUM

Confirmatio Chartarum (kon-f<<schwa>>r-may-shee-oh kahr-tair-<<schwa>>m). [Latin “confirmation of the charters”] Hist. A declaration first made by Henry III in 1225 confirming the guarantees of Magna Carta and the Charter of the Forest. • It was not enrolled until 1297, when, during the reign of Edward I, it was enacted, thus introducing these charters into the common law. — Also spelled Confirmatio Cartarum.

“For lawyers, the really important date is neither 1215 nor 1225, when Henry's Charter took its final form, but 1297, when Edward I, in his *Inspeximus*, confirmed the Charter of 1225 and the Forest Charter, which was issued at the same time (*Confirmatio Chartarum*). The important element in the *Confirmatio* is the statement that the Charter might be pleaded in every royal court, either to support a claim or a defense. The Charter becomes in this way part of the law — the Common Law — which, in 1297, was already a definite concept although it was not yet quite the equivalent of the law of England. Until then, the political aspects of the Charter had been much

the more important.” Max Radin, *Handbook of Anglo-American Legal History* 156 (1936).

CONFIRMATION

confirmation, n. 1. The act of giving formal approval <Senate confirmation hearings>. [Cases: United States 35. C.J.S. United States §§ 23, 53, 56–57.] 2. The act of verifying or corroborating; a statement that verifies or corroborates <the journalist sought confirmation of the district attorney's remarks>. 3. The act of ratifying a voidable estate; a type of conveyance in which a voidable estate is made certain or a particular estate is increased <deed of confirmation>. [Cases: Deeds 51. C.J.S. Deeds § 71.] 4. Civil law. A declaration that corrects a null provision of an obligation in order to make the provision enforceable. 5. Commercial law. A bank's agreement to honor a letter of credit issued by another bank. [Cases: Banks and Banking 191. C.J.S. Bills and Notes; Letters of Credit §§ 341–366, 368–370, 372–376.] Cf. RATIFICATION. — confirmatory (k<<schwa>>n-f<<schwa>>r-m<<schwa>>-tor-ee), adj.

silent confirmation. A bank's confirmation based on the request of the beneficiary of the credit rather than the issuing bank. [Cases: Banks and Banking 191. C.J.S. Bills and Notes; Letters of Credit §§ 341–366, 368–370, 372–376.]

CONFIRMATION OF SALE

confirmation of sale. A court's approval — usu. in the form of a docket entry or order — of the terms of a court-ordered sale. [Cases: Judicial Sales 31. C.J.S. Judicial Sales §§ 29–30.]

CONFIRMATION SLIP

confirmation slip. The form verifying a purchase or sale of a security, usu. mailed by the broker to the investor. — Also termed transaction slip; sold note.

CONFIRMATIO PERFICIENS

confirmatio perficiens. See CONFIRMATIO.

CONFIRMAVI

confirmavi (kon-f<<schwa>>r-may-vI). [Latin] Hist. I have confirmed. • The emphatic word in a deed of confirmation. See CONFIRMATION(3).

CONFIRMED LETTER OF CREDIT

confirmed letter of credit. See LETTER OF CREDIT.

CONFIRMEE

confirmee (kon-f<<schwa>>r-mee). Hist. The grantee of a deed of confirmation. See CONFIRMATION(3).

CONFIRMOR

confirmor (k<<schwa>>n-f<<schwa>>r-m<<schwa>>r or -mor). Hist. The grantor of a deed of confirmation. See CONFIRMATION(3).

CONFISCABLE

confiscable (k<<schwa>>n-fis-k<<schwa>>-b<<schwa>>l orkon-f<<schwa>>-sk<<schwa>>-b<<schwa>>l), adj. (Of property) liable to confiscation; subject to forfeiture <confiscable contraband>. [Cases: Controlled Substances 164; Forfeitures 3.]

CONFISCARE

confiscare (kon-fi-skair-ee), vb.[Latin con “together” + fiscus “treasury”] Hist. To seize (property) for the gov-ernment.

CONFISCATE

confiscate (kon-f<<schwa>>-skayt), vb.1. To appropriate (property) as forfeited to the government. 2. To seize (property) by authority of law.

CONFISCATION

confiscation (kon-fi-skay-sh<<schwa>>n), n.1. Seizure of property for the public treasury. 2. Seizure of property by actual or supposed authority. — confiscatory (k<<schwa>>n-fis-k<<schwa>>-tor-ee), adj. — confiscator (kon-f<<schwa>>-skay-t<<schwa>>r), n.

CONFISCATORY RATE

confiscatory rate.See RATE.

CONFITENS REUS

confitens reus (kon-f<<schwa>>-tenz ree-<<schwa>>s). [Latin “confessing accused”] Hist. An accused person who admits committing the offense.

CONFLICT

conflict. See CONFLICT OF LAWS.

CONFLICTING EVIDENCE

conflicting evidence.See EVIDENCE.

CONFLICTING PRESUMPTION

conflicting presumption.See PRESUMPTION.

CONFLICT OF AUTHORITY

conflict of authority. 1. A disagreement between two or more courts, often courts of coordinate jurisdiction, on a point of law. 2. A disagreement between two or more treatise authors or other scholars, esp. in an area in which scholarly authority is paramount, such as public or private international law.

CONFLICT OF INTEREST

conflict of interest. 1. A real or seeming incompatibility between one's private interests and one's public or fiduciary duties. 2. A real or seeming incompatibility between the interests of two of a lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either client or if the clients do not consent. See Model Rules of Prof'l Conduct 1.7(a). [Cases: Attorney and Client 20.1.]

CONFLICT OF LAWS

conflict of laws. 1. A difference between the laws of different states or countries in a case in which a transaction or occurrence central to the case has a connection to two or more jurisdictions. — Often shortened to conflict. Cf. CHOICE OF LAW. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12, 15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

conflict of personal laws. 1. A difference of laws between a jurisdiction's general laws and the laws of a racial or religious group, such as a conflict between federal law and American Indian tribal law. 2. A difference between personal laws. See PERSONAL LAW.

false conflict of laws. 1. A situation resembling but not embodying an actual conflict because the potentially applicable laws do not differ, because the laws' underlying policies have the same objective, or because one of the laws is not meant to apply to the case before the court. 2. The situation in which, although a case has a territorial connection to two or more states whose laws conflict with one another, there is no real conflict because one state has a dominant interest in having its law chosen to govern the case — hence there is no real conflict. 3. The situation in which the laws of all states that are relevant to the facts in dispute either are the same or would produce the same decision in the case. — Often shortened to false conflict.

2. The body of jurisprudence that undertakes to reconcile such differences or to decide what law is to govern in these situations; the principles of choice of law. — Often shortened (in sense 2) to conflicts. — Also termed (in international contexts) private international law; international private law. “The phrase [conflict of laws], although inadequate, because it does not cover questions as to jurisdiction, or as to the execution of foreign judgments, is better than any other.” Thomas E. Holland, *The Elements of Jurisprudence* 421 (13th ed. 1924).

CONFLICT OUT

conflict out, vb. To disqualify (a lawyer or judge) on the basis of a conflict of interest <the judge was conflicted out of the case by his earlier representation of one of the litigants>. [Cases: Attorney and Client 20.1; Judges 39. C.J.S. Judges §§ 62, 98, 100–102, 107.]

CONFLICT PREEMPTION

conflict preemption. See obstacle preemption under PREEMPTION.

CONFLICTS

conflicts. See CONFLICT OF LAWS(2).

CONFORMED COPY

conformed copy.See COPY.

CONFORMING

conforming,adj. Being in accordance with contractual obligations <conforming goods> <conforming conduct>. UCC § 2-106(2). [Cases: Sales 153, 166(1). C.J.S. Sales §§ 161–162, 164, 176, 182.]

CONFORMING USE

conforming use.See USE(1).

CONFORMITY ACT

Conformity Act.Hist. An 1872 federal statute providing that the practice and procedure in federal district courts (other than in equity and admiralty matters) must conform to the practice and procedure used by the state courts for like cases. • The Federal Rules of Civil Procedure (effective in 1938) superseded the Conformity Act.

“[E]ven where there was conformity, it was to be ‘as near as may be,’ and this was understood by the Court to make the Conformity Act ‘to some extent only directory and advisory’ and to permit the federal judge to disregard a state practice that would, in his view, ‘unwisely encumber the administration of the law, or tend to defeat the ends of justice.’ With all these exceptions to conformity, and with the judge left somewhat at large to decide when he would conform, it is hardly surprising that the result was, in the view of a distinguished commentator, ‘a mixture of conflicting decisions, which have served to cloud the whole subject in hideous confusion and shifting certainty.’ ” Charles Alan Wright, *The Law of Federal Courts* § 61, at 425–26 (5th ed. 1994) (quoting *Indianapolis & St. Louis Ry. Co. v. Horst*, 93 U.S. 291, 300–01 (1876)).

CONFORMITY HEARING

conformity hearing. 1. A court-ordered hearing to determine whether the judgment or decree prepared by the prevailing party conforms to the decision of the court. 2. A hearing before a federal agency or department to determine whether a state-submitted plan complies with the requirements of federal law. • This type of hearing is common in cases involving social services.

CONFRONTATION CLAUSE

Confrontation Clause.The Sixth Amendment provision generally guaranteeing a criminal defendant's right to confront an accusing witness face-to-face and to cross-examine that witness. • This right may be overridden if the witness is esp. vulnerable, as with a child who is an alleged victim of sexual abuse. Even then, the defendant's attorney must have an opportunity to examine the witness while the defendant observes by means of closed-circuit television or the like. See *Maryland v. Craig*, 497 U.S. 836, 110 S.Ct. 3157 (1990). [Cases: Criminal Law 662.1–662.80. C.J.S. Criminal Law §§ 1115–1133.]

CONFUSIO

confusio (k<<schwa>>n-fyoo-zhee-oh), n. [fr. Latin confundere “to pour together”] 1. Roman law. An inseparable mixture of liquid property belonging to different owners. Cf. COMMIXTIO. 2. Roman law. The extinction of a right or duty that occurs when the roles of creditor and debtor become united in one person. 3. Scots law. A doctrine whereby a lesser right is absorbed into a greater right and is thus extinguished. • For example, if a debtor acquired the rights of a creditor, the debt would become meaningless.

“When the rights of both creditor and debtor come to be vested in the one person, in the same legal capacity, as by succession, gift or purchase, the obligation is extinguished, unless the creditor has an interest to maintain the obligation in being or the intention appears that confusio was not to operate. Obligations are not necessarily extinguished confusione where there is a legal relationship, independent of the pecuniary interests thereof, capable of revival by a subsequent separation of interests, as in the case of superior and vassal, and dominant and serient tenements in relation to servitude.” 2 David M. Walker, *Principles of Scottish Private Law: Law of Obligations* 170 (1988).

CONFUSIO BONORUM

confusio bonorum (k<<schwa>>n-fyoo-zhee-oh b<<schwa>>-nor-<<schwa>>m). See CONFUSION OF GOODS.

CONFUSION

confusion. 1. CONFUSION OF GOODS. 2. MERGER(9).

“Confusion is the intermingling of two or more pieces of personal property so that the property rights in each can no longer be distinguished. Thereafter, no specific identification or separation of the formerly separate chattel is possible. Such an intermingling occurs most often with fungible goods like gas, oil, grain, mineral ore, or unmarked timber.” Barlow Burke, *Personal Property in a Nutshell* 379 (2d ed. 1993).

3. Trademarks. A consumer's mistaken belief about the origin of goods or services. See LIKELIH-OOD-OF-CONFUSION TEST.

direct confusion. See forward confusion.

forward confusion. Confusion occurring when consumers are likely to believe mistakenly that the infringing company's products are from the same source as the trademark owner's. • In forward-confusion cases, the in-fringing company is usu. smaller than the owner. Thus, consumers may believe the infringer to be an affiliate of the owner. — Also termed direct confusion.

reverse confusion. Confusion occurring when consumers are likely to believe mistakenly — usu. through wide-spread advertising and promotion by the infringing company — that the trademark owner's products are actually those of the infringer. • Reverse confusion often injures the owner's reputation and goodwill. In an action for reverse confusion, the trademark owner is typically the smaller company.

CONFUSION OF BOUNDARIES

confusion of boundaries. The branch of equity that deals with the settlement of disputed or uncertain real-property boundaries. [Cases: Boundaries 26. C.J.S. Boundaries §§ 106, 109.]

CONFUSION OF DEBTS

confusion of debts. See **MERGER(9)**.

CONFUSION OF GOODS

confusion of goods. The mixture of things of the same nature but belonging to different owners so that the identification of the things is no longer possible. • If this occurs by common consent of the owners, they are owners in common, but if the mixture is done willfully by one person alone, that person loses all right in the property unless (1) the goods can be distinguished and separated among owners, or (2) the mixing person's goods are equal in value to the goods with which they were intermingled. Confusion of goods combines the civil-law concepts of *confusio* (a mixture of liquids) and *commixtio* (a mixture of dry items). — Also termed intermixture of goods; *confusio bonorum*. [Cases: Confusion of Goods 1–5. C.J.S. Confusion of Goods §§ 1–7, 13.]

CONFUSION OF RIGHTS

confusion of rights. See **MERGER(9)**.

CONFUSION OF TITLES

confusion of titles. Civil law. The merger of two titles to the same land in the same person. Cf. **MERGER(9)**.

CON GAME

con game. See **CONFIDENCE GAME**.

CONGEABLE

congeable (kon-jee-<<schwa>>-b<<schwa>>l), adj. [fr. French *congé* “permission”] Hist. Lawful; permissible.

CONGÉ D'ACCORDER

congé d'accorder (kawn-zhay da-kor-day). [Law French] Hist. Leave to accord. • Courts used this phrase in fictitious land-title lawsuits to grant the defendant permission to agree with the plaintiff's allegations. See **FINE(1)**.

CONGÉ D'EMPARLER

congé d'emparler (kawn-zhay dawm-pahr-lay). [French] Hist. Leave to imparl. • This phrase was formerly used by a defendant to request leave of court for additional time to file a responsive pleading. See **IMPARLANCE**.

CONGERIES

congeries (kon-jeer-eez orkon-j<<schwa>>-reez). A collection or aggregation <a congeries of rights>.

CONGLOMERATE

conglomerate (k<<schwa>>n-glom-<<schwa>>r-it), n. A corporation that owns unrelated enterprises in a wide variety of industries. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.] — conglomerate (k<<schwa>>n-glom-<<schwa>>-rayt), vb. — conglomerate (k<<schwa>>n-glom-<<schwa>>r-it), adj.

CONGLOMERATE MERGER

conglomerate merger.See MERGER.

CONGRESS

congress,n.1. A formal meeting of delegates or representatives; CONVENTION (4).2. (cap.) The legislative body of the federal government, created under U.S. Const. art. I, § 1 and consisting of the Senate and the House of Representatives. [Cases: United States 7. C.J.S. United States §§ 16–17.] — congressional,adj.

CONGRESSIONAL BUDGET OFFICE

Congressional Budget Office.An office in the legislative branch of the federal government responsible for fo-recasting economic trends, making cost estimates, conducting special studies in budget-related areas, and issuing annual reports that discuss federal spending and revenue levels and the allocation of funds. • It was established by the Congressional Budget Act of 1974. — Abbr. CBO.

CONGRESSIONAL COMMITTEE

congressional committee.See COMMITTEE.

CONGRESSIONAL DISTRICT

congressional district.See DISTRICT.

CONGRESSIONAL GLOBE

Congressional Globe.A privately issued record of the proceedings in Congress. • The Globe was the sole record of congressional speeches and statements from 1833 until the publicly printed Congressional Record appeared in 1873.

CONGRESSIONAL IMMUNITY

congressional immunity.See IMMUNITY(1).

CONGRESSIONAL INTENT

congressional intent.See LEGISLATIVE INTENT.

CONGRESSIONAL POWER

congressional power. See POWER(3).

CONGRESSIONAL RECORD

Congressional Record. The official record of the daily proceedings in the U.S. Senate and House of Representatives. • Members of Congress are allowed to edit their speeches before printing, and they may insert material never actually spoken by obtaining permission from their respective houses to print or extend their remarks.

CONGRESSIONAL SURVEY

congressional survey. See government survey under SURVEY.

CONGRESS OF AUTHORS AND ARTISTS

Congress of Authors and Artists. Copyright. A 19th-century convention of writers, artists, librarians, and others promoting universal copyright protection. • The Congress, which met in 1858, 1861, and 1877, passed resolutions that helped lay the groundwork for the Berne Convention.

CONJECTIO

conjectio (k<<schwa>>n-jek-shee-oh), vb. [Latin “an inference”] Hist. A conclusion drawn from evidence; a fact inferred from the evidence presented. Pl. conjectiones (k<<schwa>>n-jek-shee-oh-nee-z).

CONJECTIO CAUSAE

conjectio causae (k<<schwa>>n-jek-shee-oh kaw-zee). [Latin “putting together of a cause”] Roman law. A summary presentation of a case before the court by the parties or their advocates.

CONJECTURAL CHOICE, RULE OF

conjectural choice, rule of. The principle that no basis for recovery is presented when all theories of causation rest only on conjecture. See CONJECTURE. [Cases: Negligence 1694, 1713. C.J.S. Negligence §§ 834–841, 844, 846, 865.]

CONJECTURA PIETATIS

conjectura pietatis (k<<schwa>>n-jek-ch<<schwa>>-r<<schwa>> pI-<<schwa>>-tay-tis). [Latin] Hist. A conclusion arising from a natural duty.

CONJECTURE

conjecture (k<<schwa>>n-jek-ch<<schwa>>r), n. A guess; supposition; surmise. [Cases: Criminal Law 486(2); Evidence 555.4(2). C.J.S. Evidence § 609.] — conjecture (k<<schwa>>n-jek-ch<<schwa>>r), vb. — conjectural (k<<schwa>>n-jek-ch<<schwa>>r-<<schwa>>l), adj.

CONJOINT

conjoint (k<<schwa>>n-joynt), n. A person connected with another in a joint interest,

obligation, or undertaking, such as a cotenant or spouse. — conjoint,adj.

CONJOINT ROBBERY

conjoint robbery.See ROBBERY.

CONJOINT WILL

conjoint will.See joint will under WILL.

CONJUDEX

conjudeX (kon-joo-deks). [fr. Latin con “together” + judex “judge”] Hist. An associate judge.

CONJUGAL

conjugal (kon-j<<schwa>>-g<<schwa>>l), adj. Of or relating to the married state, often with an implied emphasis on sexual relations between spouses < the prisoner was allowed a private bed for conjugal visits>. [Cases: Husband and Wife 1–354. C.J.S. Estates § 19.]

CONJUGAL RIGHTS

conjugal rights.The rights and privileges arising from the marriage relationship, including the mutual rights of companionship, support, and sexual relations. • Loss of conjugal rights amounts to loss of consortium. See CONSORTIUM. [Cases: Husband and Wife 1–354. C.J.S. Estates § 19.]

CONJUGAL UNION

conjugal union.See MARRIAGE(1).

CONJUGIUM

conjugium (k<<schwa>>n-joo-jee-<<schwa>>m), n.[fr. Latin con “together” + jugum “yoke”] Roman law. The condition of being married.

CONJUNCT

conjunct (k<<schwa>>n-j<<schwa>>ngktorkon-j<<schwa>>ngkt), adj. Civil law. (Of persons) so closely related to a person (such as an insolvent) as to be disqualified from acting as a judge or witness in a case involving that person.

CONJUNCTA

conjuncta (k<<schwa>>n-j<<schwa>>ngk-t<<schwa>>). [Latin] Civil law. Things (usu. words or phrases) that are joined together. Cf. DISJUNCTA.

CONJUNCTIM

conjunctim (k<<schwa>>n-j<<schwa>>ngk-tim), adv.[Latin] Roman law. Conjointly. • Heirs instituted con-junctim, for example, became coheirs with equal shares. Cf. DISJUNCTIM.

CONJUNCTIM ET DIVISIM

conjunctim et divisim (k<<schwa>>n-j<<schwa>>ngk-tim et d<<schwa>>-vI-zim or - sim). [Latin] Hist. Jointly and severally.

CONJUNCTIO ANIMORUM

conjunctio animorum (k<<schwa>>n-j<<schwa>>ngk-shee-oh an-<<schwa>>-mor-<<schwa>>m). [Latin] Scots law. The mutual consent of parties to a marriage.

CONJUNCTIVE DENIAL

conjunctive denial. See DENIAL.

CONJUNCTIVE OBLIGATION

conjunctive obligation. See OBLIGATION.

CONJURATIO

conjuratio (kon-juu-ray-shee-oh). [Latin] CONJURATION.

CONJURATION

conjuration (kon-j<<schwa>>-ray-sh<<schwa>>n). Hist. 1. A plot or compact made by persons who swear to each other to do something that will result in public harm. 2. The offense of attempting a conference with evil spirits to discover some secret or effect some purpose; witchcraft; sorcery.

“Coniuration (coniuratio) is the very French word drawne from the latine, which as it is compounded of (con & iuro) so it signifieth a compact or plot, made by men combining themselves together by oath or promise, to do some publique harme. But in our common lawe, it is especially used for such as have personall conference with the devill or evill spirit, to know any secret, or to effect any purpose. And the difference that I have observed (how truly let those judge that be beter skilled in these maters) betweene coniuration and witchcraft, is because the one seemeth, by prayers and invocation of Gods powerfull names, to compell the devill, to say or doe what he com-mandeth him: the other dealeth rather by a friendly and voluntarie conference or agreement betweene him or her and the devill or familiar, to have her or his desires and turnes served in lieu of blood, or other gift offered unto him, especially of his or her soule.” John Cowell, *The Interpreter* (1607).

CONJURATOR

conjurator (kon-j<<schwa>>-ray-t<<schwa>>r). Hist. A person who swears an oath with others; a coconspirator.

CON MAN

con man. See CONFIDENCE MAN.

CONNECTING FACTOR

connecting factor. Conflict of laws. A factual or legal circumstance that helps determine the

choice of law by linking an action or individual with a state or jurisdiction. • An example of a connecting factor is a party's domicile within a state. See POINT OF ATTACHMENT. [Cases: Action 17. C.J.S. Actions §§ 18–20; Conflict of Laws §§ 2–3, 12,15, 20, 23, 27–32, 34–40, 42–48, 50–65, 96–97, 100, 102, 105–107.]

CONNECTING-UP DOCTRINE

connecting-up doctrine. The rule allowing evidence to be conditionally admitted if the offering party promises to show relevance by adducing other evidence. [Cases: Criminal Law 672; Federal Civil Procedure 2014; Trial 51. C.J.S. Criminal Law § 1217; Trial § 177.]

CONNEXITY

connexity (k<<schwa>>-nek-s<<schwa>>-tee). Connectedness; the quality of being connected. • In some states, connexity expresses the relationship that must exist between a foreign party (such as a corporation) and the state for a plaintiff to maintain personal jurisdiction over the party; generally, the claim must arise from a transaction connected with the activities of the party in the state.

CONNIVANCE

connivance (k<<schwa>>-nI-v<<schwa>>-nts), n. 1. The act of indulging or ignoring another's wrongdoing, esp. when action should be taken to prevent it. 2. Family law. As a defense to divorce, one spouse's corrupt consent, express or implied, to have the other commit adultery or some other act of sexual misconduct. • Consent is an essential element of connivance. The complaining spouse must have consented to the act complained of. [Cases: Divorce 45. C.J.S. Divorce § 85.] Cf. COLLUSION(2); CONDONATION (2); RECRIMINATION. — connive (k<<schwa>>-nIv), vb.

CONNIVE

connive (k<<schwa>>-nIv), vb. 1. To knowingly overlook another's wrongdoing. 2. Loosely, to conspire.

CONNUBIUM

connubium. See CONUBIUM.

CONQUEROR

conqueror, n. [fr. Law French conquerir “to acquire”] Hist. 1. One who acquires territory by force during war with the intention of exercising sovereignty. See CONQUEST(1). 2. The first person who acquired land by purchase; one who first brought an estate into a family. See CONQUEST(2); PURCHASE(2).

conqueror, vb. [Latin] To complain. • Conqueror served as a declaratory statement in petitions, often by introducing the complaint: Conqueror quod.... (“I complain that ...”).

CONQUEST

conquest. 1.Int'l law. An act of force by which, during a war, a belligerent occupies territory within an enemy country with the intention of extending its sovereignty over that territory. • That intention is usu. explained in a proclamation or some other legal act. 2.Hist. The acquisition of land by any method other than descent, esp. by purchase. 3.Hist. The land so acquired. Cf. PURCHASE(2).

“What we call purchase, perquisitio, the feudists called conquest, conquaestus, or conquisitio: both denoting any means of acquiring an estate out of the common course of inheritance. And this is still the proper phrase in the law of Scotland: as it was, among the Norman jurists, who stiled the first purchaser (that is, he who first brought the estate into the family which at present owns it) the conqueror or conquereur. Which seems to be all that was meant by the appellation which was given to William the Norman, when his manner of ascending the throne of England was, in his own and his successors' charters, and by the historians of the times, entitled conquaestus, and himself conquaestor or conquisitor; signifying, that he was the first of his family who acquired the crown of England, and from whom therefore all future claims by descent must be derived: though now, from our disuse of the feudal sense of the word, together with the reflection on his forcible method of acquisition, we are apt to annex the idea of victory to this name of conquest or conquisition; a title which, however just with regard to the crown, the conqueror never pretended with regard to the realm of England; nor, in fact, ever had.” 2 William Blackstone, Commentaries on the Laws of England 242–43 (1766).

CONQUET

conquet. See ACQUET(1).

CONQUISITIO

conquisitio (k<<schwa>>n- or k<<schwa>>ng-kwi-zish-ee-oh). [Latin “search”] See CONQUEST(2). — Also termed conquisition.

CONQUISITOR

conquisitor (k<<schwa>>n- or k<<schwa>>ng-kwiz-<<schwa>>-t<<schwa>>r). [Latin “one who searches”] See CONQUEROR(1).

CONSANGUINE BROTHER

consanguine brother. See BROTHER.

CONSANGUINEO

consanguineo. See COSINAGE.

CONSANGUINE SISTER

consanguine sister. See SISTER.

CONSANGUINEUS

consanguineus (kon-sang-gwin-ee-<<schwa>>s), n. [Latin “related by blood”] Hist. A person

related to another by blood; a consanguineous relative.

CONSANGUINEUS FRATER

consanguineus frater (kon-sang-gwin-ee-<<schwa>>s fray-t<<schwa>>r). [Latin “blood brother”] Hist. A half-brother by the same father.

CONSANGUINEUS UTERINUS

consanguineus uterinus (kon-sang-gwin-ee-<<schwa>>s yoo-t<<schwa>>-rI-n<< schwa>>s). [Latin “blood relative by the uterus”] Hist. A half-sibling by the same mother.

CONSANGUINITAS

consanguinitas (kon-sang-gwin-<<schwa>>-tas), n. [Latin “relationship by blood”] Roman law. The relationship between siblings who have the same father.

CONSANGUINITY

consanguinity (kon-sang-gwin-<<schwa>>-tee), n. The relationship of persons of the same blood or origin. See prohibited degree under DEGREE. Cf. AFFINITY; AFFINITAS AFFINITATIS. [Cases: Incest 5; Marriage 10. C.J.S. Incest § 4; Marriage § 17.] — consanguineous,adj.

“In the mode of computing the degrees of consanguinity, the civil law ... begins with the intestate, and descends from that ancestor to the next heir, reckoning for each person, as well in the ascending as descending lines. According to this rule of computation, the father of the intestate stands in the first degree, his brother in the second, and his brother's children in the third. Or, the grandfather stands in the second degree, the uncle in the third, the cousins in the fourth, and so on in a series of genealogical order. In the canon law, which is also the rule of the common law, in tracing title by descent, the common ancestor is the terminus a quo. The several degrees of kinship are deduced from him. By this method, the brother of A is related to him in the first degree instead of being in the second ... for he is but one degree removed from the common ancestor. The uncle is related to A in the second degree, for though the uncle be but one degree from the common ancestor, yet A is removed two degrees from the grandfather, who is the common ancestor.” 4 James Kent, Commentaries on American Law *412–13 (George Comstock ed., 11th ed. 1866).

collateral consanguinity.The relationship between persons who have the same ancestor but do not descend or ascend from one another (for example, uncle and nephew, cousins, etc.).

lineal consanguinity.The relationship between persons who are directly descended or ascended from one another (for example, mother and daughter, great-grandfather and grandson, etc.).

CONSCIENCE

conscience. 1. The moral sense of right or wrong; esp., a moral sense applied to one's own judgment and actions. 2. In law, the moral rule that requires justice and honest dealings between

people.

CONSCIENCE CLAUSE

conscience clause. A legislative provision that allows a person to claim an exemption from compliance, usu. on religious-freedom grounds.

CONSCIENCE OF THE COURT

conscience of the court. 1. The court's equitable power to decide issues based on notions of fairness and justice. See EQUITY(4). 2. A standard applied by the court in deciding whether a party or a jury has acted within acceptable limits. • Thus, in some cases, a jury's award of damages is upset because it is said to “shock the conscience of the court.” See SHOCK THE CONSCIENCE.

CONSCIENTIA ILLAESA

conscientia illaesa (kon-s[h]ee-en-shee-<<schwa>> i-lee-s<<schwa>> or -z<< schwa>>). [Latin] Hist. An un-violated conscience; good faith.

CONSCIENTIA REI ALIENAE

conscientia rei alienae (kon-s[h]ee-en-shee-<<schwa>> ree-I ay-lee-ee-nee or al-ee-). [Law Latin] Scots law. The knowledge that property held by one person actually belongs to another.

CONSCIENTIOUS OBJECTOR

conscientious objector. A person who for moral or religious reasons is opposed to participating in any war, and who may be excused from military conscription but remains subject to serving in civil work for the nation's health, safety, or interest. See 50 USCA § 456. Cf. PACIFIST. [Cases: Armed Services 20.6(3). C.J.S. Armed Services §§ 56–59.]

CONSCIONABLE

conscionable (kon-sh<<schwa>>-n<<schwa>>-b<<schwa>>l), adj. Conforming with good conscience; just and reasonable <a conscionable bargain>. Cf. UNCONSCIONABLE. — conscionableness, conscionability, n.

CONSCIOUSLY PARALLEL

consciously parallel. Antitrust. Of, relating to, or characterizing the conduct of a party who has knowledge of a competitor's action (such as raising prices) and who makes an independent decision to take the same action. • In some cases this is viewed as evidence of a conspiracy.

CONSCIOUS PARALLELISM

conscious parallelism. Antitrust. An act of two or more businesses in a concentrated market intentionally en-gaging in monopolistic conduct. — Also termed tacit collusion; oligopolistic price coordination.

CONSCIOUS-PRESENCE TEST

conscious-presence test. A method for judging whether a testator is in the presence of a witness to a will, whereby if the testator can sense the presence of the witness — even if the witness cannot be seen — the witness is present. Restatement (Third) of Property: Wills and Other Donative Transfers § 3.1 (1999). — Also termed conscious presence. See PRESENCE-OF-THE-TESTATOR RULE E.

CONSCIUS FRAUDIS

consciis fraudis (kon-s[h]ee-<<schwa>>s fraw-dis). [Latin] See PARTICEPS FRAUDIS .

CONSCRIPTION

conscription. See DRAFT(2).

CONSECRATIO CAPITIS

consecratio capitis (kon-s<<schwa>>-kray-shee-oh kap-i-tis). [Latin “consecrating the body”] Roman law. The act of declaring a wrongdoer an outlaw who could be killed on sight; the punishing of criminal behavior by re-legating an offender to the gods, i.e., leaving the person outside divine and human protection. See SACER; OUTLAWRY.

CONSECUTIVE SENTENCES

consecutive sentences. See SENTENCE.

CONSECUTIVE TORTFEASORS

consecutive tortfeasors. See TORTFEASOR.

CONSENSUAL

consensual (k<<schwa>>n-sen-shoo-<<schwa>>l), adj. 1. Having, expressing, or occurring with full consent <consensual relations>. 2. Created or existing by mutual consent without formalities such as a written document or ceremony < consensual marriage>. — Also termed consentaneous; consentient.

CONSENSUAL CONTRACT

consensual contract. See CONTRACT.

CONSENSUAL CRIME

consensual crime. See victimless crime under CRIME.

CONSENSUAL MARRIAGE

consensual marriage. See MARRIAGE(1).

CONSENSUAL SEARCH

consensual search. See consent search under SEARCH.

CONSENSUS

consensus. A general agreement; collective opinion. See general consent under CONSENT(2).

“The regular method for the chair to use is to ask the members, ‘Is it the consensus of this meeting that ... is agreed to?’ or, ‘Is it the will of the assembly that ... is agreed to?’ or, ‘Is there an objection?’ Consensus has been used successfully throughout the years by Quakers, Indians, New England town meetings, and others as a decision-making procedure. It permits compromise. In small groups where less formality is required, it is a simple method for making decisions.

“General consent is an equivalent to consensus, when done without objection. Otherwise, a formal vote must be taken.” Floyd M. Riddick & Miriam H. Butcher, *Riddick's Rules of Procedure* 56 (1985).

CONSENSUS AD IDEM

consensus ad idem (k<<schwa>>n-sen-s<<schwa>>s ad I-dem). [Latin] An agreement of parties to the same thing; a meeting of minds. — Also termed consensus in idem; consensus in idem, placitum et conventio.

“Agreement between the parties or consensus in idem is the basis of contractual obligation” 2 David M. Walker, *Principles of Scottish Private Law* 11 (4th ed. 1988).

CONSENT

consent, n.1. Agreement, approval, or permission as to some act or purpose, esp. given voluntarily by a competent person; legally effective assent. • Consent is an affirmative defense to assault, battery, and related torts, as well as such torts as defamation, invasion of privacy, conversion, and trespass. Consent may be a defense to a crime if the victim has the capacity to consent and if the consent negates an element of the crime or thwarts the harm that the law seeks to prevent. See Model Penal Code § 2.11.

“The consent [to a contract] is none the less ‘genuine’ and ‘real,’ even though it be induced by fraud, mistake, or duress. Consent may be induced by a mistaken hope of gain or a mistaken estimate of value or by the lie of a third person, and yet there is a contract and we do not doubt the ‘reality of the consent.’ Fraud, mistake, and duress are merely collateral operative facts that co-exist with the expressions of consent and have a very important effect upon the resulting legal relations.” William R. Anson, *Principles of the Law of Contract* 199 n.1 (Arthur L. Corbin ed., 3d Am. ed. 1919).

blank consent. See BLANK CONSENT.

express consent. Consent that is clearly and unmistakably stated.

implied consent. 1. Consent inferred from one's conduct rather than from one's direct expression. — Also termed implied permission. 2. Consent imputed as a result of circumstances that arise, as when a surgeon removing a gallbladder discovers and removes colon cancer.

informed consent. 1. A person's agreement to allow something to happen, made with full knowledge of the risks involved and the alternatives. • For the legal profession, informed consent

is defined in Model Rule of Professional Conduct 1.0(e).2. A patient's knowing choice about a medical treatment or procedure, made after a physician or other healthcare provider discloses whatever information a reasonably prudent provider in the medical community would give to a patient regarding the risks involved in the proposed treatment or procedure. — Also termed knowing consent. [Cases: Health 906.]

knowing consent. See informed consent.

voluntary consent. Consent that is given freely and that has not been coerced.

2. Parliamentary law. ADOPTION(5). — consent, vb. — consensual, adj.

general consent. 1. Adoption without objection, regardless of whether every voter affirmatively approves. 2. See unanimous consent (1).

unanimous consent. 1. Adoption with every voter's approval. 2. See general consent (1). • The terms “general consent” and “unanimous consent” have distinct but interchangeable meanings. Some parliamentary manuals treat them as synonymous; others distinguish them; and still others distinguish them, but in exactly the opposite way.

“Motions that appear to have no opposition because they are relatively unimportant, uncontroversial, or because approval is obvious, permit the chair to say, ‘The motion, without objection, is adopted’ (or agreed to), without putting the motion to a formal vote. General consent implies that no one cared enough to oppose the motion or proposition. Unanimous consent implies that everyone was in agreement. If there is even one objection, the request is denied and the question must be put to a vote for adoption.” Floyd M. Riddick & Miriam H. Butcher, *Riddick's Rules of Procedure* 97 (1985).

“ ‘Unanimous consent’ does not necessarily imply that every member is in favor of the proposed action; it may only mean that the opposition, feeling that it is useless to oppose or discuss the matter, simply acquiesces.” Henry M. Robert, *Robert's Rules of Order Newly Revised* § 4, at 52 (10th ed. 2001).

CONSENT AGENDA

consent agenda. See consent calendar under CALENDAR(4).

CONSENTANEOUS

consentaneous, adj. See CONSENSUAL.

CONSENT CALENDAR

consent calendar. 1. Family law. A schedule of informal hearings involving a child, usu. arranged when it appears that the child's best interests will be served if the case is heard informally. • The child and all interested parties must first consent before the case goes on the consent calendar. [Cases: Infants 203. C.J.S. Infants §§ 51–52, 62, 64–67.] 2. CALENDAR(4).

CONSENT CLAUSE

consent clause.See AUTHORIZATION CLAUSE.

CONSENT DECREE

consent decree.See DECREE.

CONSENT DIVIDEND

consent dividend.See DIVIDEND.

CONSENTIENT

consentient,adj. See CONSENSUAL.

CONSENT JUDGMENT

consent judgment.See agreed judgment under JUDGMENT.

CONSENT JURISDICTION

consent jurisdiction.See JURISDICTION.

CONSENT ORDER

consent order.See consent decree under DECREE.

CONSENT SEARCH

consent search.See SEARCH.

CONSENT TO BE SUED

consent to be sued.Agreement in advance to be sued in a particular forum. See COGNOVIT CLAUSE. [Cases: Corporations 662; States 191; United States 125. C.J.S. Corporations § 941; States §§ 196–197, 202, 297–307, 314; United States §§ 217–226, 228–230, 234–239, 247.]

CONSENT TO NOTICE

consent to notice.A provision stating that notice required by a document may be given beforehand or to a designated person.

CONSEQUENTIAL CONTEMPT

consequential contempt.See CONTEMPT.

CONSEQUENTIAL DAMAGES

consequential damages.See DAMAGES.

CONSEQUENTIAL ECONOMIC LOSS

consequential economic loss.See ECONOMIC LOSS.

CONSEQUENTIAL INJURY

consequential injury.See consequential loss under LOSS.

CONSEQUENTIALISM

consequentialism.Ethics. An ethical theory that judges the rightness or wrongness of actions according to their consequences. • One of the best-known types of consequentialism is utilitarianism. See UTILITARIANISM. Cf. VIRTUE ETHICS .

CONSEQUENTIAL LOSS

consequential loss.See LOSS.

CONSERVATION

conservation.Environmental law. The supervision, management, and maintenance of natural resources; the protection, improvement, and use of natural resources in a way that ensures the highest social as well as economic benefits. [Cases: Environmental Law 31–51.]

CONSERVATOR

conservator (k<<schwa>>n-s<<schwa>>r-v<<schwa>>-t<<schwa>>r orkon-s<<schwa>>r-vay-t<<schwa>>r), n. A guardian, protector, or preserver. • Conservator is the modern equivalent of the common-law guardian. Judicial appointment and supervision are still required, but a conservator has far more flexible authority than a guardian, including the same investment powers that a trustee enjoys. The Uniform Probate Code uses the term conservator, and Article 5 is representative of modern conservatorship laws. — conservatorship,n.

managing conservator. 1. A person appointed by a court to manage the estate or affairs of someone who is legally incapable of doing so; GUARDIAN(1). [Cases: Guardian and Ward 1.] 2. In the child-custody laws of some states, the parent who has primary custody of a child, with the right to establish the child's primary domicile. See CUSTODY. [Cases: Child Custody 28.]

possessory conservator.See noncustodial parent under PARENT.

CONSERVATOR OF THE PEACE

conservator of the peace.See PEACE OFFICER.

CONSERVE

conserve,vb.1. To take care of; to care for. 2. To protect from change, destruction, or depletion. 3. To reduce or minimize the use of.

CONSIDERATION

consideration,n.1. Something (such as an act, a forbearance, or a return promise) bargained for and received by a promisor from a promisee; that which motivates a person to do something, esp. to engage in a legal act. • Consideration, or a substitute such as promissory estoppel, is necessary for an agreement to be enforceable. See Restatement (Second) of Contracts § 81 (1979). [Cases: Contracts 49. C.J.S. Contracts § 87.]

“A ‘consideration’ has been explained to be ‘any act of the plaintiff from which the defendant, or a stranger, derives a benefit or advantage, or any labour, detriment, or inconvenience sustained

by the plaintiff, however small the detriment or inconvenience may be, if such act is performed, or inconvenience suffered by the plaintiff with the assent, express or implied, of the defendant, or, in the language of pleading, at the special instance and request of the defendant.' ” Thomas E. Holland, *The Elements of Jurisprudence* 286 (13th ed. 1924).

“A consideration in its widest sense is the reason, motive, or inducement, by which a man is moved to bind himself by an agreement. It is not for nothing that he consents to impose an obligation upon himself, or to abandon or transfer a right. It is in consideration of such and such a fact that he agrees to bear new burdens or to forgo the benefits which the law already allows him.” John Salmond, *Jurisprudence* 359 (Glanville L. Williams ed., 10th ed. 1947).

“The word ‘consideration’ has been around for a long time, so it is tempting to think we have had a theory of consideration for a long time. In fact until the nineteenth century the word never acquired any particular meaning or stood for any theory.” Grant Gilmore, *The Death of Contract* 18 (1974).

“In the late fifteenth and early sixteenth centuries the word ‘consideration’ was very familiar to lawyers, and although it had not yet acquired a special legal meaning (and indeed was not to do so during the period under discussion) it had already begun to develop legal associations. Most commonly it was used in statutes.... In the statutes of Henry VI it became quite common for the draftsman, after he had rehearsed the circumstances to introduce the enacting part with a clause in the following (or similar) form: ‘The King, considering the premisses, of the Assent and Request aforesaid, hath ordained and established’ In the course of time the matters which were considered, and to which consideration was given, came themselves to be called ‘the considerations.’ [By the late 15th century] the considerations were the matters considered; they were the factors which Parliament or the King was supposed to have had in mind in legislating, and which moved or motivated the enactment. Loosely the word could be treated as synonymous with ‘cause,’ and both in statutes and elsewhere causes and considerations were often mentioned in the same breath. But ‘cause’ does not mean exactly the same thing as ‘consideration’; it lacks the suggestion of what was in the mind, what was considered, what motivated.” A.W.B. Simpson, *Legal Theory and Legal History* 332 (1987).

adequate consideration. Consideration that is fair and reasonable under the circumstances of the agreement. Cf. sufficient consideration. [Cases: Contracts 53–54. C.J.S. Contracts §§ 87, 131–132.]

“It is helpful to observe precision in use of vocabulary when analyzing consideration issues. Distinguish carefully between ‘adequate’ consideration and ‘sufficient’ consideration. ‘Adequacy’ refers to whether there was a fair bargain involving an exchange of equal values. ‘Sufficiency’ refers to whether the consideration is legally sufficient to enforce a promise, and this requires only that there be some legal detriment incurred as a bargained exchange for the other party’s promise.” Claude Rohwer & Gordon D. Schaber, *Contracts in a Nutshell* 83 (4th ed. 1997).

“Although courts have not lost the habit of speaking of an ‘adequate,’ a ‘sufficient,’ or a ‘valuable’ consideration, the bargain test as epitomized in the Restatement imposes no such additional requirement.” E. Allan Farnsworth, *Contracts* § 2.11, at 69–70 (3d ed. 1999).

and other good and valuable consideration. See other consideration.

concurrent consideration. Consideration arising at the same time as other consideration, or where the promises are simultaneous. [Cases: Contracts 56. C.J.S. Contracts §§ 105–106.]

continuing consideration. An act or performance extending over time.

due consideration. See sufficient consideration.

executed consideration. A consideration that has been wholly given; past consideration as opposed to present or future consideration. [Cases: Contracts 78. C.J.S. Contracts § 92.]

executory consideration (eg-zek-y<<schwa>>-tor-ee). A consideration that is to be given only after formation of the contract; present or future consideration as opposed to past consideration.

express consideration. Consideration that is specifically stated in an instrument.

fair consideration. 1. Consideration that is roughly equal in value to the thing being exchanged; consideration given for property or for an obligation in either of the following circumstances: (1) when given in good faith as an exchange for the property or obligation, or (2) when the property or obligation is received in good faith to secure a present advance or prior debt in an amount not disproportionately small as compared with the value of the property or obligation obtained. — Also termed fair and valuable consideration. 2. Consideration that is honest, reasonable, and free from suspicion, but not strictly adequate or full.

future consideration. 1. Consideration to be given in the future; esp., consideration that is due after the other party's performance. 2. Consideration that is a series of performances, some of which will occur after the other party's performance. 3. Consideration the specifics of which have not been agreed on between the parties. Cf. past consideration.

good and valuable consideration. See valuable consideration.

good consideration. 1. Consideration based on natural love or affection or on moral duty <good consideration, being based purely on affection, does not amount to valuable consideration>. • Such consideration is usu. not valid for the enforcement of a contract. — Also termed meritorious consideration; moral consideration. [Cases: Contracts 76–77. C.J.S. Contracts §§ 102–103, 127, 130.]

“A good consideration is that of blood, or the natural love and affection which a person has to his children, or any of his relatives.... A good consideration is not of itself sufficient to support a promise, any more than the moral obligation which arises from a man's passing his word; neither will the two together make a binding contract; thus a promise by a father to make a gift to his child will not be enforced against him. The consideration of natural love and affection is indeed good for so little in law, that it is not easy to see why it should be called a good consideration” Joshua Williams, *Principles of the Law of Personal Property* 95–96 (11th ed. 1881).

“Stated simply, good or meritorious consideration is nothing more than motive or moral obligation.” 3 Richard A. Lord, *Williston on Contracts* § 7:16, at 325–26 (4th ed. 1992).

2. Loosely, valuable consideration; consideration that is adequate to support the bargained-for exchange between the parties <his agreement to pay the offering price was good consideration for the sale>. [Cases: Contracts 49. C.J.S. Contracts § 87.]

gratuitous consideration (gr<<schwa>>-t[y]oo-i-t<<schwa>>s). Consideration that, not being founded on any detriment to the party who gives it, will not support a contract; a performance for which a party was already obligated.

grossly inadequate consideration. Consideration whose value is so much less than the fair value of the object acquired that it may not support finding that the transaction is a valid exchange. • Depending on the surrounding circumstances, the transaction may actually be fraud, a gift, or something else other than a sale and purchase.

illegal consideration. Consideration that is contrary to the law or public policy, or prejudicial to the public interest. • Such consideration does not support a contract. [Cases: Contracts 103. C.J.S. Contracts §§ 195–200, 213–214.]

immoral consideration. A consideration that so offends societal norms as to be invalid. • A contract supported by immoral consideration is usu. voidable or unenforceable. — Also termed turpis causa. [Cases: Contracts 112. C.J.S. Contracts §§ 275–276.]

implied consideration. Consideration that is inferred by law from the parties' actions.

impossible consideration. Consideration stemming from a promise or performance that cannot be fulfilled. [Cases: Contracts 80. C.J.S. Contracts § 106.]

inadequate consideration. Consideration that is not fair or reasonable under the circumstances of the agreement. Cf. adequate consideration. [Cases: Contracts 53–54. C.J.S. Contracts §§ 87, 131–132.]

invented consideration. Fictional consideration created by a court to prevent the invalidation of a contract that lacks consideration.

legally sufficient consideration. See sufficient consideration.

meritorious consideration. See good consideration.

moral consideration. See good consideration.

nominal consideration. Consideration that is so insignificant as to bear no relationship to the value of what is being exchanged (e.g., \$10 for a piece of real estate). • Such consideration can be valid, since courts do not ordinarily examine the adequacy of consideration (although they do often inquire into such issues as fraud and duress). — Also termed peppercorn. [Cases: Contracts 53–54. C.J.S. Contracts §§ 87, 131–132.]

“Offers made in consideration of one dollar paid or promised are often irrevocable The irrevocability of an offer may be worth much or little to the offeree, and the courts do not ordinarily inquire into the adequacy of the consideration bargained for. Hence a comparatively small payment may furnish consideration for the irrevocability of an offer proposing a transaction

involving much larger sums. But gross disproportion between the payment and the value of the option commonly indicates that the payment was not in fact bargained for but was a mere formality or pretense. In such a case there is no consideration Nevertheless, such a nominal consideration is regularly held sufficient to support a short-time option proposing an exchange on fair terms. The fact that the option is an appropriate preliminary step in the conclusion of a socially useful transaction provides a sufficient substantive basis for enforcement, and a signed writing taking a form appropriate to a bargain satisfies the desiderata of form. In the absence of statute, however, the bargaining form is essential: a payment of one dollar by each party to the other is so obviously not a bargaining transaction that it does not provide even the form of an exchange." Restatement (Second) of Contracts § 87 cmt. b (1979).

other consideration. Additional things of value to be provided under the terms of a contract, usu. unspecified in the contract, deed, or bill of sale, because they are too numerous to conveniently list, or to avoid public knowledge of the total amount of consideration. — Also termed other good and valuable consideration.

past consideration. An act done or a promise given by a promisee before making a promise sought to be enforced. • Past consideration is not consideration for the new promise because it has not been given in exchange for this promise (although exceptions exist for new promises to pay debts barred by limitations or debts discharged in bankruptcy). See PREEXISTING-DUTY RULE. Cf. future consideration. [Cases: Contracts 79. C.J.S. Contracts §§ 125–126, 128–130.]

“A past consideration is, in effect, no consideration at all; that is to say, it confers no benefit on the promisor, and involves no detriment to the promisee in respect of his promise. It is some act or forbearance in time past by which a man has benefited without thereby incurring any legal liability.” William R. Anson, *Principles of the Law of Contract* 149 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“ ‘Past Consideration.’ The quotation marks suggest that there is something wrong with this phrase. Past consideration, or something given, done, or suffered in the past which purportedly supports a subsequent promise, is no consideration. If a benefit has been conferred upon the promisor or if the promisee has suffered a detriment in the past and there is a subsequent promise to pay therefor, there is no bargain for such past value. Therefore, it cannot constitute consideration.” John Edward Murray Jr., *Cases and Materials on Contracts* 427 (2d ed. 1976).

sufficient consideration. Enough consideration as a matter of law to support a contract. — Also termed due consideration; legally sufficient consideration. Cf. adequate consideration. [Cases: Contracts 54. C.J.S. Contracts § 87.]

valuable consideration. Consideration that is valid under the law; consideration that either confers a pecuniarily measurable benefit on one party or imposes a pecuniarily measurable detriment on the other. — Also termed good and valuable consideration; legal consideration. [Cases: Contracts 49. C.J.S. Contracts § 87.]

“By a valuable consideration is meant something of value given or promised by one party in exchange for the promise of the other.... The thing thus given by way of consideration must be of

some value. That is to say, it must be material to the interests of one or the other or both of the parties. It must either involve some gain or benefit to the promisor by way of recompense for the burden of his promise, or it must involve some loss or disadvantage to the promisee for which the benefit of the promise is a recompense." John Salmond, *Jurisprudence* 360 (Glanville L. Williams ed., 10th ed. 1947).

2.Parliamentary law. The process by which a deliberative assembly disposes of a motion; DELIBERATION. • Consideration begins with a member making a motion and the chair stating the question on the motion; it ends with the chair putting the question on the motion (or on a subsidiary motion that disposes of the first motion). It also includes debate and may also include (among other things) amendment and referral to a committee.

consideration by paragraph.See consideration seriatim.

consideration seriatim.Consideration serially, whereby a deliberative assembly considers a long or complex motion in a series of readily divisible parts before voting on the entire motion. — Also termed consideration by paragraph (in which case a "paragraph" means not a literary paragraph but any readily divisible part of a motion, which may include more than one literary paragraph); serial consideration.

"When a proposition, motion or resolution has many parts (paragraphs, sections, or clauses), or many articles (as a set of bylaws which is up for revision or amendment), it is best and most prudent that no vote be taken on each separate part. Instead, a single vote covering all its parts should be taken after each of them has been duly con-sidered, amended, and perfected. Seriatim (Lat.) literally means 'serially,' and when applied to several or more parts of a parliamentary proposal or question it means consideration paragraph by paragraph or part by part.

"Hence, under the doctrine of consideration by paragraph, or seriatim, each part is discussed and may be amended and perfected to suit; then, without putting it to a vote for final adoption, the next part or paragraph is similarly open to discussion and amendment, but is not voted on for final adoption yet; and, in like manner, each additional part is perfected in turn until all the parts of a proposal have been considered." George Demeter, *Demeter's Manual of Parliamentary Law and Procedure* 146 (1969).informal consideration.Consideration without limit on how often a member may speak to the same question. • Informal consideration is substantially equivalent to consideration in committee of the whole or quasi-committee of the whole, without the fiction of the assembly resolving itself into a committee. See committee of the whole under COMMITTEE.

serial consideration.See consideration seriatim.

3.Hist. A court's judgment. — Also termed (in Roman law) *consideratio*.

CONSIDERATION, FAILURE OF

consideration, failure of.See FAILURE OF CONSIDERATION.

CONSIDERATION, WANT OF

consideration, want of.See WANT OF CONSIDERATION.

CONSIDERATUM EST PER CURIAM

consideratum est per curiam (k<<schwa>>n-sid-<<schwa>>-ray-t<<schwa>>m est p<<schwa>>r kyoor-ee-<<schwa>>m). [Latin] Hist. It is considered by the court. • This was the formal language preceding the judgment of a common-law court. — Sometimes shortened to consideratum est. Cf. IDEO CONSIDERATUM EST.

“A judgment is the decision or sentence of the law, given by a court of justice, as the result of proceedings instituted therein for the redress of an injury. The language of the judgment is not, therefore, that ‘it is decreed,’ or ‘resolved,’ by the court, but that ‘it is considered by the court,’ consideratum est per curiam, that the plaintiff recover his debt, etc. In the early writers, considerare, consideratio always means the judgment of a court.” 1 John Bouvier, Bouvier's Law-Dictionary 619 (8th ed. 1914).

CONSIGN

consign (k<<schwa>>n-sIn), vb.1. To transfer to another's custody or charge. 2. To give (goods) to a carrier for delivery to a designated recipient. 3. To give (merchandise or the like) to another to sell, usu. with the understanding that the seller will pay the owner for the goods from the proceeds.

CONSIGNATION

consignation (kon-sig-nay-sh<<schwa>>n), n.1. A debtor's delivery of money to an authorized third party after the creditor refuses to accept the payment. • Unlike a tender, a valid consignation discharges the debtor. Cf. TENDER(1).2.CONSIGNMENT(1).

CONSIGNATOR

consignator (k<<schwa>>n-sig-n<<schwa>>-tor), n. A person authorized to accept delivery of money from a debtor if a creditor refuses to accept it. See CONSIGNATION.

CONSIGNEE

consignee (kon-sI-neeor k<<schwa>>n-). One to whom goods are consigned.

CONSIGNMENT

consignment (k<<schwa>>n-sIn-m<<schwa>>nt).1. The act of consigning goods for custody or sale. — Also termed (archaically) consignation. [Cases: Factors 5.] 2. A quantity of goods delivered by this act, esp. in a single shipment. 3. Under the UCC, a transaction in which a person delivers goods to a merchant for the purpose of sale, and (1) the merchant deals in goods of that kind under a name other than the name of the person making delivery, is not an auctioneer, and is not generally known by its creditor to be substantially engaged in selling others' goods, (2) with respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery, (3) the goods are not consumer goods immediately before delivery, and (4) the transaction does not create a security interest that secures an obligation. UCC § 9-102(a)(20).4. See bailment for sale under BAILMENT.

CONSIGNMENT SALE

consignment sale. See SALE.

CONSIGNOR

consignor (k<<schwa>>n-sI-n<<schwa>>r or kon-sI-nor). One who dispatches goods to another on consignment.

CONSILIARIUS

consiliarius (k<<schwa>>n-sil-ee-air-ee-<<schwa>>s), n. [fr. Latin consilium “advice”]
1. Roman law. A person who advises a magistrate; one who sits with the judge and assists in deciding cases. See CONCILIUM(1). 2. Hist. A counselor learned in law. See APOCRISARIUS.

CONSIMILI CASU

consimili casu. See CASU CONSIMILI.

CONSISTORIAL COURT

consistorial court. See CONSISTORY COURT.

CONSISTORIUM

consistorium (kon-sis-tor-ee-<<schwa>>m), n. [Latin] Roman law. In the later Empire, the emperor's privy council that functioned both as a general council of state and as a supreme court of law.

CONSISTORY COURT

consistory court (k<<schwa>>n-sis-t<<schwa>>r-ee). Eccles. law. In England, a diocesan court exercising jurisdiction over the clergy and church property, such as a cemetery, and other ecclesiastical matters. • Consistory courts are presided over by the bishop's chancellor or the chancellor's commissary. — Also termed consistorial court. Cf. BISHOP'S COURT.

CONSOBRINI

consobrini (kon-s<<schwa>>-brI-nI), n. pl. [Latin] Roman law. First cousins; children of brothers and sisters, or, more precisely, of two sisters.

CONSOL

consol (kon-sol or k<<schwa>>n-sol). See annuity bond under BOND(3).

CONSOLATO DEL MARE

Consolato del Mare (kawn-soh-lah-toh del mah-ray). [Italian “consulate of the sea”] Hist. Maritime law. An influential collection of European maritime customs, referred to by commercial judges (consuls) in ports of the kingdom of Aragon and other Mediterranean maritime towns. • The Consolato del Mare was compiled in the 14th century and soon became one of the leading maritime codes of Europe. It is widely believed to be a Spanish work, but some historians suggest

that its origin is actually Italian. — Also written *Consolat de Mar*.

CONSOLIDATE

consolidate, vb. 1. To combine or unify into one mass or body. 2. Civil procedure. To combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment or, sometimes, in separate judgments. [Cases: Action 54–59; Federal Civil Procedure 8. C.J.S. Actions §§ 204–219.] 3. Corporations. To unite (two or more corporations or other organizations) to create one new corporation or other organization. [Cases: Corporations 581. C.J.S. Corporations §§ 792–797.]

CONSOLIDATED APPEAL

consolidated appeal. See APPEAL.

CONSOLIDATED BOND

consolidated bond. See BOND(3).

CONSOLIDATED FINANCIAL STATEMENT

consolidated financial statement. See FINANCIAL STATEMENT.

CONSOLIDATED LAWS

consolidated laws. See CODE(1).

CONSOLIDATED MORTGAGE

consolidated mortgage. See MORTGAGE.

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

Consolidated Omnibus Budget Reconciliation Act of 1985. A federal statute requiring employers that offer group health coverage to their employees to continue to do so for a prescribed period (usu. 18 to 36 months) after employment has terminated so that the former employee can continue to benefit from group-health rates until becoming a member of another health-insurance plan. • The statute temporarily continues group coverage for a person no longer entitled to receive it, such as a terminated employee or an overage dependent. One of the “qualifying events” justifying the continuation of group-health-insurance benefits is divorce or legal separation. So COBRA often provides critical transitional coverage until a divorced spouse and children can arrange for new health insurance. The period of transitional coverage is up to 36 months, and an applicant spouse of the employee must make written application to the employer within 60 days of the separation or divorce. — Abbr. COBRA. [Cases: Pensions 21, 127.1. C.J.S. Pensions and Retirement Plans and Benefits § 7.]

“In the absence of any type of statutory vesting provision (which would render benefits nonforfeitable), terminated employees were generally left without health care coverage while they were looking for another job. While some state insurance laws provide for limited continuation coverage or individual conversion options, these alternatives were not available in all

states Thus, COBRA was designed to fill this void, by providing a statutorily mandated mechanism for enabling terminated employees (and their eligible family members) to continue to have access to group health coverage at group rates until they can get another job or otherwise arrange for replacement coverage.” I.M. Golub et al., COBRA Handbook § 1.1, at 1–2 (1994).

CONSOLIDATED RETURN

consolidated return. See TAX RETURN.

CONSOLIDATED SCHOOL DISTRICT

consolidated school district. See SCHOOL DISTRICT.

CONSOLIDATED SECURITY

consolidated security. See SECURITY.

CONSOLIDATED SENTENCE

consolidated sentence. See general sentence under SENTENCE.

CONSOLIDATING STATUTE

consolidating statute. See STATUTE.

CONSOLIDATION

consolidation, n. 1. The act or process of uniting; the state of being united. 2. Legislation. The combination into a single statutory measure of various legislative provisions that have previously been scattered in different statutes. 3. Civil procedure. The court-ordered unification of two or more actions, involving the same parties and issues, into a single action resulting in a single judgment or, sometimes, in separate judgments. Fed. R. Civ. P. 42(a). — Also termed consolidation of actions. Cf. JOINDER; SEVERANCE(2). [Cases: Action 54–59; Federal Civil Procedure 8. C.J.S. Actions §§ 204–219.]

procedural consolidation. See JOINT ADMINISTRATION.

substantive consolidation. Bankruptcy. The merger of two or more bankruptcy cases, usually pending against the same debtor or related debtors, into one estate for purposes of distributing the assets, usually resulting in the two estates sharing assets and liabilities, and in the extinguishment of duplicate claims and claims between the debtors. [Cases: Bankruptcy 2084.]

4. The unification of two or more corporations or other organizations by dissolving the existing ones and creating a single new corporation or organization. — Also termed (with respect to corporations) consolidation of corporations. Cf. MERGER(8). [Cases: Corporations 581. C.J.S. Corporations §§ 792–797.] 5. Corporations. Archaic. A union of the stock, property, or franchises of two or more companies whereby the conduct of their affairs is permanently — or for a long period — put under one management, whether the agreement between them is by lease, sale, or other form of contract, and whether the effect is the dissolution of one, both, or neither of the companies. — consolidate, vb. — consolidatory

(k<<schwa>>n-sol-<<schwa>>-day-t<<schwa>>r-ee), adj.

CONSOLIDATION LOAN

consolidation loan.See LOAN.

CONSOLIDATION OF ACTIONS

consolidation of actions.See CONSOLIDATION (3).

CONSOLIDATION OF CORPORATIONS

consolidation of corporations.See CONSOLIDATION(4).

CONSOLIDATION OF MORTGAGES

consolidation of mortgages.Hist. The equitable right of a mortgagee who holds multiple mortgages on real property owned by the same person to refuse to release one mortgage unless all the mortgages are redeemed.

CONSONANT STATEMENT

consonant statement.See STATEMENT.

CONSORTIUM

consortium (k<<schwa>>n-sor-shee-<<schwa>>m).1. The benefits that one person, esp. a spouse, is entitled to receive from another, including companionship, cooperation, affection, aid, financial support, and (between spouses) sexual relations <a claim for loss of consortium>. See LOSS OF CONSORTIUM; CONJUGAL RIGHTS .

filial consortium (fil-ee-<<schwa>>l). A child's society, affection, and companionship given to a parent. [Cases: Parent and Child 7. C.J.S. Parent and Child § 329.]

parental consortium.A parent's society, affection, and companionship given to a child. [Cases: Parent and Child 7.5.]

spousal consortium.A spouse's society, affection, and companionship given to the other spouse. [Cases: Husband and Wife 209(3, 4).]

2.Hist. The services of a wife or daughter, the loss of which gives rise to a cause of action. • A husband could, for example, bring an action against a person who had injured his wife, “whereby he lost the help or companionship (of his wife)” (per quod consortium amisit).3. A group of companies that join or associate in an enterprise <several high-tech businesses formed a consortium to create a new supercomputer>.4.Roman law. A community of undivided goods existing among coheirs after the death of the head of their family (paterfamilias). Pl. consor-tiums, consortia.

CONSORTIUM VITAE

consortium vitae (k<<schwa>>n-sor-shee-<<schwa>>m vI-tee). [Law Latin] Hist. Cohabitation; the agreement between two parties to live together.

CONSORTSHIP

consortship (kon-sort-ship).Maritime law. An agreement by which salvors agree to work together to salvage wrecks, the recovery being apportioned among the salvors. • Consortships reduce interference among competing salvors and help prevent collisions at sea between operators attempting to salvage the same wreck.

CONSPICUOUS

conspicuous,adj. (Of a term or clause) clearly visible or obvious. • Whether a printed clause is conspicuous as a matter of law usu. depends on the size and style of the typeface. Under the UCC, a term or clause is conspicuous if it is written in a way that a reasonable person against whom it is to operate ought to notice it. UCC § 1-201(b)(10). See FINE PRINT. [Cases: Sales 267. C.J.S. Sales §§ 238, 263–270.]

CONSPICUOUS PLACE

conspicuous place.For purposes of posting notices, a location that is reasonably likely to be seen.

CONSPIRACY

conspiracy,n. An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective, and (in most states) action or conduct that furthers the agreement; a combination for an unlawful purpose. 18 USCA § 371. • Conspiracy is a separate offense from the crime that is the object of the conspiracy. A conspiracy ends when the unlawful act has been committed or (in some states) when the agreement has been abandoned. A conspiracy does not automatically end if the conspiracy's object is defeated. See Model Penal Code § 5.03(7); *United States v. Jimenez Recio*, 537 U.S. 270, 123 S.Ct. 819 (2003). — Also termed criminal conspiracy. Cf. ATTEMPT(2); SOLICITATION(2). [Cases: Conspiracy 1.1, 23.1. C.J.S. Conspiracy §§ 2–3, 8, 14–17, 98, 100–103, 110.] — conspiratorial,adj.

“Conspiracie (conspiratio) though both in Latine and French it be used for an agreement of men, to doe any thing either good or bad: yet in our lawyers bookes, it is alway taken in the evill part.” John Cowell, *The Interpreter* (1607).

“[Conspiracy is an] elastic, sprawling and pervasive offense, ... so vague that it almost defies definition. Despite certain elementary and essential elements, it also, chameleon-like, takes on a special coloration from each of the many independent offenses on which it may be overlaid. It is always ‘predominantly mental in composition’ because it consists primarily of a meeting of minds and an intent.” *Krulewitch v. United States*, 336 U.S. 440, 445–48, 69 S.Ct. 716, 719–20 (1949)(Jackson, J., concurring).

“When two or more persons combine for the purpose of inflicting upon another person an injury which is unlawful in itself, or which is rendered unlawful by the mode in which it is inflicted, and in either case the other person suffers damage, they commit the tort of conspiracy.” P.H. Winfield, *A Textbook of the Law of Tort* § 128, at 434 (5th ed. 1950).

bathtub conspiracy. See intra-enterprise conspiracy.

chain conspiracy. A single conspiracy in which each person is responsible for a distinct act within the overall plan, such as an agreement to produce, import, and distribute narcotics in which each person performs only one function. • All participants are interested in the overall scheme and liable for all other participants' acts in furtherance of that scheme. [Cases: Conspiracy 24(3). C.J.S. Conspiracy §§ 117–118.]

“In a ‘chain’ conspiracy, the court looks to whether the parties serve as links in a chain. In *Blumenthal v. United States* (1947), the Supreme Court found that the parties had agreed to sell liquor at prices exceeding the ceiling set by regulations of the Office of Price Administration. The Court found that the agreements were steps in the formulation of one larger general conspiracy. By reason of all having knowledge of the plan's general scope and common end, the disposing of whiskey, they could be drawn together in a single conspiracy.” Ellen S. Podgor & Jerold H. Israel, *White Collar Crime in a Nutshell* 52 (2d ed. 1997).

circle conspiracy. See wheel conspiracy.

civil conspiracy. An agreement between two or more persons to commit an unlawful act that causes damage to a person or property. [Cases: Conspiracy 1.1. C.J.S. Conspiracy §§ 2–3, 8, 14–17.]

conspiracy in restraint of trade. See RESTRAINT OF TRADE.

conspiracy to infringe. Intellectual property. An agreement by two or more persons to commit an act that would interfere with the exclusive rights of a patent, copyright, or trademark owner. • This action is commonly recognized in trademark law. The Copyright Act does not provide a basis for alleging a conspiracy to infringe, but an action is recognized by some states. The Patent Act provides no basis for an action asserting conspiracy to infringe because patent law covers only acts, not threats of acts.

conspiracy to monopolize. Antitrust. A conspiracy to take exclusive control of a commercial market. • Under § 2 of the Sherman Act, a conspiracy to monopolize exists if there is a conspiracy or concerted action directed at a substantial part of interstate commerce with the intent to acquire monopoly power.

hub-and-spoke conspiracy. See wheel conspiracy.

intracorporate conspiracy. A conspiracy existing between a corporation and its own officers, agents, or employees. • To be prosecutable under federal law, the conspiracy must involve at least two persons (i.e., not just the corporation and one person). 18 USCA § 371.

intra-enterprise conspiracy. Antitrust. A conspiracy existing between two subsidiaries, divisions, or other parts of the same firm. — Also termed bathtub conspiracy.

sedition conspiracy. A criminal conspiracy to forcibly (1) overthrow or destroy the U.S. government, (2) oppose its authority, (3) prevent the execution of its laws, or (4) seize or possess its property. 18 USCA § 2384. [Cases: Conspiracy 28(3). C.J.S. Conspiracy §§ 209, 215–225,

247, 249–250.]

wheel conspiracy. A conspiracy in which a single member or group (the “hub”) separately agrees with two or more other members or groups (the “spokes”). • The person or group at the hub is the only party liable for all the conspiracies. — Also termed circle conspiracy; hub-and-spoke conspiracy. [Cases: Conspiracy 24(3). C.J.S. Conspiracy §§ 117–118.]

CONSPIRATOR

conspirator, n. A person who takes part in a conspiracy.

unindicted conspirator. See unindicted coconspirator under COCONSPIRATOR.

CONSPIRE

conspire, vb. To engage in conspiracy; to join in a conspiracy.

CONSTABLE

constable (kon-st<<schwa>>-b<<schwa>>l), n. 1. A peace officer responsible for minor judicial duties, such as serving writs and warrants, but with less authority and smaller jurisdiction than a sheriff. 2. In the United Kingdom, a police officer; also, the title of a police officer. [Cases: Sheriffs and Constables 8. C.J.S. Sheriffs and Constables § 20.] — constabulary (k<<schwa>>n-stab-y<<schwa>>-ler-ee), adj. — constabulary (body or force), n.

CONSTABLEWICK

constablewick (kon-st<<schwa>>-b<<schwa>>l-wik). Hist. In the United Kingdom, the territorial jurisdiction of a constable. Cf. BAILIWICK.

CONSTANT DOLLARS

constant dollars. The value of current money expressed as a percentage of its buying power in a previous year as determined by the consumer price index. • This value is used as a measure of inflation.

CONSTAT

constat (kon-stat), n. [Latin “it is settled”] Hist. A certificate made by the Clerk of the Pipe and the auditors of the Exchequer at the request of a person intending to plead in the Court of Exchequer for the discharge of some item. • The constat certified what appeared on record.

CONSTAT DE PERSONA

constat de persona (kon-stat dee p<<schwa>>r-soh-n<<schwa>>). [Law Latin] Hist. It is evident what person was meant. • A writing that misidentified a person was enforceable if the true identity of the person was evident from the remainder of the document. See DUMMODO CONSTET DE PERSONA.

CONSTAT DE SUBJECTO

constat de subjecto (kon-stat dee s<<schwa>>b-jek-toh). [Law Latin] Hist. It is clear as to the

subject matter (of a transaction).

CONSTATE

constate (k<<schwa>>n-stayt), vb. To establish, constitute, or ordain. • Constate usu. appears in relation to corporate documents; for example, the constating instruments of a corporation are its charter, organic law, or grant of powers to it.

CONSTITUENCY

constituency. 1. The body of citizens dwelling in a defined area and entitled to elect a representative. 2. The residents of an electoral district.

CONSTITUENCY-BASED QUORUM

constituency-based quorum. See interest-based quorum under QUORUM.

CONSTITUENT

constituent, adj. 1. (Of a component) that helps make up or complete a unit or a whole <a constituent element of the criminal offense>. 2. (Of an assembly) able to frame or amend a constitution <a constituent council>.

constituent, n. 1. A person who gives another the authority to act as a representative; a principal who appoints an agent. 2. Someone who is represented by a legislator or other elected official. 3. One part of something that makes up a whole; an element. — constituency, n.

CONSTITUENT ELEMENT

constituent element. An essential component of a crime or cause of action.

CONSTITUERE

constituere (kon-sti-tyoo-<<schwa>>-ree), vb. [Latin “to appoint”] Hist. To appoint (someone). • Constituere was used principally in powers of attorney: *attornavi et in loco meo constitui* (“I have attorned and put in my place”).

CONSTITUTED ANNUITY

constituted annuity. See ANNUITY.

CONSTITUTED AUTHORITY

constituted authority. See AUTHORITY(3).

CONSTITUTIO

constitutio (kon-sti-t[y]oo-shee-oh), n. [Latin “a decree”] 1. Roman law. An imperial decree; a law issued by the emperor; later, in the plural form *constitutiones*, a collection of laws. • The *constitutiones* took various forms, including *orationes* (laws submitted to the Senate), *edicta* (laws — usu. of a general character — put forth by the emperor), *mandata* (administrative directives to imperial officials), *decreta* (decisions by the emperor in legal cases), and *rescripta* (the emperor's

responses to questions posed by litigants or imperial officials). Over time, the rapidly increasing number of constitutiones prompted their arrangement into collections such as the Theodosian Code and the Code of Justinian. They were the sole form of legislation after the third century A.D. Pl. constitu-tiones (kon-sti-t[y]oo-shee-oh-nee-z). — Also termed (collectively) constitutiones principum. See CODEX THEODOSIANUS; JUSTINIAN CODE.

“The name constitutiones, applied to the law-making utterances of the Roman emperors, had a very different meaning from our word ‘constitution,’ used to denote the fundamental, organic law of the state. Every official public document issuing from the emperor, and creating, declaring, or modifying law, was a constitutio.... [A]nd it is hardly necessary to say that, although professing to come from the person of the emperor, they were actually composed by jurists, and usually by those who stood first in their profession.” James Hadley, *Introduction to Roman Law* 6–7 (1881).

2.Civil law. A settlement achieved without a trial; the sum paid according to the settlement.
3.Hist. In England, a statute; a provision of a statute. Pl. constitutiones (kon-sti-t[y]oo-shee-oh-nee-z).

CONSTITUTION

constitution. 1. The fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties. [Cases: Constitutional Law 1.1.] 2. The written instrument embodying this fundamental law, together with any formal amendments.

flexible constitution.A constitution that has few or no special amending procedures. • The British Constitution is an example. Parliament can alter constitutional principles and define new baselines for government action through ordinary legislative processes. The Canadian Constitution also grants its legislature some limited ability to amend the Constitution by legislation.

rigid constitution.A constitution whose terms cannot be altered by ordinary forms of legislation, only by special amending procedures. • The U.S. Constitution is an example. It cannot be changed without the consent of three-fourths of the state legislatures or through a constitutional convention. U.S. Const. art. V.

unwritten constitution. 1. The customs and values, some of which are expressed in statutes, that provide the organic and fundamental law of a state or country that does not have a single written document functioning as a constitution. • In British constitutional law, the constitution is a collection of historical documents, statutes, decrees, conventions, traditions, and royal prerogatives. Documents and statutes include Magna Carta (1215), the Bill of Rights (1689), and the European Communities Act (1972).2. The implied parts of a written constitution, encompassing the rights, freedoms, and processes considered to be essential, but not explicitly defined in the written document. • Many aspects of an unwritten constitution are based on custom and precedent. The U.S. Constitution does not, for example, give the Supreme Court the power to declare laws unconstitutional, but the Court does so without question. Nor does the Constitution expressly guarantee a right of privacy, but the Supreme Court has declared that the right exists and is protected. See PENUMBRA; RIGHT OF PRIVACY.

3. A nation's history of government and institutional development. • This was the standard definition before the United States produced the first written constitution. It remains current in Great Britain and other nations that have unwritten constitutions. 4.Parliamentary law. A governing document adopted by an organization for its internal governance and its external dealings. • The constitution may be an organization's most authoritative governing document, but if the organization has also received a charter or adopted articles of incorporation or association, then the constitution is subordinate to them. If the organization has also adopted bylaws, then the bylaws are subordinate to (and usu. more easily amended than) the constitution. The constitution and bylaws are sometimes contained in a single document. See governing document under DOCUMENT. Cf. BYLAW(1).

CONSTITUTIONAL

constitutional,adj.1. Of or relating to a constitution <constitutional rights>.2. Proper and valid under a constitution <constitutional actions>.

CONSTITUTIONAL CHALLENGE

constitutional challenge.See CHALLENGE(1).

CONSTITUTIONAL CONVENTION

constitutional convention.See CONVENTION(2).

CONSTITUTIONAL COURT

constitutional court.See COURT.

CONSTITUTIONAL-FACT DOCTRINE

constitutional-fact doctrine. 1. The rule that federal courts are not bound by an administrative agency's findings of fact when the facts involve whether the agency has exceeded constitutional limitations on its power, esp. regarding personal rights. • The courts reviewed the facts de novo to afford protection of constitutional rights. Although it has not been overruled or wholly discredited, this rule has fallen out of favor. [Cases: Administrative Law and Procedure 783, 784.1. C.J.S. Public Administrative Law and Procedure § 229.] 2. The rule that a federal appellate court is not bound by a trial court's findings of fact when constitutional rights are implicated, specif. in citizenship-determination and First Amendment cases. See, e.g., *Bose Corp. v. Consumers Union*, 466 U.S. 485, 104 S.Ct. 1949 (1984). Cf. JURISDICTIONAL-FACT DOCTRINE. [Cases: Federal Courts 870.1.]

CONSTITUTIONAL FREEDOM

constitutional freedom.A basic liberty guaranteed by the Constitution or Bill of Rights, such as the freedom of speech. — Also termed constitutional protection; constitutional liberty.

CONSTITUTIONAL GUARANTEE

constitutional guarantee.A promise contained in the United States Constitution that supports or establishes an inalienable right, such as the right to due process.

CONSTITUTIONAL HOMESTEAD

constitutional homestead.See HOMESTEAD.

CONSTITUTIONAL IMMUNITY

constitutional immunity.See IMMUNITY(1).

CONSTITUTIONALITY

constitutionality,n. The quality or state of being constitutional <the constitutionality of the senator's bill is questionable>.

CONSTITUTIONALIZE

constitutionalize,vb.1. To provide with a constitution <constitutionalize the new government>.2. To make con-stitutional; to bring in line with a constitution <the court plans to constitutionalize the segregated school district>.3. To make a constitutional question out of (a question of law); to subject (issue, etc.) to the burden of passing constitutional muster <the dissenter accused the majority of unnecessarily constitutionalizing the issue>.

CONSTITUTIONAL LAW

constitutional law. 1. The body of law deriving from the U.S. Constitution and dealing primarily with govern-mental powers, civil rights, and civil liberties. 2. The body of legal rules that determine the constitution of a state or country with an unwritten constitution. Cf. STATUTORY LAW; COMMON LAW . 3. The field of law dealing with aspects of constitutional provisions, such as restrictions on government powers and guarantees of rights.

CONSTITUTIONAL LIBERTY

constitutional liberty.See CONSTITUTIONAL FREEDOM.

CONSTITUTIONAL LIMITATION

constitutional limitation.A constitutional provision that restricts the powers of a governmental branch, depart-ment, agency, or officer.

CONSTITUTIONAL MAJORITY

constitutional majority.See majority of all the members under MAJORITY.

CONSTITUTIONAL MALICE

constitutional malice.See actual malice (2) under MALICE.

CONSTITUTIONAL MONARCHY

constitutional monarchy.See limited monarchy under MONARCHY.

CONSTITUTIONAL OFFICE

constitutional office.A public position that is created by a constitution, rather than by a

statute.

CONSTITUTIONAL OFFICER

constitutional officer. See OFFICER(1).

CONSTITUTIONAL PROTECTION

constitutional protection. See CONSTITUTIONAL FREEDOM.

CONSTITUTIONAL QUESTION

constitutional question. A legal issue resolvable by the interpretation of a constitution, rather than a statute.

CONSTITUTIONAL RIGHT

constitutional right. A right guaranteed by a constitution; esp., one guaranteed by the U.S. Constitution or by a state constitution.

CONSTITUTIONAL TAKING

constitutional taking. See TAKING(2).

CONSTITUTIONAL TORT

constitutional tort. See TORT.

CONSTITUTIONES PRINCIPUM

constitutiones principum (kon-sti-t[y]oo-shee-oh-nee-z prin-sip-<<schwa>>m). [Latin] See CONSTITUTIO.

CONSTITUTIONS OF CLARENDON

Constitutions of Clarendon. Hist. A 12th-century statement of customary law, produced during the reign of Henry II, intended to limit the jurisdiction of the ecclesiastical courts and narrow the clergy's exemption from secular justice.

“During the first half of the twelfth century the claims of the church were growing, and the duty of asserting them passed into the hands of men who were not mere theologians but expert lawyers. Then, as all know, came the quarrel between Henry and Becket. In the Constitutions of Clarendon (1164) the king offered to the prelates a written treaty, a treaty which, so he said, embodied the ‘customs’ of his ancestors, more especially of his grand-father. Becket, after some hesitation, rejected the constitutions. The dispute waxed hot; certain of the customs were condemned by the pope. The murder followed ... [F]rom [Henry's] time onwards the lay courts, rather than the spiritual, are the aggressors and the victors in almost every contest.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law 124–25* (2d ed. 1898).

CONSTITUTOR

constitutor (kon-st<<schwa>>-t[y]oo-t<<schwa>>r), n. [Latin “an orderer, arranger”] Roman

law. A person who, by agreement, becomes responsible for the payment of another's debt.

CONSTITUTUM

constitutum (kon-sti-t[y]oo-t<<schwa>>m), n. [Latin “agreed arrangement”] Roman law. 1. An agreement to pay an existing debt, either one's own or another's, on a fixed day. • A constitutum was not a novation; the creditor could still sue the original debtor. It differed from a stipulation because it had to be for an existing debt. If the promise was to pay one's own debt, it was called *constitutum debiti proprii*. If it was to pay another's debt, then it was *constitutum debiti alieni*. 2. The fixing of a day for the repayment of money owed.

CONSTITUTUM DEBITI

constitutum debiti (kon-sti-t[y]oo-t<<schwa>>m deb-<<schwa>>-tI). [Latin “debt agreement”] Roman law. See CONSTITUTUM(1).

CONSTITUTUM DEBITI ALIENI

constitutum debiti alieni (kon-sti-t[y]oo-t<<schwa>>m deb-<<schwa>>-tIay-lee-<<schwa>>-nI). [Latin “debt agreement”] Roman law. See CONSTITUTUM(1).

CONSTITUTUM DEBITI PROPRII

constitutum debiti proprii (kon-sti-t[y]oo-t<<schwa>>m deb-<<schwa>>-tIproh-ree-I). [Latin “debt agree-ment”] Roman law. See CONSTITUTUM(1).

CONSTITUTUM POSSESSORIUM

constitutum possessorium (kon-sti-t[y]oo-t<<schwa>>m pah-ses-sor-ee-<<schwa>>m). [Latin “possessory agreement”] Roman law. 1. A type of constructive delivery in which mediate possession is transferred while the immediate control or custody remains in the transferor. 2. The agreement by which this transfer is brought about. • In the context of a security interest, the pledged property may remain in the possession of the debtor, but as bailee of the creditor. For the other two types of constructive delivery, see ATTORNMENT; BREVI MANU. — Also termed *traditio longa manu* (tr<<schwa>>-dish-ee-oh long-g<<schwa>> man-yoo).

“[Another] form of constructive delivery is that which the commentators on the civil law have termed *constitutum possessorium*.... Any thing may be effectually delivered by means of an agreement that the possessor of it shall for the future hold it no longer on his own account but on account of someone else.... [I]f I buy goods from a ware-houseman, they are delivered to me so soon as he has agreed with me that he will hold them as warehouseman on my account. The position is then exactly the same as if I had first taken actual delivery of them, and then brought them back to the warehouse, and deposited them there for safe custody.” John Salmond, *Jurisprudence* 306 (Glanville L. Williams ed., 10th ed. 1947).

CONSTRUCTION

construction,n.1. The act of building by combining or arranging parts or elements; the thing

so built. 2. The act or process of interpreting or explaining the sense or intention of a writing (usu. a constitution, statute, or instrument); the ascertainment of a document's meaning in accordance with judicial standards. [Cases: Contracts 143; Statutes 174–278.C.J.S. Contracts § 302; Statutes §§ 306–431.] — construct (for sense 1), vb. — construe (for sense 2), vb.

“Construction, as applied to written law, is the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful either by reason of apparently conflicting provisions or directions, or by reason of the fact that the given case is not explicitly provided for in the law.” Henry Campbell Black, *Handbook on the Construction and In-terpretation of the Laws* 1 (1896).

“Some authors have attempted to introduce a distinction between ‘interpretation’ and ‘construction.’ Etymologically there is, perhaps, such a distinction; but it has not been accepted by the profession. For practical purposes any such distinction may be ignored, in view of the real object of both interpretation and construction, which is merely to ascertain the meaning and will of the lawmaking body, in order that it may be enforced.” William M. Lile et al., *Brief Making and the Use of Law Books* 337 (3d ed. 1914).

“There is no explanation of the distinction between interpretation and construction [in Blackstone], nor can it be inferred from the matters dealt with under each head. The distinction is drawn in some modern works, but it is not taken in this book because it lacks an agreed basis. Some writers treat interpretation as something which is only called for when there is a dispute about the meaning of statutory words, while speaking of construction as a process to which all statutes, like all other writings, are necessarily subject when read by anyone. Others treat interpretation as something which is mainly concerned with the meaning of statutory words, while regarding construction as a process which mainly relates to the ascertainment of the intention of the legislature.” Rupert Cross, *Statutory Interpretation* 18 (1976).

construction ut res magis valeat quam pereat (k<<schwa>>n-str<<schwa>>k-sh<< schwa>>n<<schwa>>t rays [or reez or rez] may-jis vay-lee-at kwam peer-ee-at). [Latin “a construction that gives effect to the matter rather than having it fail”] A construction arrived at when alternative readings are possible, one of which (usu. the broader reading) would achieve the manifest purpose of the document and one of which (usu. the narrower reading) would reduce it to futility or absurdity, whereby the interpreter chooses the one that gives effect to the document's purpose.

contemporaneous construction. An interpretation given at or near the time when a writing was prepared, usu. by one or more persons involved in its preparation. — Also termed practical construction; practical interpretation; contemporaneous and practical interpretation. See CONTEMPORANEOUS-CONSTRUCTION DOCTRINE. [Cases: Contracts 170; Statutes 218, 219(2). C.J.S. Contracts § 340; Statutes §§ 342, 344.]

liberal construction. An interpretation that applies a writing in light of the situation presented and that tends to effectuate the spirit and purpose of the writing. — Also termed equitable construction; loose construction; broad interpretation. [Cases: Contracts 143. C.J.S. Contracts § 302.]

“Liberal construction ... expands the meaning of the statute to embrace cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not in-consistent with the language used. It resolves all reasonable doubts in favor of the applicability of the statute to the particular case.” William M. Lile et al., *Brief Making and the Use of Law Books* 343 (3d ed. 1914).

literal construction. See strict construction.

practical construction. See contemporaneous construction.

purposive construction (p<<schwa>>r-p<<schwa>>-siv). An interpretation that looks to the “evil” that the statute is trying to correct (i.e., the statute's purpose). — Also termed teleological interpretation. See liberal construction.

statutory construction. See STATUTORY CONSTRUCTION.

strict construction. 1. An interpretation that considers only the literal words of a writing. — Also termed literal construction; literal interpretation. See STRICT CONSTRUCTIONISM. [Cases: Contracts 143. C.J.S. Contracts § 302.] 2. A construction that considers words narrowly, usu. in their historical context. • This type of construction treats statutory and contractual words with highly restrictive readings. — Also termed strict interpretation. 3. The philosophy underlying strict interpretation of statutes; STRICT CONSTRUCTIONISM.

“Strict construction of a statute is that which refuses to expand the law by implications or equitable considerations, but confines its operation to cases which are clearly within the letter of the statute, as well as within its spirit or reason, not so as to defeat the manifest purpose of the Legislature, but so as to resolve all reasonable doubts against the applicability of the statute to the particular case.” William M. Lile et al., *Brief Making and the Use of Law Books* 343 (3d ed. 1914).

“Strict interpretation is an equivocal expression, for it means either literal or narrow. When a provision is ambiguous, one of its meanings may be wider than the other, and the strict (i.e., narrow) sense is not necessarily the strict (i.e., literal) sense.” John Salmond, *Jurisprudence* 171 n. (t) (Glanville L. Williams ed., 10th ed. 1947).

CONSTRUCTION BOND

construction bond. See BOND(3).

CONSTRUCTION CONTRACT

construction contract. See CONTRACT.

CONSTRUCTION FINANCING

construction financing. See interim financing under FINANCING.

CONSTRUCTION LIEN

construction lien. See mechanic's lien under LIEN.

CONSTRUCTION MORTGAGE

construction mortgage. See MORTGAGE.

CONSTRUCTION STATUTE

construction statute. See STATUTE.

CONSTRUCTION WARRANTY

construction warranty. See WARRANTY(2).

CONSTRUCTIVE

constructive, adj. Legally imputed; having an effect in law though not necessarily in fact. • Courts usu. give something a constructive effect for equitable reasons <the court held that the shift supervisor had constructive knowledge of the machine's failure even though he did not actually know until two days later>. See LEGAL FICTION. Cf. ACTUAL.

CONSTRUCTIVE ABANDONMENT

constructive abandonment. 1. Family law. See constructive desertion under DESERTION. 2. Intellectual prop-erty. ABANDONMENT(9).

CONSTRUCTIVE ADVERSE POSSESSION

constructive adverse possession. See ADVERSE POSSESSION.

CONSTRUCTIVE AMENDMENT OF INDICTMENT

constructive amendment of indictment. See AMENDMENT OF INDICTMENT.

CONSTRUCTIVE ASSENT

constructive assent. See ASSENT.

CONSTRUCTIVE AUTHORITY

constructive authority. See AUTHORITY(1).

CONSTRUCTIVE BAILMENT

constructive bailment. See BAILMENT.

CONSTRUCTIVE BREACH

constructive breach. See anticipatory breach under BREACH OF CONTRACT.

CONSTRUCTIVE BREAKING INTO A HOUSE

constructive breaking into a house. See constructive housebreaking under HOUSEBREAKING.

CONSTRUCTIVE CONDEMNATION

constructive condemnation. See inverse condemnation under CONDEMNATION.

CONSTRUCTIVE CONDITION

constructive condition. See CONDITION(2).

CONSTRUCTIVE CONTEMPT

constructive contempt. See indirect contempt under CONTEMPT.

CONSTRUCTIVE CONTRACT

constructive contract. See implied-in-law contract under CONTRACT.

CONSTRUCTIVE CONVERSION

constructive conversion. See CONVERSION(2).

CONSTRUCTIVE CRIME

constructive crime. See CRIME.

CONSTRUCTIVE CUSTODY

constructive custody. See CUSTODY(1).

CONSTRUCTIVE DELIVERY

constructive delivery. See DELIVERY.

CONSTRUCTIVE DESERTION

constructive desertion. See DESERTION.

CONSTRUCTIVE DISCHARGE

constructive discharge. See DISCHARGE(7).

CONSTRUCTIVE DIVIDEND

constructive dividend. See DIVIDEND.

CONSTRUCTIVE EMANCIPATION

constructive emancipation. See EMANCIPATION.

CONSTRUCTIVE ESCAPE

constructive escape. See ESCAPE(2).

CONSTRUCTIVE EVICTION

constructive eviction. See EVICTION.

CONSTRUCTIVE FORCE

constructive force. See FORCE.

CONSTRUCTIVE FRAUD

constructive fraud.See FRAUD.

CONSTRUCTIVE HOUSEBREAKING

constructive housebreaking.See HOUSEBREAKING.

CONSTRUCTIVE INTENT

constructive intent.See INTENT(1).

CONSTRUCTIVE KNOWLEDGE

constructive knowledge.See KNOWLEDGE.

CONSTRUCTIVE LARCENY

constructive larceny.See LARCENY.

CONSTRUCTIVE LOSS

constructive loss.See constructive total loss (1) under LOSS.

CONSTRUCTIVE MALICE

constructive malice.See implied malice under MALICE.

CONSTRUCTIVE MURDER

constructive murder.See felony murder under MURDER.

CONSTRUCTIVE NOTICE

constructive notice.See NOTICE.

CONSTRUCTIVE OCCUPANCY

constructive occupancy.See OCCUPANCY.

CONSTRUCTIVE PARENT

constructive parent.See equitable parent under PARENT.

CONSTRUCTIVE PAYMENT

constructive payment.See PAYMENT.

CONSTRUCTIVE POSSESSION

constructive possession.See POSSESSION.

CONSTRUCTIVE PRESENCE

constructive presence.See PRESENCE.

CONSTRUCTIVE-RECEIPT DOCTRINE

constructive-receipt doctrine. The rule that gross income under a taxpayer's control before it is actually received (such as accumulated interest income that has not been withdrawn) must be included by the taxpayer in gross income, unless the actual receipt is subject to significant constraints. IRC (26 USCA) § 451. [Cases: Internal Revenue 3081.]

CONSTRUCTIVE REDUCTION TO PRACTICE

constructive reduction to practice. See REDUCTION TO PRACTICE.

CONSTRUCTIVE SEARCH

constructive search. See SEARCH.

CONSTRUCTIVE SEISIN

constructive seisin. See seisin in law under SEISIN.

CONSTRUCTIVE SEIZURE

constructive seizure. See SEIZURE.

CONSTRUCTIVE SERVICE

constructive service. See SERVICE(2).

CONSTRUCTIVE TAKING

constructive taking. See TAKING(1).

CONSTRUCTIVE TOTAL LOSS

constructive total loss. See LOSS.

CONSTRUCTIVE TRANSFER

constructive transfer. See TRANSFER.

CONSTRUCTIVE TREASON

constructive treason. See TREASON.

CONSTRUCTIVE TRESPASS

constructive trespass. See trespass to chattels under TRESPASS.

CONSTRUCTIVE TRUST

constructive trust. See TRUST.

CONSTRUE

construe (k<<schwa>>n-stroo), vb. To analyze and explain the meaning of (a sentence or passage) <the court construed the language of the statute>.

CONSTUPRATE

constuprate (kon-st[y]<<schwa>>-prayt), vb. Archaic. To rape or violate (a person).

CONSUETUDINARIUS

consuetudinarius (kon-sw<<schwa>>-t[y]oo-di-nair-ee-<<schwa>>s). [fr. Latin consuetudo “custom”] Hist. Eccles. law. A book containing the rites and forms of divine offices or customs of abbeys and monasteries.

CONSUETUDINARY LAW

consuetudinary law. See LAW.

CONSUETUDINES FEUDORUM

Consuetudines Feudorum (kon-sw<<schwa>>-t[y]oo-di-neezyoo-dor-<<schwa>>m). [Law Latin “the customs of fiefs”] Hist. See FEUDORUM LIBRI.

CONSUETUDINIBUS ET SERVICIIS

consuetudinibus et serviciis (kon-sw<<schwa>>-t[y]oo-din-<<schwa>>-b<<schwa>>s et s<<schwa>>r-vish-ee-is). [Law Latin “customs and services”] Hist. A writ of right that lay against a tenant who withheld rent or services from the lord.

CONSUETUDO

consuetudo (kon-sw<<schwa>>-t[y]oo-doh), n. [Latin “custom”] 1. Roman law. Custom; long-established usage or practice. 2. Hist. Customary law. • Consuetudo generally bears this sense, referring to law that has been long approved by the will of the people. It is a broad term that includes both the common law and the statutory law of England. 3. Hist. A duty or tax.

CONSUETUDO ANGLICANA

consuetudo anglicana (kon-sw<<schwa>>-t[y]oo-doh ang-gli-kay-n<<schwa>>). [Law Latin “the custom of England”] Hist. The English common law, as distinguished from Roman or civil law.

CONSUETUDO CURIAE

consuetudo curiae (kon-sw<<schwa>>-t[y]oo-doh kyoor-ee-ee). [Latin] Hist. The custom or practice of a court.

CONSUETUDO MERCATORUM

consuetudo mercatorum (kon-sw<<schwa>>-t[y]oo-doh m<<schwa>>-r-k<<schwa>>-tor-<<schwa>>m). [Latin “the custom of merchants”] Hist. See LAW MERCHANT. — Also termed consuetudo mercatoria.

CONSUL

consul (kon-s<<schwa>>l), n. 1. A governmental representative living in a foreign country to oversee commercial and other matters involving the representative's home country and its citizens in that foreign country. • Consuls are not diplomatic agents, so, unless a treaty provides otherwise,

they do not enjoy diplomatic privileges and immunities. But consuls are entitled to consular immunities, which protect them from local law and jurisdiction in the exercise of their consular functions. [Cases: Ambassadors and Consuls 1–8. C.J.S. Ambassadors and Consuls §§ 2–32.] — consular (kon-s<<schwa>>-l<<schwa>>r), adj. — consulship (kon-s<<schwa>>l-ship), n.

“The commercial agents of a government, residing in foreign parts, and charged with the duty of promoting the commercial interests of the state, and especially of its individual citizens or subjects, are called consuls. These, under the regulations of some countries, are of different grades, being either consuls-general, consuls, or vice-consuls, from whom consular agents differ little.” Theodore D. Woolsey, *Introduction to the Study of International Law* § 99, at 159 (5th ed. 1878).

“Consuls are commercial, not diplomatic agents. They reside abroad for the purpose of protecting the individual interests of traders, travellers, and mariners belonging to the State which employs them.... They exercise jurisdiction over their countrymen, their persons are inviolable, their residences may be used as asylums in the case of war or tumult, and in fact they possess more than the ordinary diplomatic immunities.” T.J. Lawrence, *A Hand-book of Public International Law* 86–87 (10th ed. 1925).

“Consuls are not diplomatic agents; they perform various services for a state or its subjects in another state, without, however, representing the former in the full sense. They may be nationals of either state, and generally they are made subject to the authority of the diplomatic representative of the state for which they act. They watch over commercial interests of the state for which they act; collect information for it; help its nationals with advice, administer their property if they die abroad, and register their births, deaths, and marriages; they authenticate documents for legal purposes, take depositions from witnesses, visa passports, and the like.” J.L. Brierly, *The Law of Nations* 216 (5th ed. 1955).

“The usual criterion used for the distinction between diplomats and consuls is the representative character of the former of which the latter are devoid. However, this distinction is not altogether correct. Undoubtedly diplomatic agents have a general representative character since in all matters and relations they represent their country in the state to which they are accredited. Consuls, on the other hand, as state organs, also represent their country in another state, but only in matters within their competence. Thus, the representative character of consuls is, like their competence, specific, and secondary to that of diplomatic agents.” Constantin Economidès, “Consuls,” in *1 Encyclopedia of Public International Law* 770 (1992).

consul general. A high-ranking consul appointed to a strategically important region and often having supervisory powers over other regions or other consuls.

2. Roman law. One of two chief magistrates elected annually during the Republic to exercise supreme authority. • Under the Empire, the consulship was reduced to a sinecure, held by appointees of the emperor or the emperor himself. “The principal inheritors of the royal authority and dignity were the two consuls elected by the *comitia centuriata*. They enjoyed equal powers. In the calendar the year was distinguished by their names. They convoked and initiated legislation in either *comitia*. In special emergencies, particularly in times of grave crisis, either consul might appoint a dictator who exercised supreme authority, but not beyond six months, unless

re-appointed.... It was abolished by Justinian in A.D. 541, though later emperors continued to assume the title.” R.W. Lee, *The Elements of Roman Law* 14 (4th ed. 1956).

CONSULAR COURT

consular court. See COURT.

CONSULAR INVOICE

consular invoice. See INVOICE.

CONSULAR JURISDICTION

consular jurisdiction. The exercise of a judicial function by a consul in a foreign territory, as by performing a wedding ceremony between nationals of the country represented by the consul. [Cases: *Ambassadors and Consuls* 5. C.J.S. *Ambassadors and Consuls* §§ 26–30.]

CONSULAR LAW

consular law. The law relating to consuls, developed through custom and multitudes of bilateral consular agreements.

CONSULAR MARRIAGE

consular marriage. See MARRIAGE(1).

CONSULAR RELATIONS

consular relations. Int'l law. The aggregate of relations established between two countries through the exercise of consuls' functions on behalf of a sending state within the territory of a receiving state. See sending state and receiving state under STATE.

CONSULATE

consulate (kon-s<<schwa>>-lit). 1. The office or jurisdiction of a consul <the senator advised the businessman to notify the U.S. consulate in Kuwait before visiting the country>. [Cases: *Ambassadors and Consuls* 5. C.J.S. *Ambassadors and Consuls* §§ 26–30.] 2. The location of a consul's office or residence <the family was staying on the second floor, just above the Turkish consulate>.

foreign consulate. The consulate of a foreign country in the receiving state.

3. Government by consuls <after the French Revolution, the Directory was overthrown and the Consulate was created>. • This sense of consulate is based on the original Roman meaning (“chief magistrate”) — not on the modern sense of an overseas representative of a country.

CONSUL GENERAL

consul general. See CONSUL.

CONSULTATION

consultation, n. 1. The act of asking the advice or opinion of someone (such as a lawyer). 2. A

meeting in which parties consult or confer. 3.Int'l law. The interactive methods by which states seek to prevent or resolve disputes. — consult,vb. — consulting, consultative,adj.

CONSULTING EXPERT

consulting expert.See EXPERT.

CONSUMABLE

consumable,n. A thing (such as food) that cannot be used without changing or extinguishing its substance. Cf. NONCONSUMABLE. — consumable,adj.

CONSUMER

consumer. A person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes. [Cases: Consumer Protection 1. C.J.S. Credit Reporting Agencies; Consumer Protection § 23.]

CONSUMER BOYCOTT

consumer boycott.See BOYCOTT.

CONSUMER-CONTEMPLATION TEST

consumer-contemplation test.A method of imposing product liability on a manufacturer if the evidence shows that a product's danger is greater than that which a reasonable consumer would expect. — Also termed consum-er-user-contemplation test; consumer-expectation test. Cf. RISK-UTILITY TEST. [Cases: Products Liability 8. C.J.S. Products Liability §§ 11–15.]

CONSUMER CREDIT

consumer credit.See CREDIT(4).

CONSUMER CREDIT CODE

Consumer Credit Code.See UNIFORM CONSUMER CREDIT CODE.

CONSUMER CREDIT PROTECTION ACT

Consumer Credit Protection Act.A federal statute that safeguards consumers in the use of credit by (1) requiring full disclosure of the terms of loan agreements, including finance charges, (2) restricting the garnishment of wages, and (3) regulating the use of credit cards. 15 USCA §§ 1601–1693. • Many states have also adopted consum-er-credit-protection acts. — Also termed Truth in Lending Act (abbr. TILA). See UNIFORM CONSUMER CREDIT CODE . [Cases: Consumer Credit 30. C.J.S. Interest and Usury; Consumer Credit §§ 317–318.]

CONSUMER-CREDIT SALE

consumer-credit sale.See SALE.

CONSUMER-CREDIT TRANSACTION

consumer-credit transaction. A transaction by which a person receives a loan for buying consumer goods or services. • Consumer-credit transactions are usu. subject to regulations enacted for the consumer's protection. [Cases: Consumer Credit 1, 3. C.J.S. Interest and Usury; Consumer Credit §§ 274, 280–293, 306.]

CONSUMER DEBT

consumer debt. See DEBT.

CONSUMER-EXPECTATION TEST

consumer-expectation test. See CONSUMER-CONTEMPLATION TEST.

CONSUMER FINANCE COMPANY

consumer finance company. See FINANCE COMPANY.

CONSUMER GOODS

consumer goods. See GOODS.

CONSUMER-GOODS TRANSACTION

consumer-goods transaction. Secured transactions. A transaction in which (1) an individual incurs an obligation primarily for person, family, or household purposes, and (2) a security interest in consumer goods secures the obligation. UCC § 9-102(a)(24). [Cases: Secured Transactions 15. C.J.S. Secured Transactions § 14.]

CONSUMER LAW

consumer law. The area of law dealing with consumer transactions — that is, a person's obtaining credit, goods, real property, or services for personal, family, or household purposes. — Also termed consumer-transactions law.

CONSUMER LEASE

consumer lease. See LEASE.

CONSUMER LOAN

consumer loan. See LOAN.

CONSUMER PRICE INDEX

consumer price index. An index that tracks the price of goods and services purchased by the average consumer and that is published monthly by the U.S. Bureau of Labor Statistics. • The consumer price index is used to monitor periodic changes in the rate of inflation. — Abbr. CPI. — Also termed cost-of-living index. Cf. PRODUCER PRICE INDEX.

CONSUMER PRODUCT

consumer product. An item of personal property that is distributed in commerce and is normally used for personal, family, or household purposes. 15 USCA § 2301(1).

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Commission. An independent federal regulatory commission that develops safety standards for consumer products and promotes research into the causes and prevention of product-related deaths, illnesses, and injuries. • It was established in 1972.15 USCA §§ 2051 et seq. — Abbr. CPSC.

CONSUMER-PROTECTION LAW

consumer-protection law. A state or federal statute designed to protect consumers against unfair trade and credit practices involving consumer goods, as well as to protect consumers against faulty and dangerous goods. [Cases: Consumer Credit 1; Consumer Protection 2. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 24, 27, 33, 35, 37–39; Interest and Usury; Consumer Credit § 274.]

CONSUMER TRANSACTION

consumer transaction. A bargain or deal in which a party acquires property or services primarily for a personal, family, or household purpose.

CONSUMER-TRANSACTIONS LAW

consumer-transactions law. See CONSUMER LAW.

CONSUMER-USER-CONTEMPLATION TEST

consumer-user-contemplation test. See CONSUMER-CONTEMPLATION TEST.

CONSUMMATE

consummate (k<<schwa>>n-s<<schwa>>m-it orkahn-s<<schwa>>-mit), adj. Completed; fully accomplished. • Consummate was often used at common law to describe the status of a contract or an estate, such as the transformation of a husband's interest in his wife's inheritance from that of a tenant by the curtesy initiate to a tenant by curtesy consummate upon the wife's death (assuming that a child had been born during the marriage). See curtesy consummate under CURTESY. — consummation, n.

consummate (kon-s<<schwa>>-mayt), vb. 1. To bring to completion; esp., to make (a marriage) complete by sexual intercourse. 2. To achieve; to fulfill. 3. To perfect; to carry to the highest degree.

CONSUMMATE DOWER

consummate dower. See DOWER.

CONSUMMATE LIEN

consummate lien. See LIEN.

CONSUMMATION OF MARRIAGE

consummation of marriage. Family law. The first postmarital act of sexual intercourse

between a husband and wife. • Under canon law, a refusal to consummate the marriage may be grounds for an annulment or for divorce. But this is not so at common law or under modern state law.

CONSUMPTION

consumption. The act of destroying a thing by using it; the use of a thing in a way that thereby exhausts it.

CONSUMPTION TAX

consumption tax. See TAX.

CONTAGION

contagion. Int'l law. A discredited doctrine holding that revolution or abhorrent practices in a neighboring state justify its invasion and the overthrow of its government on the grounds of national security. • The doctrine was employed by the Holy Alliance (1815–1848) in Europe to invade countries where revolutions were brewing. — Also termed doctrine of contagion.

CONTAINING BY ESTIMATE

containing by estimate. Archaic. More or less. • This phrase usu. appears in deeds where measurements are made by metes and bounds. It is redundant when the phrase “more or less” is used.

CONTAINMENT

containment. Int'l law. The policy of restricting the ideological and territorial expansion of one's enemy. • This was the basic philosophy of the United States during the Cold War.

CONTANGO

contango (k<<schwa>>n-tang-goh). Securities. 1. A market in which long-term futures or options contracts sell at a premium over short-term contracts. — Also termed normal market. 2. The premium so paid. • The premium paid for securities with longer maturities reflects the cost of holding the commodity for future delivery.

CONTEMN

contemn (k<<schwa>>n-tem), vb. To treat (as laws or court orders) with contemptuous disregard. See CON-TEMPT.

CONTEMNOR

contemnor (k<<schwa>>n-tem-<<schwa>>r or -n<<schwa>>r or -nor). A person who is guilty of contempt before an instrumentality of government, such as a court or legislature. — Also spelled contemner.

CONTEMPLATION OF BANKRUPTCY

contemplation of bankruptcy. The thought of declaring bankruptcy because of the inability to

continue current financial operations, often coupled with action designed to thwart the distribution of assets in a bankruptcy proceeding. — Also termed contemplation of insolvency.

CONTEMPLATION OF DEATH

contemplation of death. The thought of dying, not necessarily from imminent danger, but as the compelling reason to transfer property to another. See gift causa mortis under GIFT. [Cases: Gifts 59; Internal Revenue 4159(2). C.J.S. Internal Revenue § 514.]

CONTEMPLATION OF INSOLVENCY

contemplation of insolvency. See CONTEMPLATION OF BANKRUPTCY.

CONTEMPORANEA EXPOSITIO

contemporanea expositio (k<<schwa>>n-tem-p<<schwa>>-ray-nee-<<schwa>> eks-p<<schwa>>-zish-ee-oh). [Latin “contemporaneous exposition”] The doctrine that the best meaning of a statute or document is the one given by those who enacted it or signed it, and that the meaning publicly given by contemporary or long professional usage is presumed to be the correct one, even if the language may have a popular or an etymological meaning that is very different.

CONTEMPORANEOUS AND PRACTICAL INTERPRETATION

contemporaneous and practical interpretation. See contemporaneous construction under CONSTRUCTION.

CONTEMPORANEOUS CONSTRUCTION

contemporaneous construction. See CONSTRUCTION.

CONTEMPORANEOUS-CONSTRUCTION DOCTRINE

contemporaneous-construction doctrine. The rule that the initial interpretation of an ambiguous statute by an administrative agency or lower court is entitled to great deference if the interpretation has been used over a long period. [Cases: Statutes 218, 219(2). C.J.S. Statutes §§ 342, 344.]

CONTEMPORANEOUS-OBJECTION RULE

contemporaneous-objection rule. The doctrine that a timely and proper objection to the admission of evidence must be made at trial for the issue of admissibility to be considered on appeal. • An objection is timely if it is made as soon as practicable and is proper if made formally on the record. These requirements afford the trial court an opportunity to correct the alleged error, and they preserve the issue for appeal. [Cases: Appeal and Error 204; Criminal Law 1036.1.]

CONTEMPORARY COMMUNITY STANDARDS

contemporary community standards. The gauge by which a fact-finder decides whether material is obscene, judging by its patent offensiveness and its prurience in the locale at a given time. See OBSCENITY(1). [Cases: Obscenity 1. C.J.S. Obscenity §§ 1–8.]

“Both pruriency and patent offensiveness are determined by ‘contemporary community standards.’ But what is the relevant community? In *Miller [v. California]*, the Court rejected the contention that only a national community standard, free of local biases, would provide adequate First Amendment protection and allowed lower courts to use local standards in defining what is obscene. Subsequent cases have made it clear that the state may choose to omit reference to any particular geographic community, state or local, although it may do so. If a geographic reference is omitted, each jury is free to ascertain the contemporary community standard.” Jerome A. Barron & C. Thomas Dienes, *Constitutional Law in a Nutshell* 396 (3d ed. 1995).

CONTEMPT

contempt, n. 1. The act or state of despising; the condition of being despised. 2. Conduct that defies the authority or dignity of a court or legislature. • Because such conduct interferes with the administration of justice, it is punishable, usu. by fine or imprisonment. Fed. R. Civ. P. 45(e); Fed. R. Crim. P. 42; 18 USCA § 401. — Also termed contempt of court; judicial contempt. See CONTUMACY. [Cases: Contempt 1–26; States 40. C.J.S. Contempt §§ 2–33, 37; States § 60.] — contemptuous, adj.

“Contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body, or an inter-ruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such a body.” Edward M. Dangel, *Contempt* § 1, at 2 (1939).

civil contempt. The failure to obey a court order that was issued for another party's benefit. • A civil-contempt proceeding is coercive or remedial in nature. The usual sanction is to confine the contemnor until he or she complies with the court order. The act (or failure to act) complained of must be within the defendant's power to perform, and the contempt order must state how the contempt may be purged. Imprisonment for civil contempt is indefinite and for a term that lasts until the defendant complies with the decree. [Cases: Contempt 4, 20. C.J.S. Contempt §§ 9, 14, 17.]

common-law contempt. See criminal contempt.

consequential contempt. 1. Contempt that, although not amounting to gross insolence or direct opposition, tends to create a universal disregard of the power and authority of courts and judges. 2. See indirect contempt.

constructive contempt. See indirect contempt.

contempt of Congress. Deliberate interference with the duties and powers of Congress, such as a witness's refusal to answer a question from a congressional committee. • Contempt of Congress is a criminal offense. 2 USCA § 192. [Cases: United States 23(9).]

contempt of sovereignty. Int'l law. The minor diplomatic offense of interference in domestic affairs by a foreign representative, esp. by making a public statement about an issue currently being debated in the legislature.

criminal contempt. An act that obstructs justice or attacks the integrity of the court. • A

criminal-contempt proceeding is punitive in nature. The purpose of criminal-contempt proceedings is to punish repeated or aggravated failure to comply with a court order. All the protections of criminal law and procedure apply, and the commitment must be for a definite period. — Also termed common-law contempt. [Cases: Contempt 3. C.J.S. Contempt §§ 7–8.]

“Criminal contempt is a crime in the ordinary sense; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both.” *Bloom v. Illinois*, 391 U.S. 194, 201, 88 S.Ct. 1477, 1481 (1968).

direct contempt. A contempt (such as an assault of a testifying witness) committed in the immediate vicinity of a court; esp., a contempt committed in a judge's presence. • A direct contempt is usu. immediately punishable when the transgression occurs. [Cases: Contempt 2. C.J.S. Contempt §§ 2–6, 11.]

indirect contempt. Contempt that is committed outside of court, as when a party disobeys a court order. • Indirect contempt is punishable only after proper notice to the contemnor and a hearing. — Also termed constructive contempt; consequential contempt. [Cases: Contempt 2. C.J.S. Contempt §§ 2–6, 11.]

CONTEMPT OF COURT

contempt of court. See CONTEMPT(2).

CONTEMPT POWER

contempt power. The power of a public institution (as Congress or a court) to punish someone who shows con-tempt for the process, orders, or proceedings of that institution.

CONTEMPT PROCEEDING

contempt proceeding. See PROCEEDING.

CONTEMPTUOUS DAMAGES

contemptuous damages. See nominal damages under DAMAGES.

CONTENEMENT

contenement (k<<schwa>>n-ten-<<schwa>>-m<<schwa>>nt). Hist. 1. Freehold land held by a feudal tenant, esp. land used to support the tenant. • Magna Carta exempted this property from seizure.

“Contenement, (contenementum) seemeth to be the free hould land, which lyeth to a mans tenement or dwelling house, that is in his owne occupation. For magna carta. ca. 14. you have these words: A free man shall not be amerced for a small fault, but after the quantity of the fault: and for a great fault, after the maner thereof, saving to him his contenement or free hould. And a merchant likewise shal be amerced saving to him his merchandies: and any other villaine then owers, shal be amerced saving his wainage” John Cowell, *The Interpreter* (1607).

2. A person's reputation or standing in the community. • Though contenement as used in this

sense is also rooted in the ownership of land, it may stem from the Law French *contenance* (“countenance”) rather than the Law Latin *contenementum* (“with tenement”), as used in sense (1). “Contenement signifies his Countenance, Credit, or Reputation, which he hath, together with, and by reason of his Freehold; and in this sense does the Statute of 1 Edw. 3 and Old Nat. Br. use it, where Countenance is used for Contenement: The Armor of a Soldier is his Countenance; the Books of a Schollar, his Countenance; and the like.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

CONTENT-BASED DISCRIMINATION

content-based discrimination. See DISCRIMINATION.

CONTENT-BASED RESTRICTION

content-based restriction. Constitutional law. A restraint on the substance of a particular type of speech. • This type of restriction are presumptively invalid but can survive a constitutional challenge if it is based on a compelling state interest and its measures are narrowly drawn to accomplish that end. *Boos v. Barry*, 485 U.S. 312, 108 S.Ct. 1157 (1988). See SPEECH (1). [Cases: Constitutional Law 90(3). C.J.S. Constitutional Law §§ 502, 542, 546–550.]

CONTENTIOUS JURISDICTION

contentious jurisdiction. See JURISDICTION.

CONTENTIOUS POSSESSION

contentious possession. See hostile possession under POSSESSION.

CONTENTS UNKNOWN

contents unknown. A statement placed on a bill of lading to show that the carrier does not know what is inside shipped containers. • Carriers use this phrase in an attempt to limit their liability for damage to the goods shipped. Shipper's load and count is also used. [Cases: Carriers 50; Shipping 106(3). C.J.S. Shipping §§ 260–263, 265.]

CONTENT-VALID TEST

content-valid test. A job-applicant examination that bears a close relationship to the skills required by the job. • Content-validation studies are often performed in employment-discrimination cases that contest the validity of an examination. [Cases: Civil Rights 1142, 1546. C.J.S. Civil Rights §§ 29, 144, 170.]

“The simplest form of test validation is where the test replicates major portions of the job, as for example, where a test measuring typing or computer literacy is used to select a secretarial support person A content valid test must measure or replicate a ‘representative sample’ of the job's duties. It is not valid if it measures only a small portion of those duties. For example, fire fighters may need to write reports, but a grammar test is too narrow to be content valid.” Mack A. Player, *Federal Law of Employment Discrimination in a Nutshell* 101 (3d ed. 1992).

CONTERMINOUS

conterminous,adj.1. Sharing a common boundary <the surveyor set a new line between the conterminous counties>. — Also termed coterminous. 2. Enclosed within a common boundary <all 48 conterminous states of this country>.

CONTEST

contest (k<<schwa>>n-test), vb.1. To strive to win or hold; contend <he chose to contest for the prize>.2. To litigate or call into question; challenge < they want to contest the will>.3. To deny an adverse claim or assert a defense to it in a court proceeding <she contests that charge>. — contest (kon-test), n.

CONTESTABILITY CLAUSE

contestability clause (k<<schwa>>n-tes-t<<schwa>>-bil-<<schwa>>-tee).Insurance. A policy provision setting forth when and under what conditions the insurer may contest a claim or void the policy based on a representation or omission made when the policy was issued. • Contestability clauses usu. lapse after two years. — Also termed contestable clause. Cf. INCONTESTABILITY CLAUSE. [Cases: Insurance 2950, 3121. C.J.S. Insurance §§ 536, 1636.]

CONTESTANT

contestant. 1. One who contests the validity of a will, trust, or other legal instrument. — Also termed objectant; caveator. 2.Trademarks. One who challenges the placement of a trademark on the Principal Register. • The term refers to a challenger in (1) an interference proceeding, (2) an opposition proceeding before a mark is placed on the Principal Register, or (3) a cancellation proceeding after the mark is placed on the Principal Register. [Cases: Trade Regulation 217. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 179, 183.] 3.Patents. A party to an interference proceeding in the U.S. Patent and Trademark Office. — Also termed (in sense 3) interferant. [Cases: Patents 106(1). C.J.S. Patents §§ 159–162, 165.]

CONTESTATIO LITIS

contestatio litis (kon-tes-tay-shee-oh II-tis). [Latin “contestation of suit”] See LITIS CONTESTATIO.

CONTESTATION OF SUIT

contestation of suit (kon-tes-tay-sh<<schwa>>n).Eccles. law. The point in an action when the defendant answers the plaintiff's libel (i.e., complaint); the plea and joinder of an issue. — Also termed litis contestatio.

CONTESTED DIVORCE

contested divorce.See DIVORCE.

CONTESTED HEARING

contested hearing.See HEARING.

CONTEXT

context, n. 1. The surrounding text of a word or passage, used to determine the meaning of that word or passage <his remarks were taken out of context>. 2. Setting or environment <in the context of foreign relations>. — contextual, adj.

CONTEXTUAL ZONING

contextual zoning. See ZONING.

CONTIGUITY

contiguity (kon-ti-gyoo-<<schwa>>-tee), n. The state or condition of being contiguous <contiguity existed between the two adjoining tracts of land>.

CONTIGUOUS

contiguous (k<<schwa>>n-tig-yoo-<<schwa>>s), adj. 1. Touching at a point or along a boundary; ADJOINING <Texas and Oklahoma are contiguous>. 2. Near in time or sequence; successive <contiguous thunder and lightning>.

CONTIGUOUS ZONE

contiguous zone. Int'l law. An area abutting and extending beyond the territorial sea, in which countries have limited powers to enforce customs as well as fiscal, sanitary, and immigration laws. [Cases: International Law 7. C.J.S. International Law §§ 23–24.]

CONTINENTAL CONGRESS

Continental Congress. The first national governmental assembly in the United States, formed in 1774 to protest British treatment of the colonies. • The Second Continental Congress, commencing in 1775, adopted the Declaration of Independence and served as the national government until the Articles of Confederation were ratified in 1781.

CONTINGENCY

contingency (k<<schwa>>n-tin-j<<schwa>>n-see). 1. An event that may or may not occur; a possibility. 2. The condition of being dependent on chance; uncertainty. 3. CONTINGENT FEE.

CONTINGENCY BENEFICIARY

contingency beneficiary. See contingent beneficiary (1) under BENEFICIARY.

CONTINGENCY FEE

contingency fee. See CONTINGENT FEE.

CONTINGENCY RESERVE

contingency reserve. See contingent fund under FUND.

CONTINGENCY WITH A DOUBLE ASPECT

contingency with a double aspect. A contingent remainder existing along with a second remainder, the latter taking the remainder only if the first fails. • In the following example, this type of remainder would arise if A never has children: “to A for life, and if A has children, then to the children and their heirs forever; and if A dies without children, then to B and B's heirs forever.” See contingent remainder under REMAINDER. [Cases: Remainders 1. C.J.S. Estates §§ 70–71, 77, 79, 81–82.]

CONTINGENT

contingent (k<<schwa>>n-tin-j<<schwa>>nt), adj. 1. Possible; uncertain; unpredictable <the trust was contingent, and the contingency never occurred>. 2. Dependent on something else; conditional <her acceptance of the position was contingent upon the firm's agreeing to guarantee her husband a position as well>.

CONTINGENT ANNUITY

contingent annuity. See ANNUITY.

CONTINGENT BENEFICIARY

contingent beneficiary. See BENEFICIARY.

CONTINGENT CLAIM

contingent claim. See CLAIM(4).

CONTINGENT DEBT

contingent debt. See DEBT.

CONTINGENT DEMAND

contingent demand. See DEMAND(1).

CONTINGENT ESTATE

contingent estate. See ESTATE(1).

CONTINGENT FEE

contingent fee. A fee charged for a lawyer's services only if the lawsuit is successful or is favorably settled out of court. • Contingent fees are usu. calculated as a percentage of the client's net recovery (such as 25% of the recovery if the case is settled, and 33% if the case is won at trial). — Also termed contingency fee; contingency; conditional fee. [Cases: Attorney and Client 146. C.J.S. Attorney and Client §§ 313, 319.]

reverse contingent fee. A fee in which a defense lawyer's compensation depends in whole or in part on how much money the lawyer saves the client, given the client's potential liability — so that the lower the settlement or judgment, the higher the lawyer's fee. • For example, if a client might be liable for up to \$2 million, and agrees to pay the lawyer 40% of the difference between \$1 million and the amount of the settlement or judgment, then a settlement of \$800,000 would

result in a fee of \$80,000 (40% of the \$200,000 under the threshold amount of \$1 million). — Also termed negative contingent fee; defense contingent fee; reverse bonus. [Cases: Attorney and Client 146. C.J.S. Attorney and Client §§ 313, 319.]

CONTINGENT FUND

contingent fund. See FUND(1).

CONTINGENT GUARANTY

contingent guaranty. See GUARANTY.

CONTINGENT INTEREST

contingent interest. See INTEREST(2).

CONTINGENT-INTEREST MORTGAGE

contingent-interest mortgage. See MORTGAGE.

CONTINGENT LEGACY

contingent legacy. See LEGACY.

CONTINGENT LIABILITY

contingent liability. See LIABILITY.

CONTINGENT OWNERSHIP

contingent ownership. See OWNERSHIP.

CONTINGENT REMAINDER

contingent remainder. See REMAINDER.

CONTINGENT TRUST

contingent trust. See TRUST.

CONTINGENT USE

contingent use. See USE(4).

CONTINGENT WILL

contingent will. See WILL.

CONTINUAL CLAIM

continual claim. Hist. A formal claim to a tract of land made by an out-of-possession owner who is deterred from taking possession by a menace of some type. • The claim — called continual because it had to be renewed annually — preserved the claimant's right to the land. The owner had to make the claim as near to the land as could be done safely. This procedure gave the disseised person the same benefits (such as the right to devise the land) as a legal entry. The

continual claim was abolished early in the 19th century.

“Continual claim is, where a man hath right to enter into certain lands whereof another is seised in fee, or fee tail, and dares not enter for fear of death or beating, but approaches as nigh as he dares, and makes claim thereto within the year and day before the death of him that hath the lands” *Termes de la Ley* 114 (1st Am. ed. 1812).

CONTINUAL INJURY

continual injury. See INJURY.

CONTINUANCE

continuance, n. 1. The act of keeping up, maintaining, or prolonging <continuance of the formal tradition>. 2. Duration; time of continuing <the senator's continuance in office>. 3. Procedure. The adjournment or postponement of a trial or other proceeding to a future date <motion for continuance>. Cf. RECESS(1). — continue, vb.

CONTINUANDO

continuando (k<<schwa>>n-tin-yoo-an-doh). [Law Latin “by continuing”] Hist. An allegation charging that the trespass or other wrongful act complained of constitutes a continuing tort against the plaintiff's property.

“In trespasses of a permanent nature, where the injury is continually renewed, (as by spoiling or consuming the herbage with the defendant's cattle) the declaration may allege the injury to have been committed by continuation from one given day to another, (which is called laying the action with a continuando) and the plaintiff shall not be compelled to bring separate actions for every day's separate offence.” 3 William Blackstone, *Commentaries on the Laws of England* 212 (1768).

CONTINUATION

continuation. Patents. A patent application that is based on the same disclosure and that claims the same invention as a rejected parent application but contains some change in the scope of the claims. • A continuation application maintains the original filing date for prior-art and interference purposes, as long as it is filed while the parent application is still pending, has at least one inventor in common with the parent application, and refers to the parent application. — Also termed continuation application; continuation-in-whole application; continuing application; file-wrapper continuation application. Cf. CONTINUATION-IN-PART, continued-prosecution application under PATENT APPLICATION; REQUEST FOR CONTINUED EXAMINATION . [Cases: Patents 110. C.J.S. Patents § 156.]

CONTINUATION AGREEMENT

continuation agreement. Partnership. An agreement among the partners that, in the event of dissolution, the business of the partnership can be continued without the necessity of liquidation. Cf. BUY-SELL AGREEMENT(1). [Cases: Partnership 277. C.J.S. Partnership §§ 318–320.]

“Normally, a continuation agreement would have some type of provision for purchasing the

interest of a deceased or expelled partner. However, such a provision is not necessary. Courts have enforced agreements that give the estate of the deceased partner nothing.” Harold Gill Reuschlein & William A. Gregory, *The Law of Agency and Partnership* § 269, at 461 (2d ed. 1990).

CONTINUATION APPLICATION

continuation application.1.CONTINUATION. 2.CONTINUATION-IN-PART.

CONTINUATION-APPLICATION LACHES DOCTRINE

continuation-application laches doctrine.Patents. An equitable defense to patent infringement, based on an assertion that the patentee deliberately delayed the issuance of the patent-in-suit by filing multiple continuing applications that added new patent claims to cover products marketed or processes used after the original application was filed. — Also termed prosecution-laches doctrine. See SUBMARINE PATENT.

CONTINUATION-IN-PART

continuation-in-part.Patents. A patent application filed during the pendency of an earlier application by the same applicant, repeating a substantial part of the earlier application but adding to or subtracting from the claims. 35 USCA § 120. • This type of application contains new technical descriptions from the inventor or reflects im-provements made since the parent application was filed. A claim in a continuation-in-part application is entitled to the benefit of the parent application's filing date if the claimed subject matter is the same, but new matter takes the filing date of the continuation-in-part application. Continuation-in-part applications are usu. filed to describe and claim later-discovered improvements to an invention, or to distinguish the invention from some prior-art reference. — Abbr. CIP. — Also termed continuation-in-part application; continuation application; continuing application; file-wrapper continuation application. Cf. CONTINUATION. [Cases: Patents 110. C.J.S. Patents § 156.]

CONTINUATION-IN-PART APPLICATION

continuation-in-part application.See CONTINUATION-IN-PART.

CONTINUATION-IN-WHOLE APPLICATION

continuation-in-whole application.See CONTINUATION.

CONTINUED BOND

continued bond.See annuity bond under BOND(3).

CONTINUED-CUSTODY HEARING

continued-custody hearing.See shelter hearing under HEARING.

CONTINUED MEETING

continued meeting.See MEETING.

CONTINUED-PROSECUTION APPLICATION

continued-prosecution application. See PATENT APPLICATION.

CONTINUING

continuing, adj. 1. Uninterrupted; persisting <a continuing offense>. 2. Not requiring renewal; enduring <continuing stockholders> <continuing jurisdiction>.

CONTINUING ANNUITY

continuing annuity. See survivorship annuity under ANNUITY.

CONTINUING APPLICATION

continuing application. See PATENT APPLICATION.

CONTINUING BREACH

continuing breach. See BREACH OF CONTRACT.

CONTINUING CONSIDERATION

continuing consideration. See CONSIDERATION(1).

CONTINUING CONTRACT

continuing contract. See CONTRACT.

CONTINUING COVENANT

continuing covenant. See COVENANT(1).

CONTINUING DAMAGES

continuing damages. See DAMAGES.

CONTINUING GUARANTY

continuing guaranty. See GUARANTY.

CONTINUING HARM

continuing harm. See continuing injury under INJURY.

CONTINUING INJURY

continuing injury. See INJURY.

CONTINUING JUDICIAL EDUCATION

continuing judicial education. Continuing legal education for judges, usu. organized and sponsored by a go-vernmentally subsidized body and often involving topics such as judicial writing, efficient decision-making, caseload management, and the like. — Abbr. CJE.

CONTINUING JURISDICTION

continuing jurisdiction. See JURISDICTION.

CONTINUING-JURISDICTION DOCTRINE

continuing-jurisdiction doctrine. 1. The rule that a court retains power to enter and enforce a judgment over a party even though that party is no longer subject to a new action. [Cases: Courts 30. C.J.S. Courts §§ 71–73.] 2. Family law. The rule that once a court has acquired jurisdiction over a child-custody or support case, that court continues to have jurisdiction to modify orders, even if the child or a parent moves to another state. [Cases: Child Custody 745; Child Support 507. C.J.S. Parent and Child §§ 205, 246, 251–253.]

CONTINUING LEGAL EDUCATION

continuing legal education. 1. The process or system through which lawyers extend their learning beyond their law-school studies, usu. by attending seminars designed to sharpen lawyering skills or to provide updates on legal developments within particular practice areas. • In some jurisdictions, lawyers have annual or biennial requirements to devote a given number of hours (usu. 12–15) to continuing legal education. [Cases: Attorney and Client 9. C.J.S. Attorney and Client §§ 24–25.] 2. The enhanced skills or knowledge derived from this process. 3. The business field in which educational providers supply the demand for legal seminars, books, audiotapes, and videotapes designed to further the education of lawyers. — Abbr. CLE.

CONTINUING NUISANCE

continuing nuisance. See NUISANCE.

CONTINUING OBJECTION

continuing objection. See OBJECTION.

CONTINUING OFFENSE

continuing offense. See OFFENSE(1).

CONTINUING PART-TIME JUDGE

continuing part-time judge. See JUDGE.

CONTINUING THREAT OF HARM

continuing threat of harm. A condition or situation that presents a high risk of injury at intervals or over an extended period, whether or not an injury has actually occurred. • The condition or situation can be a behavior that is subject to repetition, as with unfair-competition practices or stalking, or an enduring state, such as environmental contamination. — Also termed threat of continuing harm; continuing threat of injury; threat of continuing injury. Cf. continuing injury under INJURY.

CONTINUING TRESPASS

continuing trespass. See TRESPASS.

CONTINUING-VIOLATION DOCTRINE

continuing-violation doctrine. Employment law. The judge-made rule that if an employer's discriminatory acts are of an ongoing nature, the statute of limitations will be extended to allow the plaintiff to recover even when a claim based on those acts would otherwise be time-barred.

CONTINUING WARRANTY

continuing warranty. See promissory warranty under WARRANTY(3).

CONTINUING WRONG

continuing wrong. See WRONG.

CONTINUITY

continuity (kon-ti-n[y]oo-<<schwa>>-tee). 1. Int'l law. The principle that upheavals and revolutions within a country — as well as changes in governmental forms, the extent of a country's territory, and measures taken during a military occupation — do not affect the existence of the country and therefore cannot lead to its extinction. 2. Patents. The rule that a continuation or divisional patent application carries the effective filing date of its parent application if (1) the parent application fully discloses the same invention, (2) there is at least one common inventor, and (3) the parent application was still pending when the latter application was filed. • A continuation-in-part application carries the effective filing date for everything disclosed in the parent application, but not for new material. 35 USCA § 120. — Also termed doctrine of continuity. Cf. HIATUS. [Cases: Patents 110. C.J.S. Patents § 156.]

CONTINUITY OF BUSINESS ENTERPRISE

continuity of business enterprise. A doctrine covering acquisitive reorganizations whereby the acquiring corporation must continue the target corporation's historical business or must use a significant portion of the target's business assets in a new business to qualify the exchange as a tax-deferred transaction. [Cases: Corporations 445.1. C.J.S. Corporations § 657.]

CONTINUITY-OF-ENTERPRISE DOCTRINE

continuity-of-enterprise doctrine. See SUBSTANTIAL-CONTINUITY DOCTRINE.

CONTINUITY-OF-ENTITY DOCTRINE

continuity-of-entity doctrine. See MERE-CONTINUATION DOCTRINE.

CONTINUITY OF EXISTENCE

continuity of existence. See CONTINUITY-OF-LIFE DOCTRINE.

CONTINUITY OF INTEREST

continuity of interest. 1. A doctrine covering acquisitive reorganizations whereby a target corporation's shareholders must retain a share in the acquiring corporation to qualify the exchange as a tax-deferred transaction. 2. A judicial requirement for divisive reorganizations whereby a target corporation's shareholders must retain an interest in both the distributing and the controlled corporations to qualify the exchange as a tax-deferred transaction. [Cases: Internal

Revenue 3677.]

CONTINUITY-OF-LIFE DOCTRINE

continuity-of-life doctrine. The principle that the withdrawal, incapacity, bankruptcy, or death of the owner of an entity (esp. a corporation) does not end the entity's existence. — Also termed continuity of existence. [Cases: Corporations 36. C.J.S. Corporations § 52.]

CONTINUOUS-ADVERSE-USE PRINCIPLE

continuous-adverse-use principle. The rule that the uninterrupted use of land — along with the other elements of adverse possession — will result in a successful claim for adverse possession. — Also termed uninter-rupted-adverse-use principle. See ADVERSE POSSESSION. [Cases: Adverse Possession 44. C.J.S. Adverse Possession §§ 149–150, 332.]

CONTINUOUS CRIME

continuous crime. See CRIME.

CONTINUOUS EASEMENT

continuous easement. See EASEMENT.

CONTINUOUS INJURY

continuous injury. See continual injury under INJURY.

CONTINUOUS-OPERATIONS CLAUSE

continuous-operations clause. Oil & gas. A provision in an oil-and-gas lease giving the lessee the right to continue any drilling well that was begun before the lease expired and to begin drilling more wells. See OPERATIONS CLAUSE .

CONTINUOUS POLICY

continuous policy. See INSURANCE POLICY.

CONTINUOUS-REPRESENTATION DOCTRINE

continuous-representation doctrine. The principle that the limitations period for bringing a legal-malpractice action is tolled as long as the lawyer continues the representation that is related to the negligent act or omission. [Cases: Limitation of Actions 55(3). C.J.S. Limitations of Actions §§ 159, 166, 171–175; Physicians, Surgeons, and Other Health-Care Providers § 108.]

CONTINUOUS SERVITUDE

continuous servitude. See continuous easement under EASEMENT.

CONTINUOUS-TREATMENT DOCTRINE

continuous-treatment doctrine. The principle that the limitations period for bringing a medical-malpractice action is tolled while the patient continues treatment that is related to the negligent act or omission. [Cases: Limitation of Actions 55(3). C.J.S. Limitations of Actions §§

159, 166, 171–175; Physicians, Surgeons, and other Health–Care Providers § 108.]

CONTINUOUS TRIGGER

continuous trigger. See TRIPLE TRIGGER.

CONTIO

contio (kon-shee-oh), n. [Latin] Roman law. 1. A public meeting to which participants have been summoned by a magistrate. 2. A speech delivered at a public meeting. — Also spelled concio. Pl. contiones (kon-shee-oh-nee-z).

CONTORT

contort (kon-tort), n.1. (usu. pl.) The overlapping domain of contract law and tort law.

“I have occasionally suggested to my students that a desirable reform in legal education would be to merge the first-year courses in Contracts and Torts into a single course which we could call Contorts.” Grant Gilmore, *The Death of Contract* 90 (1974).

2. A specific wrong that falls within that domain. 3. Informal. A constitutional tort. See constitutional tort under TORT.

CONTRA

contra (kon-tr<<schwa>>), prep. Against or contrary to. • As a citation signal, contra denotes that the cited authority supports a contrary view. In old law reports, contra often identifies the defendant's attorney (pro que-rente refers to the plaintiff's).

“Observe in the note citing cases in support of a proposition mentioned in the text whether any of the cases follow the word contra, which means that a contrary rule has been laid down in them.” Frank Hall Childs, *Where and How to Find the Law* 78–79 (1922).

CONTRA ACCOUNT

contra account. See ACCOUNT.

CONTRABAND

contraband (kon-tr<<schwa>>-band), n.1. Illegal or prohibited trade; smuggling. 2. Goods that are unlawful to import, export, or possess. — contraband, adj.

absolute contraband. Goods used primarily for war, such as arms and ammunition, as well as clothing and equipment of a military character.

conditional contraband. Goods susceptible of being used for warlike and peaceful purposes, such as coal and food. — Also termed ancipitis usus (an-sip-i-t<<schwa>>s yoo-s<<schwa>>s).

contraband per se. Property whose possession is unlawful regardless of how it is used. Cf. derivative contraband.

derivative contraband. Property whose possession becomes unlawful when it is used in

committing an illegal act. Cf. *contraband per se*.

CONTRA BONOS MORES

contra bonos mores (kon-tr<<schwa>> boh-nohs mor-eez). [Latin “against good morals”] Offensive to the conscience and to a sense of justice. • Contracts *contra bonos mores* are voidable. — Also termed *contra bonos mores et decorum*; *adversus bonos mores*.

“Whatever is *contra bonos mores et decorum*, the principles of our law prohibit, and the King's court, as the general censor and guardian of the public manners, is bound to restrain and punish.” *Jones v. Randall*, 98 E.R. 706, 707 (1774)(per Mansfield, C.J.).

CONTRACAUSATOR

contracausator (kon-tr<<schwa>>-kaw-zay-t<<schwa>>r).Hist. A criminal; a person prosecuted for a crime.

CONTRACEPTIVISM

contraceptivism.Hist. The criminal offense of distributing or prescribing contraceptives.

CONTRACT

contract,n.1. An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law <a binding contract>. [Cases: Contracts 1. C.J.S. Contracts §§ 2, 9, 12.] 2. The writing that sets forth such an agreement <a contract is valid if valid under the law of the residence of the party wishing to enforce the contract>.

“The term *contract* has been used indifferently to refer to three different things: (1) the series of operative acts by the parties resulting in new legal relations; (2) the physical document executed by the parties as the lasting evidence of their having performed the necessary operative acts and also as an operative fact in itself; (3) the legal relations resulting from the operative acts, consisting of a right or rights in personam and their corresponding duties, accompanied by certain powers, privileges, and immunities. The sum of these legal relations is often called ‘obligation.’ The present editor prefers to define *contract* in sense (3)” William R. Anson, *Principles of the Law of Contract* 13 n.2 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“A *contract* is a promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. This definition may not be entirely satisfactory since it requires a subsequent definition of the circumstances under which the law does in fact attach legal obligation to promises. But if a definition were attempted which should cover these operative facts, it would require compressing the entire law relating to the formation of contracts into a single sentence.” Samuel Williston, *A Treatise on the Law of Contracts* § 1, at 1–2 (Walter H.E. Jaeger ed., 3d ed. 1957) (footnote omitted).

“The term ‘*contract*’ is also used by lay persons and lawyers alike to refer to a document in which the terms of a contract are written. Use of the word in this sense is by no means improper so long as it is clearly understood that rules of law utilizing the concept ‘*contract*’ rarely refer to the writing itself. Usually, the reference is to the agreement; the writing being merely a memorial of

the agreement.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 1.1, at 3 (4th ed. 1998).

3. A promise or set of promises by a party to a transaction, enforceable or otherwise recognizable at law; the writing expressing that promise or set of promises <when the lessor learned that the rooms were to be used for the delivery of blasphemous lectures, he declined to carry out his contract>. See Restatement (Second) of Contracts § 2 (1979). “The promissory element present in every contract is stressed in a widely quoted definition: ‘A contract is a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.’ [1 Samuel Williston, *Contracts* § 1.1 (4th ed. 1990).] This, like similar definitions, is somewhat misleading. While it is true that a promise, express or implied, is a necessary element in every contract, frequently the promise is coupled with other elements such as physical acts, recitals of fact, and the immediate transfer of property interests. In ordinary usage the contract is not the promise alone, but the entire complex of these elements.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 1.1, at 1–2 (4th ed. 1998).

4. Broadly, any legal duty or set of duties not imposed by the law of tort; esp., a duty created by a decree or declaration of a court <an obligation of record, as a judgment, recognizance, or the like, is included within the term “contract”>.5. The body of law dealing with agreements and exchange <the general theory of contract>.6. The terms of an agreement, or any particular term <there was no express contract about when the money was payable>.7. Loosely, a sale or conveyance. “Sometimes the word ‘contract’ is used to designate a transaction involving the exchange of goods or land for money. When money is exchanged for goods, this constitutes a sale. When money is exchanged for land, this constitutes a conveyance. Sales and conveyances may be the result of a previous contract but they are not the contracts in themselves. There is no undertaking or commitment to do or refrain from doing anything in the future. This indispensable element of contract is missing.” John Edward Murray Jr., *Murray on Contracts* § 2, at 5 (2d ed. 1974).

8. Loosely, an enforceable agreement between two or more parties to do or not to do a thing or set of things; a compact <when they finally agreed, they had a contract>. — contract, vb. — contractual, adj.

absolute simulated contract. Civil law. A simulated contract that the parties intend to be wholly ineffective. La. Civ. Code art. 2026. See simulated contract.

accessory contract. A contract entered into primarily for the purpose of carrying out a principal contract. • The principal types are suretyship, indemnity, pledge, warranty, and ratification. Cf. principal contract.

adhesion contract. A standard-form contract prepared by one party, to be signed by the party in a weaker position, usu. a consumer, who adheres to the contract with little choice about the terms. — Also termed contract of adhesion; adhesive contract; adhesory contract; adhesiory contract; take-it-or-leave-it contract; leonine contract. [Cases: Contracts 1. C.J.S. *Contracts* §§ 2–3, 9, 12.]

“Some sets of trade and professional forms are extremely one-sided, grossly favoring one interest group against others, and are commonly referred to as contracts of adhesion. From weakness in bargaining position, ignorance, or indifference, unfavored parties are willing to enter transactions controlled by these lopsided legal documents.” Quintin Johnstone & Dan Hopson Jr., *Lawyers and Their Work* 329–30 (1967).

“Dangers are inherent in standardization ... for it affords a means by which one party may impose terms on another unwitting or even unwilling party. Several circumstances facilitate this imposition. First, the party that proffers the form has had the advantage of time and expert advice in preparing it, almost inevitably producing a form slanted in its favor. Second, the other party is usually completely or at least relatively unfamiliar with the form and has scant opportunity to read it — an opportunity often diminished by the use of fine print and convoluted clauses. Third, bargaining over terms of the form may not be between equals or, as is more often the case, there may be no possibility of bargaining at all. The form may be used by an enterprise with such disproportionately strong economic power that it simply dictates the terms. Or the form may be a take-it-or-leave-it proposition, often called a contract of adhesion, under which the only alternative to complete adherence is outright rejection.” E. Allan Farnsworth, *Contracts* § 4.26, at 296–97 (3d ed. 1999).

aleatory contract (ay-lee-<<schwa>>-tor-ee). [fr. Latin *aleator* “gambler,” fr. *alea* “the throwing of dice”] A contract in which at least one party's performance depends on some uncertain event that is beyond the control of the parties involved. • Most insurance contracts and life annuities are of this type. — Also termed hazardous contract; wagering contract. Cf. certain contract. [Cases: Contracts 218; Insurance 1713. C.J.S. Contracts §§ 355, 358; Insurance §§ 253, 272, 285.]

“A contract is aleatory when, because of the nature or according to the parties' intent, the performance of either party's obligation, or the extent of the performance, depends on an uncertain event.” La. Civ. Code art. 1912.

alternative contract. A contract in which the performing party may elect to perform one of two or more specified acts to satisfy the obligation; a contract that provides more than one way for a party to complete performance, usu. permitting that party to choose the manner of performance. — Also termed alternative-methods-of-performance contract. [Cases: Contracts 172. C.J.S. Contracts §§ 341, 506; Trading Stamps and Coupons §§ 7–9.]

assessment contract. A contract in which the payment of a benefit is dependent on the collection of an assessment levied on persons holding similar contracts. See assessment insurance under INSURANCE. [Cases: Insurance 2080.]

best-efforts contract. A contract in which a party undertakes to use best efforts to fulfill the promises made rather than to achieve a specific result; a contract in which the adequacy of a party's performance is measured by the party's ability to fulfill the specified obligations. • Although the obligor must use best efforts, the risk of failure lies with the obligee. To be enforceable, a best-efforts term must generally set some kind of goal or guideline against which the efforts may be measured. See BEST EFFORTS. [Cases: Contracts 189. C.J.S. Contracts §§

341–342.]

bilateral contract. A contract in which each party promises a performance, so that each party is an obligor on that party's own promise and an obligee on the other's promise; a contract in which the parties obligate themselves reciprocally, so that the obligation of one party is correlative to the obligation of the other. — Also termed mutual contract; reciprocal contract; (in civil law) synallagmatic contract. See COUNTERPROMISE. [Cases: Contracts 1, 10(1). C.J.S. Contracts §§ 2–3, 9, 12, 105–106, 108–113.]

“In a bilateral contract a promise, or set of promises on one side, is exchanged for a promise or a set of promises on the other side. In a unilateral contract, on the other hand, a promise on one side is exchanged for an act (or a forbearance) on the other side. Typical examples of bilateral contracts are contracts of sale, the buyer promising to pay the price and the seller promising to deliver the goods. A typical example of a unilateral contract is a promise of a reward for the finding of lost property followed by the actual finding of the property.” P.S. Atiyah, *An Introduction to the Law of Contract* 32 (3d ed. 1981).

blanket contract. A contract covering a group of products, goods, or services for a fixed period.

bona fide contract (boh-n<<schwa>> fīd orfī-dee). A contract in which equity may intervene to correct inequities and to adjust matters according to the parties' intentions.

build-to-print contract. A contract requiring the contractor to build a product according to exact technical specifications provided by the customer. • The design specifications are explicit and are often coupled with performance specifications, so the contractor has little discretion in how to perform. Much governmental contracting is build-to-print. — Also termed design-specification contract. Cf. performance contract (1).

certain contract. A contract that will be performed in a stipulated manner. Cf. aleatory contract.

collateral contract. A side agreement that relates to a contract, which, if unintegrated, can be supplemented by evidence of the side agreement; an agreement made before or at the same time as, but separately from, another contract. See COLLATERAL-CONTRACT DOCTRINE. [Cases: Evidence 440. C.J.S. Evidence §§ 1249–1251, 1283.]

“The term ‘collateral contract’ has no very precise meaning in the law. It is generally used as a label for a contract which is collateral, or by the side of, another contract. A great many examples of implied or constructive contracts created by the Courts are collateral in a broad sense.... [A]lthough the normal presumption is that the parties intend a written contract to be exclusive evidence of their intentions, it is always open to a party to show that in fact the writing did not exclusively represent their intentions, because of a ‘collateral’ contract made during the negotiations but not incorporated in the written instrument.” P.S. Atiyah, *An Introduction to the Law of Contract* 80–81, 161 (3d ed. 1981).

commutative

contract

(k<<schwa>>-myoo-t<<schwa>>-tiv

orkom-y<<schwa>>-tay-tiv). Civil law. A contract in which one party's performance is correlative to the performance of the other, so that nonperformance by either affords a defense to the other. La. Civ. Code art. 1911. Cf. independent contract; synallagmatic contract.

conditional contract. An agreement that is enforceable only if another agreement is performed or if another particular prerequisite or condition is satisfied. — Also termed hypothetical contract. [Cases: Contracts 218. C.J.S. Contracts §§ 355, 358.]

conditional sales contract. See retail installment contract.

consensual contract. Hist. A contract arising from the mere consensus of the parties, without any formal or symbolic acts performed to fix the obligation. • Although the consensual contract was known to the common law, it originated in Roman law, where it embraced four types of contracts in which informal consent alone was sufficient: (1) an agency agreement (*mandatum*), (2) a partnership agreement (*societas*), (3) a sale (*emptio venditio*), or (4) a letting or hiring (*locatio conductio*). Cf. real contract.

“[T]he peculiarity of these Consensual Contracts is that no formalities are required to create them out of the Pact. Much that is indefensible, and much more that is obscure, has been written about the Consensual Contracts, and it has even been asserted that in them the consent of the Parties is more emphatically given than in any other species of agreement. But the Consensual merely indicates that the Obligation is here annexed at once to the Consensus. The Consensus, or mutual assent of the parties, is the final and crowning ingredient in the Convention, and it is the special characteristic of agreements falling under one of the four heads of Sale, Partnership, Agency, and Hiring, that, as soon as the assent of the parties has supplied this ingredient, there is at once a Contract. The Consensus draws with it the Obligation, performing, in transactions of the sort specified, the exact functions which are discharged, in the other contracts, by the Res or Thing ...” Henry S. Maine, *Ancient Law* 322–23 (10th ed. 1884).

construction contract. A contract setting forth the specifications for a building project's construction. • This type of contract is usually secured by performance and payment bonds to protect both the owner and the subcontractors. [Cases: Contracts 198.]

constructive contract. See implied-in-law contract.

continuing contract. A contract calling for periodic performances. [Cases: Contracts 216. C.J.S. Contracts § 421.]

contract for deed. A conditional sales contract for the sale of real property. — Also termed installment land contract; land sales contract; land contract. [Cases: Vendor and Purchaser 54. C.J.S. Vendor and Purchaser §§ 145–146.]

contract for sale. 1. A contract for the present transfer of property for a price. — Also termed contract of sale. [Cases: Sales 1(1). C.J.S. Sales §§ 2, 9, 29, 48.] 2. A contract to sell goods at a future time. — Also termed (in sense 2) contract to sell.

contract implied in fact. See implied-in-fact contract.

contract implied in law. See implied-in-law contract.

contract of adhesion. See adhesion contract.

contract of affreightment. See CONTRACT OF AFFREIGHTMENT.

contract of beneficence. See gratuitous contract.

contract of benevolence. See gratuitous contract.

contract of carriage. See CONTRACT OF AFFREIGHTMENT.

contract of indemnity. See indemnity contract.

contract of insurance. See INSURANCE POLICY.

contract of marriage. See marriage contract.

contract of record. A contract that is declared by a court and entered into the court's record. • Contracts of record include judgments, recognizances, and (in England) statutes staple.

“Contracts of record are not really contracts at all, but are transactions which, being entered on the records of certain courts called ‘courts of record,’ are conclusive proof of the facts thereby appearing, and could formerly be enforced by action of law as if they had been put in the shape of a contract.” 1 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 282 (1883).

“A contract of record is in point of fact no contract at all, and has nothing whatever to do with the law of contracts. These so-called contracts are the obligations incurred by a judgment or recognizance of a Court of Record. They came to be called contracts only because they were enforceable by the same type of action as was used for genuinely contractual cases in the old common-law system of procedure.” P.S. Atiyah, *An Introduction to the Law of Contract* 31 (3d ed. 1981).

contract of sale. See contract for sale (1).

contract to pledge. 1. An agreement purporting to create a present pledge without a bailment. 2. An agreement to make a future bailment for the purpose of security. See PLEDGE(3).

contract to satisfaction. See satisfaction contract.

contract to sell. See contract for sale (2).

contract uberrimae fidei (yoo-ber-<<schwa>>-mee fi-dee-I). A contract in which the parties owe each other duties with the utmost good faith. [Cases: Insurance 1867, 2996. C.J.S. Insurance § 377.]

“In a certain restricted group of contracts good faith is peculiarly necessary owing to the relationship between the parties, and in these cases — known as contracts uberrimae fidei — there is a full duty to disclose all material facts. The typical instance of such contracts is the contract of insurance. Here the duty to disclose all material facts to the insurer arises from the fact that many

of the relevant circumstances are within the exclusive knowledge of one party, and it would be impossible for the insurer to obtain the facts necessary for him to make a proper calculation of the risk he is asked to assume without this knowledge.” P.S. Atiyah, *An Introduction to the Law of Contract* 221–22 (3d ed. 1981).

contract under seal. A formal contract that requires no consideration and has the seal of the signer attached. • A contract under seal must be in writing or printed on paper or parchment and is conclusive between the parties when signed, sealed, and delivered. Delivery is made either by actually handing it to the other party (or party's representative) or by stating an intention that the deed be operative even though it is retained in the possession of the party executing it. Modern statutes have mostly eliminated the special effects of a sealed contract. — Also termed sealed contract; special contract; deed; covenant; specialty; specialty contract; common-law specialty. See SEAL. [Cases: Contracts 48. C.J.S. Contracts § 85.]

“The only formal contract of English law is the contract under seal, sometimes also called a deed and sometimes a specialty. It is the only formal contract, because it derives its validity neither from the fact of agreement, nor from the consideration which may exist for the promise of either party, but from the form in which it is expressed.” William R. Anson, *Principles of the Law of Contract* 82 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“Contracts under seal also bear little resemblance to ordinary contracts, although here at least the liability is based on a promise. A contract under seal, that is to say a deed, ... is a written promise or set of promises which derives its validity from the form, and the form alone, of the executing instrument. In point of fact the ‘form’ of the deed is nowadays surprisingly elastic. The only necessities are that the deed should be intended as such, and should be signed, sealed, and delivered. The sealing, however, has now become largely a fiction, an adhesive wafer simply being attached to the document in place of a genuine seal. Similarly, ‘delivery’ is not literally necessary, provided that there is a clear intention that the deed should be operative.” P.S. Atiyah, *An Introduction to the Law of Contract* 31 (3d ed. 1981).

cost-plus contract. A contract in which payment is based on a fixed fee or a percentage added to the actual cost incurred. [Cases: Contracts 229(2). C.J.S. Contracts § 386.]

de facto contract of sale. A contract that purports to pass property but is defective in some element.

dependent contract. A contract conditioned or dependent on another contract.

deposit contract. An agreement between a financial institution and its customer governing the treatment of deposited funds and the payment of checks and other demands against the customer's account. [Cases: Banks and Banking 133, 137–155. C.J.S. Banks and Banking §§ 266–268, 277–278, 283–287, 290, 294–300, 320–321, 326–335, 342–381, 393, 399, 401, 415–423, 425–444, 455.]

design-specification contract. See build-to-print contract.

destination contract. A contract in which a seller bears the risk of loss until the goods arrive at

the destination. UCC § 2-509. Cf. shipment contract. [Cases: Sales 201(4). C.J.S. Sales §§ 224–227.]

discharged contract. See void contract (2).

divisible contract. See severable contract.

dual contract. A contract between parties who have made two contracts for the same transaction, sometimes so that one may be used to defraud another (such as a lender) as to the terms of the parties' actual agreement.

electronic contract. See E-CONTRACT.

employment contract. A contract between an employer and employee in which the terms and conditions of employment are stated. [Cases: Master and Servant 2. C.J.S. Apprentices § 2; Employer–Employee Relationship §§ 21, 25–26.]

engineering, procurement, and construction contract. A fixed-price, schedule-intensive construction contract — typically used in the construction of single-purpose projects, such as energy plants — in which the contractor agrees to a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement, and construction of the facility; to prepare start-up procedures; to conduct performance tests; to create operating manuals; and to train people to operate the facility. — Abbr. EPC contract. — Also termed turnkey contract. See SINGLE-PURPOSE PROJECT.

entire-output contract. See output contract.

escrow contract. The agreement among buyer, seller, and escrow holder, setting forth the rights and responsibilities of each. See ESCROW. [Cases: Deposits and Escrows 13, 15. C.J.S. Depositories §§ 15–17; Escrows §§ 6, 8–10.]

evergreen contract. A contract that renews itself from one term to the next in the absence of contrary notice by one of the parties.

executed contract. 1. A contract that has been fully performed by both parties. [Cases: Contracts 6; Sales 197; Vendor and Purchaser 53. C.J.S. Contracts § 8; Sales §§ 214, 223; Vendor and Purchaser §§ 144, 146.] 2. A signed contract. [Cases: Contracts 34. C.J.S. Contracts –§ 73–74, 700.]

executory contract (eg-zek-y<<schwa>>-tor-ee). 1. A contract that remains wholly unperformed or for which there remains something still to be done on both sides, often as a component of a larger transaction and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement. [Cases: Contracts 6; Sales 197; Vendor and Purchaser 53. C.J.S. Contracts § 8; Sales §§ 214, 223; Vendor and Purchaser §§ 144, 146.]

“If a contract is wholly executory, and the legal duties of the parties are as yet unfulfilled, it can be discharged by mutual consent, the acquittance of each from the other's claims being the consideration for the promise of each to waive his own.” William R. Anson, *Principles of the Law of Contract* 138 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2.Bankruptcy. A contract under which debtor and nondebtor each have unperformed obligations and the debtor, if it ceased further performance, would have no right to the other party's continued performance. [Cases: Bankruptcy 3106. C.J.S. Bankruptcy § 218.]

express contract.A contract whose terms the parties have explicitly set out. — Also termed special contract. Cf. implied contract. [Cases: Contracts 3. C.J.S. Contracts §§ 5, 7.]

financial contract.Securities. An arrangement that (1) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets; (2) involves securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function; and (3) is entered into in response to a request from a counterparty for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counterparty to such an arrangement.

fixed-price contract.A contract in which the buyer agrees to pay the seller a definite and predetermined price regardless of increases in the seller's cost or the buyer's ability to acquire the same goods in the market at a lower price. [Cases: Sales 77. C.J.S. Sales §§ 26, 96–98.]

formal contract.A contract made through the observance of certain prescribed formalities. • Among the formal contracts are the contract under seal, the recognizance, the negotiable instrument, and the letter of credit. Cf. informal contract; formal agreement under AGREEMENT.

forward contract.An agreement to buy or sell a particular nonstandardized asset (usu. currencies) at a fixed price on a future date. • Unlike a futures contract, a forward contract is not traded on a formal exchange. — Also termed forward agreement. Cf. FUTURES CONTRACT.

futures contract.See FUTURES CONTRACT.

gambling contract.An agreement to engage in a gamble; a contract in which two parties wager something, esp. money, for a chance to win a prize. • Where gambling is legal, contracts related to legal gambling activities are enforceable. — Also termed gaming contract. See wagering contract. [Cases: Gaming 25.]

“Generally, under or apart from statutes so providing, or prohibiting such contracts or transactions, gambling contracts and transactions are illegal and void and cannot be enforced; and such contracts are void ab initio.... A gambling contract is invalid, no matter what outward form it may assume, and no ingenuity can make it legal.” 38 C.J.S. Gaming § 26, at 138–39 (1996).

government contract.A contract to which a government or government agency is a party, esp. for the purchase of goods and services. See procurement contract.

gratuitous contract (gr<<schwa>>-t[y]oo-i-t<<schwa>>s).1. A contract made for the benefit of a promisee who does not give consideration to the promisor. — Also termed contract of beneficence; contract of benevolence. Cf. onerous contract. 2.Civil law. A contract in which one party promises to give a benefit to the other party without expecting or gaining any benefit in return. — Also termed voluntary contract.

grubstake contract.A contract between two parties in which one party provides the grubstake — money and supplies — and the other party prospects for and locates mines on public land. • Each party acquires an interest in the mine as agreed to in the contract. Grubstake contracts are used chiefly in the western United States. In some states, such as Alaska, a request for grubstake money is considered the offer of a security and must be registered. — Also termed grubstaking contract. [Cases: Mines and Minerals 101. C.J.S. Mines and Minerals §§ 396–401.]

guaranteed-sale contract.A contract between a real-estate agency and a property owner in which the agency agrees to buy the property at a guaranteed price after a specified length of time if it has not been sold under the listing agreement. • The guaranteed price is usu. a substantial discount from the listed price. — Also termed guaranteed-purchase contract.

guaranty contract.See GUARANTY(1).

hazardous contract.See aleatory contract.

hypothetical contract.See conditional contract.

illegal contract.A promise that is prohibited because the performance, formation, or object of the agreement is against the law. • Technically speaking, an illegal contract is not a contract at all, so the phrase is a misnomer. Cf. unenforceable contract; void contract. [Cases: Contracts 103. C.J.S. Contracts §§ 195–200, 213–214.]

“An illegal contract is exceptionally difficult to define. It does not merely mean a contract contrary to the criminal law, although such a contract would indubitably be illegal. But a contract can well be illegal without contravening the criminal law, because there are certain activities which the law does not actually prohibit, but at the same time regards as contrary to the public interest and definitely to be discouraged, for instance, prostitution. While a void contract is not necessarily illegal, an illegal contract is often void. However, the consequences of an illegal contract differ somewhat from those usually produced by a simply void contract, so illegal contracts are usually accorded separate treatment.” P.S. Atiyah, *An Introduction to the Law of Contract* 38 (3d ed. 1981).

illusory contract.An agreement in which one party gives as consideration a promise that is so insubstantial as to impose no obligation. • The insubstantial promise renders the contract unenforceable. [Cases: Contracts 10. C.J.S. Contracts § 108.]

immoral contract.A contract that so flagrantly violates societal norms as to be unenforceable. [Cases: Contracts 112. C.J.S. Contracts §§ 275–276.]

implied contract. 1. An implied-in-law contract. [Cases: Implied and Constructive Contracts 1. C.J.S. Im-plied and Constructive Contracts §§ 2–3.] 2. An implied-in-fact contract. Cf. express contract. [Cases: Contracts 27. C.J.S. Contracts § 6.]

implied-in-fact contract.A contract that the parties presumably intended as their tacit understanding, as inferred from their conduct and other circumstances. — Also termed contract implied in fact. [Cases: Contracts 27. C.J.S. Contracts § 6.]

implied-in-law contract. An obligation created by law for the sake of justice; specif., an obligation imposed by law because of some special relationship between them, or because one of them would otherwise be unjustly enriched. • An implied-in-law contract is not actually a contract, but instead a remedy that allows the plaintiff to recover a benefit conferred on the defendant. — Also termed contract implied in law; quasi-contract; constructive contract. See UNJUST ENRICHMENT. [Cases: Implied and Constructive Contracts 1. C.J.S. Implied and Constructive Contracts §§ 2–3.]

“[A]dventurous courts have turned to the idea of a ‘contract implied in law,’ a ‘quasi-contract’ — not really a contract, a legal fiction necessary to promote the ends of justice and, in particular, to prevent ‘unjust enrichment.’” Grant Gilmore, *The Death of Contract* 73–74 (1974).

“Since ... claims for the redress of unjust enrichment did not fit comfortably into either the category of contract or that of tort, they came to be described as claims in quasi-contract. Some of them were originally characterized as being in quantum meruit (as much as he deserved), a form of action used for claims to payment for services. This procedural term has persisted and is sometimes used inexactly as a synonym for the more general term quasi-contract, which refers to any money claim for the redress of unjust enrichment.” E. Allan Farnsworth, *Contracts* § 2.20, at 103 (2d ed. 1990).

impossible contract. A contract that the law will not enforce because there is no feasible way for one of the parties to perform. See IMPOSSIBILITY(3). [Cases: Contracts 309. C.J.S. Contracts §§ 520–522, 524.]

indemnity contract. A contract by which the promisor agrees to reimburse a promisee for some loss irrespective of a third person's liability. — Also termed contract of indemnity.

independent contract. A contract in which the mutual acts or promises of the parties have no relation to each other, either as equivalents or as considerations. Cf. commutative contract.

informal contract. 1. A contract other than one under seal, a recognizance, or a negotiable instrument; specif., that derives its force not from the observance of formalities but because of the presence in the transaction of certain elements that are usually present when people make promises with binding intent — namely, mutual assent and consideration (or a device other than consideration). • An informal contract may be made with or without a writing. Most modern contracts are informal. — Also termed bargain; simple contract. 2. See parol contract.

“In general, there are five essential elements to the formation of an informal contract. These are: (1) mutual assent; (2) consideration or some other validation device; (3) two or more contracting parties (no person may contract with himself); (4) parties having legal capacity to contract; (5) the absence of any statute or common-law rule declaring the particular transaction to be void. The fourth and fifth elements are essential to the creation of any contract, formal or informal. The first, second and third elements are essential to the formation of informal contracts.” John Edward Murray Jr., *Murray on Contracts* § 17, at 28 (2d ed. 1974).

innominate contract (i-nom-<<schwa>>-nit). Roman & civil law. A contract not classifiable

under any particular name; a contract for which the law supplies nothing in addition to the express agreement of the parties. La. Civ. Code art. 1914. • This type of contract was developed late in classical Roman law. Although the agreements were reciprocal, they did not become operational without at least part performance. — Also termed innominate real contract. Cf. nominate contract.

installment contract. A contract requiring or authorizing the delivery of goods in separate lots, or payments in separate increments, to be separately accepted. • Under the UCC, this type of agreement will be considered one contract even if it has a clause stating that each delivery is a separate contract. UCC § 2-612. [Cases: Sales 163, 192. C.J.S. Sales § 181.]

installment land contract. See contract for deed.

integrated contract. See INTEGRATED CONTRACT.

invalid contract. A contract that is either void or voidable. — Also termed invalid agreement. [Cases: Contracts 98. C.J.S. Contracts §§ 137, 139–140, 145, 153–155, 157, 171, 173–174, 185, 188.]

investment contract. See INVESTMENT CONTRACT.

joint contract. A contract in which two or more promisors are together bound to fulfill its obligations, or one in which two or more promisees are together entitled to performance. Cf. severable contract. [Cases: Contracts 181. C.J.S. Contracts §§ 366, 371.]

land contract. See contract for deed.

land sales contract. See contract for deed.

leonine contract. See adhesion contract.

letter contract. In federal contract law, a written contract with sufficient provisions to permit the contractor to begin performance. [Cases: Contracts 26. C.J.S. Contracts §§ 61–62, 64.]

leverage contract. See LEVERAGE CONTRACT.

literal contract. 1. Roman law. A type of written contract originally created by — and later evidenced by — an entry of the sum due on the debit side of a ledger, binding a signatory even though the signatory receives no consideration. • Literal contracts were often used for novations. See LITTERIS OBLIGATIO.

“Though an obligation could be created by a literal contract in the time of Gaius, the so-called literal contract of Justinian was not, in itself, a means of creating an obligation, but was the evidence of an obligation created in some other way The true literal contract, as described by Gaius, may be defined as a means of creating an obligation to pay money by a fictitious entry ... in the creditor's account book ... with the consent of the intended debtor. A, with B's consent, enters the fact that B is indebted to him ... and thereupon B is under an obligation to pay, though no money has passed between them.” R.W. Leage, *Roman Private Law* 316–17 (C.H. Ziegler ed., 2d ed. 1930).

2. Civil law. A contract fully evidenced by a writing and binding on the signatory.

marine contract. See maritime contract.

maritime contract. A contract that is recognized in admiralty jurisdiction. • In general, a maritime contract relates to a vessel in its use as such, to navigation on navigable waters, to transportation by sea, or to maritime employment. — Also termed marine contract.

marketing contract. 1. A business's agreement with an agency or other association for the promotion of sales of the business's goods or services. 2. An agreement between a cooperative and its members, by which the members agree to sell through the cooperative, and the cooperative agrees to obtain an agreed price.

marriage contract. A form of mutual consent required for a matrimonial relationship to exist according to the law of the place where the consent takes place. — Also termed contract of marriage.

mixed contract. 1. Civil law. A contract in which the respective benefits conferred are unequal. 2. A contract for both the sale of goods and services. • The UCC may apply to a mixed contract if the predominant purpose is for the sale of goods. [Cases: Sales 3.1. C.J.S. Sales §§ 3–4.]

mutual contract. See bilateral contract.

naked contract. See NUDUM PACTUM.

nominate contract (nom-<<schwa>>-nit). Civil law. A contract distinguished by a particular name, such as sale, insurance, or lease, the very use of which determines some of the rules governing the contract and the contractual rights of the parties, without the need for special stipulations. • The contracts are generally divided into four types: (1) real (arising from something done), (2) oral (arising from something said), (3) literal (arising from something written), and (4) consensual (arising from something agreed to). La. Civ. Code art. 1914. Cf. innominate contract.

nude contract. See NUDUM PACTUM.

onerous contract. Civil law. A contract in which each party is obligated to perform in exchange for each party's promise of performance. La. Civ. Code art. 1909. Cf. gratuitous contract.

option contract. See OPTION(2).

oral contract. See parol contract (1).

output contract. A contract in which a seller promises to supply and a buyer to buy all the goods or services that a seller produces during a specified period and at a set price. • The quantity term is measured by the seller's output. An output contract assures the seller of a market or outlet for the period of the contract. — Also termed en-tire-output contract. Cf. requirements contract. [Cases: Sales 71(4). C.J.S. Sales §§ 178–180.]

parol contract (p-<<schwa>>-rohlorpar-<<schwa>>l). 1. A contract or modification of a contract that is not in writing or is only partially in writing. — Also termed oral contract; parol agreement; (loosely) verbal contract. [Cases: Contracts 31, 238(2). C.J.S. Contracts §§ 68,

412–414.] 2. At common law, a contract not under seal, although it could be in writing. — Also termed informal contract; simple contract. See PAROL-EVIDENCE RULEE.

pay-or-play contract.A contract in which one party agrees to perform and the other agrees to pay for the promised performance even if performance is never demanded. • Pay-or-play contracts are usu. made in the entertainment industry.

performance contract. 1. A contract that requires a party to act personally and does not allow substitution. • People who provide unique personal services often make performance contracts. 2. A contract that allows the contractor to choose the means to achieve the end result. • The product's specifications may be loose and allow the contractor latitude in deciding how to perform. Cf. build-to-print contract.

personal contract. 1. A contract that binds a person but not that person's heirs or assignees because the contract requires a personal performance for which there is no adequate substitute. 2. A contract that binds a representative as an individual rather than binding the person or entity represented. • For instance, contracts made by a decedent's personal representative traditionally bind the representative, not the estate, unless expressly agreed otherwise. 3. A real-property-related contract that is treated as personal property, not as a substitute for the real property. • Ex-amples include oil-and-gas royalty contracts and property-insurance policies.

pignorative contract (pig-n<<schwa>>-ray-tiv).Civil law. A contract in which the seller of real property, instead of relinquishing possession of the property that is theoretically sold, gives the buyer a lien; a contract of pledge, hypothecation, or mortgage of realty. [Cases: Mortgages 31. C.J.S. Mortgages § 20.]

precontract. A contract that precludes a party from entering into a comparable agreement with someone else. • Historically, a precontract was usu. a promise to marry. It formed an impediment to marriage with any person other than the promisee. The legal impediment was extinguished and revived several times until it was finally abolished in 1752 by 26 Geo. 2, ch. 33, § 13. Cf. LETTER OF INTENT. [Cases: Contracts 25. C.J.S. Contracts § 60.]

principal contract.A contract giving rise to an accessory contract, as an agreement from which a secured obligation originates. Cf. accessory contract.

private contract.An agreement between private parties affecting only private rights.

procurement contract.A contract in which a government receives goods or services. • A procurement contract, including the bidding process, is subject to government regulation. See FEDERAL ACQUISITION REGULATION. — Also termed government contract. [Cases: Public Contracts 5. C.J.S. Public Administrative Law and Procedure §§ 7–9.]

public contract.A contract that, although it involves public funds, may be performed by private persons and may benefit them. [Cases: Public Contracts 1. C.J.S. Public Administrative Law and Procedure §§ 2–3, 6.]

quasi-contract. See implied-in-law contract.

real contract.Hist. A contract in which money or other property passes from one party to another; a contract requiring something more than mere consent, such as the lending of money or handing over of a thing. • This term, derived from Roman law, referred to contracts concerning both personal and real property. Real contracts in-cluded transactions in the form of commodatum, depositum, mutuum, and pignus. Cf. consensual contract.

“The essence of ...the real contracts, was that, at the time the agreement was made, one party, by delivering something belonging to him to the other party to the contract, imposed on that other an obligation to return the thing itself or, in the case of things intended to be consumed, an equivalent in kind. As the Roman lawyers ex-pressed it, the contractual obligation was created by something being handed over” R.W. Leage, *Roman Private Law* 292 (C.H. Ziegler ed., 2d ed. 1930).

“The term ‘real contract’ is in common use in the Civil law, and though not commonly used by judges or writers in the common law, nevertheless describes certain obligations enforced in England from very early times. A real contract is an obligation arising from the possession or transfer of a res.” Samuel Williston, *A Treatise on the Law of Contracts* § 8, at 19 (Walter H.E. Jaeger ed., 3d ed. 1957).

reciprocal contract.See bilateral contract.

referral sales contract.See REFERRAL SALES CONTRACT.

relative simulated contract.Civil law. A simulated contract that the parties intend to have some effects, but not necessarily those recited in the contract. La. Civ. Code art. 2027. See simulated contract.

requirements contract.A contract in which a buyer promises to buy and a seller to supply all the goods or services that a buyer needs during a specified period. • The quantity term is measured by the buyer's requirements. A requirements contract assures the buyer of a source for the period of the contract. Cf. output contract. [Cases: Sales 71(4). C.J.S. Sales §§ 178–180.]

retail installment contract.A contract for the sale of goods under which the buyer makes periodic payments and the seller retains title to or a security interest in the goods. — Also termed retail installment contract and security agreement; conditional sales contract. Cf. chattel mortgage under MORTGAGE. [Cases: Consumer Credit 4. C.J.S. Interest and Usury; Consumer Credit §§ 280, 284–293.]

satisfaction contract.A contract by which one party agrees to perform to the satisfaction of the other. — Also termed contract to satisfaction. [Cases: Contracts 282. C.J.S. Contracts §§ 561, 563–564.]

sealed contract.See contract under seal.

self-determination contract.Under the Indian Self-Determination and Education Assistance Act, an agreement by which the federal government provides funds to an Indian tribe and allows the tribe to plan and administer a program that would otherwise be administered by the federal government. 25 USCA § 450b(j). [Cases: Indians 7. C.J.S. Indians §§ 46–47.]

service contract. A contract to perform a service; esp., a written agreement to provide maintenance or repairs on a consumer product for a specified term. [Cases: Contracts 190; Sales 3.1. C.J.S. Contracts § 341; Sales §§ 3–4.]

severable contract. A contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promisor in breach of the entire contract. — Also termed divisible contract; several contract. See SEVERABILITY CLAUSE. Cf. joint contract. [Cases: Contracts 137, 171. C.J.S. Contracts §§ 297, 349–354.]

“A severable contract ... is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample.” Ivan Horniman, *Wharton's Law Lexicon* 215 (13th ed. 1925).

shipment contract. A contract in which a seller bears the risk of damage to the items sold only until they are brought to the place of shipment. • If a contract for the sale of goods does not address the terms of delivery, it is presumed to be a shipment contract. UCC §§ 2-319, 2-504, 2-509. Cf. destination contract. [Cases: Sales 201(4). C.J.S. Sales §§ 224–227.]

“In the jargon of commercial lawyers, a contract that requires or authorizes the seller to send the goods to the buyer but does not require that he deliver them at any particular destination is called a ‘shipment contract.’ Generally, in shipment contracts, risk of loss passes to the buyer at the point of shipment, which is also the point of ‘delivery,’ while in ‘destination contracts’ (seller must deliver at a particular destination) risk passes upon seller’s tender at destination.” 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 3-5, at 128–29 (4th ed. 1995).

simple contract. See parol contract (2).

simulated contract. Civil law. A contract that, by mutual agreement, does not express the true intent of the parties. La. Civ. Code art. 2025. • A simulated contract is absolute when the parties intend that the contract will impose no obligations; no obligations are enforceable on the parties by such a contract. A simulated contract is relative if the parties intend it to impose obligations different from those recited in the contract; the intended obligations are enforceable if all relevant conditions are met. A simulated contract may affect the rights of third parties. See action en déclaration de simulation under ACTION(4). — Also termed simulation. [Cases: Fraudulent Con-veyances 1, 24(1).]

special contract. 1. See contract under seal. 2. A contract with peculiar provisions that are not ordinarily found in contracts relating to the same subject matter. 3. See express contract.

specialty contract. See contract under seal.

standard-form contract. A usu. preprinted contract containing set clauses, used repeatedly by a business or within a particular industry with only slight additions or modifications to meet the specific situation. • Because stan-dard-form contracts usu. favor the drafting party, they can

amount to adhesion contracts. Courts offset the drafting party's advantage by construing the contract in the light least favorable to the drafting party. — Also termed standardized contract. See adhesion contract. [Cases: Contracts 1. C.J.S. Contracts §§ 2, 9, 12.]

“[U]niformity of terms in contracts typically recurring in a business enterprise is an important factor in the exact calculation of risks. Risks that are difficult to calculate can be excluded altogether. Unforeseeable contingencies affecting performance, such as strikes, fire, and transportation difficulties can be taken care of... Standardized contracts have thus become an important means of excluding or controlling the [‘irrational factors’ that could persuade a court or jury to decide against a powerful defendant].” Friedrich Kessler, *Contracts of Adhesion — Some Thoughts About Freedom of Contract*, 43 *Colum. L. Rev.* 629, 631–32 (1943).

statutory contract. A contract for which a statute prescribes certain terms. • Statutes often govern the contracts made by public entities, but also some by private persons. For example, a statute may define and set minimum standards for terms in home-improvement contracts.

stock-option contract. A negotiable instrument that gives the holder the right to buy or sell — for a specified price within a fixed time limit — a certain number of shares of the corporation's stock. See STOCK OPTION. [Cases: Corporations 116. C.J.S. Corporations §§ 233–240, 242.]

subcontract. A contract made by a party to another contract for carrying out the other contract, or a part of it.

subscription contract. See SUBSCRIPTION(3).

substituted contract. A contract made between parties to an earlier contract so that the new one takes the place of and discharges the earlier one. • A substituted contract differs from a novation (as “novation” is traditionally defined) in that the latter requires the substitution for the original obligor of a third person not a party to the original agreement; when the obligee accepts the third party, the agreement is immediately discharged. In contrast to both substituted contract and novation, an executory accord does not immediately discharge an obligation; rather, the obligation is discharged on performance, often by a third person, rather than the original obligor. Cf. NOVATION; ACCORD(2). [Cases: Accord and Satisfaction 1; Novation 1, 4. C.J.S. Accord and Satisfaction §§ 2–17, 25–33; Novation §§ 2–4, 9–16, 29.]

“[A] substituted contract immediately discharges the prior claim which is merged into the new agreement. Consequently, in the absence of an express agreement to the contrary, the original claim can no longer be enforced. In the event of a breach, any action would have to be brought on the substituted agreement.... The concept of ‘substituted contract’ was created largely to circumvent the unsatisfactory rules that until recently governed executory accords. Now that these rules have been modernized, the next step should be the reabsorption of the substituted contract into the executory accord.... [T]he untidy distinction between executory accords and substituted contracts should not be allowed to complicate litigation about routine claim settlements.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 21.6, at 803 (4th ed. 1998).

synallagmatic contract (sin-*schwa*-lag-mat-ik). [fr. Greek synallagma “mutual agreement”] Civil law. A contract in which the parties obligate themselves reciprocally, so that the

obligation of each party is correlative to the obligation of the other. La. Civ. Code arts. 1908, 1911.

- A synallagmatic contract is characterized by correlative obligations, whereas a commutative contract is characterized by correlative performances. The term synallagmatic contract is essentially the civil-law equivalent of the common law's bilateral contract. Cf. commutative contract.

tacit contract. A contract in which conduct takes the place of written or spoken words in the offer or acceptance (or both). [Cases: Contracts 27. C.J.S. Contracts § 6.]

take-it-or-leave-it contract. See adhesion contract.

take-or-pay contract. A contract requiring the buyer to either purchase and receive a minimum amount of a product ("take") or pay for this minimum without taking immediate delivery ("pay").

- These contracts are often used in the energy and oil-and-gas businesses. [Cases: Electricity 11(3); Gas 13(1).]

third-party-beneficiary contract. A contract that directly benefits a third party and that gives the third party a right to sue any of the original contracting parties for breach. [Cases: Contracts 187. C.J.S. Contracts §§ 612–622, 624–629.]

unconscionable contract. See unconscionable agreement under AGREEMENT.

unenforceable contract. A valid contract that, because of some technical defect, cannot be fully enforced; a contract that has some legal consequences but that may not be enforced in an action for damages or specific performance in the face of certain defenses, such as the statute of frauds. Cf. illegal contract; void contract. — Also termed agreement of imperfect obligation. [Cases: Contracts 1, 138(1). C.J.S. Contracts §§ 2–3, 9, 12, 280–281, 283–284, 290, 292, 300.]

"The difference between what is voidable and what is unenforceable is mainly a difference between substance and procedure. A contract may be good, but incapable of proof owing to lapse of time, want of written form, or failure to affix a revenue stamp. Writing in the first cases, a stamp in the last, may satisfy the requirements of law and render the contract enforceable, but it is never at any time in the power of either party to avoid the transaction. The contract is unimpeachable, only it cannot be proved in court." William R. Anson, *Principles of the Law of Contract* 19–20 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"Courts are ... fond of condemning the unenforceable agreement as 'illegal.' This is misleading insofar as it suggests that some penalty is necessarily imposed on one of the parties, apart from the court's refusal to enforce the agreement. In some cases, the conduct that renders the agreement unenforceable is also a crime, but this is not necessarily or even usually so. It is therefore preferable to attribute unenforceability to grounds of public policy rather than to 'illegality.'" E. Allan Farnsworth, *Contracts* § 5.1, at 323 (3d ed. 1999).

unilateral contract. A contract in which only one party makes a promise or undertakes a performance; a contract in which no promisor receives a promise as consideration for the promise given. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.]

"[M]any unilateral contracts are in reality gratuitous promises enforced for good reason with

no element of bar-gain.” P.S. Atiyah, *An Introduction to the Law of Contract* 126 (3d ed. 1981).

“If A says to B, ‘If you walk across the Brooklyn Bridge I will pay you \$100,’ A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 2-10(a), at 64–65 (4th ed. 1998).

valid contract. A contract that is fully operative in accordance with the parties' intent. — Also termed valid agreement. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.]

variable annuity contract. Securities. An annuity whose payments vary according to how well the fund (usu. made up of common stocks) that backs it is performing. SEC Rule 0-1(e)(1) (17 CFR § 270.0-1(e)(1)). See variable annuity under ANNUITY.

verbal contract. See parol contract (1).

voidable contract. A contract that can be affirmed or rejected at the option of one of the parties; a contract that is void as to the wrongdoer but not void as to the party wronged, unless that party elects to treat it as void. [Cases: Contracts 98, 136. C.J.S. Contracts §§ 137, 139–140, 145, 153–155, 157, 171, 173–174, 185, 188, 280–281, 286, 296.]

“A voidable contract is a contract which, in its inception, is valid and capable of producing the results of a valid contract, but which may be ‘avoided’, i.e. rendered void at the option of one (or even, though rarely, of both) of the parties.” P.S. Atiyah, *An Introduction to the Law of Contract* 37–38 (3d ed. 1981).

void contract. 1. A contract that is of no legal effect, so that there is really no contract in existence at all. • A contract may be void because it is technically defective, contrary to public policy, or illegal. Cf. illegal contract; unenforceable contract. [Cases: Contracts 98, 136. C.J.S. Contracts §§ 137, 139–140, 145, 153–155, 157, 171, 173–174, 185, 188, 280–281, 286, 296.]

“Strictly speaking, a ‘void contract’ is a contradiction in terms; for the words describe a state of things in which, despite the intention of the parties, no contract has been made. Yet the expression, however faulty, is a compendious way of putting a case in which there has been the outward semblance without the reality of contract.” William R. Anson, *Principles of the Law of Contract* 18 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“A valid contract is, of course, simply a contract of full force and effect, not vitiated in any way. A so-called void contract, on the other hand, is really a contradiction in terms inasmuch as a contract has already been defined in terms applicable only to a valid contract. However, the term is convenient and is universally used. For purposes of exposition, it is convenient to treat void contracts as falling, broadly speaking, into main categories. On the one hand, are cases where one of the normal requirements for the creation of a contract is absent, while, on the other hand, are

cases where all the normal requirements are satisfied, but the contract is void because the law disapproves of its purpose or the terms by which it seeks to achieve that purpose. Typical examples of contracts which are void because one of the normal requirements is absent are contracts in which the acceptance of an offer has not been communicated or in which a promise is given gratuitously. Typical examples of contracts which are void because of their terms or objects are wagering contracts, and contracts prejudicial to family relations." P.S. Atiyah, *An Introduction to the Law of Contract* 36–37 (3d ed. 1981).

2. A contract that has been fully performed. — Also termed discharged contract.

"Not only is the term 'void contract' in itself technically inaccurate, but a contract is sometimes said to be void, not because it was destitute of legal effect from its commencement, but because it has been fully performed, and so has ceased to have legal operation. It would be more proper to describe such a contract as 'discharged.'" William R. Anson, *Principles of the Law of Contract* 20 (Arthur L. Corbin ed., 3d Am. ed. 1919).

3. Loosely, a voidable contract.

"Again the word 'void' has been used, even by judges and the framers of statutes, where 'voidable' is meant. One illustration will suffice. By 17 Geo. III, c. 50, failure to pay certain duties at an auction is stated to make a bidding 'nul and void to all intents,' but this does not entitle a purchaser who has repented of his bargain to avoid the contract by his own wrong, that is by refusal to pay the statutory duty. The contract is voidable at the option of the party who has not broken the condition imposed by law." William R. Anson, *Principles of the Law of Contract* 20–21 (Arthur L. Corbin ed., 3d Am. ed. 1919).

voluntary contract. See gratuitous contract (2).

wagering contract. 1. A contract the performance of which depends on the happening of an uncertain event, made entirely for sport. See gambling contract. Cf. aleatory contract. [Cases: Gaming 17(1).]

"Although wagering and gaming agreements were generally enforceable under the English common law, they were condemned in most American states, in part because they were thought to encourage shiftlessness, poverty, and immorality, and in part because they were regarded as too frivolous to be worthy of judicial attention. *Irwin v. Williar*, 110 U.S. 499 (1884) ('In England it is held that the contracts, although wagers, were not void at common law, ... while generally, in this country, all wagering contracts are held to be illegal and void as against public policy.')" E. Allan Farnsworth, *Contracts* § 5.2 n.4, at 326–27 (3d ed. 1999).

2. A contract in which an uncertain event affects or results from a business transaction. • With this type of wagering contract, a businessperson is protected from a trade risk.

written contract. A contract whose terms have been reduced to writing.

"Written contracts are also commonly signed, but a written contract may consist of an exchange of correspondence, of a letter written by the promisee and assented to by the promisor without signature, or even of a memorandum or printed document not signed by either party.

Statutes relating to written contracts are often expressly limited to contracts signed by one or both parties. Whether such a limitation is to be implied when not explicit depends on the purpose and context.” Restatement (Second) of Contracts § 95 cmt. c (1979) (citations omitted).

CONTRACT, FREEDOM OF

contract, freedom of. See FREEDOM OF CONTRACT.

CONTRACT BOND

contract bond. See PERFORMANCE BOND.

CONTRACT CARRIER

contract carrier. See private carrier under CARRIER.

CONTRACT CLAUSE

Contract Clause. See CONTRACTS CLAUSE.

CONTRACT DEMURRAGE

contract demurrage. See DEMURRAGE.

CONTRACTEE

contractee. Rare. A person with whom a contract is made.

CONTRACT LABOR

contract labor. See INDEPENDENT CONTRACTOR.

CONTRACT LOAN

contract loan. See add-on loan under LOAN.

CONTRACT NOT TO COMPETE

contract not to compete. See noncompetition covenant under COVENANT(1).

CONTRACT OF AFFREIGHTMENT

contract of affreightment (<<schwa>>-frayt-m<<schwa>>nt). Maritime law. An agreement for carriage of goods by water. • A contract of affreightment may employ a bill of lading, a charterparty, or both to ship the goods. — Abbr. COA. — Also termed contract of carriage. See CHARTERPARTY. [Cases: Shipping 104. C.J.S. Shipping §§ 247–250, 252–254.]

CONTRACTOR

contractor. 1. A party to a contract. 2. More specif., one who contracts to do work or provide supplies for another.

competent contractor. A contractor who has the knowledge, skill, experience, and available equipment to do the work that he or she is employed to do without creating an unreasonable risk

of injury to others and who has the personal characteristics necessary to carry out the work.

general contractor. One who contracts for the completion of an entire project, including purchasing all materials, hiring and paying subcontractors, and coordinating all the work. — Also termed original contractor; prime contractor. [Cases: Contracts 197. C.J.S. Contracts § 11.]

independent contractor. See INDEPENDENT CONTRACTOR.

subcontractor. See SUBCONTRACTOR.

CONTRACT RATE

contract rate. See INTEREST RATE.

CONTRACTS CLAUSE

Contracts Clause. The clause of the U.S. Constitution prohibiting states from passing a law that would impair private contractual obligations. • The Supreme Court has generally interpreted this clause so that states can regulate private contractual obligations if the regulation is reasonable and necessary to serve an important public purpose. U.S. Const. art. I, § 10, cl. 1. — Also termed Contract Clause; Obligation of Contracts Clause. [Cases: Constitutional Law 113–185. C.J.S. Constitutional Law §§ 277–389.]

CONTRACT-SPECIFICATION DEFENSE

contract-specification defense. An affirmative defense that immunizes a contractor from liability for a defect in a product when the contractor has manufactured or performed according to detailed contractual orders. • The defense applies to specialized, single-use components and protects a component supplier from claims of negligent design if the component conforms to the contractual specifications — unless the specifications are obviously dangerous. Under modern notions of strict liability, courts have increasingly rejected this defense. Cf. GOVERNMENT-CONTRACTOR DEFENSE; GOVERNMENT-AGENCY DEFENSE .

CONTRACT SYSTEM

contract system. Hist. The practice of leasing prisoners out to private individuals for the prisoners' labor.

CONTRACT TO PLEDGE

contract to pledge. See CONTRACT.

CONTRACT TO SATISFACTION

contract to satisfaction. See satisfaction contract under CONTRACT.

CONTRACT TO SELL

contract to sell. See contract for sale (2) under CONTRACT.

CONTRACTUAL DUTY

contractual duty. See DUTY(1).

CONTRACTUAL FAULT

contractual fault. See FAULT.

CONTRACTUAL OBLIGATION

contractual obligation. See OBLIGATION.

CONTRACTUBERRIMAE FIDEI

contract uberrimae fidei. See CONTRACT.

CONTRACT UNDER SEAL

contract under seal. See CONTRACT.

CONTRACTUS

contractus (k<<schwa>>n-trak-t<<schwa>>s). [Latin] Roman law. A contract; an agreement between two or more parties, usu. to create an actionable bond between them. See CONTRAHERE.

“The texts of the Roman Law do not supply a definition of contract. The words contractus — contrahere — like ‘contract’ in English, are used in various senses, sometimes wider, sometimes narrower. Labeo gives contractus the meaning of a reciprocal obligation, such as purchase and sale, hire, partnership. But when the Romans speak of obligation arising from contract, they mean obligations arising from convention or agreement. In Roman law it was far from being the case that all agreements which might be expected to produce a legal obligation did so.” R.W. Lee, *The Elements of Roman Law* 285 (4th ed. 1956).

CONTRACTUS BONAE FIDEI, VEL STRICTI JURIS

contractus bonae fidei, vel stricti juris (k<<schwa>>n-trak-t<<schwa>>s boh-nee fi-dee-I, vel strik-tljoor-is). [Latin] Roman law. Contracts of good faith or of strict law; a contract requiring that the parties perform their duties in good faith. • In an action brought on a contractus bonae fidei, the plaintiff had to assert that he had not acted in bad faith. All consensual contracts were considered contractus bonae fidei. Essentially, then, the phrase was typically used when a remedy was being sought for a breach. Judges enforced contracts of good faith (e.g., contracts of sale) according to the requirements of good faith and contracts of strict law (e.g., stipulations) according to their strict terms. — Sometimes shortened to contractus bonae fidei.

CONTRACT ZONING

contract zoning. See ZONING.

CONTRADICTORY JUDGMENT

contradictory judgment. See JUDGMENT.

CONTRADICTORY MOTION

contradictory motion. See MOTION(1).

CONTRA EXECUTIONEM

contra executionem (kon-tr<<schwa>> ek-si-kyoo-shee-oh-n<<schwa>>m). [Law Latin] Hist. Against execution. • The phrase appeared in reference to the presumption in favor of a defendant's objections to the manner of execution against the defendant's property.

CONTRAFACTIO

contrafactio (kon-tr<<schwa>>-fak-shee-oh). [Law Latin] Hist. The act of counterfeiting. • The word appeared frequently in the phrase contrafactio sigilli regis (“counterfeiting the king's seal”).

CONTRA FIDEM TABULARUM NUPTIALIUM

contra fidem tabularum nuptialium (kon-tr<<schwa>> fl-d<<schwa>>m tab-y<<schwa>>-lair-<<schwa>>m n<<schwa>>p-shee-ay-lee-<<schwa>>m). [Law Latin] Scots law. Against the provisions of the marriage contract. • The phrase usu. referred to antenuptial contracts.

CONTRA FORMAM COLLATIONIS

contra formam collationis (kon-tr<<schwa>> for-m<<schwa>>m k<<schwa>>-lay-shee-oh-nis). [Latin “against the form of a collation”] Hist. A writ to regain lands given to a religious society in exchange for perpetual alms. • The writ was usu. sought by an heir of the person who had given the land away.

CONTRA FORMAM FEOFFMENTI

contra formam feoffmenti (kon-tr<<schwa>> for-m<<schwa>>m feef-men-tl). [Latin “contrary to the form of the feoffment”] Hist. A writ that commanded a landowner to stop demanding from a tenant more services than those included in the tenant's deed to the land. — Also spelled contra formam feoffamenti.

“Contra formam feoffamenti is a writ that lies where a man before the statute of quia emptores terrarum, made 18 Ed. 1, infeoffed another by deed to do certain service; if the feoffor or his heirs distrain him to do other service than is comprised in the deed, then the tenant shall have this writ, commanding him not to distrain him to do other service than is comprised in the deed.” *Termes de la Ley* 116 (1st Am. ed. 1812).

CONTRA FORMAM STATUTI

contra formam statuti (kon-tr<<schwa>> for-m<<schwa>>m st<<schwa>>-tyoo-tl). [Law Latin] Contrary to the form of the statute. See AGAINST THE FORM OF THE STATUTE .

CONTRAHERE

contrahere (k<<schwa>>n-tray-h<<schwa>>-ree), vb. [Latin “draw together”] Roman law. 1. To establish or enter into a formal relationship, as between husband and wife, creditor and debtor, by mutual agreement. 2. To commit a crime. 3. To accept an inheritance. 4. Generally, to perform

any act of legal significance. See CONTRACTUS.

CONTRA HEREDITATEM JACENTEM

contra hereditatem jacentem (kon-tr<<schwa>> h<<schwa>>-red-i-tay-t<<schwa>>m j<<schwa>>-sen-t<<schwa>>m). [Law Latin] Hist. Against a succession that the heir has not taken up; against a fallen inheritance. • The phrase appeared in reference to a creditor's right to pursue a debtor's estate for recovery of a debt even though the heir did not take up the succession.

CONTRA JUS BELLI

contra jus belli (kon-tr<<schwa>> j<<schwa>>s bel-I). [Latin] Against the law of war.

CONTRA JUS COMMUNE

contra jus commune (kon-tr<<schwa>> j<<schwa>>s k<<schwa>>-myoo-nee). [Latin] Against common right or law; contrary to the rule of the common law.

CONTRA LEGEM

contra legem (kon-tr<<schwa>> lee-j<<schwa>>m). [Latin] 1. Contrary to law; against the law. 2. EQUITY CONTRA LEGEM.

CONTRA LEGEM TERRAE

contra legem terrae (kon-tr<<schwa>> lee-j<<schwa>>m ter-ee). [Latin] Against the law of the land.

CONTRA LIBERTATEM MATRIMONII

contra libertatem matrimonii (kon-tr<<schwa>> lib-<<schwa>>r-tay-t<<schwa>>m ma-tri-moh-nee-I). [Latin] Hist. Against freedom of marriage. • The phrase appeared in reference to marriage restraints, some of which were illegal.

CONTRA NON PRODUCTA

contra non producta (kon-tr<<schwa>> non pr<<schwa>>-d<<schwa>>k-t<<schwa>>). [Law Latin “against things not produced”] Scots law. In a reduction action, a decree declaring that a challenged deed is void.

CONTRA NON VALENTEM

contra non valentem. See DOCTRINE OF CONTRA NON VALENTEM.

CONTRA OMNES GENTES

contra omnes gentes (kon-tr<<schwa>> om-nee-z jen-teez). [Latin] Hist. Against all people. • These were the traditional words of warranty in a deed.

CONTRA OMNES MORTALES

contra omnes mortales (kon-tr<<schwa>> ahm-nee-z mor-tay-leez). [Law Latin] Hist. Against all mortals. • This language was contained in an absolute warranty.

CONTRA PACEM

contra pacem (kon-tr<<schwa>> pay-s<<schwa>>m). [Latin] Against the peace. • This term was formerly used in indictments to signify that the alleged offense is against the public peace.

CONTRA PIETATEM

contra pietatem (kon-tr<<schwa>> pI-<<schwa>>-tay-t<<schwa>>m). [Latin] Hist. Contrary to natural duty.

CONTRAPLACITUM

contraplacitum (kon-tr<<schwa>>-plas-<<schwa>>-t<<schwa>>m). [Latin] Hist. A counterplea.

CONTRA PROFERENTEM

contra proferentem (kon-tr<<schwa>> prof-<<schwa>>-ren-t<<schwa>>m). [Latin “against the offeror”] The doctrine that, in interpreting documents, ambiguities are to be construed unfavorably to the drafter. — Also spelled contra proferentes. — Also termed ambiguity doctrine. [Cases: Contracts 155. C.J.S. Contracts § 337.]

CONTRAROTULATOR

contrarotulator (kon-tr<<schwa>>-roch-y<<schwa>>-lay-t<<schwa>>r or kon-tr<<schwa>>-roh-ty<<schwa>>-lay-t<<schwa>>r). [Latin “controller”] Hist. A person responsible for collecting and managing funds on behalf of the Crown or other government office. • A variety of controllers existed in England, including the contrarotulator customarum (controller of the customs), contrarotulator hospitii domini regis (controller of the king's household), and contrarotulator pipae (controller of the pipe — i.e., an officer who collected debts due to the Exchequer).

CONTRARY TO LAW

contrary to law. Illegal; unlawful; conflicting with established law.

CONTRARY TO THE EVIDENCE

contrary to the evidence. (Of an argument, finding, etc.) conflicting with the weight of the evidence presented at a contested hearing.

CONTRA SPOLIUM

contra spolium (kon-tr<<schwa>> spoh-lee-<<schwa>>m). [Law Latin “against the spoil”] Scots law. A real action for the recovery of stolen movable property.

CONTRA TABULAS

contra tabulas. See BONORUM POSSESSIO CONTRA TABULAS.

CONTRAVENE

contravene (kon-tr<<schwa>>-veen), vb.1. To violate or infringe; to defy <the soldier contravened the officer's order, and then went AWOL>.2. To come into conflict with; to be contrary to <the court held that the regulation contravenes public policy>.

CONTRAVENING EQUITY

contravening equity. See EQUITY.

CONTRAVENTION

contravention (kon-tr<<schwa>>-ven-sh<<schwa>>n).1. An act violating a legal condition or obligation; esp., an entail heir's act that conflicts with the entail provision. 2. French law. A criminal breach of a law, treaty, or agreement; a minor violation of the law. • A contravention is traditionally punishable by peines de police, usu. a fine not exceeding 15 francs and imprisonment not exceeding three days. See public-welfare offense under OFFENSE(1).

“We might get [terminological] help from the practice of Continental Europe in which three classes of punishable offenses are maintained — crimes, delicts, and contraventions. The last word is used for those minor violations of regulations, all of them necessary enough for public safety and convenience, which are so numerous and so detailed in our lives. It is a convenient term and is widely used in the United States for just such acts, but it has not yet been made official. The Continental practice has the advantage of using the word crimes only for really serious offenses, which is in conformity with popular feeling on the subject.” Max Radin, *The Law and You* 92 (1948).

3. Scots law. An action brought for breach of a peace bond. See *LAWBURROWS*. 4. Hist. Scots law. An act committed in violation of a legal condition or obligation, esp. one done contrary to a deed by an heir to an en-tailment.

CONTRACTATAE

contractatae (kon-trek-tay-tee). [Latin “things meddled with”] Scots law. Things that a person (such as a thief) either improperly used or tampered with.

CONTRACTATIO

contractatio (kon-trek-tay-shee-oh), n.[fr. Latin contractare “to touch or handle”] Hist. The act of laying hands on another's property with the intent of taking, misappropriating, or misusing it. • This term implied a greater culpability than simply taking property without the owner's permission and, under Roman law, was an element of theft (*furtum*). Pl. contractationes (kon-trek-tay-shee-oh-nee-z).

CONTRIBUTING CAUSE

contributing cause. See CAUSE(1).

CONTRIBUTING TO THE DELINQUENCY OF A MINOR

contributing to the delinquency of a minor. The offense of an adult's engaging in conduct involving a minor — or in the presence of a minor — likely to result in delinquent conduct. •

Examples include encouraging a minor to shoplift, enabling underage drinking, and soliciting sex for money. — Often shortened to contributing to delinquency. See JUVENILE DELINQUENCY. Cf. IMPAIRING THE MORALS OF A MINOR. [Cases: Infants 13. C.J.S. Infants §§ 5, 92–93, 95–98.]

CONTRIBUTIO LUCRI ET DAMNI

contributio lucri et damni (kon-tri-byoo-shee-oh loo-krI et dam-nI). [Latin] Scots law. Distribution of or sharing in profit and loss. • The phrase referred to one test for determining whether a partnership existed.

CONTRIBUTION

contribution. 1. The right that gives one of several persons who are liable on a common debt the ability to recover ratably from each of the others when that one person discharges the debt for the benefit of all; the right to demand that another who is jointly responsible for a third party's injury supply part of what is required to compensate the third party. — Also termed right of contribution. [Cases: Contribution 1–6. C.J.S. Contribution §§ 2–7, 9–24, 29.] 2. A tortfeasor's right to collect from others responsible for the same tort after the tortfeasor has paid more than his or her proportionate share, the shares being determined as a percentage of fault. [Cases: Contribution 5–7. C.J.S. Contribution §§ 5–10, 12–24, 29.] 3. The actual payment by a joint tortfeasor of a proportionate share of what is due. Cf. INDEMNITY. 4. WAR CONTRIBUTION.

CONTRIBUTION AGREEMENT

contribution agreement. See SUPPORT AGREEMENT.

CONTRIBUTION BAR

contribution bar. Preclusion of a defendant having contribution rights against other defendants, who have settled their dispute with the plaintiff, from seeking contribution from them. • The bar is usu. allowed in exchange for a credit against any judgment the plaintiff obtains against the nonsettling defendant. [Cases: Contribution 8. C.J.S. Contribution §§ 26–31.]

CONTRIBUTION CLAUSE

contribution clause. See COINSURANCE CLAUSE.

CONTRIBUTIONE FACIENDA

contributione facienda (kon-tri-byoo-shee-oh-nee fay-shee-en-d<<schwa>>). [Latin “writ for making contribution”] Hist. A writ to compel a tenant in common to contribute to a fellow tenant who has paid more than the tenant's share of a sum for which all the tenants are liable.

“Contributione facienda is a writ that lieth in case where more are bound to one thing, & one is put to the whole burden.... If tenents in comon or joynt, hold a mill (pro indiviso) & equally take the profits therof, the mill falling to decay, & one or more of them refusing to contribute toward the reparation therof, the rest shall have this writ....” John Cowell, *The Interpreter* (1607).

CONTRIBUTION MARGIN

contribution margin. The difference between a product's selling price and its cost of production. • The contribution margin indicates the amount of funds available for profit and payment of fixed costs.

CONTRIBUTORY

contributory (k<<schwa>>n-trib-y<<schwa>>-tor-ee), adj. 1. Tending to bring about a result. 2. (Of a pension fund) receiving contributions from both the employer and the employees. [Cases: Pensions 101–107. C.J.S. Pensions and Retirement Plans and Benefits §§ 53–68, 121–129.]

contributory, n. 1. One who contributes or who has a duty to contribute. 2. A contributing factor. 3. Hist. A person who, as a result of being or representing a past or present member of a corporation, is liable to contribute to the corporation's debts upon its winding up.

CONTRIBUTORY INFRINGEMENT

contributory infringement. See INFRINGEMENT.

CONTRIBUTORY NEGLIGENCE

contributory negligence. See NEGLIGENCE.

CONTRIBUTORY-NEGLIGENCE DOCTRINE

contributory-negligence doctrine. Torts. The principle that completely bars a plaintiff's recovery if the damage suffered is partly the plaintiff's own fault. • Most states have abolished this doctrine and have adopted instead a comparative-negligence scheme. See NEGLIGENCE. Cf. COMPARATIVE-NEGLIGENCE DOCTRINE . [Cases: Negligence 547. C.J.S. Negligence §§ 293, 297.]

CONTRIBUTORY PENSION PLAN

contributory pension plan. See PENSION PLAN.

CONTROL

control, n. The direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contract, or otherwise; the power or authority to manage, direct, or oversee <the principal exercised control over the agent>.

superintending control. The general supervisory control that a higher court in a jurisdiction has over the administrative affairs of a lower court within that jurisdiction. [Cases: Courts 204.]

working control. The effective control of a corporation by a person or group who owns less than 50% of the stock. [Cases: Corporations 174. C.J.S. Corporations § 307.]

control, vb. 1. To exercise power or influence over <the judge controlled the proceedings>. 2. To regulate or govern <by law, the budget office controls expenditures>. 3. To have a controlling interest in <the five shareholders controlled the company>.

CONTROL GROUP

control group. The persons with authority to make decisions on a corporation's behalf.

CONTROL-GROUP TEST

control-group test. A method of determining whether the attorney–client privilege protects communications made by corporate employees, by providing that those communications are protected only if made by an employee who is a member of the group with authority to direct the corporation's actions as a result of that communication. • The U.S. Supreme Court rejected the control-group test in *Upjohn Co. v. United States*, 449 U.S. 383, 101 S.Ct. 677 (1981). Cf. SUBJECT-MATTER TEST. [Cases: Witnesses 199(2). C.J.S. Witnesses § 325.]

CONTROLLED COMPANY

controlled company. See COMPANY.

CONTROLLED CORPORATE GROUPS

controlled corporate groups. See CONTROLLED GROUP.

CONTROLLED CORPORATION

controlled corporation. See CORPORATION.

CONTROLLED DEBATE

controlled debate. See DEBATE.

CONTROLLED FOREIGN CORPORATION

controlled foreign corporation. See CORPORATION.

CONTROLLED GROUP

controlled group. Tax. Two or more corporations whose stock is substantially held by five or fewer persons. • The Internal Revenue Code subjects these entities (such as parent–subsidiary or brother–sister groups) to special rules for computing tax liability. — Also termed controlled corporate groups. IRC (26 USCA) §§ 851(c)(3), 1563(a). [Cases: Internal Revenue 3870–3880. C.J.S. Internal Revenue §§ 17–18, 638.]

CONTROLLED-SECURITIES-OFFERING DISTRIBUTION

controlled-securities-offering distribution. See securities-offering distribution (1) under DISTRIBUTION.

CONTROLLED SUBSTANCE

controlled substance. Any type of drug whose possession and use is regulated by law, including a narcotic, a stimulant, or a hallucinogen. See DRUG. [Cases: Controlled Substances 9.]

CONTROLLED-SUBSTANCE ACT

controlled-substance act. A federal or state statute that is designed to control the distribution,

classification, sale, and use of certain drugs. • Most states have enacted these laws, which are usu. modeled on the Uniform Controlled Substances Act. [Cases: Controlled Substances 4.]

CONTROLLED TIME

controlled time. See controlled debate under DEBATE.

CONTROLLER

controller. See COMPTROLLER.

CONTROLLING INTEREST

controlling interest. See INTEREST(2).

CONTROLLING PERSON

controlling person. See CONTROL PERSON.

CONTROLLING SHAREHOLDER

controlling shareholder. See SHAREHOLDER.

CONTROL PERSON

control person. Securities. A person who has actual control or significant influence over the issuer of securities, as by directing corporate policy. • The control person is subject to many of the same requirements applicable to the sale of securities by the issuer. — Also termed controlling person. [Cases: Securities Regulation 35.15, 60.40. C.J.S. Securities Regulation §§ 105–106, 218.]

“[T]he question of who is a control person is highly factual and is not dependent upon ownership of any specific percentage. For example, it has been held that someone owning eight percent of a company's stock was not a control person...” 1 Thomas Lee Hazen, *The Law of Securities Regulation* § 4.24, at 279 (3d ed. 1995).

CONTROL PREMIUM

control premium. See PREMIUM(3).

CONTROL STOCK

control stock. Stock belonging to a control person at the time of a given transaction. — Also termed control shares.

CONTROL TEST

control test. See IRRESISTIBLE-IMPULSE TEST.

CONTROL THEORY

control theory. The theory that people will engage in criminal behavior unless certain personally held social controls (such as a strong investment in conventional, legitimate activities

or a belief that criminal behavior is morally wrong) are in place to prevent them from doing so. Cf. ROUTINE-ACTIVITIES THEORY Y; RA-TIONAL-CHOICE THEORY; STRAIN THEORY.

CONTROL-YOUR-KID LAW

control-your-kid law. See PARENTAL-RESPONSIBILITY STATUTE.

CONTROVER

controver (k<<schwa>>n-troh-v<<schwa>>r). Hist. A person who concocts false news.

CONTROVERSY

controversy. 1. A disagreement or a dispute, esp. in public. 2. A justiciable dispute.

public controversy. A controversy involving issues that are debated publicly and that have substantial ramifications for persons other than those engaged in it. • A participant in a public controversy may be deemed a public figure for purposes of a defamation suit arising from the controversy. See PUBLIC FIGURE. [Cases: Libel and Slander 48(1). C.J.S. Libel and Slander; Injurious Falsehood §§ 91–92, 96, 98, 102–104.]

“The nature and extent of an individual's involvement in a public controversy is determined by three factors: (1) the extent to which participation in it is voluntary; (2) the extent to which there is access to channels of effective communication in order to counteract false statements; and (3) the prominence of the role played in the public controversy.” 50 Am. Jur. 2d Libel and Slander § 75, at 390 (1995).

separable controversy. A claim that is separate and independent from the other claims being asserted in a suit. • This term is most often associated with the statute that permits an entire case to be removed to federal court if one of the claims, being separate and independent from the others, presents a federal question that is within the jurisdiction of the federal courts. 28 USCA § 1441(c). [Cases: Removal of Cases 48–61. C.J.S. Removal of Causes §§ 134–140.]

3. Constitutional law. A case that requires a definitive determination of the law on the facts alleged for the adjudication of an actual dispute, and not merely a hypothetical, theoretical, or speculative legal issue. — Also termed (in senses 2 & 3) actual controversy. See CASE-OR-CONTROVERSY REQUIREMENT. [Cases: Action 6; Federal Courts 12.1. C.J.S. Actions §§ 38–45.] “What is a ‘case or controversy’ that is justiciable in the federal courts? The answer of Chief Justice Hughes is classic if cryptic. He said: ‘A controversy in this sense must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical character; from one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.’ [Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240–41, 57 S.Ct. 461, 464 (1937) (Hughes, C.J.)] Unfortunately, this definition, though often quoted, turns upon labels that the Court had used in the past to describe cases before it, and the labels themselves are ‘elastic, inconstant, and imprecise.’ ” Charles Alan Wright, *The Law of Federal Courts* § 12, at

60–61 (5th ed. 1994).

CONTROVERT

controvert (kon-tr<<schwa>>-v<<schwa>>rt or kon-tr<<schwa>>-v<<schwa>>rt), vb. To dispute or contest; esp., to deny (as an allegation in a pleading) or oppose in argument <the allegations in Peck's pleadings were never adequately controverted>.

CONTUBERNIUM

contubernium (kon-t[y]uu-b<<schwa>>r-nee-<<schwa>>m). [Latin] Roman law. A marriage-like union between slaves. • Contubernium was recognized in the United States. Before slavery was abolished, only one Southern court gave a marriage between slaves legal effect upon manumission. See *Girod v. Lewis*, 6 Mart. (O.S.) 559, 559–60 (La. 1819). In 1825, the Louisiana legislature passed a law expressly making such marriages invalid.

“No such thing as marriage among slaves was, or could be, recognized by the law. As slaves were wholly subject to the disposal of their masters, no unions having the character of permanence or sacredness could exist among them: such a union, if it existed, would abridge the master's power of absolute control. Among slaves there could only be contubernium, cohabitation of the sexes for a longer or shorter time, but no legal matrimonium.” James Hadley, *Introduction to Roman Law* 111 (1881).

“There was ... among slaves a permitted cohabitation called contubernium, but it brought with it no civil rights.... [C]ohabitation, ... in a state of slavery, was not marriage, or evidence of marriage. It conferred no rights upon the offspring, and created no legal disabilities on the part of the father from forming a valid marriage, whenever he became in a condition which would authorize him to contract one.” Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 *Stan. L. Rev.* 221, 245 (1999).

CONTUMACE CAPIENDO

contumace capiendo. See DE CONTUMACE CAPIENDO.

CONTUMACIOUS CONDUCT

contumacious conduct. See CONDUCT.

CONTUMACY

contumacy (kon-t[y]uu-m<<schwa>>-see), n. Contempt of court; the refusal of a person to follow a court's order or direction. See CONTEMPT. [Cases: Contempt 1–26. C.J.S. Contempt §§ 2–3, 37.] — contumacious, adj.

CONTUMAX

contumax. Hist. 1. A person found to be in contempt of court. 2. A person who is accused of a crime but refuses to appear and answer the charge.

CONTUMELIOUS

contumelious (kon-t[y]oo-mee-lee-<<schwa>>s), adj. Insolent, abusive, spiteful, or humiliating.

CONTUMELY

contumely (kon-t[y]uu-m<<schwa>>-lee or k<<schwa>>n-t[y]oo-m<<schwa>>-lee), n. Insulting language or treatment; scornful rudeness.

CONTUTOR

contutor (k<<schwa>>n-t[y]oo-t<<schwa>>r), n. [Latin] Roman law. A coguardian of a ward.
• Appointment as a coguardian could be accomplished by testament or by court order.

CONUBIUM

conubium (k<<schwa>>-n[y]oo-bee-<<schwa>>m), n.[fr. Latin con “together” + nubere “to marry”] Roman law. 1. The legal capacity to wed. 2. The collection of rights that accompany a marriage between persons who have the capacity to marry. — Also spelled connubium. — Also termed jus connubii. See CONCUBINATUS; JUSTAE NUPTIAE.

“The word connubium denotes properly the right to intermarry with Roman citizens; and hence to contract a Roman marriage, according to the peculiar forms and with the peculiar incidents and effects of marriage between Roman citizens. Chief among these incidents or effects was the patria potestas, or life-long control of the father over his children ... which was among the most remarkable peculiarities of the Roman system. In general, con-nubium embraces the peculiar rights of Roman citizens, so far as they pertain to family relations.” James Hadley, Introduction to Roman Law 116 (1881).

CONUSANCE

conusance (kon-y<<schwa>>-z<<schwa>>nts).Hist. 1. Cognizance; jurisdiction. • The word conusance is actually an archaic form of cognizance. See COGNIZANCE(1); CLAIM OF COGNIZANCE. 2.JUDICIAL NOTICE. 3. An acknowledgment (of a debt, act, or opposing claim). • Examples of conusance include an acknowledgment in replevin that the defendant took the sued-for goods, or an acknowledgment in a land transfer (by fine) that the grantee is entitled to the land. See FINE(1).

CONUSANT

conusant (kon-y<<schwa>>-z<<schwa>>nt), adj. (Of a person) having cognizance or knowledge. See COG-NIZANCE.

CONUSEE

conusee (kon-y<<schwa>>-zee). See COGNIZEE.

CONUSOR

conusor (kon-y<<schwa>>-z<<schwa>>r or -zor). See COGNIZOR.

CONVENE

convene,vb.1. To call together; to cause to assemble. 2.Eccles. law. To summon to respond to an action. See CONVENTIO(1).

“When the defendant was brought to answer, he was said to be convened, — which the canonists called conventio, because the plaintiff and defendant met to contest.” 1 John Bouvier, *Bouvier's Law-Dictionary* 668 (8th ed. 1914).

3.Civil law. To bring an action.

CONVENIENCE ACCOUNT

convenience account.See ACCOUNT.

CONVENING AUTHORITY

convening authority.Military law. An officer (usu. a commanding officer) with the power to convene, or who has convened, a court-martial. [Cases: Military Justice 877, 1380. C.J.S. Military Justice §§ 143, 434, 438.]

CONVENING ORDER

convening order.Military law. An instrument that creates a court-martial. • The convening order specifies (1) the type of court-martial and its time and place, (2) the names of the members and the trial and defense counsel, (3) the name of the military judge, if one has been detailed, and (4) if necessary, the authority by which the court-martial has been created. [Cases: Military Justice 879.1.]

CONVENTICLE

conventicle (k<<schwa>>n-ven-t<<schwa>>-k<<schwa>>l). [fr. Latin *conventiculum* “small assembly”] 1. An assembly of a clandestine or unlawful character. 2. An assembly for religious worship; esp., a secret meeting for worship not sanctioned by law. 3. A place where such meetings are held.

CONVENTIO

conventio (k<<schwa>>n-ven-shee-oh). [fr. Latin *convenire* “to come together”] 1.Eccles. law. The act of con-vening the parties to an action by summoning the defendant. 2.Hist. An agreement or convention; an agreement between two or more persons respecting a legal relation between them. See CONVENTION(1).

“Conventio is a word much used both in Ancient and Modern Law-pleadings, for an Agreement or Covenant.” Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

CONVENTION

convention. 1. An agreement or compact, esp. one among nations; a multilateral treaty <the Geneva Convention>. See TREATY. [Cases: Treaties 1.C.J.S. Treaties § 2.] 2. A special deliberative assembly elected for the purpose of framing, revising, or amending a constitution. See CONSTITUTION (1). — Also termed constitutional convention. [Cases: Constitutional Law 8,

10. C.J.S. Constitutional Law §§ 5, 8–9.] 3. An assembly or meeting of members belonging to an organization or having a common objective <an ABA convention>. — Also termed conference. 4.Parliamentary law. A deliberative assembly that consists of delegates elected or appointed from subordinate or constituent organizations within a state or national organization, or elected directly from the organization's membership or from defined geographic or other constituencies into which the membership is grouped, and that usu. exercises the organization's highest policymaking authority <a national political conven-tion>. — Also termed assembly; congress; convocation; delegate assembly; general assembly. See HOUSE OF DELEGATES . 5.Parliamentary law. A session of a convention (sense 4), consisting of a series of consecutive meetings separated by short recesses or adjournments, often during a convention (sense 3) that includes educa-tional and social programs for the benefit of other members in addition to the delegates. 6. A generally accepted rule or practice; usage or custom <the court dispensed with the convention of having counsel approach the bench>.

CONVENTIONAL

conventional,adj.1. Customary; orthodox; traditional <conventional motion practice>.2. Depending on, or arising from, the agreement of the parties, as distinguished from something arising by law <conventional subrogation>.3. Arising by treaty or convention <conventional international law>.

CONVENTIONAL CUSTOM

conventional custom.See CUSTOM.

CONVENTIONAL INTEREST

conventional interest.See INTEREST(3).

CONVENTIONALISM

conventionalism. A jurisprudential conception of legal practice and tradition holding that law is a matter of respecting and enforcing legal and social rules.

“Conventionalism makes two postinterpretive, directive claims. The first is positive: that judges must respect the established legal conventions of their community except in rare circumstances. It insists, in other words, that they must treat as law what convention stipulates as law. Since convention in Britain establishes that acts of Parliament are law, a British judge must enforce even acts of Parliament he considers unfair or unwise. This positive part of conventionalism most plainly corresponds to the popular slogan that judges should follow the law and not make new law in its place. The second claim, which is at least equally important, is negative. It declares that there is no law — no right flowing from past political decisions — apart from the law drawn from those decisions by tech-niques that are themselves matters of convention, and therefore that on some issues there is no law either way.” Ronald Dworkin, *Law's Empire* 116 (1986).

CONVENTIONAL LAW

conventional law. A rule or system of rules agreed on by persons for the regulation of their conduct toward one another; law constituted by agreement as having the force of special law between the parties, by either supplementing or replacing the general law of the land. • The most important example is conventional international law, but there are many lesser examples such as rules and regulations of a country club or professional association, or the rules of golf, basketball, or any other game. — Also termed (in international law) treaty-made law; treaty-created law; treaty law. See CONVENTION(1).

CONVENTIONAL LIEN

conventional lien. See LIEN.

CONVENTIONAL LOAN

conventional loan. See conventional mortgage under MORTGAGE.

CONVENTIONAL MORTGAGE

conventional mortgage. See MORTGAGE.

CONVENTIONAL OBLIGATION

conventional obligation. See OBLIGATION.

CONVENTIONAL REMISSION

conventional remission. See REMISSION.

CONVENTIONAL SEQUESTRATION

conventional sequestration. See SEQUESTRATION.

CONVENTIONAL SERVITUDE

conventional servitude. See SERVITUDE(2).

CONVENTIONAL SUBROGATION

conventional subrogation. See SUBROGATION.

CONVENTION APPLICATION

Convention application. See PATENT APPLICATION.

CONVENTIONE

conventione (k<<schwa>>n-ven-shee-oh-nee). [Latin] Hist. A writ for the breach of a written covenant. • This writ was often used when parties wished to convey land by fine. — Also termed writ of covenant. See FINE(1).

CONVENTION FOR THE EUROPEAN PATENT FOR THE COMMON MARKET

Convention for the European Patent for the Common Market. See COMMUNITY PATENT CONVENTION .

CONVENTION FOR THE PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS

Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations. See ROME CONVENTION ON RELATED RIGHTS.

CONVENTION FOR THE PROTECTION OF PRODUCERS OF PHONOGRAMS

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. See GENEVA PHONOGRAMS CONVENTION.

CONVENTION ON THE GRANT OF EUROPEAN PATENT

Convention on the Grant of European Patent. See EUROPEAN PATENT CONVENTION.

CONVENTION RELATING TO THE DISTRIBUTION OF PROGRAM-CARRYING SIGNALS

Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite. See BRUSSELS SATELLITE CONVENTION.

CONVENTUS

conventus (k<<schwa>>n-ven-t<<schwa>>s), n. [Latin] 1. An assembly. • Conventus magnatum vel procerum (“the assembly of the nobles”) was an ancient name for Parliament. 2. CONVENTUS JURIDICUS. Pl. conventus.

CONVENTUS JURIDICUS

conventus juridicus (k<<schwa>>n-ven-t<<schwa>>s juu-rid-i-k<<schwa>>s). [Latin “judicial assembly”] Roman law. A court session held by a provincial governor in the leading cities of the province. — Sometimes shortened to conventus.

CONVERSION

conversion, n. 1. The act of changing from one form to another; the process of being exchanged.

equitable conversion. A change in the nature of property so that real property is treated as personal property, or vice versa, in certain circumstances. • Equitable conversion is based on the maxim that equity regards as done that which ought to be done. The most common situation involves transferring real property as the parties to a contract intended before the seller experienced a change in circumstances, such as marriage or death, that could affect the property's ownership. When a contract is made, the buyer acquires equitable title to the property, and the seller retains legal title. But the seller's interest is treated as one in personal property rather than in real property because the seller's true interest is in the proceeds (usu. personal property such as cash); the legal title is security for the buyer's payment. Courts usu. apply the doctrine of equitable conversion to recognize the transfer of equitable title, including the right of possession, to the buyer when the contract was signed. The buyer then acquires legal title by performing under the contract. [Cases: Conversion 1. C.J.S. Conversion §§ 2–4.]

forced conversion. The conversion of a convertible security, after a call for redemption, when the value of the security that it may be converted to is greater than the amount that will be received if the holder permits the security to be redeemed.

2. Tort & criminal law. The wrongful possession or disposition of another's property as if it were one's own; an act or series of acts of willful interference, without lawful justification, with an item of property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property. [Cases: Trover and Conversion 1. C.J.S. Trover and Conversion § 1, 5.] — convert, vb. — conversionary, adj. “There are three distinct methods by which one man may deprive another of his property, and so be guilty of a conversion and liable in an action for trover — (1) by wrongly taking it, (2) by wrongly detaining it, and (3) by wrongly disposing of it. The term conversion was originally limited to the third of these cases. To convert goods meant to dispose of them, or make away with them, to deal with them, in such a way that neither owner nor wrongdoer had any further possession of them: for example, by consuming them, or by destroying them, or by selling them, or otherwise delivering them to some third person. Merely to take another's goods, however wrongfully, was not to convert them. Merely to detain them in defiance of the owner's title was not to convert them. The fact that conversion in its modern sense includes instances of all three modes in which a man may be wrongfully deprived of his goods, and not of one mode only, is the outcome of a process of historical development whereby, by means of legal fictions and other devices, the action of trover was enabled to extend its limits and appropriate the territories that rightly belonged to other and earlier forms of action.” R.F.V. Heuston, *Salmond on the Law of Torts* 94 (17th ed. 1977).

“By conversion of goods is meant any act in relation to goods which amounts to an exercise of dominion over them, inconsistent with the owner's right of property. It does not include mere acts of damage, or even an asportation which does not amount to a denial of the owner's right of property; but it does include such acts as taking possession, refusing to give up on demand, disposing of the goods to a third person, or destroying them.” William Geldart, *Introduction to English Law* 143 (D.C.M. Yardley ed., 9th ed. 1984).

constructive conversion. Conversion consisting of an action that in law amounts to the appropriation of property. • Constructive conversion could be, for example, an appropriation that was initially lawful. [Cases: Trover and Conversion 6. C.J.S. Trover and Conversion §§ 35–38.]

conversion by detention. Conversion by detaining property in a way that is adverse to the owner or other lawful possessor. • The mere possession of property without title is not conversion. The defendant must have shown an intention to keep it in defiance of the owner or lawful possessor. [Cases: Trover and Conversion 6. C.J.S. Trover and Conversion §§ 35–38.]

conversion by estoppel. A judicial determination that a conversion has taken place — though in truth one has not — because a defendant is estopped from offering a defense. • This occurs, for example, under the traditional rule that a bailee is estopped from denying the bailor's title even if the bailor has no title to the chattel.

conversion by taking. Conversion by taking a chattel out of the possession of another with the intention of exercising a permanent or temporary dominion over it, despite the owner's

entitlement to use it at all times. [Cases: Trover and Conversion 11. C.J.S. Trover and Conversion § 30.]

conversion by wrongful delivery. Conversion by depriving an owner of goods by delivering them to someone else so as to change the possession. [Cases: Carriers 93. C.J.S. Carriers § 408.]

conversion by wrongful destruction. Conversion by willfully consuming or otherwise destroying a chattel belonging to another person. [Cases: Trover and Conversion 12. C.J.S. Trover and Conversion § 20.]

conversion by wrongful disposition. Conversion by depriving an owner of goods by giving some other person a lawful title to them. [Cases: Trover and Conversion 10. C.J.S. Trover and Conversion §§ 31–34.]

direct conversion. The act of appropriating the property of another to one's own benefit, or to the benefit of another. • A direct conversion is per se unlawful, and the traditional requirements of demand and refusal of the property do not apply. [Cases: Trover and Conversion 3–5. C.J.S. Trover and Conversion §§ 8, 19, 21–30.]

fraudulent conversion. Conversion that is committed by the use of fraud, either in obtaining the property or in withholding it. [Cases: Trover and Conversion 3, 7. C.J.S. Trover and Conversion § 8.]

involuntary conversion. The loss or destruction of property through theft, casualty, or condemnation.

CONVERSIONARY ACT

conversionary act. See ACT.

CONVERSION DIVORCE

conversion divorce. See DIVORCE.

CONVERSION PREMIUM

conversion premium. Securities. The surplus at which a security sells above its conversion price.

CONVERSION PRICE

conversion price. Securities. The contractually specified price per share at which a convertible security can be converted into shares of common stock.

CONVERSION RATIO

conversion ratio. 1. The number of common shares into which a convertible security may be converted. 2. The ratio of the face amount of the convertible security to the conversion price.

CONVERSION SECURITY

conversion security. See SECURITY.

CONVERSION VALUE

conversion value. A convertible security's value as common stock. • For example, a bond that can be converted into ten shares of stock worth \$40 each has a conversion value of \$400. See **BOND CONVERSION**.

CONVERTER

converter, n. One who wrongfully possesses or disposes of another's property; esp., one who engages in a series of acts of willful interference, without lawful justification, with an item of property in a manner inconsistent with another's right, whereby that other person is deprived of the use and possession of the property.

innocent converter. A person who takes another's chattel tortiously but in good faith and without knowledge that he or she has no entitlement to it.

CONVERTIBLE ARBITRAGE

convertible arbitrage. See kind arbitrage under **ARBITRAGE**.

CONVERTIBLE BOND

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

CONVERTIBLE COLLISION INSURANCE

convertible collision insurance. See **INSURANCE**.

CONVERTIBLE DEBENTURE

convertible debenture. See **DEBENTURE**.

CONVERTIBLE DEBT

convertible debt. 1. **DEBT**. 2. See convertible security under **SECURITY**.

CONVERTIBLE DIVORCE

convertible divorce. See conversion divorce under **DIVORCE**.

CONVERTIBLE INSURANCE

convertible insurance. See **INSURANCE**.

CONVERTIBLE SECURITY

convertible security. See **SECURITY**.

CONVERTIBLE STOCK

convertible stock. See convertible security under **SECURITY**.

CONVERTIBLE SUBORDINATED DEBENTURE

convertible subordinated debenture. See **DEBENTURE**.

CONVEY

convey, vb. To transfer or deliver (something, such as a right or property) to another, esp. by deed or other writing; esp., to perform an act that is intended to create one or more property interests, regardless of whether the act is actually effective to create those interests.

CONVEYANCE

conveyance (k<<schwa>>n-vay-<<schwa>>nts), n.1. The voluntary transfer of a right or of property.

absolute conveyance. A conveyance in which a right or property is transferred to another free of conditions or qualifications (i.e., not as a security). Cf. conditional conveyance.

conditional conveyance. A conveyance that is based on the happening of an event, usu. payment for the property; a mortgage. Cf. absolute conveyance.

derivative conveyance. See secondary conveyance.

innocent conveyance. Hist. A leaseholder's conveyance of the leaseholder's property interest — that is, something less than a fee simple. • The conveyance is of an equitable interest. [Cases: Landlord and Tenant 74. C.J.S. Landlord and Tenant §§ 30, 53.]

mesne conveyance (meen). An intermediate conveyance; one occupying an intermediate position in the chain of title between the first grantee and the present holder.

original conveyance. See primary conveyance.

present conveyance. A conveyance made with the intent that it take effect at once rather than in the future.

primary conveyance. A conveyance that creates an estate. • Examples of primary conveyances include feoffment, gift, grant, lease, exchange, and partition. — Also termed original conveyance. Cf. secondary conveyance.

“Of conveyances by the common law, some may be called original, or primary conveyances; which are those by means whereof the benefit or estate is created or first arises: others are derivative or secondary; whereby the benefit or estate, originally created, is enlarged, restrained, transferred, or extinguished.” 2 William Blackstone, *Commentaries on the Laws of England* 309 (1766).

secondary conveyance. A conveyance that follows an earlier conveyance and that serves only to enlarge, confirm, alter, restrain, restore, or transfer the interest created by the primary conveyance. — Also termed derivative conveyance; derivative deed. Cf. primary conveyance.

voluntary conveyance. A conveyance made without valuable consideration, such as a deed in favor of a relative.

2. The transfer of a property right that does not pass by delivery of a thing or merely by agreement. 3. The transfer of an interest in real property from one living person to another, by

means of an instrument such as a deed. 4. The document (usu. a deed) by which such a transfer occurs. [Cases: Deeds 3. C.J.S. Deeds §§ 1–8.] 5. A means of transport; a vehicle. 6. Bankruptcy. A transfer of an interest in real or personal property, including an assignment, a release, a monetary payment, or the creation of a lien or encumbrance. — Also termed (in sense 6) bond for deed. See FRAUDULENT CONVEYANCE; PREFERENTIAL TRANSFER.

CONVEYANCER

conveyancer (k<<schwa>>n-vay-<<schwa>>n-s<<schwa>>r). A lawyer who specializes in real-estate transac-tions. • In England, a conveyancer is a solicitor or licensed conveyancer who examines title to real estate, prepares deeds and mortgages, and performs other functions relating to the transfer of real property.

CONVEYANCING

conveyancing (k<<schwa>>n-vay-<<schwa>>n-sing). The act or business of drafting and preparing legal in-struments, esp. those (such as deeds or leases) that transfer an interest in real property.

“Conveyancing is the art or science of preparing documents and investigating title in connection with the creation and assurance of interests in land. Despite its connection with the word ‘conveyance’, the term in practice is not limited to use in connection with old system title but is used without discrimination in the context of all types of title.” Peter Butt, *Land Law* 7 (2d ed. 1988).

“Conveyancing may be regarded as the application of the law of real property in practice.” Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 125 (6th ed. 1993).

CONVEYANCING COUNSEL

conveyancing counsel. Three to six lawyers who are appointed by the Lord Chancellor to assist the High Court of Justice with opinions in matters of property titles and conveyancing. — Also termed conveyancing counsel of the Supreme Court; (formerly) conveyancing counsel to the Court of Chancery.

CONVEYEE

conveyee (k<<schwa>>n-vay-ee). One to whom property is conveyed.

CONVEYOR

conveyor (k<<schwa>>n-vay-<<schwa>>r or -or). One who transfers or delivers title to another.

CONVICIANDI ANIMO

conviciandi animo (k<<schwa>>n-vish-ee-an-dīan-<<schwa>>-moh). [Latin] Hist. With the intention of insulting; with the intention of bringing into contempt.

CONVICIUM

convicium (k<<schwa>>n-vish-ee-<<schwa>>m), n.[Latin] Roman law. Reproach, abuse, revilement, or clamor directed at a person.

CONVICT

convict (kon-vikt), n. A person who has been found guilty of a crime and is serving a sentence of confinement for that crime; a prison inmate. [Cases: Convicts 1. C.J.S. Convicts §§ 2–3.]

convict (k<<schwa>>n-vikt), vb. To find (a person) guilty of a criminal offense upon a criminal trial, a plea of guilty, or a plea of nolo contendere (no contest).

CONVICTED FELON

convicted felon.See FELON.

CONVICTION

conviction (k<<schwa>>n-vik-sh<<schwa>>n), n.1. The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty. [Cases: Criminal Law 977(5).] 2. The judgment (as by a jury verdict) that a person is guilty of a crime. 3. A strong belief or opinion.

abiding conviction.A settled conviction; a definite conviction based on a thorough examination of the case.

summary conviction.A conviction of a person for a violation or minor misdemeanor as the result of a trial before a magistrate sitting without a jury.

CONVICTION RATE

conviction rate.Within a given area or for a given time, the number of convictions (including plea bargains) as a percentage of the total number of prosecutions undertaken.

CONVIVIUM

convivium (k<<schwa>>n-viv-ee-<<schwa>>m). [Latin “banquet”] Hist. Tenure that binds the tenant to provide meat and drink for the lord at least once a year.

CONVOCATION

convocation. 1.CONVENTION(4).2. See call to order under CALL(1).3. See provincial synod under SYNOD.

CONVOY

convoy,n. A group of vehicles or vessels traveling together for safety, esp. with armed escorts.
• The term also applies figuratively to groups traveling together for convenience. — convoy,vb.

COO

COO.abbr. CHIEF OPERATING OFFICER.

CO-OBLIGEE

co-obligee. One of two or more persons to whom an obligation is owed. See OBLIGEE.

CO-OBLIGOR

co-obligor. 1. One of two or more persons who have undertaken an obligation. See OBLIGOR. 2. A person who is under a duty of contribution. See CONTRIBUTION(1).

COOL BLOOD

cool blood.Criminal law. In the law of homicide, a condition in which the defendant's emotions are not in such an excited state that they interfere with his or her faculties and reason. — Also termed cool state of blood. See COLD BLOOD. Cf. HEAT OF PASSION. [Cases: Homicide 669.]

COOLEY<TT> DOCTRINE

Cooley doctrine.Constitutional law. The principle that Congress has exclusive power under the Commerce Clause to regulate the national as well as the local aspects of national commercial matters, and that the states may regulate those aspects of interstate commerce so local in character as to require diverse treatment. • The Supreme Court has abandoned the Cooley doctrine in favor of a balancing test for Commerce Clause cases. *Cooley v. Port Bd. of Wardens*, 53 U.S. (12 How.) 299 (1851). [Cases: Commerce 3, 13.5. C.J.S. Commerce §§ 4, 11.]

COOLING-OFF PERIOD

cooling-off period. 1. An automatic delay between a person's taking some legal action and the consequence of that action. 2. A period during which a buyer may cancel a purchase. 3. An automatic delay in some states between the filing of divorce papers and the divorce hearing. [Cases: Divorce 146. C.J.S. Divorce §§ 209–210.] 4.Securities. A period (usu. at least 20 days) between the filing of a registration and the effective registration. 5. During a dispute, a period during which no action may be taken by either side. • In labor disputes, a statutory cooling-off period forbids employee strikes and employer lockouts.

COOLING TIME

cooling time.Criminal law. Time to recover cool blood after great excitement, stress, or provocation, so that one is considered able to contemplate, comprehend, and act with reference to the consequences that are likely to follow. See COOL BLOOD. [Cases: Homicide 669.]

“[O]ne who controls his temper time after time, following repeated acts of provocation, may have his emotion so bottled-up that the final result is an emotional explosion [I]n such a case the ‘cooling time’ begins to run not from earlier acts, but from ‘the last straw.’ ... As was the position in regard to the adequacy of the provocation, so the early holding was that the cooling time was a matter of law for the court.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 100 (3d ed. 1982).

COOL STATE OF BLOOD

cool state of blood. See COOL BLOOD.

CO-OP

co-op. See COOPERATIVE.

COOPERATION

cooperation. 1. An association of individuals who join together for a common benefit. 2. Patents. A unity of action to a common end or result, not merely joint or simultaneous action. 3. Int'l law. The voluntary coordinated action of two or more countries occurring under a legal régime and serving a specific objective.

COOPERATION CLAUSE

cooperation clause. Insurance. A policy provision requiring that the insured assist the insurer in investigating and defending a claim. [Cases: Insurance 3202, 3204. C.J.S. Insurance § 1159.]

COOPERATIVE

cooperative, n. 1. An organization or enterprise (as a store) owned by those who use its services. 2. A dwelling (as an apartment building) owned by its residents, to whom the apartments are leased. — Often shortened to coop; co-op. Cf. CONDOMINIUM(2). [Cases: Landlord and Tenant 350. C.J.S. Landlord and Tenant § 792.21.]

COOPERATIVE ADOPTION

cooperative adoption. See ADOPTION.

COOPERATIVE CAUSE

cooperative cause. See CAUSE(1).

COOPERATIVE CORPORATION

cooperative corporation. See CORPORATION.

COOPERATIVE FEDERALISM

cooperative federalism. See FEDERALISM.

COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE

Cooperative State Research, Education, and Extension Service. An agency in the U.S. Department of Agriculture responsible for coordinating departmental research activities with those of academic and land-grant institutions. — Abbr. CSREES.

CO-OPT

co-opt, vb. 1. To add as a member. 2. To assimilate; absorb.

CO-OPTATION

co-optation (koh-ahp-tay-sh<<schwa>>n), n. The act of selecting a person to fill a vacancy

(usu. in a close corporation). — co-optative,adj.

COORDINATE JURISDICTION

coordinate jurisdiction. See concurrent jurisdiction under JURISDICTION.

COORDINATION-OF-BENEFITS CLAUSE

coordination-of-benefits clause. See COB CLAUSE.

COOWNER

coowner, n. A person who is in concurrent ownership, possession, and enjoyment of property with one or more others; a tenant in common, a joint tenant, or a tenant by the entirety. [Cases: Husband and Wife 14; Joint Tenancy 1; Tenancy in Common 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9; Tenancy in Common §§ 2–5.] — coown, vb. — coownership, n.

COPA

COPA. abbr. CHILD ONLINE PROTECTION ACT.

COP A PLEA

cop a plea, vb. Slang. (Of a criminal defendant) to plead guilty to a lesser charge as a means to avoid standing trial for a more serious offense. See PLEA BARGAIN.

COPARCENARY

coparcenary (koh-pahr-s<<schwa>>-ner-ee), n. An estate that arises when two or more persons jointly inherit from one ancestor, the title and right of possession being shared equally by all. • Coparcenary was a form of coownership created by common-law rules of descent upon intestacy when two or more persons together constituted the decedent's heirs. Typically, this situation arose when the decedent was survived by no sons but by two or more daughters, so that the daughters took as coparceners. — Also termed parcenary; tenancy in coparcenary. — coparcenary, adj.

“Coparcenary is converted into separate ownership (i) by partition, or (ii) by the union in one parcener of all the shares, and it is converted into a tenancy in common if one parcener transfers her share to a stranger.” G.C. Cheshire, *Modern Law of Real Property* 553 (3d ed. 1933).

COPARCENER

coparcener (koh-pahr-s<<schwa>>-n<<schwa>>r). A person to whom an estate descends jointly, and who holds it as an entire estate; a person who has become a concurrent owner as a result of descent. — Also termed parcener; (archaically) coparticeps.

“Coparceners constitute a single heir, and they occupy a position intermediate between joint tenants and tenants in common. Like joint tenants they have unity of title, interest and possession; like tenants in common, their estate is not subject to the doctrine of survivorship, and if there are three coparceners and one dies, her share passes separately to her heirs or devisee, not to the survivors, though the unity of possession continues. It follows that unity of time is not necessary

to constitute coparcenary, for if a man has two daughters to whom his estate descends and one dies leaving a son, such son and the surviving daughter will be coparceners." G.C. Cheshire, *Modern Law of Real Property* 553 (3d ed. 1933).

COPARTICEPS

coparticeps (koh-pahr-t<<schwa>>-seps). [fr. Latin *particeps* "sharing"] See COPARCENER.

COPARTNER

copartner. A member of a partnership; PARTNER. [Cases: Partnership 1.C.J.S. Partnership §§ 1–7, 17.]

"Copartner need not exist alongside partner. The joint relationship (i.e., that the existence of one partner implies the existence of one or more other partners) is clear to all native speakers of English.... Because copartner adds nothing to the language of the law, it should be avoided." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 223 (2d ed. 1995).

COPARTNERSHIP

copartnership. See PARTNERSHIP. • The terms copartnership and partnership are equally old — each having first appeared in the 1570s.

COPARTY

coparty. A litigant or participant in a legal transaction who has a like status with another party; a party on the same side of a lawsuit. — Also termed joint party. See CODEFENDANT; COPLAINTIFF.

COPAYMENT

copayment. A fixed amount that a patient pays to a healthcare provider according to the terms of the patient's health plan. — Often shortened to copay. [Cases: Insurance 2523.]

COPENDING

copending,adj. Patents. (Of serial applications filed in the same patent prosecution) before the U.S. Patent and Trademark Office at or near the same time and concerning the same invention. • A continuation or divisional application that is copending with its parent application benefits from the parent's earlier filing date.

COPENDING PATENT

copending patent. See PATENT (3).

COPIA LIBELLI DELIBERANDA

copia libelli deliberanda. See DE COPIA LIBELLI DELIBERANDA.

COPLAINTIFF

coplaintiff. One of two or more plaintiffs in the same litigation. — Also termed joint plaintiff.

Cf. CODE-FENDANT.

COPRINCIPAL

coprincipal. 1. One of two or more participants in a criminal offense who either perpetrate the crime or aid a person who does so. [Cases: Criminal Law 59. C.J.S. Criminal Law §§ 127, 998.]
2. One of two or more persons who have appointed an agent whom they both have the right to control.

COPULATIVE CONDITION

copulative condition. See CONDITION(2).

COPY

copy, n. 1. An imitation or reproduction of an original. • In the law of evidence, a copy is generally admissible to prove the contents of a writing. Fed. R. Evid. 1003. See BEST-EVIDENCE RULE. [Cases: Evidence 174.1. C.J.S. Evidence §§ 1074, 1102–1104.]

archival copy. See ARCHIVAL COPY.

attested copy. See certified copy.

certified copy. A duplicate of an original (usu. official) document, certified as an exact reproduction usu. by the officer responsible for issuing or keeping the original. — Also termed attested copy; exemplified copy; verified copy. [Cases: Criminal Law 430; Evidence 338. C.J.S. Criminal Law §§ 1025, 1029–1031; Evidence §§ 879–880, 893, 895.]

conformed copy. An exact copy of a document bearing written explanations of things that were not or could not be copied, such as a note on the document indicating that it was signed by a person whose signature appears on the original.

examined copy. A copy (usu. of a record, public book, or register) that has been compared with the original or with an official record of an original. [Cases: Criminal Law 445; Evidence 367. C.J.S. Criminal Law §§ 1025, 1029; Evidence §§ 881, 884, 889.]

exemplified copy. See certified copy.

true copy. A copy that, while not necessarily exact, is sufficiently close to the original that anyone can understand it.

verified copy. See certified copy.

2. Copyright. The physical form in which a creative work is fixed and from which the work can be reproduced or perceived, with or without the aid of a special device. 17 USCA § 101.
3. Copyright. An expressive work that is substantially similar to a copyrighted work and not produced coincidentally and independently from the same source as the copyrighted work. • Proof of copying in an infringement action requires evidence of the defendant's access to the original work and substantial similarity of the defendant's work to the original. See substantial similarity under SIMILARITY. “The noun ‘copy’ ordinarily connotes a tangible object that is a reproduction

of the original work; the courts have generally found no reason to depart from this usage in the law of copyright.” 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 4.08[B], at 4-47 (Supp. 1995).

COPYCAT DRUG

copycat drug. See generic drug under DRUG.

COPYHOLD

copyhold. Hist. A base tenure requiring the tenant to provide the customary services of the manor, as reflected in the manor's court rolls. • Copyhold tenure descended from pure villeinage; over time, the customs of the manor, as reflected on the manor's rolls, dictated what services a lord could demand from a copyholder. This type of tenure was abolished by the Law of Property Act of 1922, which converted copyhold land into freehold or leasehold land. — Also termed copyhold tenure; customary estate; customary freehold; tenancy by the verge; tenancy par la verge; tenancy by the rod. See base tenure under TENURE; VILLEINAGE.

“Out of the tenure by villeinage, copyhold tenure developed... By the end of the fifteenth century, to hold by copy of the court roll, to be a ‘copyholder,’ was a definite advantage, and, in most cases the holders had for many generations been personally free. The fusing of several different types of payment had also gone on, so that there was little difference between a holder in socage who had commuted the services for a sum of money and a co-pyholder who had done the same, except the specific dues of heriot and merchet. In Coke's time, a very large part of the land of England was still held by copyhold.” Max Radin, *Handbook of Anglo-American Legal History* 371 (1936).

“[L]and held on an unfree tenure could be transferred only by a surrender and admittance made in the lord's court. The transaction was recorded on the court rolls and the transferee given a copy of the entry to prove his title; he thus held ‘by copy of the court roll,’ and the tenure became known as ‘copyhold.’ ” Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 22 (6th ed. 1993).

privileged copyhold. Hist. A copyhold subject only to the customs of the manor and not affected by the nonconforming dictates of the current lord.

COPYHOLDER

copyholder. Hist. A tenant by copyhold tenure. — Also termed tenant by the verge; tenant par la verge.

“The lord still held a court, and that court kept records of all transactions affecting the lands. These records were called the rolls of the court. When, for instance, a tenant sold his interest to a third party, the circumstances of the sale would be recorded, and the buyer would receive a copy of the court rolls in so far as they affected his holding. Inasmuch as he held his estate by copy of court roll, he came to be called a copyholder.” G.C. Cheshire, *Modern Law of Real Property* 24 (3d ed. 1933).

COPYHOLD TENANT

copyhold tenant. See customary tenant under TENANT.

COPYHOLD TENURE

copyhold tenure. See COPYHOLD.

COPYLEFT

copyleft. Slang. A software license that allows users to modify or incorporate open-source code into larger programs on the condition that the software containing the source code is publicly distributed without restrictions.

COPYLEFTED SOFTWARE

copylefted software. Slang. Free software whose distribution terms forbid the addition of restrictions if the software is redistributed in its original or a modified form. • Not actually a legal term, this phrase is popularly used as the antithesis of copyright by Internet free-software promoters. See FREEWARE.

COPYRIGHT

copyright, n. 1. The right to copy; specif., a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural, and architectural works; motion pictures and other audiovisual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work. [Cases: Copyrights and Intellectual Property 1. C.J.S. Copyrights and Intellectual Property §§ 2, 4–5.] 2. The body of law relating to such works. • Copyright law is governed by the Copyright Act of 1976. 17 USCA §§ 101–1332. — Abbr. c. [Cases: Copyrights and Intellectual Property 101. C.J.S. Copyrights and Intellectual Property §§ 102–104.] — copyright, vb. — copyrighted, adj.

“[C]opyright is a monopoly of limited duration, created and wholly regulated by the legislature; and ... an author has, therefore, no other title to his published works than that given by statute.” Ethan S. Drone, *A Treatise on the Law of Property in Intellectual Productions* 2 (1879).

“The development of copyright law in England was shaped by the efforts of mercantile interests to obtain monopoly control of the publishing industry — similar to those of the guilds that were instrumental in shaping patent and trademark law.... American copyright law came to distinguish between the ‘common law’ right of an author to his unpublished creations, and the statutory copyright that might be secured upon publication. Until recently, therefore, an author had perpetual rights to his creation, which included the right to decide when, if, and how to publish the work, but that common law right terminated upon publication at which time statutory rights become the sole rights, if any, to which the author was entitled. This distinction was altered by the Copyright Act of 1976, which shifts the line of demarcation between common law and statutory copyright from the moment of publication to the moment of fixation of the work into tangible form.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 280–82 (2d ed.

1990).

“What is copyright? From copyright law's beginnings close to three centuries ago, the term has meant just what it says: the right to make copies of a given work — at first it meant simply written work — and to stop others from making copies without one's permission.” Paul Goldstein, *Copyright's Highway* 3 (1994).

“Before the 1976 Copyright Act swept virtually all copyrightable subject matter within the exclusive domain of federal protection, the term ‘copyright’ implied a statutory right created by Congress in order to ‘Promote the Progress of Science.’ Our first copyright act, in 1790, protected only maps, charts, and books. Protection gradually was extended to musical compositions and graphic works. In the middle of the nineteenth century, photography was developed and then protected, followed at the end of the century by motion pictures (although they were protected as photographs). As the twentieth century comes to a close, digital technology and multimedia forms of authorship seriously challenge the gradual, compartmentalized approach to granting new rights and new subject matter” 1 William F. Patry, *Copyright Law and Practice* 1 (1994).

ad interim copyright.Hist. A limited five-year U.S. copyright granted to the author of a foreign edition of an English-language book or periodical if, within six months after its publication abroad, the author deposited one complete copy of that edition in the U.S. Copyright Office and requested ad interim copyright protection. • An ad interim copyright was granted as an exception to the 1909 Copyright Act's manufacturing clause, which limited copyright protection for English-language books and periodicals to those printed in the U.S. If the copyright owner published the work in the U.S. during the period of ad interim protection and complied with the Act's manufacturing requirements, full copyright protection related back to the date of first publication. Otherwise, the work went into the public domain at the end of five years.

common-law copyright.A property right that arose when the work was created, rather than when it was published. • Under the Copyright Act of 1976, which was effective on January 1, 1978, common-law copyright was largely abolished for works created after the statute's effective date. But the statute retained the common law's recognition that the property right arose when the work was created rather than when it was published. And the common-law copyright still applies in a few areas: notably, a common-law copyright received before January 1, 1978, remains entitled to protection. — Also termed right of first publication.

COPYRIGHTABILITY TEST

copyrightability test.A judicial test for determining whether a contributor to a joint work is an author for legal purposes, based on whether the contributor's effort is an original expression that could qualify for copyright protection on its own. • This test has been adopted by a majority of courts that have addressed the question. Cf. DE MINIMIS TEST.

COPYRIGHT ACT OF 1790

Copyright Act of 1790.The first U.S. copyright law, which, like England's Statute of Anne, gave authors copyright protection for 14 years, renewable for another 14 years, after which time the work then entered the public domain.

COPYRIGHT ACT OF 1909

Copyright Act of 1909. A major revision of U.S. copyright law, extending the term of protection from 14 to 28 years (renewable for a second 28-year term); measuring the copyright term from the time of publication rather than the time of registration with the Copyright Office; and expanding coverage to all writings. • The Act retained the formalities for securing a copyright and required that a copyright mark appear on the work. It governed U.S. copyrights issued from July 1, 1909 to December 31, 1977. Although the 1976 Copyright Act supplanted the 1909 Act, the 1909 Act still applies to some pre-1978 claims and affects certain other rights of copyright owners. — Also termed 1909 Copyright Act.

COPYRIGHT ACT OF 1976

Copyright Act of 1976. A major revision of U.S. copyright law, extending the term of protection to the life of the author plus 50 years, measured from the date of creation; greatly expanding the types of works that qualify for protection; dropping the requirement that the work be published before it can be protected; making fair use a statutory defense to a claim in infringement; and preempting state common-law copyright. 17 USCA §§ 101 et seq. • This is the current federal statute that governs copyright registrations and rights. — Also termed 1976 Copyright Act.

COPYRIGHT AND THE CHALLENGE OF TECHNOLOGY

Copyright and the Challenge of Technology. See GREEN PAPER ON COPYRIGHT AND THE CHALLENGE OF TECHNOLOGY .

COPYRIGHT APPLICATION

copyright application. A written request for copyright protection made by a work's creator, filed with the U.S. Copyright Office and accompanied by a filing fee and either a deposit copy of the work or approved identifying material. • A registrant who does not meet the deposit requirement of the Copyright Act of 1976 risks losing copyright protection. See, e.g., *Coles v. Wonder*, 283 F.3d 798 (6th Cir. 2002). [Cases: Copyrights and Intellectual Property 50.20.]

COPYRIGHT BUG

copyright bug. See COPYRIGHT NOTICE.

COPYRIGHT CLAUSE

Copyright Clause. U.S. Const. art. I, § 8, cl. 8, which gives Congress the power to secure to authors the exclusive rights to their writings for a limited time. [Cases: Copyrights and Intellectual Property 2.C.J.S. Copyrights and Intellectual Property §§ 3–6, 8.]

COPYRIGHT CLEARINGHOUSE

copyright clearinghouse. An organization that licenses members' works to applicants for specific purposes. • A clearinghouse usu. licenses only one type or class of works, such as songs, photographs, cartoons, or written materials.

COPYRIGHT INFRINGEMENT

copyright infringement. See INFRINGEMENT.

COPYRIGHT LEGEND

copyright legend. See COPYRIGHT NOTICE.

COPYRIGHT-MANAGEMENT INFORMATION

copyright-management information. The name and other identifying information about the creator, performer, or copyright owner of a creative work. See DIGITAL MILLENNIUM COPYRIGHT ACT.

COPYRIGHT MISUSE

copyright misuse. In an infringement action, an affirmative defense based on the copyright owner's use of a license to restrain trade or in any other manner that is against public policy. • The defense, roughly parallel to the declining patent-misuse defense, was invoked, for example, to prevent the American Medical Association from enforcing its copyright in its medical-procedure codes after licensing them to the U.S. Government for use in the Medicaid program. See *Practice Mgmt. Info. Corp. v. Am. Med. Ass'n*, 121 F.3d 516 (9th Cir. 1997). [Cases: Copyrights and Intellectual Property 75. C.J.S. Copyrights and Intellectual Property §§ 43–44, 62.]

COPYRIGHT NOTICE

copyright notice. A notice that a work is copyright-protected, usu. placed in each published copy of the work. • A copyright notice takes the form © (year of publication) (name of basic copyright owner). Since March 1, 1989, such a notice is not required for a copyright to be valid (although the notice continues to provide certain procedural advantages). The phrase “all rights reserved” is usu. no longer required. — Sometimes termed copyright bug; copyright legend; notice of copyright. See ALL RIGHTS RESERVED; BUENOS AIRES CONVENTION . [Cases: Copyrights and Intellectual Property 50.1(2). C.J.S. Copyrights and Intellectual Property §§ 35, 95.]

COPYRIGHT OWNER

copyright owner. 1. One who holds an exclusive right or rights to copyrighted material. 17 USCA § 101. [Cases: Copyrights and Intellectual Property 41. C.J.S. Copyrights and Intellectual Property §§ 22, 93.] 2. One who is named as the owner on any copyright notice attached to a work and who is registered with the U.S. Copyright Office as the owner.

COPYRIGHT ROYALTY TRIBUNAL

Copyright Royalty Tribunal. A former board in the legislative branch of the federal government responsible for establishing and monitoring copyright royalty rates for published and recorded materials. • Its functions are now performed by copyright arbitration royalty panels.

CORAM

coram (kor-⟨⟨schwa⟩⟩m), prep. [Latin] (Of a person) before; in the presence of.

CORAM DOMINO REGE

coram domino rege (kor-⟨⟨schwa⟩⟩m dom-⟨⟨schwa⟩⟩-noh ree-jee). [Latin] Hist. Before our lord the king.

CORAM IPSO REGE

coram ipso rege (kor-⟨⟨schwa⟩⟩m ip-soh ree-jee). [Latin] Hist. Before the king himself. — Also termed coram ipso domino rege.

“The court of king's bench (so called because the king used formerly to sit there in person, the style of the court still being coram ipso rege) is the supreme court of common law in the kingdom....” 3 William Blackstone, Commentaries on the Laws of England 41 (1768).

CORAM JUDICE

coram iudice (kor-⟨⟨schwa⟩⟩m joo-di-see). 1. In the presence of a judge. 2. JURISDICTION.

CORAM NOBIS

coram nobis (kor-⟨⟨schwa⟩⟩m noh-bis). [Latin “before us”] Hist. 1. A writ of error taken from a judgment of the King's Bench. • “Before us” refers to the sovereign, in contrast to the writ coram vobis (“before you”), which refers to any court other than King's Bench, esp. the Court of Common Pleas. 2. A writ of error directed to a court for review of its own judgment and predicated on alleged errors of fact. — Also termed writ of error coram nobis; writ of coram nobis. [Cases: Criminal Law 1411; Judgment 334.C.J.S. Judgments §7 360–361.]

CORAM NON JUDICE

coram non iudice (kor-⟨⟨schwa⟩⟩m non joo-di-see). [Latin “not before a judge”] 1. Outside the presence of a judge. 2. Before a judge or court that is not the proper one or that cannot take legal cognizance of the matter.

CORAM PARIBUS

coram paribus (kor-⟨⟨schwa⟩⟩m par-⟨⟨schwa⟩⟩-b⟨⟨schwa⟩⟩s). [Latin] Hist. Before the peers. • This phrase appeared in deed attestations.

CORAM REGE COURT

Coram Rege Court. See KING'S BENCH.

CORAM SECTORIBUS

coram sectoribus (kor-⟨⟨schwa⟩⟩m sek-t⟨⟨schwa⟩⟩-tor-⟨⟨schwa⟩⟩-b⟨⟨schwa⟩⟩s). [Law Latin] Hist. Before the suitors.

CORAM VOBIS

coram vobis (kor-⟨⟨schwa⟩⟩m voh-bis), n. [Latin “before you”] Hist. 1. A writ of error

directed to a court other than the King's Bench, esp. the Court of Common Pleas, to review its judgment.

“Certain errors in the process of the court, committed by the defaults of the clerks, or as to matters of fact, could be remedied by the court itself. The writ issued for this purpose was called a writ of error ‘coram vobis’ if the error was in the Common Pleas; ‘coram nobis’ if it was in the King's Bench.” 1 William Holdsworth, *A History of English Law* 224 (7th ed. 1956).

2. A writ of error sent by an appellate court to a trial court to review the trial court's judgment based on an error of fact. — Also termed writ of error coram vobis; writ of coram vobis. [Cases: Courts 207.1.]

CORDON RULE

Cordon rule. A rule of the U.S. Senate requiring any committee that is reporting a bill amending current law to show in its report what wording the bill would strike from or insert into the current statute. • The rule is named for Senator Guy Cordon (1890–1969) of Oregon, who proposed it. The analogous rule in the U.S. House of Representatives is the Ramseyer rule. See RAMSEYER RULE.

CORE EARNINGS

core earnings. See operating earnings under EARNINGS.

CORE PROCEEDING

core proceeding. Bankruptcy. 1. A proceeding involving claims that substantially affect the debtor-creditor relationship, such as an action to recover a preferential transfer. • In such a proceeding, the bankruptcy court, as opposed to the district court, conducts the trial or hearing and enters a final judgment. Cf. RELATED PROCEEDING. 2. In federal courts, an action involving subject matter that is clearly within the confines of federal bankruptcy law and the management of the bankrupt's estate. • A federal bankruptcy court may also hear noncore matters that have an independent basis for subject-matter jurisdiction, such as a federal question. For a nonexclusive list of core proceedings, see 28 USCA § 157(b)(2). [Cases: Bankruptcy 2043–2063. C.J.S. Bankruptcy §§ 5, 9–12, 14–15, 17–18, 22.]

CORE RIGHTS

core rights. 1. Human rights that are generally recognized and accepted throughout the world. • These rights include freedom from extrajudicial execution, torture, and arbitrary arrest and detention. Core rights are embodied in many human-rights conventions, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. 2. Fundamental rights claimed within a social, cultural, or other context. • These are not universally recognized rights. For example, the ability to vote may be a fundamental right of citizens in one country but only a privilege limited to selected people in another.

CORRESPONDENT

corespondent. 1. A coparty who responds to a petition, such as a petition for a writ of certiorari. 2. In some states, a coparty who responds to an appeal. 3. Family law. In a divorce suit based on adultery, the person with whom the spouse is accused of having committed adultery. See RESPONDENT. [Cases: Divorce 26. C.J.S. Divorce §§ 60, 70.]

CORE WORK PRODUCT

core work product. See opinion work product under WORK PRODUCT.

CORIUM FORISFACERE

corium forisfacere (kor-ee-*<<schwa>>*m for-is-fay-s*<<schwa>>*-ree). [Law Latin “to forfeit skin”] Hist. To whip (a person, esp. a servant) as punishment. — Also termed corium perdere.

CORIUM REDIMERE

corium redimere (kor-ee-*<<schwa>>*m ri-dim-*<<schwa>>*r-ee). [Latin] Hist. To redeem one's skin. • This referred to a person who paid restitution for an offense.

CORNAGE

cornage (kor-nij). [fr. Anglo-French corne “horn”] Hist. 1. A type of grand-sergeanty military tenure in which the tenant was bound to blow a horn to alert others whenever an enemy approached. 2. A form of tenure entitling a landowner to rent based on the number of horned cattle owned by the tenant. • Cornage may have developed into a type of serjeanty or knight-service tenure that obligated the tenant to blow a horn to warn of invaders, esp. along the border with Scotland. See KNIGHT-SERVICE; SERJEANTY. — Also termed (in senses 1 & 2) horn tenure. 3. A tribute of corn due only on special occasions, as distinguished from a regularly provided service. • This term has often been spelled coraage or coraagium, stemming perhaps from a spelling error in the 1569 edition of Bracton's *De Legibus et Consuetudinibus Angliae*.

CORNELIAN LAW

Cornelian law. See LEX CORNELIA.

CORNER

corner, n. 1. The common end of two survey lines; an angle made by two boundary lines. [Cases: Boundaries 7. C.J.S. Boundaries §§ 10–13.]

existent corner. A corner whose location can be verified by an original landmark, a surveyor's field notes, or other reliable evidence.

lost corner. A point in a land description, such as a landmark or natural object, whose position cannot be reasonably determined from traces of the original marks or other acceptable evidence. • The location can be determined by reference to one or more independent points remaining in the description.

obliterated corner. A corner that can be located only with evidence other than that put in place by the original surveyor.

2. The acquisition of control over all or a dominant quantity of a commodity with the purpose of artificially enhancing the price, carried out by purchases and sales of the commodity — and of options and futures — in a way that depresses the market price so that the participants are enabled to purchase the commodity at satisfactory prices and withhold it from the market for a time, thereby inflating its price. • A corner accomplished by confederation, with the purpose of raising or depressing prices and operating on the market, is a criminal conspiracy if the means are unlawful.

CORNERING THE MARKET

cornering the market. The act or process of acquiring ownership or control of a large portion of the available supply of a commodity or security, permitting manipulation of the commodity's or security's price.

CORN PRODUCTS DOCTRINE

Corn Products doctrine. Tax. The principle that a capital asset should be narrowly defined to exclude inventory-related property that is integrally tied to the day-to-day operations of a business. *Corn Prods. Refining Co. v. C.I.R.*, 350 U.S. 46, 76 S.Ct. 20 (1955). [Cases: Internal Revenue 3178, 3230.1. C.J.S. Internal Revenue § 110.]

CORODY

corody (kor- orkahr-*<<schwa>>*-dee). Hist. An allowance of money, accommodation, food, or clothing given by a religious house to any person who signed over personal or real property or both in exchange or to a royal servant at the Crown's request. • The amount of property required from a person who purchased a corody depended on the person's age and remaining life expectancy. The Crown was entitled to a corody for a retired royal servant only from houses that the Crown had founded. Theoretically, the cost of a retired royal servant's care would come from the royal purse. But since the royal purse did not always open, royal servants were not always accepted as corodiaries. — Also spelled corrody. Cf. LIFE-CARE CONTRACT. — corodiary (*k<<schwa>>-roh-dee-air-ee*), corodiary, n.

“Corrody is a partition for one's sustenance. Be it bread, ale, herring, a yearly robe, or sum of money for the robe. So of a chamber, and stable for my horses, when the same is coupled with other things....” Sir Henry Finch, *Law, or a Discourse Thereof* 162 (1759).

COROLLARY

corollary (kor- orkahr-*<<schwa>>*-ler-ee), n. A proposition that follows from a proven proposition with little or no additional proof; something that naturally follows.

CORONA

corona (*k<<schwa>>-roh-n<<schwa>>*). [Latin] Hist. The Crown. • This term formerly appeared in criminal pleadings, e.g., *placita coronae* (“pleas of the Crown”).

CORONATION CASE

coronation case.Hist. Any of the many lawsuits for breach of contract resulting from the postponement of the coronation of Edward VII because of his illness. • In one case, for example, the defendant had agreed to hire a ship for watching the naval review by King Edward VII and for a day's cruise around the fleet. The court held that the contract was not frustrated by the cancellation of the naval review — the day's cruise around the fleet was still possible, and indeed, the ship could have been used for many other purposes.

CORONATOR

coronator (kor- orkahr-<<schwa>>-nay-t<<schwa>>r). [fr. Latin corona “crown”] A coroner. See CORONER(2).

“The formal title of *custos* (or occasionally *conservator*) *placitorum corone* continued to be used throughout the Middle Ages, but the more convenient shorter forms *coronarius*, which was confined to a short period around 1200, and CORONATOR rapidly gained greater currency. The English form was ‘coroner’ or ‘crownier.’ ” R.F. Hunnisett, *The Medieval Coroner* 1 n.1 (1961).

CORONATORE ELIGENDO

coronatore eligendo.See DE CORONATORE ELIGENDO.

CORONATORE EXONERANDO

coronatore exonerando.See DE CORONATORE EXONERANDO.

CORONER

coroner (kor- orkahr-<<schwa>>-n<<schwa>>r).1. A public official whose duty is to investigate the causes and circumstances of any death that occurs suddenly, suspiciously, or violently. See MEDICAL EXAMINER. [Cases: Coroners 1. C.J.S. Coroners and Medical Examiners § 2.] 2.Hist. A royal official with countywide jurisdiction to investigate deaths, to hold inquests, and to assume the duties of the sheriff if need be. • The coroner acted as a check on the sheriff, a local officer whose growing power threatened royal control over the counties. The coroner reported criminal activity to the king's justices in eyre. When the eyre court arrived in a county, it collected the coroner's roll to learn what had occurred in the county during the eyre's absence. The justices fined the coroner if he failed to produce the roll, or if they learned of criminal activity in the county from a source other than the roll.

“The office of coroner was established in September 1194, when the justices in eyre were required to see that three knights and one clerk were elected in every county as ‘keepers of the pleas of the crown.’ These were the first county coroners.... Throughout the Middle Ages the coroner could be ordered to perform almost any duty of an administrative or inquisitorial nature within his bailiwick, either alone or with the sheriff, but there were other duties which belonged more specifically to his office and which he performed without being ordered. These consisted of holding inquests upon dead bodies, receiving adjurations of the realm made by felons in sanctuary, hearing appeals, confessions of felons and appeals of approvers, and attending and sometimes organising exactions and outlawries promulgated in the county court. These were the ‘crown pleas’ which the coroner had to ‘keep’” R.F. Hunnisett, *The Medieval Coroner* 1 (1961).

CORONER'S COURT

coroner's court. See COURT.

CORONER'S INQUEST

coroner's inquest. See INQUEST(1).

CORONER'S JURY

coroner's jury. See JURY.

CORPNERSHIP

corpnership. [Portmanteau word probably formed fr. corporation + partnership] A limited partnership (usu. having many public investors as limited partners) whose general partner is a corporation.

CORPORALE SACRAMENTUM

corporale sacramentum (kor-p<<schwa>>-ray-lee sak-r<<schwa>>-men-t<<schwa>>m). See corporal oath under OATH.

CORPORAL OATH

corporal oath. See OATH.

CORPORAL PUNISHMENT

corporal punishment. See PUNISHMENT.

CORPORATE

corporate, adj. Of or relating to a corporation, esp. a business corporation < corporate bonds>.

CORPORATE ACQUISITION

corporate acquisition. The takeover of one corporation by another if both parties retain their legal existence after the transaction. Cf. MERGER(8).

CORPORATE AGENT

corporate agent. See AGENT(2).

CORPORATE AUTHORITY

corporate authority. 1. The power rightfully wielded by officers of a corporation. [Cases: Corporations 297, 300–303. C.J.S. Corporations §§ 460–461, 469–471.] 2. In some jurisdictions, a municipal officer, esp. one empowered to represent the municipality in certain statutory matters. [Cases: Municipal Corporations 168. C.J.S. Municipal Corporations § 370.]

CORPORATE BODY

corporate body. See CORPORATION.

CORPORATE BOND

corporate bond. See BOND(3).

CORPORATE BOOKS

corporate books. Written records of a corporation's activities and business transactions.

CORPORATE CHARTER

corporate charter. See CHARTER(3).

CORPORATE CITIZENSHIP

corporate citizenship. Corporate status in the state of incorporation, though a corporation is not a constitutional citizen for the purposes of the Privileges and Immunities Clauses in Article IV, § 2 and in the 14th Amendment to the U.S. Constitution. [Cases: Corporations 1.1(3), 52. C.J.S. Corporations §§ 3, 107–109, 886.]

CORPORATE COUNSEL

corporate counsel. See COUNSEL.

CORPORATE CRIME

corporate crime. See CRIME.

CORPORATE DISTRIBUTION

corporate distribution. See DISTRIBUTION.

CORPORATE DOMICILE

corporate domicile. See DOMICILE.

CORPORATE ENTITY

corporate entity. See ENTITY.

CORPORATE FRANCHISE

corporate franchise. See FRANCHISE(2).

CORPORATE IMMUNITY

corporate immunity. See IMMUNITY(2).

CORPORATE INDENTURE

corporate indenture. See INDENTURE.

CORPORATE-MORTGAGE TRUST

corporate-mortgage trust. A financing device in which debentures are issued and secured by property held in trust. • An independent trustee protects the interests of those who purchase the

debentures. [Cases: Corporations 476(1). C.J.S. Corporations § 676.]

CORPORATE NAME

corporate name. See NAME.

CORPORATE OFFICER

corporate officer. See OFFICER(1).

CORPORATE-OPPORTUNITY DOCTRINE

corporate-opportunity doctrine. The rule that a corporation's directors, officers, and employees are precluded from using information gained as such to take personal advantage of any business opportunities that the corporation has an expectancy right or property interest in, or that in fairness should otherwise belong to the corporation. • In a partnership, the analogous principle is termed the firm-opportunity doctrine. [Cases: Corporations 315. C.J.S. Corporations §§ 512–514.]

CORPORATE-OWNED LIFE INSURANCE

corporate-owned life insurance. See LIFE INSURANCE.

CORPORATE PURPOSE

corporate purpose. The general scope of the business objective for which a corporation was created. • A statement of corporate purpose is commonly required in the articles of incorporation.

CORPORATE RAIDER

corporate raider. A person or business that attempts to take control of a corporation, against its wishes, by buying its stock and replacing its management. — Often shortened to raider. — Also termed hostile bidder; unfriendly suitor. Cf. WHITE KNIGHT.

CORPORATE RESOLUTION

corporate resolution. See RESOLUTION(2).

CORPORATE SEAL

corporate seal. See SEAL.

CORPORATE SPEECH

corporate speech. See SPEECH.

CORPORATE STOCK

corporate stock. See STOCK.

CORPORATE TRUSTEE

corporate trustee. See TRUSTEE(1).

CORPORATE VEIL

corporate veil. The legal assumption that the acts of a corporation are not the actions of its shareholders, so that the shareholders are exempt from liability for the corporation's actions. See **PIERCING THE CORPORATE VEIL**. [Cases: Corporations 1.3. C.J.S. Corporations § 8.]

CORPORATE WELFARE

corporate welfare. See **WELFARE**(2).

CORPORATION

corporation, n. An entity (usu. a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it. — Also termed corporation aggregate; aggregate corporation; body corporate; corporate body. See **COMPANY**. [Cases: Corporations 1. C.J.S. Corporations §§ 2, 4.] — incorporate, vb. — corporate, adj.

“A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law... [I]t possesses only those properties which the charter of its creation confers upon it.” *Trustees of Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819)(Marshall, J.).

acquired corporation. The corporation that no longer exists after a merger or acquisition. [Cases: Corporations 586. C.J.S. Corporations § 807.]

admitted corporation. A corporation licensed or authorized to do business within a particular state. — Also termed qualified corporation; corporation qualified to do business.

aggressor corporation. A corporation that attempts to obtain control of a publicly held corporation by (1) a direct cash tender, (2) a public-exchange offer to shareholders, or (3) a merger, which requires the agreement of the target's management.

alien corporation. See foreign corporation.

brother-sister corporation. See sister corporation.

business corporation. A corporation formed to engage in commercial activity for profit. Cf. nonprofit corporation.

C corporation. A corporation whose income is taxed through it rather than through its shareholders. • Any corporation not electing S-corporation tax status under the Internal Revenue Code is a C corporation by default. — Also termed subchapter-C corporation. Cf. S corporation.

charitable corporation. A nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code. — Also termed eleemosynary corporation. See **CHARIT-ABLE ORGANIZATION**. [Cases: Internal Revenue 4045–4069. C.J.S. Internal Revenue §§ 327, 462–474.]

civil corporation. Any corporation other than a charitable or religious corporation.

clearing corporation. A corporation whose capital stock is held by or for a national security exchange or association registered under federal law such as the Securities Exchange Act of 1934.

close corporation. A corporation whose stock is not freely traded and is held by only a few shareholders (often within the same family). • The requirements and privileges of close corporations vary by jurisdiction. — Also termed closely held corporation; closed corporation. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

collapsible corporation. A corporation formed to give a short-term venture the appearance of a long-term investment in order to portray income as capital gain, rather than profit. • The corporation is typically formed for the sole purpose of purchasing property. The corporation is usually dissolved before the property has generated substantial income. The Internal Revenue Service treats the income earned through a collapsible corporation as ordinary income rather than as capital gain. IRC (26 USCA) § 341(a). Cf. collapsible partnership under PARTNERSHIP. [Cases: Internal Revenue 3728.]

common-law corporation. See corporation by prescription.

controlled corporation. 1. A corporation in which the majority of the stock is held by one individual or firm. [Cases: Internal Revenue 3643.] 2. A corporation in which a substantial amount (but less than a majority) is held by one individual or firm. • Some states presume control with as little as 10%.

controlled foreign corporation. Tax. A foreign corporation in which more than 50% of the stock is owned by U.S. citizens who each own 10% or more of the voting stock. • These shareholders (known as U.S. shareholders) are required to report their pro rata share of certain passive income of the corporation. — Abbr. CFC. IRC (26 USCA) §§ 951–964. [Cases: Internal Revenue 4119. C.J.S. Internal Revenue § 484.]

cooperative corporation. An entity that has a corporate existence, but is primarily organized for the purpose of providing services and profits to its members and not for corporate profit. • The most common kind of cooperative corporation is formed to purchase real property, such as an apartment building, so that its shareholders may lease the apartments. See COOPERATIVE(1). [Cases: Landlord and Tenant 350. C.J.S. Landlord and Tenant § 792.21.]

corporation aggregate. Hist. A corporation made up of a number of individuals. Cf. corporation sole.

“The first division of corporations is into aggregate and sole. Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue forever: of which kind are the mayor and commonalty of a city, the head and fellows of a college, the dean and chapter of a cathedral church.” 1 William Blackstone, Commentaries on the Laws of England 457 (1765).

“The corporation aggregate is the typical corporation, which, at any given time, normally contains a number of individuals as members. This number may be great or small, varying from the hundreds of thousands of burgesses of a large borough to the two members of a private

joint-stock company. It is even said that a corporation aggregate would not necessarily cease to exist if all its members died, leaving no successors; and this is, probably, sound doctrine.” Edward Jenks, *The Book of English Law* 118 (P.B. Fairst ed., 6th ed. 1967).

corporation by estoppel. A business that is deemed, by operation of law, to be a corporation because a third party dealt with the business as if it were a corporation, thus preventing the third party from holding a shareholder or officer of the corporation individually liable. See ESTOPPEL. [Cases: Corporations 34. C.J.S. Corporations §§ 65–66.]

corporation by prescription. A corporation that, though lacking a charter, has acquired its corporate status through a long period of operating as a corporation. • Such an entity may engage in any enterprises that are not manifestly inconsistent with the purposes for which it is assumed to have been created. — Also termed common-law corporation. [Cases: Corporations 27.]

corporation de facto. See de facto corporation.

corporation de jure. See de jure corporation.

corporation for profit. See for-profit corporation.

corporation qualified to do business. See admitted corporation.

corporation sole. A series of successive persons holding an office; a continuous legal personality that is attributed to successive holders of certain monarchical or ecclesiastical positions, such as kings, bishops, rectors, vicars, and the like. • This continuous personality is viewed, by legal fiction, as having the qualities of a corporation. Cf. corporation aggregate.

“It would have been quite possible to explain in the same way the devolution of the lands of the Crown, or of a bishopric, or of a rectory, from the sovereign, bishop, or rector, to his successor; but English law has preferred to introduce for this purpose the fiction, peculiar to itself, of a ‘corporation sole.’” Thomas E. Holland, *The Elements of Jurisprudence* 350–51 (13th ed. 1924).

“But English Law knows another kind of corporation, the ‘corporation sole’, in which the group consists, not of a number of contemporary members, but of a succession of single members, of whom only one exists at any given time. This kind of corporation has been described by eminent legal writers as a ‘freak’; but it is a freak which undoubtedly has a legal existence. It has been said that the Crown is the only common law lay corporation sole; though the Master of Trinity College, Cambridge, has been claimed as another example, and statutory examples, such as the Public Trustee and the Treasury Solicitor, are conspicuous. But the examples of ecclesiastical corporations sole are numerous. Every diocesan bishop, every rector of a parish, is a corporation sole, and can acquire and hold land (and now also personal property) even during the vacancy of the see or living, for the benefit of his successors, and can bind his successors by his lawful conveyances and contracts. But, obviously, the distinction between the bishop or rector, in his personal and in his corporate character, is even harder to grasp than that between the members of a corporation aggregate and the corporation itself....” Edward Jenks, *The Book of English Law* 118–19 (P.B. Fairst ed., 6th ed. 1967).

dead corporation. See dissolved corporation.

de facto corporation (di fak-toh). An incompletely formed corporation whose existence operates as a defense to personal liability of the directors, officers, and shareholders who in good faith thought they were operating the business as a duly formed corporation. — Also termed corporation de facto. [Cases: Corporations 28. C.J.S. Corporations § 63.]

de jure corporation (di juur-ee). A corporation formed in accordance with all applicable laws and recognized as a corporation for liability purposes. — Also termed corporation de jure. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

dissolved corporation. A corporation whose charter has expired or been revoked, relinquished, or voluntarily terminated. — Also termed dead corporation.

domestic corporation. 1. A corporation that is organized and chartered under the laws of a state. • The corporation is considered domestic by the chartering state. Cf. foreign corporation. 2. Tax. A corporation created or organized in the United States or under federal or state law. IRC (26 USCA) § 7701(a)(4). [Cases: Internal Revenue 3623. C.J.S. Internal Revenue § 369.]

dormant corporation. 1. An inactive corporation; a legal corporation that is presently not operating. 2. A corporation whose authority to do business has been revoked or suspended either by operation of law (as by failure to pay franchise taxes) or by an act of the government official responsible for the corporation's authority.

dummy corporation. A corporation whose only function is to hide the principal's identity and to protect the principal from liability.

ecclesiastical corporation (i-klee-zee-as-t<<schwa>>-k<<schwa>>l). English law. A corporation that is organized for spiritual purposes or for the administration of property held for religious uses. — Also termed religious corporation. Cf. lay corporation.

“Ecclesiastical corporations. Corporations created for the furtherance of religion.... They are of two kinds: (1) corporations sole, i.e., bishops, certain deans, parsons and vicars; and (2) corporations aggregate, i.e., deans and chapters, and formerly prior and convent, abbot and monks, and the like. Such corporations are called ‘religious corporations,’ or ‘religious societies,’ in the United States.” 1 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 432 (1883).

eleemosynary corporation. See charitable corporation.

foreign corporation. A corporation that was organized and chartered under the laws of another state, government, or country <in Arizona, a California corporation is said to be a foreign corporation>. — Also termed alien corporation. Cf. domestic corporation. [Cases: Corporations 632. C.J.S. Corporations § 883.]

“ ‘Foreign’ is defined as ‘not native or domestic.’ This is the meaning given to the word in the various judicial definitions of foreign corporations. With respect to a particular state or country, a corporation created by or under the laws of that state or country is a ‘domestic corporation,’ and any corporation that owes its existence to the laws of another state, government or country is a ‘foreign corporation.’ The difference between a domestic and a foreign corporation of the same

kind is one of status, determined by considerations that are external to the corporation and not internal or organic. Moreover, foreign corporations of all classes fall equally within the definition. In many jurisdictions foreign corporations are defined by statute, and the statutory definitions do not differ in substance from that stated above.” 17 Fletcher Cyclopedic on the Law of Private Corporations § 8290, at 6–7 (1998).

for-profit corporation.A corporation organized for the purpose of making a profit; a business corporation. — Also termed corporation for profit; moneyed corporation.

government corporation.See public corporation (3).

joint-venture corporation.A corporation that has joined with one or more individuals or corporations to accomplish some specified project.

lay corporation.English law. A corporation made up of laypersons, and existing for a business or charitable purpose. Cf. ecclesiastical corporation.

limited-liability corporation.See limited-liability company under COMPANY.

migratory corporation.A corporation formed under the laws of another state than that of the incorporators' residence for the purpose of carrying on a significant portion of its business in the state of the incorporators' residence or in a state other than where it was incorporated.

moneyed corporation. 1. A corporation that uses money capital in its business, esp. one (such as a bank) that engages in the exchange or lending of money. 2. See for-profit corporation.

multinational corporation.A company with operations in two or more countries, generally allowing it to transfer funds and products according to price and demand conditions, subject to risks such as changes in exchange rates or political instability. — Also termed transnational corporation.

multistate corporation.A corporation incorporated under the laws of two or more states.

municipal corporation.See MUNICIPAL CORPORATION.

municipal corporation de facto.See MUNICIPAL CORPORATION.

nonprofit corporation.A corporation organized for some purpose other than making a profit, and usu. afforded special tax treatment. — Also termed not-for-profit corporation. Cf. business corporation. [Cases: Corporations 3; Internal Revenue 4045–4071. C.J.S. Corporations §§ 5–7, 62; Internal Revenue §§ 327, 462–474, 670, 798.]

nonstock corporation.A corporation that does not issue shares of stock as evidence of ownership but instead is owned by its members in accordance with a charter or agreement. • Examples are mutual insurance companies, charitable organizations, and private clubs. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

not-for-profit corporation.See nonprofit corporation.

parent corporation.A corporation that has a controlling interest in another corporation (called

a subsidiary corporation), usu. through ownership of more than one-half the voting stock. — Often shortened to parent. — Also termed parent company.

political corporation. See public corporation (2).

private corporation. A corporation founded by and composed of private individuals principally for a nonpublic purpose, such as manufacturing, banking, and railroad corporations (including charitable and religious corporations). — Also termed quasi-individual. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

professional corporation. A corporation that provides services of a type that requires a professional license. • A professional corporation may be made up of architects, accountants, lawyers, physicians, veterinarians, or the like. — Abbr. P.C.

public corporation. 1. A corporation whose shares are traded to and among the general public. — Also termed publicly held corporation. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.] 2. A corporation that is created by the state as an agency in the administration of civil government. — Also termed political corporation. 3. A government-owned corporation that engages in activities that benefit the general public, usu. while remaining financially independent. • Such a corporation is managed by a publicly appointed board. — Also termed (in sense 3) government corporation; public-benefit corporation. [Cases: States 84. C.J.S. States §§ 141–143, 165, 202.]

publicly held corporation. See public corporation (1).

public-service corporation. A corporation whose operations serve a need of the general public, such as public transportation, communications, gas, water, or electricity. • This type of corporation is usu. subject to extensive governmental regulation. [Cases: Public Utilities 103. C.J.S. Public Utilities §§ 3–4, 6, 11.]

qualified corporation. See admitted corporation.

quasi-corporation. An entity that exercises some of the functions of a corporation but that has not been granted corporate status by statute; esp., a public corporation with limited authority and powers (such as a county or school district). — Also sometimes termed quasi-municipal corporation. Cf. MUNICIPAL CORPORATION. [Cases: Municipal Corporations 2. C.J.S. Municipal Corporations §§ 7–9.]

quasi-public corporation. A for-profit corporation providing an essential public service. • An example is an electric company or other utility.

railroad corporation. A company organized to construct, maintain, and operate railroads. — Also termed railroad company. [Cases: Railroads 13. C.J.S. Railroads §§ 24–25, 31–33.]

“A railroad company or corporation is usually regarded as a private corporation, and justly so, as contrasted with a strictly public corporation, such as a city, county, township, or the like governmental subdivision, but it is not a private corporation in the strict sense that an ordinary business corporation is, for it is charged with duties of a public nature that distinguish it from a

purely and strictly private corporation.” 1 Byron K. Elliott & William F. Elliott, *A Treatise on the Law of Railroads* § 3, at 7 (3d ed. 1921).

registered corporation. A publicly held corporation a security of which is registered under § 12 of the Securities Exchange Act of 1934. • The corporation is subject to the Act's periodic disclosure requirements and proxy regulations. 15USCA § 78l. [Cases: Securities Regulation 35.22. C.J.S. Securities Regulation §§ 112–114.]

religious corporation. A corporation created to carry out some ecclesiastical or religious purpose. See ecclesiastical corporation. [Cases: Religious Societies 4. C.J.S. Religious Societies §§ 2, 5, 7–13.]

S corporation. A corporation whose income is taxed through its shareholders rather than through the corporation itself. • Only corporations with a limited number of shareholders can elect S-corporation tax status under Sub-chapter S of the Internal Revenue Code. — Also termed subchapter-S corporation; tax-option corporation. Cf. C corporation. [Cases: Internal Revenue 3885–3903. C.J.S. Internal Revenue §§ 374–379.]

shell corporation. A corporation that has no active business and usu. exists only in name as a vehicle for another company's business operations.

sister corporation. One of two or more corporations controlled by the same, or substantially the same, owners. — Also termed brother-sister corporation. [Cases: Corporations 1.5(2), 3. C.J.S. Corporations §§ 5–7, 62.]

small-business corporation. 1. A corporation having no more than 75 shareholders and otherwise satisfying the requirements of the Internal Revenue Code provisions permitting a subchapter-S election. IRC (26 USCA) § 1361. See S corporation. [Cases: Internal Revenue 3885–3903. C.J.S. Internal Revenue §§ 374–379.] 2. A corporation receiving money for stock (as a contribution to capital and paid-in surplus) totaling not more than \$1,000,000, and otherwise satisfying the requirements of § 1244(c) of the Internal Revenue Code, thereby enabling the shareholders to claim an ordinary loss on worthless stock. IRC (26 USCA) § 1244(c).

sole corporation. A corporation having or acting through only a single member. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

spiritual corporation. A corporation whose members are spiritual persons, such as bishops, rectors, and abbots.

stock corporation. A corporation in which the capital is contributed by the shareholders and divided into shares represented by certificates. [Cases: Corporations 65. C.J.S. Corporations § 127.]

subchapter-C corporation. See C corporation.

subchapter-S corporation. See S corporation.

subsidiary corporation. A corporation in which a parent corporation has a controlling share. — Often shortened to subsidiary; sub. [Cases: Corporations 174. C.J.S. Corporations § 307.]

surviving corporation.A corporation that acquires the assets and liabilities of another corporation by a merger or takeover. [Cases: Corporations 586. C.J.S. Corporations § 807.]

target corporation.A corporation over which control is being sought by another party. See TAKEOVER.

thin corporation.A corporation with an excessive amount of debt in its capitalization. See thin capitalization under CAPITALIZATION. [Cases: Corporations 3. C.J.S. Corporations §§ 5–7, 62.]

trading corporation.A corporation whose business involves the buying and selling of goods.

tramp corporation.A corporation chartered in a state where it does not conduct business. [Cases: Corporations 635.]

transnational corporation.See multinational corporation.

trust corporation.See trust company under COMPANY.

U.S.-owned foreign corporation.A foreign corporation in which 50% or more of the total combined voting power or total value of the stock is held directly or indirectly by U.S. citizens. IRC (26 USCA) § 904(g)(6). • If the dividend or interest income paid by a U.S. corporation is classified as a foreign source, the U.S. corporation is treated as a U.S.-owned foreign corporation. IRC (26 USCA) § 861. [Cases: Internal Revenue 4099–4105, 4119. C.J.S. Internal Revenue § 484.]

CORPORATION ACT

Corporation Act.Hist. A 1661 English statute (13 Car. 2, St. 2, ch. 1) prohibiting the holding of public office by anyone who would not take the Anglican sacrament and the oaths of supremacy and allegiance. • The Act was repealed by the Promissory Oaths Act of 1871.

CORPORATION COUNSEL

corporation counsel.See COUNSEL.

CORPORATION COURT

corporation court.See COURT.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Corporation for National and Community Service.A federal corporation that fosters civic responsibility, pro-vides educational opportunity for those who contribute services, and oversees AmeriCorps (the domestic Peace Corps), Learn and Serve America, and the National Senior Service Corps. • It was established in 1993. 42 USCA § 12651.

CORPORATOR

corporator (kor-p<<schwa>>-ray-t<<schwa>>r).1. A member of a corporation.
2.INCORPORATOR.

“Usually, a member of a corporation, in which sense it includes a stockholder; also, one of the persons who are the original organizers or promoters of a new corporation. The incorporators are not the corporation, for either may sue the other.” William C. Anderson, *A Dictionary of Law* 266 (1889).

CORPOREAL

corporeal (kor-por-ee-<<schwa>>l), adj. Having a physical, material existence; TANGIBLE <land and fixtures are corporeal property>. Cf. INCORPOREAL. — corporeality, n.

CORPOREAL HEREDITAMENT

corporeal hereditament. See HEREDITAMENT.

CORPOREAL OWNERSHIP

corporeal ownership. See OWNERSHIP.

CORPOREAL POSSESSION

corporeal possession. See POSSESSION.

CORPOREAL PROPERTY

corporeal property. See PROPERTY.

CORPOREAL THING

corporeal thing. See THING.

CORPS DIPLOMATIQUE

corps diplomatique (kor dee-pl<<schwa>>-ma-teek). DIPLOMATIC CORPS.

CORPUS

corpus (kor-p<<schwa>>s), n. [Latin “body”] 1. The property for which a trustee is responsible; the trust principal. — Also termed res; trust estate; trust fund; trust property; trust res; trust. [Cases: Trusts 1. C.J.S. *Trover and Conversion* §§ 1–9, 14–18.] 2. PRINCIPAL(4). Pl. corpora (kor-p<<schwa>>-r<<schwa>>), corpuses (kor-p<<schwa>>-s<<schwa>>z).

CORPUS COMITATUS

corpus comitatus (kor-p<<schwa>>s kom-<<schwa>>-tay-t<<schwa>>s). [Latin “the body of a county”] Hist. The area within a territorial jurisdiction rather than on the “high seas” and hence where admiralty jurisdiction did not originally extend. See *INFRA* CORPUS COMITATUS.

CORPUS CORPORATUM

corpus corporatum (kor-p<<schwa>>s kor-p<<schwa>>-ray-t<<schwa>>m). [Latin] Hist. A corporate body; a corporation.

CORPUS CUM CAUSA

corpus cum causa (kor-p<<schwa>>s k<<schwa>>m kaw-z<<schwa>>). [Law Latin “the body with the cause”] Hist. A writ issuing out of Chancery to remove both a person and a record from an inferior court in order to review a judgment issued by the inferior court.

“The first use of the writ to challenge imprisonment was in cases of privilege; an officer of a central court, or a litigant there, could be released from imprisonment in another court by writ of privilege in habeas corpus form. The Court of Chancery at the same time developed a similar procedure for reviewing the cause of imprisonment in an inferior tribunal; this species of writ was called corpus cum causa, and it became a common remedy against the misuse of borough jurisdiction in the fifteenth century.” J.H. Baker, *An Introduction to English Legal History* 168 (3d ed. 1990).

CORPUS DELICTI

corpus delicti (kor-p<<schwa>>s d<<schwa>>-lik-tIor -tee). [Latin “body of the crime”] 1. The fact of a trans-gression; ACTUS REUS. [Cases: Criminal Law 26; Homicide 511. C.J.S. Criminal Law §§ 44–45, 1110.]

“[T]he definition of ‘corpus delicti’ often becomes important. (a) Essentially it signifies merely the fact of the specific loss or injury sustained, e.g., death of a victim or burning of a house. (b) To this is added also, by most courts, the criminal agency of some person (i.e., not mere accident). (c) A few courts also include evidence of the accused's identity with the deed; but this is absurd, for it virtually signifies making ‘corpus delicti’ synonymous with the whole charge. — Many courts treat this rule with a pedantic and unpractical strictness.” John H. Wigmore, *A Students' Textbook of the Law of Evidence* 310 (1935).

“One of the important rules of evidence in criminal cases is that which requires proof of the corpus delicti. Literally defined this term means ‘the body of the offense,’ or ‘the substance of the crime.’ In popular language it is used to describe the visible evidence of the crime, such as the dead body of a murdered person. Properly used, however, it is applicable to any crime and relates particularly to the act element of criminality; that is, that a certain prohibited act has been committed or result accomplished and that it was committed or accomplished by a criminal human agency.” Justin Miller, “The Criminal Act,” in *Legal Essays in Tribute to Orrin Kip McMurray* 469, 478 (1935).

“The phrase ‘corpus delicti’ does not mean dead body, but body of the crime, and every offense has its corpus delicti. Its practical importance, however, has been very largely limited to the homicide cases. It concerns the usability in a criminal case of a confession made by the defendant outside of court.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 140 (3d ed. 1982).

2. Loosely, the material substance on which a crime has been committed; the physical evidence of a crime, such as the corpse of a murdered person. • Despite the common misunderstanding, a victim's body could be evidence of a homicide, but the prosecutor does not have to locate or present the body to meet the corpus delicti requirement.

CORPUS DELICTI RULE

corpus delicti rule. Criminal law. The doctrine that prohibits a prosecutor from proving the corpus delicti based solely on a defendant's extrajudicial statements. • The prosecution must establish the corpus delicti with corroborating evidence to secure a conviction. [Cases: Criminal Law 412(6), 517.3. C.J.S. Criminal Law §§ 942–945.]

CORPUS JURIS

corpus juris (kor-p<<schwa>>s joor-is). [Latin “body of law”] The law as the sum or collection of laws <Corpus Juris Secundum>. — Abbr. C.J.

CORPUS JURIS ANGLIAE

corpus juris Angliae (kor-p<<schwa>>s joor-is ang-gee-ee). The entire body of English law, comprising the common law, statutory law, equity, and special law in its various forms.

CORPUS JURIS CANONICI

Corpus Juris Canonici (kor-p<<schwa>>s joor-is k<<schwa>>-non-<<schwa>>-sl). [Latin] Hist. The body of the canon law, compiled from the decrees and canons of the Roman Catholic Church. • The Corpus Juris Canonici emerged during the 12th century, beginning with the publication of Gratian's *Decretum* (c. 1140). In addition to the *Decretum*, it includes Raymond of Peñaforte's *Liber Extra* (1234), the *Liber Sextus* of Pope Boniface VIII (1298), the *Clementines* of Pope Clement V (1313), the *Extravagantes Joannis* of Pope John XXII (1325), and *Extravagantes Communes* published by Pope John's successors (1499–1502). In 1582, the entire collection was edited by a commission of church dignitaries and officially named the *Corpus Juris Canonici*. It remained the Catholic Church's primary body of law until the promulgation of the *Code of Canon Law* in 1917, now replaced by that of 1983.

“After Gratian, later papal enactments, called ‘decretals,’ were collected and issued by the authority of various popes.... A revised edition of such ‘decretals’ ... was presented to Pope Gregory IX in 1234 — only a short while, therefore, after the final form of *Magna Carta* in 1225 — and issued by him with statutory force. The revision freely made changes in the text of the enactments and the resulting compilation in four ‘books’ was regarded as a ‘Code,’ corresponding to the ‘Code’ of Justinian, just as the *Decretum* of Gratian corresponded to the *Digest*.... All these compilations and collections were, from the sixteenth century on, known as the *Corpus Juris Canonici*, the ‘Body of Canon Law,’ and formed the basis of the law administered in the Church courts.” Max Radin, *Handbook of Anglo-American Legal History* 33–34 (1936).

CORPUS JURIS CIVILIS

Corpus Juris Civilis (kor-p<<schwa>>s joor-is s<<schwa>>-vil-is or s<<schwa>>-v I-lis). The body of the civil law, compiled and codified under the direction of the Roman emperor Justinian in A.D. 528–556. • The collection includes four works — the *Institutes*, the *Digest* (or *Pandects*), the *Code*, and the *Novels*. The title *Corpus Juris Civilis* was not original, or even early, but was modeled on the *Corpus Juris Canonici* and given in the 16th century and later to editions of the texts of the four component parts of the Roman law. See *ROMAN LAW*. Cf. *JUSTINIAN CODE*.

CORPUS POSSESSIONIS

corpus possessionis (kor-p<<schwa>>s p<<schwa>>-zes[h]-ee-oh-nis). [Latin] Roman law. The physical aspect of possession. See animus possidendi under ANIMUS.

CORPUS PRO CORPORE

corpus pro corpore (kor-p<<schwa>>s proh kor-p<<schwa>>-ree). [Latin] Hist. Body for body. • This phrase commonly expressed the liability of a surety in a civil action (a mainpernor). See MAINPRISE.

CORREAL

correal (kor-ee-<<schwa>>l or k<<schwa>>-ree-<<schwa>>l), adj.[fr. Latin correus “codebtor”] Roman law. Of or relating to liability that is joint and several. • A correal debtor who paid an entire obligation had no right of action against a codebtor. See CORREUS; SOLIDARY.

“If Aulus, having first obtained from Titius the promise of a hundred aurei, turned to Seius and said, Spondesne mihi, Sei, cosdem centum aureos dare?(Do you engage, Seius, to give me the same one hundred aurei?), then if Seius answered, Spondeo, there was one single obligation for a hundred aurei, binding in full on each of the two debtors. Aulus could demand a hundred from Titius or a hundred from Seius, and in case of non-payment could sue either one, taking his choice between them, for the full amount. If either paid the hundred, whether willingly or by compulsion, the other was released: for there was but one debt, and that was now discharged. This kind of obligation is called correal obligation (correal, from con, and reus or rei, connected parties, parties associated in a common debt or credit).” James Hadley, *Introduction to Roman Law* 258 (1881).

CORREALITY

correality (kor-ee-al-<<schwa>>-tee), n. The quality or state of being correal; the relationship between parties to an obligation that terminates when an entire payment is made by one of two or more debtors to a creditor, or a payment is made by a debtor to one of two or more creditors.

“But there were circumstances, apart from indivisibility, in which each of the parties might be liable in full.... Several were liable or entitled, each in solidum, under an obligation, but the thing was due only once. Satisfaction by, or to, one of those liable, or entitled, ended the whole obligation, and action by one of the joint creditors, or against one of the debtors, not only ‘novated’ the obligation between the actual parties, but destroyed it altogether as against the others. This relation is commonly called correality (correi debendi vel credendi).” W.W. Buckland, *A Manual of Roman Private Law* 349–50 (2d ed. 1939).

CORREAL OBLIGATION

correal obligation. See OBLIGATION.

CORRECTED POLICY

corrected policy. See INSURANCE POLICY.

CORRECTION

correction, n. 1. Generally, the act or an instance of making right what is wrong <mark your corrections in red ink>. 2. A change in business activity or market price following and counteracting an increase or decrease in the activity or price <the broker advised investors to sell before the inevitable stock-market correction>. See DOWN REVERSAL. 3. (usu. pl.) The punishment and treatment of a criminal offender through a program of imprisonment, parole, and probation <Department of Corrections>. — correct, vb. — corrective (for senses 1 & 2), correctional (for sense 3), adj.

CORRECTION, HOUSE OF

correction, house of. See house of correction under HOUSE.

CORRECTIONAL INSTITUTION

correctional institution. See PRISON.

CORRECTIONAL SYSTEM

correctional system. A network of governmental agencies that administer a jurisdiction's prisons and parole system.

CORRECTIVE ADVERTISING

corrective advertising. Advertising that informs consumers that earlier advertisements contained a deceptive claim, and that provides consumers with corrected information. • This type of advertising may be ordered by the Federal Trade Commission.

CORRECTOR OF THE STAPLE

corrector of the staple. Hist. A clerk who records merchants' transactions at a staple. See STAPLE(2).

CORREI CREDENDI

correi credendi (kor-ee-I kri-den-dI). [Latin] Roman law. Joint creditors. — Also termed *correi stipulandi* (stip-y<<schwa>>-lan-dI). See STIPULATIO.

“The mode for stipulatio is stated in the Institutes. Of several stipulators (*correi credendi*, active correality) each asks the debtor and he answers once for all. Of several promisors (*correi debendi*, passive correality) the creditor asks each and they answer together.” W.W. Buckland, *A Manual of Roman Private Law* 350 (2d ed. 1939).

CORREI DEBENDI

correi debendi (kor-ee-I di-ben-dI). [Latin] Roman & Scots law. Joint debtors. — Also termed *correi promittendi* (proh-mi-ten-dI). See STIPULATIO.

“*Correi Debendi* — The name given by the Roman law to persons jointly bound.... In the Scotch law, if bound severally, and not jointly and severally, each is bound only for his share, whatever be the responsibility of the others.” Hugh Barclay, *A Digest of the Law of Scotland* 196 (3d ed. 1865).

CORREI STIPULANDI

correi stipulandi. See **CORREI CREDENDI**.

CORRELATIVE

correlative (k<<schwa>>-rel-<<schwa>>-tiv), adj. 1. Related or corresponding; analogous. 2. Having or involving a reciprocal or mutually interdependent relationship <the term right is correlative with duty>.

CORRELATIVE-RIGHTS DOCTRINE

correlative-rights doctrine. 1. Water law. The principle that adjoining landowners must limit their use of a common water source to a reasonable amount. [Cases: Waters and Water Courses 41, 101. C.J.S. Waters §§ 13, 193, 195–197, 201–204.]

“Under the correlative rights doctrine ... rights to groundwater are determined by land ownership. However, owners of land overlying a single aquifer are each limited to a reasonable share of the total supply of groundwater. The share is usually based on the acreage owned.” David H. Getches, *Water Law in a Nutshell* 249 (3d ed. 1997).

2. Oil & gas. The rule that a lessee's or landowner's right to capture oil and gas from the property is restricted by the duty to exercise that right without waste or negligence. • This is a corollary to the rule of capture. Cf. **RULE OF CAPTURE**(4).

CORRESPONDENCE AUDIT

correspondence audit. See **AUDIT**.

CORRESPONDENT

correspondent, n. 1. The writer of a letter or letters. 2. A person employed by the media to report on events. 3. A securities firm or financial institution that performs services for another in a place or market that the other does not have direct access to. — correspond, vb.

CORRESPONDENT BANK

correspondent bank. See **BANK**.

CORRESPONDING PROMISE

corresponding promise. See **PROMISE**.

CORRESPONDING SECRETARY

corresponding secretary. See **SECRETARY**.

CORREUS

correus (kor-ee-<<schwa>>s), n. [Latin] Roman law. 1. A codebtor in a contract; a joint debtor. 2. A co-creditor in a contract; a joint creditor. Pl. *correi* (kor-ee-I). See **STIPULATIO**.

CORRIGENDUM

corrigendum (kor-<<schwa>>-jen-d<<schwa>>m), n.[Latin "correction"] An error in a printed work discovered after the work has gone to press. — Also termed erratum. Pl. corrigenda (kor-<<schwa>>-jen-d<<schwa>>).

CORROBORATE

corroborate (k<<schwa>>-rob-<<schwa>>-rayt), vb. To strengthen or confirm; to make more certain <the witness corroborated the plaintiff's testimony>.

CORROBORATING EVIDENCE

corroborating evidence. See EVIDENCE.

CORROBORATING WITNESS

corroborating witness. See WITNESS.

CORROBORATION

corroboration (k<<schwa>>-rob-<<schwa>>-ray-sh<<schwa>>n), n.1. Confirmation or support by additional evidence or authority <corroboration of the witness's testimony>. [Cases: Witnesses 410–416. C.J.S. Wit-nesses §§ 776–787.] 2. Formal confirmation or ratification <corroboration of the treaty>. — corroborate, vb. — corroborative (k<<schwa>>-rob-<<schwa>>-r<<schwa>>-tiv), adj. — corroborator (k<<schwa>>-rob-<<schwa>>-ray-t<<schwa>>r), n.

CORROBORATIVE EVIDENCE

corroborative evidence. See corroborating evidence under EVIDENCE.

CORRODY

corrody. See CORODY.

CORRUPT

corrupt, adj. 1. Archaic. (Of a person) subject to corruption of blood.

"[T]here are divers offences made Treason by Act of Parliament, whereof, though a Man be Attaint, yet his Blood, by Provisoes therein, is not corrupt, nor shall he forfeit any thing...." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

2. Having an unlawful or depraved motive; esp., influenced by bribery.

corrupt, vb. 1. Archaic. To impose corruption of blood on (a person). 2. To change (a person's morals or principles) from good to bad.

CORRUPTING

corrupting, n. See IMPAIRING THE MORALS OF A MINOR.

CORRUPTION

corruption. 1. Depravity, perversion, or taint; an impairment of integrity, virtue, or moral principle; esp., the impairment of a public official's duties by bribery. [Cases: Officers and Public Employees 121.C.J.S. Officers and Public Employees §§ 329–334.]

“The word ‘corruption’ indicates impurity or debasement and when found in the criminal law it means depravity or gross impropriety.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 855 (3d ed. 1982).

2. The act of doing something with an intent to give some advantage inconsistent with official duty and the rights of others; a fiduciary's or official's use of a station or office to procure some benefit either personally or for someone else, contrary to the rights of others.

CORRUPTION IN OFFICE

corruption in office. See official misconduct under MISCONDUCT.

CORRUPTION OF A MINOR

corruption of a minor. See IMPAIRING THE MORALS OF A MINOR.

CORRUPTION OF BLOOD

corruption of blood. A defunct doctrine, now considered unconstitutional, under which a person loses the ability to inherit or pass property as a result of an attainder or of being declared civilly dead. — Also termed corruption of the blood. See ATTAINDER; civil death (1) under DEATH.

“Corruption of blood is, when any one is attainted of felony or treason, then his blood is said to be corrupt; by means whereof neither his children, nor any of his blood, can be heirs to him, or to any other ancestor, for that they ought to claim by him. And if he were a noble or gentleman before, he and all his children are made thereby ignoble and ungentle” *Termes de la Ley* 125 (1st Am. ed. 1812).

CORRUPTLY

corruptly, adv. In a corrupt or depraved manner; by means of corruption or bribery. • As used in criminal-law statutes, corruptly usu. indicates a wrongful desire for pecuniary gain or other advantage.

CORRUPT-MOTIVE DOCTRINE

corrupt-motive doctrine. Criminal law. The rule that conspiracy is punishable only if the agreement was entered into with an evil purpose, not merely with an intent to do the illegal act. • This doctrine — which originated in *People v. Powell*, 63 N.Y. 88 (1875) — has been rejected by the Model Penal Code. — Also termed Powell doctrine. [Cases: Conspiracy 24.5. C.J.S. Conspiracy §§ 111–112.]

CORRUPT-PRACTICES ACT

corrupt-practices act. A federal or state statute that regulates campaign contributions and

expenditures as well as their disclosure. [Cases: Elections 317.1. C.J.S. Elections § 329.]

CORSNAED

corsnaed,n. See ordeal of the morsel under ORDEAL.

CORSNED

corsned,n. See ordeal of the morsel under ORDEAL.

CORVÉE SEIGNEURIALE

corvée seigneuriale (kor-vay sen-yuu-ree-ahl). [French] Hist. Services due the lord of the manor. — Often shortened to corvée.

COSEN

cosen,vb. See COZEN.

COSENING

cosening,n. See COZENING.

COSIGN

cosign,vb. To sign a document along with another person, usu. to assume obligations and to supply credit to the principal obligor. — cosignature,n.

COSIGNER

cosigner. See COMAKER.

COSINAGE

cosinage (k<<schwa>>z-<<schwa>>n-ij).Hist. A writ used by an heir to secure the right to land held by a great-great-grandfather or certain collateral relatives. — Also spelled cosenage; cousinage. — Also termed consanguineo; de consanguineo; de consanguinitate. Cf. AIEL; BESAYEL.

“[T]here is the closest possible affinity between the Mort d'Ancestor and the action of Cosinage. If I claim the seisin of my uncle, I use the one; if I claim the seisin of a first cousin, I use the other. But procedurally, the two stand far apart.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 569 (2d ed. 1899).

COSMETIC DAMAGES

cosmetic damages.See DAMAGES.

COST

cost,n.1. The amount paid or charged for something; price or expenditure. Cf. EXPENSE.

aboriginal cost.The cost of an asset incurred by the first company to use it for public utilities. [Cases: Public Utilities 124. C.J.S. Public Utilities §§ 23–26, 30–33, 48–49.]

acquisition cost.1. An asset's net price; the original cost of an asset. — Also termed historical cost; original cost. 2.LOAD.

after cost.A delayed expense; an expense, such as one for repair under a warranty, incurred after the principal transaction.

applied cost.A cost appropriated to a project before it has been incurred.

average cost.The sum of the costs of beginning inventory costs and the costs of later additions divided by the total number of available units.

avoidable cost.A cost that can be averted if production is held below a certain level so that additional expenses will not be incurred.

carrying cost. 1.Accounting. The variable cost of stocking one unit of inventory for one year. • Carrying cost includes the opportunity cost of the capital invested in the inventory. — Also termed cost of carrying. 2. A current charge or noncapital expenditure made to prevent the causing or accelerating of the termination of a defeasible estate, as well as the sums spent on repairs required by the duty to avoid permissive waste.

common cost.See indirect cost.

cost of completion.Contracts. An element of damages based on the expense that would be incurred by the party not in breach to finish the promised performance. [Cases: Damages 121. C.J.S. Damages § 111.]

direct cost.The amount of money for material, labor, and overhead to produce a product.

distribution cost.Any cost incurred in marketing a product or service, such as advertising, storage, and shipping.

fixed cost.A cost whose value does not fluctuate with changes in output or business activity; esp., overhead expenses such as rent, salaries, and depreciation. — Also termed fixed charge; fixed expense.

flotation cost.(usu. pl.) A cost incurred in issuing additional stock.

historical cost.See acquisition cost.

implicit cost.See opportunity cost.

indirect cost.A cost that is not specific to the production of a particular good or service but that arises from production activity in general, such as overhead allocations for general and administrative activities. — Also termed common cost.

manufacturing cost.The cost incurred in the production of goods, including direct and indirect costs.

marginal cost.The additional cost incurred in producing one more unit of output.

mitigation cost.A party's expenditures to reduce an existing harm so that further damage

might be halted, slowed, or diminished.

mixed cost. A cost that includes fixed and variable costs.

net book cost. The cost of property when it was first acquired or devoted to public use, minus accumulated de-preciation. — Also termed rate-base value.

net cost. The cost of an item, arrived at by subtracting any financial gain from the total cost.

opportunity cost. The cost of acquiring an asset measured by the value of an alternative investment that is forgone <her opportunity cost of \$1,000 in equipment was her consequent inability to invest that money in bonds>. — Also termed implicit cost.

original cost. See acquisition cost.

prime cost. The true price paid for goods on a bona fide purchase.

prophylactic cost. A party's expenditures to prepare property to withstand or prevent potential future harm. • These costs are not related to any existing property damage and are usu. not recoverable under insurance contracts.

replacement cost. The cost of a substitute asset that is equivalent to an asset currently held. • The new asset has the same utility but may or may not be identical to the one replaced.

social cost. The cost to society of any particular practice or rule <although automobiles are undeniably beneficial to society, they carry a certain social cost in the lives that are lost every year on the road>.

sunk cost. A cost that has already been incurred and that cannot be recovered.

tangible cost. Oil & gas. A particular expense associated with drilling, such as the costs incurred for materials and land. • Drilling and testing costs are considered intangible.

transaction cost. (usu. pl.) A cost connected with a process transaction, such as a broker's commission, the time and effort expended to arrange a deal, or the cost involved in litigating a dispute.

unit cost. The cost of a single unit of a product or service; the total manufacturing cost divided by the number of units.

variable cost. The cost that varies in the short run in close relationship with changes in output.

2. (pl.) The charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees. — Also termed court costs. 3. (pl.) The expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other. • Some but not all states allow parties to claim attorney's fees as a litigation cost. — Also termed (in sense 3) litigation costs. [Cases: Costs 2, 146–194; Federal Civil Procedure 2721–2748. C.J.S. Copyrights and Intellectual Property § 83; Costs §§ 2–3, 6, 8–9, 94–97, 99–101, 105–124.]

accruing costs. Costs and expenses incurred after judgment.

costs of increase. See COSTS OF INCREASE.

costs of the day. Costs incurred in preparing for trial.

costs to abide event. Costs incurred by a successful party who is entitled to an award of those costs incurred at the conclusion of the matter; esp., appellate court's order for payment of costs to the party who finally prevails in a proceeding that has been returned to a lower court. [Cases: Costs 69. C.J.S. Costs § 2.]

interlocutory costs. Costs incurred during the pendency of an appeal.

taxable cost. A litigation-related expense that the prevailing party is entitled to as part of the court's award.

COST ACCOUNTING

cost accounting. See cost accounting method under ACCOUNTING METHOD.

COST ACCOUNTING METHOD

cost accounting method. See ACCOUNTING METHOD.

COST AND FREIGHT

cost and freight. A mercantile-contract term allocating the rights and duties of the buyer and the seller of goods with respect to delivery, payment, and risk of loss, whereby the seller must (1) clear the goods for export, (2) arrange for transportation by water, and (3) pay the costs of shipping to the port of destination. • When the goods are safely stowed on the receiving ship while docked, the seller's delivery is complete; the risk of loss then passes to the buyer. This term is used only when goods are transported by sea or inland waterway. — Abbr. CF; CFR; C & F; CandF. Cf. COST, INSURANCE, AND FREIGHT ; FREE ON BOARD. [Cases: Sales 77(2), 202(5). C.J.S. Sales §§ 96–98.]

COST APPROACH

cost approach. A method of appraising real property, based on the cost of building a new structure with the same utility, assuming that an informed buyer would pay no more for the property than it would cost to build a new structure having the same usefulness. Cf. MARKET APPROACH; INCOME APPROACH. [Cases: Taxation 348(4).]

COST BASIS

cost basis. See BASIS(2).

COST-BENEFIT ANALYSIS

cost-benefit analysis. An analytical technique that weighs the costs of a proposed decision, holding, or project against the expected advantages, economic or otherwise.

COST BILL

cost bill. See bill of costs under BILL(2).

COST BOND

cost bond. See BOND(2).

COST-BOOK MINING COMPANY

cost-book mining company. An association of persons organized for the purpose of working mines or lodes, whose capital stock is divided into shares that are transferable without the consent of other members. • The management of the mine is entrusted to an agent called a purser. [Cases: Mines and Minerals 101. C.J.S. Mines and Minerals §§ 396–401.]

COST DEPLETION

cost depletion. Oil & gas. The recovery of an oil-and-gas producer's basis (i.e., investment) in a producing well by deducting the basis proportionately over the producing life of the well. Treas. Reg. § 1.611–2. Cf. PERCENTAGE DEPLETION .

“Under cost depletion, the taxpayer in an oil and gas property deducts the basis in the property from the income as oil and gas are produced and sold. Cost depletion is calculated by a formula ... [that] relates the recovery of the taxpayer's investment to the proportion that the current unit sales of oil and gas bear to the total anticipated sales of oil and gas from the property. The investment is recovered ratably over the life of the reserves.” John S. Lowe, *Oil and Gas Law in a Nutshell* 353 (3d ed. 1995).

COST, INSURANCE, AND FREIGHT

cost, insurance, and freight. A mercantile-contract term allocating the rights and duties of the buyer and the seller of goods with respect to delivery, payment, and risk of loss, whereby the seller must (1) clear the goods for export, (2) arrange for transportation by water, (3) procure insurance against the buyer's risk of damage during carriage, and (4) pay the costs of shipping to the port of destination. • The seller's delivery is complete (and the risk of loss passes to the buyer) when the goods are loaded on the receiving ship while docked in the port of shipment. This term is used only when goods are transported by sea or inland waterway. — Abbr. CIF; C.I.F. Cf. COST AND FREIGHT; FREE ON BOARD. [Cases: Sales 77(2). C.J.S. Sales §§ 96–98.]

“ ‘C.i.f.’ is a mercantile symbol that is commonly used in international sales contracts. It is defined by section 2–320 of the UCC and by the Incoterms — 1953 and the Revised American Foreign Trade Definitions — 1941. Under all of these definitions the letters ‘c.i.f.’ mean that the price covers the cost of the goods, the cost of insuring them for the benefit of the order of the buyer, and the cost of carrying them to the named point, almost always the destination. Like the other mercantile symbols, the meaning of ‘C.I.F.’ may be varied by agreement.” William D. Hawkland, *Uniform Commercial Code Series* § 2-320:01 (1984).

CIF destination. A contractual term denoting that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. — Also termed C.I.F. place of destination. [Cases: Sales 77(2). C.J.S. Sales §§ 96–98.]

COST JUSTIFICATION

cost justification. Under the Robinson–Patman Act, an affirmative defense against a charge of price discrimination dependent on the seller's showing that it incurs lower costs in serving those customers who are paying less. 15 USCA § 13(a).

COST-OF-CAPITAL METHOD

cost-of-capital method. A means of measuring a utility's cost of acquiring debt and equity capital. • Regulatory commissions often use this method to determine a fair rate of return for the utility's investors. [Cases: Public Utilities 129. C.J.S. Public Utilities §§ 35, 38–41, 57.]

COST OF CARRYING

cost of carrying. See carrying cost under COST.

COST OF COMPLETION

cost of completion. See COST(1).

COST-OF-LIVING ADJUSTMENT

cost-of-living adjustment. An automatic increase or decrease in the amount of money, usu. support or mainten-ance, to be paid by one party to another, the adjustment being tied to the cost-of-living-adjustment figures maintained and updated by the federal government. — Abbr. COLA.

COST-OF-LIVING CLAUSE

cost-of-living clause. A provision (as in a contract or lease) that gives an automatic wage, rent, or benefit increase tied in some way to cost-of-living rises in the economy. • A cost-of-living clause may also cover a decrease, though this is rare. See INFLATION. [Cases: Landlord and Tenant 200.7.]

COST-OF-LIVING INDEX

cost-of-living index. See CONSUMER PRICE INDEX.

COST-PLUS CONTRACT

cost-plus contract. See CONTRACT.

COST-PUSH INFLATION

cost-push inflation. See INFLATION.

COSTS DE INCREMENTO

costs de incremento. See COSTS OF INCREASE.

COSTS OF COLLECTION

costs of collection. Expenses incurred in receiving payment of a note; esp., attorney's fees created in the effort to collect a note. [Cases: Bills and Notes 534. C.J.S. Bills and Notes; Letters of Credit §§ 238, 297, 306, 312–328, 339.]

COSTS OF INCREASE

costs of increase. Costs of court awarded in addition to what a jury awards. • Juries usu. awarded the successful party only a small sum for costs. A party wishing to recoup the additional costs had to file an affidavit of increase setting forth what further costs were incurred by taking the matter through trial. — Also termed costs de incremento. See affidavit of increase under AFFIDAVIT. [Cases: Costs 1–283; Federal Civil Procedure 2721–2748. C.J.S. Copyrights and Intellectual Property § 83; Costs §§ 2–209.]

COSTS OF THE DAY

costs of the day. See COST(3).

COSTS TO ABIDE EVENT

costs to abide event. See COST(3).

COSURETY

cosurety. A surety who shares the cost of performing suretyship obligations with another. See SURETY. [Cases: Principal and Surety 62, 191–200. C.J.S. Principal and Surety §§ 71, 259–280, 289–291.]

COSURETYSHIP

cosuretyship. The relation between two or more sureties who are bound to answer for the same duty of the principal, and who are jointly responsible for any loss resulting from the principal's default.

COTARIUS

cotarius (k<<schwa>>-tair-ee-<<schwa>>s). [Law Latin] Hist. A socage-tenure serf who holds land by paying rent and providing some personal services to the lord. • Both cotarius and coterellus serfs were also known as cottagers. Cf. COTERELLUS.

COTENANCY

cotenancy. See TENANCY.

COTERELLUS

coterellus (kot-<<schwa>>-rel-<<schwa>>s). [Law Latin] Hist. A serf who inhabits a cottage; a servile tenant whose person, issue, and goods are at the disposal of the lord. — Also spelled coterell. Cf. COTARIUS.

“Coterellus.... A cottager. Considered by Spelman and others, the same with cotarius. But Cowell makes the distinction that the cotarius had free socage tenure, and paid a stated firm (rent) in provisions or money, with some occasional customary service; whereas the coterellus seemed to have held in mere villenage, and had his person and issue and goods disposed at the pleasure of the lord.” 1 Alexander M. Burrill, *A Law-Dictionary and Glossary* 387 (2d ed. 1867).

COTERMINOUS

coterminous (koh-t<<schwa>>r-m<<schwa>>-n<<schwa>>s), adj.1. (Of ideas or events) coextensive in time or meaning <Judge Smith's tenure was coterminous with Judge Jasper's>.2.CONTERMINOUS(1).

COTLAND

cotland (kot-l<<schwa>>nd).Hist. Land held by a cottager, whether in socage or villeinage tenure.

COTORTFEASOR

cotortfeasor (koh-tort-fee-z<<schwa>>r). One who, together with another, has committed a tort. See TORT-FEASOR. [Cases: Torts 21. C.J.S. Torts §§ 36–38.]

COTRUSTEE

cotrustee. One of two or more persons in whom the administration of a trust is vested. • The cotrustees form a collective trustee and exercise their powers jointly. — Also termed joint trustee. See TRUSTEE. [Cases: Trusts 238. C.J.S. Trover and Conversion § 345.]

COTSET

cotset (kot-set).Hist. A villein who provides labor to a lord in exchange for a cottage and plot of land. — Also termed cotsetus.

COTTIER

cottier (kot-ee-<<schwa>>r).1.Hist. A serf who lives in a cottage; a cottager. • Over time, cottier has come to refer to a day laborer or a rural dweller. 2.Hist. Irish law. A tenant who leases a house and a small (usu. two acres or less) plot of land.

COUCHANT AND LEVANT

couchant and levant (kow-ch<<schwa>>nt / lev-<<schwa>>nt), adj. See LEVANT AND COUCHANT .

COUNCIL

council. 1. A deliberative assembly <the U.N. Security Council>.

common council. 1. In some cities, the lower branch of a city council. [Cases: Municipal Corporations 82. C.J.S. Municipal Corporations § 209.] 2. In some cities, the city's governing board. [Cases: Municipal Corporations 80. C.J.S. Municipal Corporations §§ 208–210, 213–219.]

general council.A body of elected persons who represent all the citizens of a territory or members of an organization.

select council.In some states, the upper branch of a city council.

2. An administrative or executive body <a parish council>.

COUNCILLOR

councillor. See COUNCILOR.

COUNCIL OF ECONOMIC ADVISERS

Council of Economic Advisers. A three-member council in the Executive Office of the President responsible for analyzing the national economy and advising the President on economic matters. • Created by the Employment Act of 1946, it now functions under Reorganization Plan No. 9 of 1953. Its members are appointed by the President with the advice and consent of the Senate. — Abbr. CEA.

COUNCIL OF THE NORTH

Council of the North. Hist. A body used by the Tudors to administer the northern parts of England (esp. Yorkshire) during the 16th and 17th centuries. • The council probably predated the Tudors, but Henry VIII revived it. In addition to enforcing Crown policy in the northern territories, the appointees (many of whom were lawyers) exercised wide criminal and civil jurisdiction. The Council disbanded ca. 1640.

COUNCIL ON ENVIRONMENTAL QUALITY

Council on Environmental Quality. A three-member council in the Executive Office of the President responsible for developing and recommending national policy on environmental quality. • The council was created by the National Environmental Policy Act of 1969. Its members are appointed by the President with the advice and consent of the Senate. 42 USCA §§ 4321 et seq., §§ 4371 et seq. — Abbr. CEQ.

COUNCILOR

councilor, n. A person who serves on a council, esp. at the local level. — Also spelled councillor. — council-ship, n.

COUNSEL

counsel, n. 1. Advice or assistance <the lawyer's counsel was to petition immediately for a change of immigration status>. 2. One or more lawyers who represent a client <the client acted on advice of counsel>. — In the singular, also termed counselor; counselor-at-law. Cf. ATTORNEY; LAWYER. 3. English law. A member of the bar; BARRISTER.

advisory counsel. 1. An attorney retained merely to give advice on a particular matter, as distinguished from one (such as trial counsel) actively participating in a case. 2. See standby counsel.

appellate counsel. A lawyer who represents a party on appeal. • The term is often used in contrast with trial counsel.

appointed counsel. See assigned counsel.

assigned counsel. An attorney appointed by the court to represent a person, usu. an indigent person. — Also termed court-appointed attorney; court-appointed counsel; appointed counsel. [Cases: Criminal Law 641.7(1); Federal Civil Procedure 1951; Trial 21. C.J.S. Criminal Law §§ 277–278, 280, 295, 297–299, 307, 318–319; Trial § 94.]

corporate counsel. An in-house attorney for a corporation. See in-house counsel.

corporation counsel. A city attorney in an incorporated municipality. See CITY ATTORNEY. [Cases: Municipal Corporations 214(3).]

counsel of record. See attorney of record under ATTORNEY.

court-appointed counsel. See assigned counsel.

general counsel. 1. A lawyer or law firm that represents a client in all or most of the client's legal matters, but that sometimes refers extraordinary matters — such as litigation and intellectual-property cases — to other lawyers. 2. The most senior lawyer in a corporation's legal department, usu. also a corporate officer.

house counsel. See in-house counsel.

independent counsel. An attorney hired to provide an unbiased opinion about a case or to conduct an impartial investigation; esp., an attorney appointed by a governmental branch or agency to investigate alleged misconduct within that branch or agency. See special prosecutor under PROSECUTOR. Cf. special counsel. [Cases: United States 40. C.J.S. United States §§ 58–60.]

in-house counsel. One or more lawyers employed by a company. — Also termed house counsel. See corporate counsel.

junior counsel. 1. The younger or lower-ranking of two or more attorneys employed on the same side of a case, esp. someone charged with the less important aspects of the case. 2. English law. The barrister who assists Queen's Counsel.

King's Counsel. See KING'S COUNSEL.

lead counsel. 1. The more highly ranked lawyer if two or more are retained; the lawyer who manages or controls the case or cases, esp. in class actions or multidistrict litigation. — Also termed senior counsel; attorney in charge. 2. QUEEN'S COUNSEL; KING'S COUNSEL. — Also termed leading counsel.

local counsel. One or more lawyers who practice in a particular jurisdiction and are retained by nonresident counsel to help prepare and try a case or to complete a transaction in accordance with that jurisdiction's law, rules, and customs.

of counsel. 1. A lawyer employed by a party in a case; esp., one who — although not the principal attorney of record — is employed to assist in the preparation or management of the case or in its presentation on appeal. 2. A lawyer who is affiliated with a law firm, though not as a member, partner, or associate.

Queen's Counsel. See QUEEN'S COUNSEL.

senior counsel. 1. See lead counsel. 2. See KING'S COUNSEL; QUEEN'S COUNSEL.

settlement counsel. See CIRCUIT MEDIATOR.

special counsel. An attorney employed by the state or political subdivision to assist in a particular case when the public interest so requires. — Also termed special attorney. Cf. independent counsel. [Cases: Attorney General 2. C.J.S. Attorney General §§ 4–5.]

standby counsel. An attorney who is appointed to be prepared to represent a pro se criminal defendant if the defendant's self-representation ends. • The standby counsel may also provide some advice and guidance to the defendant during the self-representation. — Also termed advisory counsel. [Cases: Criminal Law 641.10(3). C.J.S. Criminal Law § 297.]

trial counsel. 1. A lawyer who represents a party at trial. • The term is often used in contrast with appellate counsel. 2. Military law. The person who prosecutes a case on the government's behalf.

COUNSEL, ASSISTANCE OF

counsel, assistance of. See ASSISTANCE OF COUNSEL.

COUNSEL, RIGHT TO

counsel, right to. See RIGHT TO COUNSEL.

COUNSEL AND PROCURE

counsel and procure. See AID AND ABET.

COUNSELOR

counselor. See COUNSEL(2).

COUNSELOR-AT-LAW

counselor-at-law. See COUNSEL(2).

COUNT

count, n. Procedure. 1. The part of an indictment charging the suspect with a distinct offense. 2. In a complaint or similar pleading, the statement of a distinct claim. Cf. DECLARATION(7). [Cases: Federal Civil Procedure 627; Pleading 53. C.J.S. Pleading § 150.]

“This word ... is in our old law-books used synonymously with declaration.... But when the suit embraces two or more causes of action (each of which of course requires a different statement), or when the plaintiff makes two or more different statements of one and the same cause of action, each several statement is called a count, and all of them, collectively, constitute the declaration.” 1 John Bouvier, A Law Dictionary 245 (1839).

common count. Hist. In a plaintiff's pleading in an action for debt, boilerplate language that is

not founded on the circumstances of the individual case but is intended to guard against a possible variance and to enable the plaintiff to take advantage of any ground of liability that the proof may disclose. • In the action for indebitatus assumpsit, the common count stated that the defendant had failed to pay a debt as promised. See indebitatus assumpsit under ASSUMPSIT.

general count.A count that states the plaintiff's claim without undue particularity.

money count.Hist. A count, usu. founded on a simple contract, giving rise to a claim for payment of money.

“Simple contracts, express or implied, resulting in mere debts, are of so frequent occurrence as causes of action, that certain concise forms of counts were devised for suing upon them. These are called the ‘indebitatus’ or ‘money counts.’” 2 Stewart Rapalje & Robert L. Lawrence, A Dictionary of American and English Law 833 (1883).

multiple counts.Several separate causes of action or charged offenses contained in a single pleading or indictment. [Cases: Pleading 50. C.J.S. Pleading §§ 147–148.]

omnibus count (ahm-ni-b<<schwa>>s). A count that combines into one count all money claims, claims for goods sold and delivered, claims for work and labor, and claims for an account stated.

separate count.One of two or more criminal charges contained in one indictment, each charge constituting a separate indictment for which the accused may be tried. [Cases: Indictment and Information 97. C.J.S. Indictments and Informations § 133.]

several count.One of two or more counts in a pleading, each of which states a different cause of action. [Cases: Pleading 50, 53. C.J.S. Pleading §§ 147–148, 150.]

special count.A section of a pleading in which the plaintiff's claim is stated with great particularity — usu. employed only when the pleading rules require specificity. [Cases: Pleading 18, 50. C.J.S. Pleading §§ 70–71, 147–148, 162, 165.]

3. A canvassing. See CANVASS(2).4.Hist. The plaintiff's declaration, or initial pleading, in a real action. See DECLARATION(7).5.Patents. The part of a patent application that defines the subject matter in a priority contest (i.e., an interference) between two or more applications or between one or more applications and one or more patents. See INTERFERENCE(3). [Cases: Patents 106(2). C.J.S. Patents §§ 163–164, 167, 169.]

count,vb.1. In pleading, to declare or state; to narrate the facts that state a claim. 2.Hist. To plead orally; to plead or argue a case in court.

COUNTED VOTE

counted vote.See VOTE(4).

COUNTER

counter.Hist. An advocate or professional pleader; one who counts (i.e., orally recites) for a client. • Counters had coalesced into an identifiable group practicing before the Common Bench

by the beginning of the 13th century. They were the leaders of the medieval legal profession, and over time came to be known as serjeants-at-law. — Also spelled countor; contor; counteur. See SERJEANT-AT-LAW.

COUNTERACTION

counteraction. See COUNTERCLAIM.

COUNTERAFFIDAVIT

counteraffidavit. See AFFIDAVIT.

COUNTERBOND

counterbond. See BOND(2).

COUNTERCLAIM

counterclaim,n. A claim for relief asserted against an opposing party after an original claim has been made; esp., a defendant's claim in opposition to or as a setoff against the plaintiff's claim. — Also termed counteraction; countersuit; cross-demand. Cf. CROSS-CLAIM. [Cases: Federal Civil Procedure 775–784; Set-off and Counterclaim 9. C.J.S. Set-off and Counterclaim §§ 9–10, 65.] — counterclaim,vb. — counterclaimant,n.

“Under [Fed. R. Civ. P.] 13 the court has broad discretion to allow claims to be joined in order to expedite the resolution of all controversies between the parties in one suit. Rule 13(c) specifically provides that the counter-claimant is not limited by recovery sought by the opposing party but may claim relief in excess of that amount. Further, the general legal rule is that it is immaterial whether a counterclaim is legal or equitable for purposes of determining whether it properly is brought under Rule 13.... The expectation is that this liberal joinder policy will further the elimination of circuity of action and multiple litigation.” 6 Charles Alan Wright et al., Federal Practice and Procedure § 1403, at 15–16 (2d ed. 1990).

compulsory counterclaim.A counterclaim that must be asserted to be cognizable, usu. because it relates to the opposing party's claim and arises out of the same subject matter. • If a defendant fails to assert a compulsory counterclaim in the original action, that claim may not be brought in a later, separate action (with some excep-tions). See Fed. R. Civ. P. 13(a). [Cases: Federal Civil Procedure 775; Judgment 585(4); Set-off and Counterclaim 60. C.J.S. Judgments §§ 775, 777–778; Set-off and Counterclaim §§ 102–103.]

permissive counterclaim.A counterclaim that need not be asserted to be cognizable, usu. because it does not arise out of the same subject matter as the opposing party's claim or involves third parties over which the court does not have jurisdiction. • Permissive counterclaims may be brought in a later, separate action. See Fed. R. Civ. P. 13(b).

COUNTERDEED

counterdeed. See DEED.

COUNTERFEISANCE

counterfeisance (kown-t<<schwa>>r-fee-z<<schwa>>nts).Archaic. The act of counterfeiting.

COUNTERFEIT

counterfeit,vb. To unlawfully forge, copy, or imitate an item, esp. money or a negotiable instrument (such as a security or promissory note) or other officially issued item of value (such as a postage stamp or a food stamp), or to possess such an item without authorization and with the intent to deceive or defraud by presenting the item as genuine. • Counterfeiting includes producing or selling an item that displays a reproduction of a genuine trademark, usu. to deceive buyers into thinking they are purchasing genuine merchandise. See 18 USCA §§ 470 et seq. [Cases: Counterfeiting 1.Trade Regulation 312. C.J.S. Counterfeiting §§ 2, 8; Trade-Marks, Trade-Names, and Unfair Competition § 151.] — counterfeiting,n. — counterfeit,n. — counterfeit,adj.

“Literally a counterfeit is an imitation intended to pass for an original. Hence it is spurious or false, and to counterfeit is to make false. For this reason the verbs counterfeit and forge are often employed as synonyms and the same is true to some extent of the corresponding nouns. No error is involved in this usage but it is important to distinguish between the words as far as possible when used as the labels of criminal offenses. In the most restricted sense, [c]ounterfeiting is the unlawful making of false money in the similitude of the genuine. At one time under English statutes it was made treason. Under modern statutes it is a felony.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 431–32 (3d ed. 1982).

COUNTERFEIT ACCESS DEVICE AND COMPUTER FRAUD AND ABUSE ACT OF 1984

Counterfeit Access Device and Computer Fraud and Abuse Act of 1984.A federal statute that criminalizes various computer-related activities such as accessing without permission a computer system belonging to a bank or the federal government, or using that access to improperly obtain anything of value. 18 USCA § 1030.

COUNTERFEITER

counterfeiter. A person who makes an unauthorized imitation of something (esp. a document, currency, or another's signature) with the intent to deceive or defraud.

COUNTERFEITING

counterfeiting,n. The unlawful forgery, copying, or imitation of an item, esp. money or a negotiable instrument (such as a security or promissory note) or other officially issued item of value (such as a postage stamp), or the unauthorized possession of such an item, with the intent to deceive or defraud by claiming or passing the item as genuine. See 18 USCA §§ 470 et seq. — counterfeit,vb. — counterfeit,adj. — counterfeit,n.

COUNTERFEIT MARK

counterfeit mark.See counterfeit trademark under TRADEMARK.

COUNTERFEIT RECORDING

counterfeit recording. Copyright. An unauthorized copy of a copyright-protected recording's sounds, artwork, label, trademark, or packaging. — Also termed bootleg recording.

COUNTERFEIT TRADEMARK

counterfeit trademark. See TRADEMARK.

COUNTERFOIL

counterfoil (kown-t<<schwa>>r-foyl), n. A detachable part of a writing on which the particulars of the main part are summarized. • The most common example is a check stub, on which the date, the payee, and the amount are typically noted.

COUNTERLETTER

counterletter. Civil law. A document in which the parties to a simulated contract record their true intentions. La. Civ. Code art. 2025. • For example, the record owner of real property may acknowledge in a counterletter that another person actually owns the property; the counterletter may then be used when the property is to be recon-veyed after a period. A counterletter can have no effect against a third party acting in good faith. See simulated contract under CONTRACT.

COUNTERMAND

countermand (kown-t<<schwa>>r-mand), n. 1. A contradictory command that overrides or annuls a previous one. 2. An action that has the effect of voiding something previously ordered; a revocation. — countermand (kown-t<< schwa>>r-mandorkown-), vb.

COUNTEROFFER

counteroffer, n. Contracts. An offeree's new offer that varies the terms of the original offer and that ordinarily rejects and terminates the original offer. • A late or defective acceptance is considered a counteroffer. See MIRROR-IMAGE RULE. [Cases: Contracts 24. C.J.S. Contracts §§ 52–53.] — counteroffer, vb. — counterofferor, n.

COUNTERPART

counterpart. 1. In conveyancing, a corresponding part of an instrument <the other half of the indenture — the counterpart — could not be found>. 2. One of two or more copies or duplicates of a legal instrument <this lease may be executed in any number of counterparts, each of which is considered an original>.

“Formerly ‘part’ was used as the opposite of ‘counterpart,’ in respect to covenants executed in duplicate, but now each copy is called a ‘counterpart.’ ” 2 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 927 (1883).

“Counterparts are not nowadays written on the same parchment, but that which is executed by the grantor of an interest is called the ‘original,’ while that which is executed by the party to whom the interest passes — for ex-ample, a lessee — is called the ‘counterpart.’ ” G.C. Cheshire, *Modern Law of Real Property* 674 (3d ed. 1933).

COUNTERPART WRIT

counterpart writ. See WRIT.

COUNTERPROMISE

counterpromise, n. A promise made in exchange for another party's promise <a promise supported by a counterpromise is binding in its inception>. See bilateral contract under CONTRACT. [Cases: Contracts 55. C.J.S. Contracts § 109.] — counterpromise, vb.

COUNTER-ROLL

counter-roll. Hist. A record kept by an officer as a check on another officer's record, esp. the rolls maintained by a sheriff and a coroner.

COUNTERSIGN

countersign, vb. To write one's own name next to someone else's to verify the other signer's identity. [Cases: Signatures 1. C.J.S. Signatures §§ 1–16.] — countersignature, n.

COUNTERSUIT

countersuit. See COUNTERCLAIM.

COUNTERTRADE

countertrade. A type of international trade in which purchases made by an importing nation are linked to off-setting purchases made by the exporting nation.

“Countertrade is barter in modern clothes. It developed rapidly as a form of doing business with the USSR and Eastern European nations in the 1970s and 1980s, before the major economic and political reforms tended to diminish its emphasis as a means of doing business.” Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* § 2.1, at 46 (1995).

COUNTERAVAILABLE SUBSIDY

countervailable subsidy. See SUBSIDY.

COUNTERVAILING DUTY

countervailing duty. See DUTY(4).

COUNTERVAILING EQUITY

countervailing equity. See EQUITY.

COUNTER WILL

counter will. See mutual will under WILL.

COUNTEZ

countez (kawn-teez). [Law French] Hist. A direction given by a clerk of a court to a crier, after a jury was sworn, to count the jury members.

“Of this ignorance we may see daily instances, in the abuse of two legal terms of ancient French; one, the prologue to all proclamations, ‘oyez, or hear ye,’ which is generally pronounced most unmeaningly, ‘O yes:’ the other, a more pardonable mistake, viz., when a jury are all sworn, the officer bids the crier number them, for which the word in law-french is, ‘countez;’ but we now hear it pronounced in very good English, ‘count these.’ ” 4 William Blackstone, Commentaries on the Laws of England 334 n.s (1769).

COUNTING HOUSE OF THE KING'S HOUSEHOLD

Counting House of the King's Household. See BOARD OF GREEN CLOTH.

COUNTRY

country. 1. A nation or political state; STATE(1). 2. The territory of such a nation or state.

COUNTY

county. The largest territorial division for local government within a state, generally considered to be a political subdivision and a quasi-corporation. • Every county exists as a result of a sovereign act of legislation, either constitutional or statutory, separating it from the rest of the state as an integral part of its territory and establishing it as one of the primary divisions of the state for purposes of civil administration. — Abbr. co. [Cases: Counties 1. C.J.S. Counties §§ 2–4.]

“A county is a part of the realm, intirely governed by one sheriff under the king, but all subject to the general government of the realm; and therefore every county is as it were an intire body of itself, so that upon a feoffment of lands in many towns in one county, livery of seisin made in one parcel in any one of the towns in the name of all, sufficeth for all the lands in all the other towns within the same county: but upon a feoffment of lands in divers counties, there must be livery of seisin in every county.” Sir Henry Finch, Law, or a Discourse Thereof 79 (1759).

foreign county. Any county separate from that of a county where matters arising in the former county are called into question, though both may lie within the same state or country.

COUNTY AGENT

county agent. See juvenile officer under OFFICER(1).

COUNTY ATTORNEY

county attorney. An attorney who represents a county in civil matters and, in some jurisdictions, who prosecutes criminal offenders.

COUNTY AUDITOR

county auditor. See AUDITOR.

COUNTY BOND

county bond. See BOND(3).

COUNTY COMMISSIONER

county commissioner. See COMMISSIONER.

COUNTY COURT

county court. See COURT.

COUNTY JUDGE

county judge. See JUDGE.

COUNTY OFFICER

county officer. See OFFICER(1).

COUNTY PALATINE

county palatine (pal-*<<schwa>>*-tIn or -tin). Hist. A county in which the lord held certain royal privileges, such as the right to pardon a felon or to have indictments recite that offenses were committed against the lord's — rather than the king's — peace. • In England, there were three such counties: Chester, Durham, and Lancaster. The separate legal systems in these counties were slowly eliminated; the last vestiges of a separate system were abolished by the Courts Act (1971). Cf. proprietary government under GOVERNMENT.

“The counties palatine were Chester, Durham, and Lancaster. Whatever may be the precise date at which these counties became ‘Palatine,’ it seems likely that there was in Saxon times a jurisdiction equivalent to that of the Palatine earl, and originating in usurpation and necessity. The Central Government was too far away both before and after the Conquest to control effectually the administration of the Marches, which were always turbulent and lawless districts.” A.T. Carter, *A History of English Legal Institutions* 192 (4th ed. 1910).

COUNTY PROPERTY

county property. Property that a county is authorized to acquire, hold, or sell. [Cases: Counties 103. C.J.S. Counties § 143.]

COUNTY PURPOSE

county purpose. An objective pursued by a county; esp., one that a county levies taxes for. [Cases: Counties 190.1.]

COUNTY SEAT

county seat. The municipality where a county's principal offices are located. — Also termed county town. [Cases: Counties 25. C.J.S. Counties § 45.]

COUNTY SUPERVISOR

county supervisor. See county commissioner under COMMISSIONER.

COUNTY TOWN

county town. See COUNTY SEAT.

COUNTY WARRANT

county warrant. See WARRANT(3).

COUP D'ÉTAT

coup d'état (koo-day-tah). [French "stroke of state"] A sudden, usu. violent, change of government through seizure of power.

COUPON

coupon (koo-pon). An interest or dividend certificate that is attached to another instrument, such as a bond, and that may be detached and separately presented for payment of a definite sum at a specified time. — Also termed interest coupon.

COUPON BOND

coupon bond. See BOND(3).

COUPON INTEREST RATE

coupon interest rate. See coupon rate under INTEREST RATE.

COUPON NOTE

coupon note. See NOTE(1).

COUPON RATE

coupon rate. See INTEREST RATE.

COUPON SECURITY

coupon security. See SECURITY.

COUPON YIELD

coupon yield. See YIELD.

COUR DE CASSATION

Cour de Cassation. See COURT OF CASSATION.

COURIER

courier. A messenger, esp. one who delivers parcels, packages, and the like. • In international law, the term denotes a messenger duly authorized by a sending state to deliver a diplomatic pouch.

COURSE OF BUSINESS

course of business. The normal routine in managing a trade or business. — Also termed ordinary course of business; regular course of business; ordinary course; regular course. [Cases:

Customs and Usages 9. C.J.S. Customs and Usages § 15.]

COURSE OF DEALING

course of dealing. An established pattern of conduct between parties in a series of transactions (e.g., multiple sales of goods over a period of years). • If a dispute arises, the parties' course of dealing can be used as evidence of how they intended to carry out the transaction. Cf. COURSE OF PERFORMANCE ; trade usage under USAGE. [Cases: Contracts 170. C.J.S. Contracts § 340.]

“A course of dealing is distinguishable from a course of performance. As defined by the [UCC], ‘course of dealing’ relates to conduct under other transactions which occurred with regularity prior to the formation of the present contract, while ‘course of performance’ relates to the conduct of the parties under the contract in question subsequent to its formation. However, in meaning the two expressions are essentially equivalent.” Ronald A. Anderson, Uniform Commercial Code § 1-205:86 (1997).

COURSE OF EMPLOYMENT

course of employment. Events that occur or circumstances that exist as a part of one's employment; esp., the time during which an employee furthers an employer's goals through employer-mandated directives. Cf. SCOPE OF EMPLOYMENT ; ZONE OF EMPLOYMENT.

COURSE OF PERFORMANCE

course of performance. A sequence of previous performance by either party after an agreement has been entered into, when a contract involves repeated occasions for performance and both parties know the nature of the performance and have an opportunity to object to it. • A course of performance accepted or acquiesced in without objection is relevant to determining the meaning of the agreement. Cf. COURSE OF DEALING; trade usage under USAGE. [Cases: Contracts 170. C.J.S. Contracts § 340.]

“[C]ommon law courts have recognized the necessity of learning how people usually talk and what they usually mean by their language before one interprets their contracts.... ‘[C]ourse of performance’ refers to a pattern of performance of the contract that is the subject of the dispute, as contrasted to ‘course of dealing’ which refers to the pattern of performance in prior contracts between the same parties.” Claude Rohwer & Gordon D. Schaber, *Contracts in a Nutshell* 171–73 (4th ed. 1997).

“The phrase ‘course of performance’ relates to the way the parties have acted in performance of the particular contract in question. The judicial inquiry on this point is limited to the way the parties have acted in carrying out the particular contract that is in controversy, as distinguished from a general pattern of dealing that may embrace many other contracts or transactions between the parties.” Ronald A. Anderson, Uniform Commercial Code § 1-205:74 (1997).

COURSE OF TRADE

course of trade. See trade usage under USAGE.

COURT

court,n.1. A governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice <a question of law for the court to decide>.

“A court ... is a permanently organized body, with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice.” 1 William J. Hughes, *Federal Practice, Jurisdiction & Procedure* § 7, at 8 (1931).

2. The judge or judges who sit on such a governmental body <the court asked the parties to approach the bench>.3. A legislative assembly <in Massachusetts, the General Court is the legislature>.4. The locale for a legal proceeding <an out-of-court statement>.5. The building where the judge or judges convene to adjudicate disputes and administer justice <the lawyers agreed to meet at the court at 8:00 a.m.>. — Also termed (in sense 5) courthouse.

admiralty court.See ADMIRALTY(1).

appeals court.See appellate court.

appellate court.A court with jurisdiction to review decisions of lower courts or administrative agencies. — Also termed appeals court; appeal court; court of appeals; court of appeal; court of review. [Cases: Courts 203–254.]

“Appellate courts are among the most important institutions of governance in the United States. Through their review of trial court and administrative agency decisions they ensure that those bodies function lawfully and that litigants receive justice under law. Moreover, they provide authoritative interpretations of statutory and constitutional provisions and control the shaping of the common law in response to ever-changing circumstances; they are thus major sources of law.” Daniel John Meador & Jordana Simone Bernstein, *Appellate Courts in the United States v* (1994).

Archdeacon's court.See COURT OF ARCHDEACON.

Article I Court.See legislative court.

Article III Court.See ARTICLE III COURT.

Bail Court.See BAIL COURT.

Bankruptcy Court.See BANKRUPTCY COURT.

baronial court.Hist. A feudal court established by the owner of extensive lands held directly of the king under military tenure.

base court.Archaic. An inferior court.

basement court.See BASEMENT COURT.

bishop's court.See BISHOP'S COURT.

borough court.See BOROUGH COURT.

business court.A court that handles exclusively commercial litigation. • In the late 20th

century, business courts emerged as a way to unclog the general dockets and to dispose of commercial cases more efficiently and consistently. — Also termed commercial court; commercial division.

bylaw court. See BYRLAW COURT.

Central Criminal Court. See CENTRAL CRIMINAL COURT.

children's court. See juvenile court (1).

church court. See ecclesiastical court.

circuit court. 1. A court usu. having jurisdiction over several counties, districts, or states, and holding sessions in all those areas. See CIRCUIT; CIRCUIT-RIDING. 2. UNITED STATES COURT OF APPEALS.

city court. See municipal court.

civil court. A court with jurisdiction over noncriminal cases. — Abbr. Civ. Ct.

claims court. See court of claims.

closed court. See CLOSED COURT.

Commerce Court. Hist. A federal court having the power to review and enforce determinations of the Interstate Commerce Commission. • The Commerce Court existed from 1910 to 1913.

commercial court. 1. See business court. 2. English law. A court that hears business disputes under simplified procedures designed to expedite the trials. • This court was created in 1971 as part of the Queen's Bench Division of the High Court of Justice.

commissary court. 1. A court of general ecclesiastical jurisdiction presided over by four commissioners appointed by the Crown from the Faculty of Advocates. 2. Scots law. A sheriff or county court that appoints and confirms the executors of decedents who have personal property in Scotland. 3. Hist. Scots law. A supreme court in which matters of probate and divorce were decided. • This court was established in Edinburgh in 1563 to hear cases that had previously come under the jurisdiction of the ecclesiastical commissary court. It was absorbed by the Court of Session in 1836.

commissioner's court. In certain states, a court having jurisdiction over county affairs and often functioning more as a managerial group than as a judicial tribunal.

common pleas court. See COURT OF COMMON PLEAS.

commonwealth court. 1. In some states, a court of general jurisdiction. [Cases: Courts 118. C.J.S. Courts § 3.] 2. In Pennsylvania, a court that hears suits against the state and reviews decisions of state agencies and officials. [Cases: Courts 242(1).]

competent court. See court of competent jurisdiction.

conciliation court. See small-claims court.

consistory court. See CONSISTORY COURT.

constitutional court. 1. A court named or described and expressly protected in a constitution; esp., ARTICLE III COURT. 2. A court whose jurisdiction is solely or primarily over claims that legislation (and sometimes executive action) is inconsistent with a nation's constitution. • Germany, for example, has state constitutional courts and a Federal Constitutional Court.

consular court (kon-s<<schwa>>-l<<schwa>>r). A court held by the consul of one country within the territory of another. • Consular courts are created by treaty, and their jurisdiction is usu. limited to civil cases. The last of the U.S. consular courts (Morocco) was abolished in 1956. [Cases: Ambassadors and Consuls 6. C.J.S. Am-bassadors and Consuls §§ 31–32.]

coroner's court. English law. A common-law court that holds an inquisition if a person died a violent or unnatural death, died in prison, or died suddenly when the cause is not known. • The court also has jurisdiction over treasure trove.

corporation court. In some jurisdictions, a court that serves an incorporated municipality. See municipal court.

county court. 1. A court with powers and jurisdiction dictated by a state constitution or statute. • The county court may govern administrative or judicial matters, depending on state law. — Also termed parish court; (in Latin) curia comitatus. [Cases: Counties 38; Courts 182. C.J.S. Counties § 63.] 2. See probate court.

court above. A court to which a case is appealed. — Also termed higher court; upper court.

court a quo (ay kwoh). A court from which a case has been removed or appealed.

court below. A trial court or intermediate appellate court from which a case is appealed. — Also termed lower court.

court christian. See ecclesiastical court.

court de facto. See de facto court.

court merchant. Hist. A court of limited jurisdiction that decided controversies arising between merchants, dealers, shipmasters, supercargoes, and other, usu. transient, people connected with trade. • Cases were usu. tried before a jury of merchants.

court not of record. An inferior court that is not required to routinely make a record of each proceeding and usu. does not.

court of appeals. 1. An intermediate appellate court. — Also termed (as in California and England) court of appeal. See appellate court. 2. In New York and Maryland, the highest appellate court within the jurisdiction. [Cases: Courts 226, 237(1).]

court of chivalry. See HIGH COURT OF CHIVALRY.

court of claims. A court with the authority to hear claims made against a state (or its political

subdivision) for cases in which the state has waived sovereign immunity. — Also termed claims court. See UNITED STATES COURT OF FEDERAL CLAIMS. [Cases: States 184. C.J.S. States §§ 273–274, 280, 282.]

court of competent jurisdiction. A court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy. — Also termed competent court.

court of domestic relations. See family court.

court of equity. A court that (1) has jurisdiction in equity, (2) administers and decides controversies in accordance with the rules, principles, and precedents of equity, and (3) follows the forms and procedures of chancery. Cf. court of law. [Cases: Courts 42(7).]

court of final appeal. 1. See court of last resort. 2. Eccles. law. (cap.) JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

court of first instance. See trial court.

court of general jurisdiction. A court having unlimited or nearly unlimited trial jurisdiction in both civil and criminal cases. — Also termed general-jurisdiction court. [Cases: Courts 118–158.1. C.J.S. Courts §§ 3, 23–31, 33–35.]

court of impeachment. See COURT FOR THE TRIAL OF IMPEACHMENTS.

court of inquiry. 1. Hist. In English law, a court appointed by the monarch to ascertain whether it was proper to use extreme measures against someone who had been court-martialed. 2. Hist. In American law, an agency created under articles of war and vested with the power to investigate the nature of a transaction or accusation of an officer or soldier. 3. In some jurisdictions, a procedure that allows a magistrate to examine witnesses in relation to any offense that the magistrate has a good-faith reason to believe was committed.

court of instance. See trial court.

court of last resort. The court having the authority to handle the final appeal of a case, such as the U.S. Supreme Court.

court of law. 1. Broadly, any judicial tribunal that administers the laws of a state or nation. 2. A court that proceeds according to the course of the common law, and that is governed by its rules and principles. Cf. court of equity.

court of limited jurisdiction. A court with jurisdiction over only certain types of cases, or cases in which the amount in controversy is limited. [Cases: Courts 159–197. C.J.S. Courts §§ 3, 23, 25–35.]

court of ordinary. See probate court.

court of original jurisdiction. A court where an action is initiated and first heard. [Cases: Courts 118–158.1, 206. C.J.S. Courts §§ 3, 23–31, 33–35.]

court of record. 1. A court that is required to keep a record of its proceedings. • The court's records are presumed accurate and cannot be collaterally impeached. See OF RECORD(2). [Cases: Courts 48. C.J.S. Courts § 4.]

“The distinction that we still draw between ‘courts of record’ and courts that are ‘not of record’ takes us back to early times when the king asserts that his own word as all that has taken place in his presence is incontestable. This privilege he communicates to his own special court; its testimony as to all that is done before it is conclusive. If any question arises as to what happened on a previous occasion, the justices decide this by recording or bearing record (recordantur, portant recordum). Other courts ... may and, upon occasion, must bear record; but their records are not irrefragable We easily slip into saying that a court whose record is incontrovertible is a court which has record (habet recordum) or is a court of record, while a court whose record may be disputed has no record (non habet recordum) and is no court of record.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I 669* (2d ed. 1899).

2. A court that may fine and imprison people for contempt.

“A court of record is, strictly speaking, a court which has power to fine and imprison.” Lancelot Feilding Everest, *Everest and Strode's Law of Estoppel* 13 (1923).

court of review. See appellate court.

court of special jurisdiction. See limited court.

court of special session. A court that has no stated term and is not continuous, but is organized only for hearing a particular case. [Cases: Courts 64. C.J.S. Courts § 119.]

criminal court. A court with jurisdiction over criminal matters.

Crown Court. See CROWN COURT.

Dean of Guild Court. See DEAN OF GUILD COURT.

de facto court (di fak-toh). 1. A court functioning under the authority of a statute that is later adjudged to be invalid. — Also termed court de facto. [Cases: Courts 59. C.J.S. Courts § 8.] 2. A court established and acting under the authority of a de facto government.

dependency court. A court having jurisdiction over matters involving abused and neglected children, foster care, the termination of parental rights, and (sometimes) adoption.

diocesan court (di-ahs-i-sin). Eccles. law. A court exercising general or limited jurisdiction (as determined by patent, local custom, or legislation) of matters arising within a bishop's diocese. • Diocesan courts include the consistory court, the courts of the commissaries, and the courts of archdeacons.

district court. 1. A trial court having general jurisdiction within its judicial district. — Abbr. D.C. [Cases: Courts 191.] 2. Scots law. A local court, usu. staffed by lay magistrates, with jurisdiction over petty crimes.

divided court. See DIVIDED COURT.

divisional court. An English court made up of two or more judges from the High Court of Justice sitting in special cases that cannot be disposed of by one judge. • Each division of the High Court has a divisional court, e.g., the Divisional Court of the Family Division. With the exception of the Divisional Court of the Chancery Division, which has jurisdiction to review land-registration appeals from the county court, almost all judicial appeals are from decisions of a magistrates' court. The Divisional Court of the Queen's Bench Division hears appeals from the Crown Court or the magistrates' court by way of case stated in criminal prosecutions, which is the most frequent use of a divisional court.

domestic court. 1. A court having jurisdiction at the place of a party's residence or domicile. 2. See family court.

domestic-relations court. See family court.

drug court. A court that hears cases against nonviolent adults and juveniles, who are often first-time offenders and who are usu. charged with possession of a controlled substance or with committing a minor drug-related crime. • Drug courts focus on treatment rather than on incarceration.

ecclesiastical court (i-klee-zee-as-ti-k<<schwa>>l). 1. A religious court that hears matters concerning a particular religion. 2. In England, a court having jurisdiction over matters concerning the Church of England (the established church) as well as the duties and rights of the people serving it, but whose modern jurisdiction is limited to matters of ecclesiastical discipline and church property. — Also termed church court; court christian; spiritual court; (in Latin) christianitatis curia; curia christianitatis. [Cases: Religious Societies 12, 14. C.J.S. Religious Socie-ties §§ 84–86, 88–92.]

“The ecclesiastical courts exercised a jurisdiction which played a part of the development of the English legal system, and their work was not confined to controlling the clergy and doctrines of the Church. The jurisdiction of these courts was of particular significance before the Reformation, but, in certain matters and especially in ma-trimonial causes and the law of succession to property on death (testate and intestate succession), it remained of importance till the middle of the nineteenth century.” 1 A.K.R. Kiralfy, *Potter's Historical Introduction to English Law and Its Institutions* 211 (4th ed. 1958).

examining court. A lower court (usu. presided over by a magistrate) that determines probable cause and sets bail at a preliminary hearing in a criminal case.

family court. A court having jurisdiction over matters involving divorce, child custody and support, paternity, domestic violence, and other family-law issues. — Also termed domestic-relations court; court of domestic re-lations; domestic court. [Cases: Courts 174.]

federal court. A court having federal jurisdiction, including the U.S. Supreme Court, courts of appeals, district courts, bankruptcy courts, and tax courts. — Also termed United States court.

foreign court. 1. The court of a foreign nation. 2. The court of another state.

forty-days court. See COURT OF ATTACHMENTS.

franchise court. See FRANCHISE COURT.

full court. A court session that is attended by all the court's judges; an en banc court. — Also termed full bench.

General Court. See GENERAL COURT.

general-jurisdiction court. See court of general jurisdiction.

High Commission Court. See COURT OF HIGH COMMISSION.

High Court. 1. HIGH COURT OF JUSTICE. 2. HIGH COURT OF JUSTICIARY.

High Court of Admiralty. See HIGH COURT OF ADMIRALTY.

High Court of Chivalry. See HIGH COURT OF CHIVALRY.

High Court of Delegates. See COURT OF DELEGATES.

High Court of Errors and Appeals. See COURT OF ERRORS AND APPEALS.

High Court of Justice. See HIGH COURT OF JUSTICE.

High Court of Justiciary. See HIGH COURT OF JUSTICIARY.

higher court. See court above.

highest court. The court of last resort in a particular jurisdiction; a court whose decision is final and cannot be appealed because no higher court exists to consider the matter. • The U.S. Supreme Court, for example, is the highest federal court.

hot court. A court, esp. an appellate court, that is familiar with the briefs filed in the case, and therefore with the issues, before oral argument. • Typically, a hot court controls the oral argument with its questioning, as opposed to listening passively to set presentations of counsel.

housing court. A court dealing primarily with landlord-and-tenant matters, including disputes over maintenance, lease terms, and building and fire codes. [Cases: Courts 174.]

hundred court. Hist. In England, a larger court baron, held for all inhabitants of a particular hundred rather than a manor, in which the free suitors were the judges (jurors) and the steward the register. • A hundred court was not a court of record, and it resembled a court-baron in all respects except for its larger territorial jurisdiction. The last hundred court was abolished in 1971. — Also termed hundred moot. See COURT BARON.

impeachment court. See COURT FOR THE TRIAL OF IMPEACHMENTS.

inferior court. 1. Any court that is subordinate to the chief appellate tribunal within a judicial system. 2. A court of special, limited, or statutory jurisdiction, whose record must show the existence of jurisdiction in any given case to give its ruling presumptive validity. — Also termed lower court.

inquisitorial court. A court in which the inquisitorial system prevails.

“We should remember that in the ‘inquisitorial court’ the roles of prosecutor, defender, and judge are combined in one person or group of persons. It is no accident that such a court commonly holds its sessions in secret. The usual explanation for this is that the methods by which it extracts confessions cannot stand public scrutiny. But the reason runs deeper. The methods employed by an inquisitorial court, even if open to the public, could scarcely be a secret of meaningful observation by an outsider. It is only when the roles of prosecutor, defender, and judge are separated that a process of decision can take on an order and coherence that will make it understandable to an outside audience and convince that audience that all sides of the controversy have been considered.” Lon L. Fuller, *Anatomy of the Law* 35–36 (1968).

instance court. 1. See trial court. 2.Hist. The admiralty court in England exercising original jurisdiction in all cases except those involving prizes.

insular court.A federal court with jurisdiction over U.S. island territories, such as the Virgin Islands. [Cases: Federal Courts 1021–1024.]

intermediate court.An appellate court that is below a court of last resort.

International Court of Justice.See INTERNATIONAL COURT OF JUSTICE.

International Criminal Court.See INTERNATIONAL CRIMINAL COURT.

International Trade Court.See UNITED STATES COURT OF INTERNATIONAL TRADE.

J.P. court.See justice court.

justice court.A court, presided over by a justice of the peace, that has jurisdiction to hear minor criminal cases, matters involving small amounts of money, or certain specified claims (such as forcible-entry-and-detainer suits). — Also termed justice-of-the-peace court; J.P. court. [Cases: Justices of the Peace 31. C.J.S. Justices of the Peace § 26, 47.]

juvenile court. 1. A court having jurisdiction over cases involving children under a specified age, usu. 18. • Illinois enacted the first statewide juvenile-court act in 1899. Today every state has a specialized juvenile or family court with exclusive original delinquency jurisdiction. — Also termed children's court. [Cases: Courts 174.] 2. A court having special jurisdiction over orphaned, delinquent, dependent, and neglected children. • This type of juvenile court is created by statute and derives its power from the specific wording of the statute, usu. having exclusive original jurisdiction over matters involving abuse and neglect, adoption, status offenses, and delinquency. Generally, juvenile courts are special courts of a paternal nature that have jurisdiction over the care, custody, and control of children (as defined by the statute). The jurisdiction of the juvenile court is exercised as between the state (for the child) and the parents of the child and is not concerned with a custody controversy that does not affect the morale, health, or welfare of the child. A juvenile court is not a criminal court. The primary concern of a juvenile court is the child's immediate welfare. See UNIFORM JUVENILE COURT ACT.

kangaroo court. 1. A self-appointed tribunal or mock court in which the principles of law and justice are disregarded, perverted, or parodied. • Kangaroo courts may be assembled by various groups, such as prisoners in a jail (to settle disputes between inmates) and players on a baseball

team (to “punish” teammates who commit fielding errors). 2. A court or tribunal characterized by unauthorized or irregular procedures, esp. so as to render a fair proceeding impossible. 3. A sham legal proceeding. • The term's origin is uncertain, but it appears to be an Americanism. It has been traced to 1853 in the American West. “Kangaroo” might refer to the illogical leaps between “facts” and conclusions, or to the hapless defendant's quick bounce from court to gallows.

King's Court. See CURIA REGIS.

land court. A court having jurisdiction over land-related matters including: (1) exclusive original jurisdiction of applications for registration of land titles and related questions, writs of entry and petitions to clear title to real estate, petitions to determine the validity and extent of municipal zoning ordinances, bylaws, and regulations, and proceedings for foreclosure and redemption from tax titles; (2) original concurrent jurisdiction of declaratory judgment proceedings, shared with the supreme judicial, superior, and probate courts; and (3) original concurrent equity jurisdiction in land-related matters, except for cases of specific performance of land contracts. • Land courts today exist in the United States only in Massachusetts and Hawaii. [Cases: Courts 174, 472.1. C.J.S. Courts §§ 186–187.]

landed-estates court. Hist. English law. A statutorily established tribunal to dispose of encumbered real estate more promptly and easily than could be accomplished through the ordinary judicial machinery. • This type of court was first established in Ireland by acts of 11 & 12 Vict., ch. 48 and 12 & 13 Vict., ch. 77. The purpose of the court was to enable the owner, or any lessee of an unexpired term of 63 years or less, of encumbered land to apply to commissioners to direct a sale. The court served as a court of record and was called the Incumbered Estates Court. A later act abolished that court and created a new permanent tribunal called the Landed Estates Court. 21 & 22 Vict., ch. 72.

legatine court. A court held by a papal legate and having ecclesiastical jurisdiction.

legislative court. A court created by a statute, as opposed to one created by a constitution. — Also termed (in federal law) Article I court. [Cases: Courts 41. C.J.S. Courts §§ 93–96, 100, 102.]

levy court. Hist. A court that once existed in the District of Columbia, exercising many of the functions typical of county commissioners or county supervisors in the states, such as constructing and repairing roads and bridges.

limited court. A court having special jurisdiction conferred by statute, such as a probate court. — Also termed court of special jurisdiction. [Cases: Courts 159–197. C.J.S. Courts §§ 3, 23, 25–35.]

local court. A court whose jurisdiction is limited to a particular territory, such as a state, municipal, or county court.

lord mayor's court. A court of law and equity having jurisdiction in civil cases arising within the city of London and acting as the appellate court from the Chamberlain Court. • It was abolished by the Court Act of 1971.

lower court. 1. See court below. 2. See inferior court.

magistrate's court (maj-i-strayts or -strits). 1. A court with jurisdiction over minor criminal offenses. • Such a court also has the power to bind over for trial persons accused of more serious offenses. — Also termed police court. 2. A court with limited jurisdiction over minor criminal and civil matters. — Sometimes spelled (esp. in England) magistrates' court. — Also termed (in England) court of petty sessions; court of summary jurisdiction. [Cases: Justices of the Peace 31. C.J.S. Justices of the Peace §§ 26, 47.]

maritime court. See ADMIRALTY(1).

mayor's court. A municipal court in which the mayor presides as the judge, with jurisdiction over minor criminal (and sometimes civil) matters, traffic offenses, and the like. [Cases: Municipal Corporations 635. C.J.S. Municipal Corporations §§ 204–205.]

military court. A court that has jurisdiction over members of the armed forces and that enforces the Code of Military Justice. See CODE OF MILITARY JUSTICE. [Cases: Armed Services 42.1; Military Justice 870. C.J.S. Military Justice §§ 138–139.]

military court of inquiry. A military court that has special and limited jurisdiction and that is convened to investigate specific matters and, traditionally, to determine whether further procedures are warranted. 10 USCA § 935. [Cases: Armed Services 41. C.J.S. Armed Services §§ 160, 163; Military Justice § 161.]

moot court. See MOOT COURT.

municipal court. A court having jurisdiction (usu. civil and criminal) over cases arising within the municipality in which it sits. • A municipal court's civil jurisdiction to issue a judgment is often limited to a small amount, and its criminal jurisdiction is limited to petty offenses. — Also termed city court. [Cases: Courts 42(5), 186; Municipal Corporations 634. C.J.S. Courts § 102; Municipal Corporations §§ 204–205.]

naturalization court. See NATURALIZATION COURT.

nisi prius court. See NISI PRIUS.

open court. See OPEN COURT.

ordinary's court. See probate court.

orphan's court. See probate court.

Palace Court. See PALACE COURT.

parish court. See county court.

peacemaker's court. Native American law. A tribal court that adjudicates, arbitrates, or mediates some disputes, usu. according to traditional and statutory tribal law.

people's court. See PEOPLE'S COURT.

piepowder court. See PIEPOWDER COURT.

police court. See magistrate's court (1).

practice court. 1. MOOT COURT. 2. (cap.) BAIL COURT.

prerogative court. In New Jersey, a probate court. See probate court.

pretorial court. Hist. A colonial court in Maryland with jurisdiction of capital crimes, consisting of the lord pro-prietary or his lieutenant-general and the council.

prize court. A court having jurisdiction to adjudicate the captures made at sea in time of war. See PRIZE(2). [Cases: War and National Emergency 28(1). C.J.S. War and National Defense §§ 29–39, 43, 45.]

probate court. A court with the power to declare wills valid or invalid, to oversee the administration of estates, and in some states to appoint guardians and approve the adoption of minors. — Also termed surrogate's court; surrogate court; court of ordinary; ordinary's court; county court; orphan's court (abbr. o.c.). See PROBATE. [Cases: Courts 42(4), 198.]

provisional court. A federal court with jurisdiction and powers governed by the order granting its authority, such as a temporary court established in a conquered or occupied territory.

Quarter Sessions Court. See COURT OF GENERAL QUARTER SESSIONS OF THE PEACE.

recorder's court. A court having jurisdiction over felony cases. • This court exists in only a few jurisdictions, such as Michigan, where the recorder's court hears felony cases arising within the Detroit city limits. [Cases: Criminal Law 90.]

register's court. Hist. A probate court in Pennsylvania. See probate court. [Cases: Courts 202.]

sheriff's court. Scots law. The principal inferior court in Scotland, having both civil and criminal jurisdiction.

small-claims court. A court that informally and expeditiously adjudicates claims that seek damages below a specified monetary amount, usu. claims to collect small accounts or debts. — Also termed small-debts court; conciliation court. [Cases: Courts 174.]

spiritual court. See ecclesiastical court.

state court. A court of the state judicial system, as opposed to a federal court.

superior court. 1. In some states, a trial court of general jurisdiction. [Cases: Courts 118–158.1. C.J.S. Courts §§ 3, 23–31, 33–35.] 2. In Pennsylvania, an intermediate court between the trial court and the chief appellate court. [Cases: Courts 242(1).]

supreme court. See SUPREME COURT.

Supreme Court of the United States. See SUPREME COURT OF THE UNITED STATES.

Supreme Judicial Court. The highest appellate court in Maine and Massachusetts. [Cases: Courts 225, 227.]

surrogate's court. See probate court.

tax court. See TAX COURT.

teen court. A group of teenagers who (1) hear cases involving juveniles, usu. first-time offenders, who have acknowledged their guilt or responsibility, and (2) impose sanctions within a fixed range, usu. involving counseling, community service, or restitution. • Some local jurisdictions in more than half the states have provided for this type of tribunal. The juvenile offender consents to the assessment of punishment by this jury of peers. The American Bar Association encourages the formation of these kinds of courts. — Also termed youth court.

Teind Court. See TEIND COURT.

territorial court. A U.S. court established in a U.S. territory (such as the Virgin Islands) and serving as both a federal and state court. • The Constitution authorizes Congress to create such courts. U.S. Const. art. IV, § 3, cl. 2. [Cases: Federal Courts 1021–1024.]

three-judge court. A court made up of three judges; esp., a panel of three federal judges convened to hear a trial in which a statute is challenged on constitutional grounds. • Three-judge courts were virtually abolished in 1976 when Congress restricted their jurisdiction to constitutional challenges to congressional reapportionments. Occasionally, Congress creates three-judge courts in special legislation, as with the 2002 campaign-finance law. Appeals from a three-judge court go directly to the Supreme Court. See 28 USCA § 2284. [Cases: Federal Courts 991–1013. C.J.S. Injunctions § 177.]

traffic court. A court with jurisdiction over prosecutions for parking violations and infractions of road law.

trial court. A court of original jurisdiction where the evidence is first received and considered. — Also termed court of first instance; instance court; court of instance.

Tribal Court. See TRIBAL COURT.

unified family court. In some jurisdictions, a court that hears all family matters, including matters of divorce, juvenile delinquency, adoption, abuse and neglect, and criminal abuse. • A unified family court also hears matters typically heard in family court (in jurisdictions that have statutory family courts) or in courts of general jurisdiction, such as divorce, paternity, and emancipation proceedings. Proponents of unified family courts cite the benefits of having all family-related matters heard by one court — for instance, the benefit of having a child testify only once rather than forcing the child to testify in one court in a divorce proceeding, in a different court in criminal proceedings against an abuser, and in yet another in a civil proceeding initiated by Child Protective Services.

United States Claims Court. See UNITED STATES COURT OF FEDERAL CLAIMS.

United States court. See federal court.

United States Court of International Trade. See UNITED STATES COURT OF INTERNATIONAL TRADE.

United States Customs Court. See UNITED STATES CUSTOMS COURT.

United States District Court. See UNITED STATES DISTRICT COURT.

United States Supreme Court. See SUPREME COURT OF THE UNITED STATES.

United States Tax Court. See TAX COURT, U.S.

upper court. See court above.

vice-admiralty court. See VICE-ADMIRALTY COURT.

Wood-Plea Court. See WOOD-PLEA COURT.

World Court. See INTERNATIONAL COURT OF JUSTICE.

youth court. See teen court.

COURT ADMINISTRATOR

court administrator. See ADMINISTRATOR(1).

COURT-APPOINTED ATTORNEY

court-appointed attorney. See assigned counsel under COUNSEL.

COURT-APPOINTED COUNSEL

court-appointed counsel. See assigned counsel under COUNSEL.

COURT-APPOINTED EXPERT

court-appointed expert. See impartial expert under EXPERT.

COURT-APPOINTED SPECIAL ADVOCATE

court-appointed special advocate. A trained volunteer appointed by a court to represent the interests of a child in an abuse or neglect case. — Abbr. CASA. Cf. guardian ad litem under GUARDIAN.

COURT APPOINTED SPECIAL ADVOCATES

Court Appointed Special Advocates. A federally funded program in which trained laypersons act on behalf of children in abuse and neglect cases. • The CASA program began in 1977 in Seattle, Washington. In 1989, the American Bar Association endorsed using a combination of CASA volunteers and attorneys in abuse and neglect cases. CASA volunteers are sanctioned by the ABA as permissible guardians ad litem. — Abbr. CASA.

COURT A QUO

court a quo. See COURT.

COURT BARON

court baron. Hist. A manorial court with jurisdiction over amounts in controversy of 40 shillings or less. • According to some authorities, the court baron developed into two courts: the customary court baron for disputes involving copyholders, and the court baron proper (also known as the freeholders' court baron), in which freeholders were allowed to hold court concerning minor disputes. — Also termed freeholder's court baron.

“In Coke's day it was said that the lord of a manor had one court, ‘a court baron,’ for his freeholders and another court, ‘a customary court,’ for his copyholders, and that in the latter the lord or his steward was the judge. Now over his unfree men the lord had, according to the law of the king's court, almost unlimited power; short of maiming them he might do what he liked with them; and every tenant of an unfree tenement was a tenant at will. Nevertheless in the court rolls and the manuals for stewards which come to us from the thirteenth and fourteenth centuries we cannot discover two courts or two methods of constituting the court. Freeholders and serfs are said to owe suit to the same halimoot, and so far as we can see, the curia which pronounces judgment is always the same body.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 593 (2d ed. 1898).

COURT BELOW

court below. See COURT.

COURT CALENDAR

court calendar. A list of matters scheduled for trial or hearing; DOCKET(2).

COURT CHRISTIAN

court christian. See ecclesiastical court under COURT.

COURT COMMISSIONER

court commissioner. See COMMISSIONER.

COURT COSTS

court costs. See COST(2).

COURT CRIER

court crier. See CRIER(1).

COURT DAY

court day. See DAY.

COURT DE FACTO

court de facto. See de facto court under COURT.

COURTESAN

courtesan. 1. A court mistress. 2. A loose woman. 3. A prostitute. — Also spelled courtezan. Cf. CONCUBINE.

COURTESY

courtesy. See CURTESY.

COURTESY SUPERVISION

courtesy supervision. Oversight of a parolee by a correctional agency located in a jurisdiction other than where the parolee was sentenced. • Courtesy supervision is usu. arranged informally between correctional authorities in cases in which the offense is not serious and the rehabilitative needs of the parolee are better served in another jurisdiction.

COURT FOR CONSIDERATION OF CROWN CASES RESERVED

Court for Consideration of Crown Cases Reserved. Hist. A court established in 1848 to review questions of law arising in criminal cases. • Trial judges posed the postverdict questions of law to the Court, which decided whether error had been committed. The Court was abolished in 1907, and its jurisdiction was transferred to the Court of Criminal Appeal. — Also termed Court for Crown Cases Reserved.

“It was an old practice for the judge, in case of a conviction, if he felt a doubt as to the law, to respite judgment or sentence, and discuss the matter informally with the other judges. If they thought that the prisoner had been improperly convicted, he was pardoned. Statutory authority was given to this practice in 1848 by the establishment of the court for Crown Cases Reserved. All the judges were members of this court; and five, of whom the Lord Chief Justice must be one, formed a quorum.” 1 William Holdsworth, *A History of English Law* 217 (7th ed. 1956).

COURT FOR DIVORCE AND MATRIMONIAL CAUSES

Court for Divorce and Matrimonial Causes. Hist. A court exercising jurisdiction over family issues, such as legitimacy and divorce. • The Court, which was established in 1857, acquired the matrimonial jurisdiction previously exercised by the ecclesiastical courts. It consisted of the Lord Chancellor, the Chief Justices of the Queen's Bench and Common Pleas, the Chief Baron of Exchequer, the senior puisne judges of the last three courts, and the Judge Ordinary. In most instances, the Judge Ordinary heard the cases. The Judicature Act of 1873 abolished the Court and transferred its jurisdiction to the Probate Divorce and Admiralty Division (now Family Division) of the High Court of Justice.

COURT FOR THE CORRECTION OF ERRORS

Court for the Correction of Errors. A court having jurisdiction to review a lower court. • The name was formerly used in New York and South Carolina.

COURT FOR THE RELIEF OF INSOLVENT DEBTORS

Court for the Relief of Insolvent Debtors. Hist. A court located in London with jurisdiction

over bankruptcy matters. • The Bankruptcy Act of 1861 abolished the Court.

COURT FOR THE TRIAL OF IMPEACHMENTS

court for the trial of impeachments. A tribunal empowered to try a government officer or other person brought before it by the process of impeachment. • The U.S. Senate and the British House of Lords have this authority, as do the upper houses of most state legislatures. — Also termed impeachment court; court of impeachment.

COURT HAND

court hand. Hist. A script style used by English court clerks, the words being abbreviated and contracted according to a set of common principles for maintaining brevity and uniformity. • This type of writing, along with the use of Latin (except for technical or untranslatable phrases), was banned early in the 18th century in an effort to make court records more accessible to nonlawyers.

“[T]echnical Latin continued in use from the time of its first introduction, till the subversion of our ancient constitution under Cromwell; when, among many other innovations in the law, some for the better and some for the worse, the language of our records was altered and turned into English. But, at the restoration of king Charles, this novelty was no longer countenanced; the practicers finding it very difficult to express themselves so concisely or significantly in any other language but the Latin. And thus it continued without any sensible inconvenience till about the year 1730, when it was again thought proper that the proceedings at law should be done into English, and it was accordingly so ordered by statute 4 Geo. II. c. 26... What is said of the alteration of language by the statute 4 Geo. II. c. 26 will hold equally strong with respect to the prohibition of using the ancient immutable court hand in writing the records of other legal proceedings; whereby the reading of any record that is forty years old is now become the object of science, and calls for the help of an antiquarian.” 3 William Blackstone, Commentaries on the Laws of England 322–23 (1768).

COURTHOUSE

courthouse. See COURT(5).

COURTHOUSE STEPS

courthouse steps. The figurative location of settlement negotiations that occur shortly before trial commences, regardless of the literal location of the negotiations <the parties settled the lawsuit on the courthouse steps>.

COURT LANDS

court lands. Hist. The part of a manor used for the lord's household. — Also termed (in Latin) *curtiles terrae*.

COURT LEET

court leet (kort leet). Hist. A feudal court responsible for receiving frankpledges and notices of criminal accusations. • Courts leet exercised both governmental and judicial powers, but declined

after the justices in eyre began to take over serious criminal cases. The court met once or twice a year, and was presided over by the lord's steward, a lawyer who acted as judge.

COURT-MARTIAL

court-martial,n. An ad hoc military court convened under military authority to try someone accused of violating the Uniform Code of Military Justice, particularly a member of the armed forces. [Cases: Armed Services 42; Military Justice 870–898. C.J.S. Armed Services § 166; Military Justice §§ 13, 138–158.] Pl. courts-martial. — court-martial,vb.

“[C]ourts-martial are not a part of the federal judicial system, and the procedure in such courts is regulated by the Articles of War, Army Regulations, orders of the President, and military custom.” *Altmayer v. Sanford*, 148 F.2d 161, 162 (5th Cir. 1945).

BCD special court-martial.A special court-martial in which a possible punishment is a bad-conduct discharge (a “BCD”).

general court-martial.A proceeding that is presided over by a military judge, and no fewer than five members (who serve as jurors), and that has jurisdiction over all the members of the armed forces. • It is the highest military trial court.

special court-martial.A proceeding that is presided over by a military judge and no fewer than three members (who serve as jurors) to hear noncapital offenses and prescribe a sanction of hard labor, dismissal, or extended confinement (up to six months). • It is the intermediate level of courts-martial.

summary court-martial.A proceeding presided over by a single commissioned officer who is jurisdictionally limited in what sanctions can be imposed. • It is the lowest level of courts-martial.

COURT-MARTIAL ORDER

court-martial order.A written order containing the result of a court-martial trial.

COURT-MARTIAL REPORTS

Court-Martial Reports.A publication containing the opinions of the U.S. Court of Military Appeals and select decisions of the Courts of Military Review. • This publication appeared during the years 1951–1975. — Abbr. CMR.

COURT MERCHANT

court merchant.See COURT.

COURT NOT OF RECORD

court not of record.See COURT.

COURT OF ADMIRALTY

Court of Admiralty.See HIGH COURT OF ADMIRALTY.

COURT OF ANCIENT DEMESNE

court of ancient demesne.Hist. A court made up of freeholders of land held by the Crown (i.e., an ancient de-mesne). • The freeholders acted as judges much the same way that freeholders of an ordinary manor would in a court baron. See ancient demesne under DEMESNE; COURT BARON.

COURT OF APPEAL

Court of Appeal.An English court of civil and criminal appellate jurisdiction established by the Judicature Acts of 1873 and 1875. • The court is made up of the Lord Chancellor, Lord Chief Justice, Master of the Rolls, President of the Family Division, Vice-Chancellor of the Chancery Division, former Lord Chancellors, Lords of Appeal in Ordinary, and Lords Justices of Appeal. In practice it is made up of the Master of Rolls and the Lords Justices. It sits in several divisions, each having three members.

COURT OF APPEAL IN CHANCERY

Court of Appeal in Chancery.Hist. An English court of intermediate appeal in equity cases, established in 1851 and abolished in 1873–1875, when its jurisdiction was transferred to the Court of Appeal.

COURT OF APPEALS

court of appeals.See COURT.

COURT OF APPEALS, U.S.

Court of Appeals, U.S. See UNITED STATES COURT OF APPEALS.

COURT OF APPEALS FOR THE ARMED FORCES

Court of Appeals for the Armed Forces.See UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES .

COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Court of Appeals for the Federal Circuit.See UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT .

COURT OF APPEALS FOR VETERANS CLAIMS

Court of Appeals for Veterans Claims. The federal court that reviews decisions of the Board of Veterans Ap-peals.

COURT OF APPEALS IN CASES OF CAPTURE

Court of Appeals in Cases of Capture.Hist. A court responsible for reviewing state-court decisions concerning British ships captured by American privateers during the Revolution. • The Court was established by Congress under the Articles of Confederation and served as the chief U.S. court from 1780 to 1787. It was the first federal court in the United States.

COURT OF ARCHDEACON

Court of Archdeacon (ahrch-dee-k<<schwa>>n).Hist. Eccles. law. An inferior ecclesiastical court with juris-diction over cases arising within the archdeaconry and probate matters. • Appeal was to the Bishop's Court. The Court of Archdeacon was abolished in 1967. — Also termed Archdeacon's Court; Archdiaconal Court (ahr-k<<schwa>>-dl-ak<<schwa>>n<<schwa>>l).

COURT OF ARCHES

Court of Arches.Eccles. law. The ecclesiastical court of the province of Canterbury, responsible for appeals from provincial diocesan courts. • The Pope heard appeals from the Court of Arches until the break with Rome prompted a transfer of the appellate jurisdiction to the Court of Delegates. The Judicial Committee of the Privy Council now hears certain appeals from the Court of Arches. — Also termed Arches Court of Canterbury; Court of Canterbury; Court of the Official Principal. Cf. CHANCERY COURT OF YORK.

“The Court of Arches is the provincial court of the Archbishop of Canterbury. It is held by a judge generally called the Dean of the Arches. Its jurisdiction was important while testamentary cases were dealt with in the Ecclesiastical Courts. The name is derived from the fact that the court was originally held in the Church of St. Mary-le-Bow (Ecclesia Beatae Mariae de Arcubus), the steeple of which is raised on stone pillars formed archwise like bent bows.” W.J.V. Windeyer, *Lectures on Legal History* 184 n.11 (2d ed. 1949).

COURT OF ASSISTANTS

Court of Assistants.Hist. A colonial body organized in Massachusetts Bay Colony in 1630 to act as a legislature and court for the colony. Cf. GENERAL COURT .

“The court of assistants, made up of governor, deputy governor, and magistrates, heard appeals from lower courts, and took original jurisdiction in certain cases — for example, cases of divorce. Below it were the county courts.” Lawrence M. Friedman, *A History of American Law* 40 (2d ed. 1985).

COURT OF ATTACHMENTS

Court of Attachments.Hist. An inferior forest court with jurisdiction over trespasses of the royal forests. • The judges of this court (the verderers) met every 40 days to hear charges made by the royal foresters. Major trespass cases were heard by the justices in eyre. — Also termed wood-mote; forty-days court. See VERDERER.

COURT OF AUDIENCE

Court of Audience.Hist. Eccles. law. A court in which the Archbishop of York or Canterbury exercised personal jurisdiction. • This court was abolished in 1963.

“Just as the bishop did not deprive himself of all jurisdiction by delegation to an official or commissary, so the archbishop did not originally deprive himself of all jurisdiction by delegation to the official principal. He possessed a jurisdiction concurrent with that of the court of the Arches, which was exercised in the court of Audience. In later times this jurisdiction was exercised by the

judge of the court of Audience. At one time the archbishop may have exercised a considerable part of this jurisdiction in this court." 1 William Holdsworth, *A History of English Law* 601 (7th ed. 1956).

COURT OF AUGMENTATIONS

Court of Augmentations.Hist. A court established in 1536 by Henry VIII to determine controversies arising from the royal policy of taking over property owned by monasteries. • The court was merged into the Court of Ex-chequer in 1554.

COURT OF CANTERBURY

Court of Canterbury.See COURT OF ARCHES.

COURT OF CASSATION

Court of Cassation (ka-say-sh<<schwa>>n). The highest court of France. • The court's name derives from its power to quash (casser) the decrees of inferior courts. — Also termed (more formally) Cour de Cassation.

COURT OF CHANCERY

court of chancery.See CHANCERY(1).

COURT OF CHIVALRY

COURT OF CIVIL APPEALS

Court of Civil Appeals.An intermediate appellate court in some states, such as Alabama and (formerly) Texas. [Cases: Courts 210, 247.]

COURT OF CLAIMS

court of claims.1.COURT. 2. (cap.) UNITED STATES COURT OF FEDERAL CLAIMS.

COURT OF COMMON PLEAS

Court of Common Pleas. 1.Hist. A superior court having jurisdiction of all real actions and common pleas (i.e., actions between subjects). • The Court was presided over by a chief justice with four (later five) puisne judges. In 1873 it became the Common Pleas Division of the High Court of Justice. In 1881 it merged into the Queen's Bench Division. 2. An intermediate-level court in some states, such as Arkansas. [Cases: Courts 211.] 3. A trial court of general jurisdiction in some states, such as Ohio, Pennsylvania, and South Carolina. [Cases: Courts 150, 151, 153.] — Also termed Court of Common Bench. — Abbr. C.P.

“Common pleas is the kings Court now held in Westminster hall, but in auncient time moveable, as appeareth by the statute called Magna charta.... [U]ntill the time that Henry the third granted the great charter, there were but two courts in all, called the Kings courts: whereof one was the Exchequer, and the other, the kings bench, which was then called (curia Domini regis) and (aula regis) because it followed the court or king: and that upon the grant of that charter, the court of common pleas was erected and setled in one place certaine: viz. at Westminster.... All civill

causes both reall and personall are, or were in former times, tryed in this court, according to the strict lawe of the realme: and by Fortescue, cap. 50 it seemeth to have bene the onely court for reall causes." John Cowell, *The Interpreter* (1607).

COURT OF COMPETENT JURISDICTION

court of competent jurisdiction. See COURT.

COURT OF CONSCIENCE

court of conscience. Hist. A local English court with jurisdiction of small-debt cases. • The court was so called because its judgments were supposed to reflect equity and good conscience. County courts assumed the jurisdiction of the courts of conscience in 1846.

COURT OF CONVOCATION

Court of Convocation. Eccles. law. An assembly of high-ranking provincial officials and representatives of the lower clergy having jurisdiction over cases of heresy, schism, and other ecclesiastical matters.

COURT OF CRIMINAL APPEALS

Court of Criminal Appeals. 1. For each armed service, an intermediate appellate court that reviews court-martial decisions. • The court was established by the Military Justice Act of 1968. 10 USCA §§ 859–876. — Formerly termed Court of Military Review (abbr. CMR). [Cases: Armed Services 47.1(1); Military Justice 1411. C.J.S. Military Justice §§ 454, 457, 488–489, 491–492.] 2. In some jurisdictions, such as Texas and Oklahoma, the highest appellate court that hears criminal cases.

COURT OF CUSTOMS AND PATENT APPEALS

Court of Customs and Patent Appeals. Hist. An Article III court created in 1929 to hear appeals in customs and patent cases. • This court was abolished in 1982 and was superseded by the U.S. Court of Appeals for the Federal Circuit. — Abbr. CCPA. See UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT. [Cases: Patents 113. C.J.S. Patents §§ 188–189, 196, 199, 202.]

COURT OF DELEGATES

Court of Delegates. Hist. Eccles. law. A court serving as the final court of appeal for admiralty and ecclesiastical matters. • The Court was established in 1534 to serve in the stead of the Papal Curia when the English Church severed its ties with the Papacy. Six delegates, appointed to hear only one case, made up the Court, usu. three persons trained in common law and three in civil law. This mixture led to confused rulings and unreliable pre-cedents that hindered the Court's credibility and ultimately led to its dissolution. The Court was abolished in 1833 and its jurisdiction transferred to the Judicial Committee of the Privy Council. — Also termed High Court of Delegates.

“The crown had an absolute discretion as to the person to be appointed. But, as the lawyers of

Doctors' Commons were the only lawyers acquainted with canon or civil law, certain of them were usually included in the commis-sion.... It is not surprising to find that the [Court of Delegates] was unsatisfactory. It was a shifting body, so that no general rules of procedure could be established. It did not as a rule give reasons for its decisions. Its members were only paid a guinea a day; and consequently it was usually composed of the junior civilians. On them, the judges of the common law courts, appointed as delegates, were obliged to rely for their law. In consequence of the dissatisfaction felt at its working the Ecclesiastical Commission of 1832, in a special report, recommended the transfer of its jurisdiction to the Privy Council" 1 William Holdsworth, A History of English Law 605 (7th ed. 1956).

COURT OF DOMESTIC RELATIONS

court of domestic relations.See family court under COURT.

COURT OF EARL MARSHAL

Court of Earl Marshal.1.COURT OF THE LORD HIGH CONSTABLE AND EARL MARSHAL. 2.HIGH COURT OF CHIVALRY.

COURT OF EQUITY

court of equity.See COURT.

COURT OF ERROR

court of error. 1.Hist. Formerly, the Court of Exchequer Chamber and the House of Lords. • Appeals from common-law courts lay to the Court of Exchequer Chamber, and then to the House of Lords until 1873, when the Judicature Act gave jurisdiction of superior-court appeals to the Court of Appeal. Cf. COURT OF EXCHEQUER CHAMBER . 2. Generally, a court having jurisdiction to review a lower court's rulings.

COURT OF ERRORS AND APPEALS

Court of Errors and Appeals.Hist. Formerly, the court of last resort in New Jersey and New York. — Also termed High Court of Errors and Appeals.

COURT OF EXCHEQUER

Court of Exchequer (eks-chek-<<schwa>>r oreks-chek-<<schwa>>r).Hist. A former English superior court responsible primarily for adjudicating disputes about the collection of public revenue. • In 1873 it became the Exchequer Division of the High Court of Justice. In 1881 that Division was merged into the Queen's Bench Division. See QUEEN'S BENCH DIVISION. Cf. CHAMBER OF ACCOUNTS.

COURT OF EXCHEQUER CHAMBER

Court of Exchequer Chamber.Hist. 1.An informal assembly of common-law judges who (sometimes with the Lord Chancellor) gathered to discuss important cases that had adjourned pending an opinion from the Court. • This body never became a court of law in a technical sense, but judges gave great weight to its decisions. The last reported decision of this body is from 1738.

“Earlier than these two statutory courts was the practice, which apparently originated about the time of Edward I, of informal meetings of the judges in the Exchequer Chamber to decide matters connected with litigation.... The purpose of the meeting was to bring before the judges a point of law which caused difficulty and which had arisen in a case being heard before one or other of the courts. Any resolution passed did not constitute a judgment; it was left to the court concerned to make the appropriate decree, and the official record made no reference to the informal decision.... Civil cases were debated in the Exchequer Chamber as late as the seventeenth century, and criminal cases continued to be ‘reserved’ for full discussion by all the common law judges until the nineteenth century.” A.K.R. Kiralfy, *Potter's Outlines of English Legal History* 202–04 (5th ed. 1958).

2. A court created by statute in 1357 to hear appeals from the Court of Exchequer. 3. A court created by statute in 1585 to hear appeals from the King's Bench. • This court consisted of all the justices of the Common Pleas and the Barons of Exchequer who were serjeants. At least six judges were necessary to render a judgment. “Parliament was only occasionally summoned in the sixteenth century; and as Parliament was the only court which could amend errors of the King's Bench, the want of a court which could hold regular sessions was much felt. To supply this want a new court of Exchequer Chamber was created in 1585 for the purpose of amending the errors of the King's Bench.” 1 William Holdsworth, *A History of English Law* 244 (7th ed. 1956).

4. A court charged with hearing appeals from the common-law courts of record. • This court was created in 1830 by combining the courts created by the statutes of 1357 and 1585. Appeals from one common-law court were heard by judges from the other two courts. “This complicated system of appellate courts was abolished in 1830, when a new Court of Exchequer Chamber was set up as the court of error from each of the three common law courts. It was composed of the judges of the two common law courts other than those of the court appealed from. At the same time the right of the King's Bench to hear error from the Common Pleas was abolished. From the judgment of this new court a further appeal still lay to the House of Lords. This court was thus, until the Judicature Act, 1873, a court of intermediate appeals. Its jurisdiction after the Judicature Act passed to the Court of Appeal which was then created.” W.J.V. Windeyer, *Lectures on Legal History* 144 (2d ed. 1949).

COURT OF FACULTIES

Court of Faculties. Eccles. law. An archbishop's tribunal that grants special dispensations (such as a marriage license) and decides questions relating to monuments and mortuary matters. See MASTER OF THE FACULTIES.

COURT OF FEDERAL CLAIMS, U.S.

Court of Federal Claims, U.S. See UNITED STATES COURT OF FEDERAL CLAIMS.

COURT OFFICER

court officer. See OFFICER OF THE COURT.

COURT OF FINAL APPEAL

court of final appeal. See COURT.

COURT OF FIRST INSTANCE

court of first instance. See trial court under COURT.

COURT OF GENERAL JURISDICTION

court of general jurisdiction. See COURT.

COURT OF GENERAL QUARTER SESSIONS OF THE PEACE

Court of General Quarter Sessions of the Peace. Hist. 1. English law. A court of criminal jurisdiction held in each county (or borough) once in every quarter of a year. • The court was made up of a county's justices of the peace. It committed certain cases to the Assizes. Quarter Sessions were abolished in 1971, with most jurisdiction transferred to the Crown Court. — Often shortened to Quarter Sessions; Sessions.

“The court of general quarter sessions of the peace is a court that must be held in every county, once in every quarter of a year.... It is held before two or more justices of the peace, one of which must be of the quorum. The jurisdiction of this court, by statute 34 Edw. III. c. I. extends to the trying and determining all felonies and tres-passes whatsoever, though they seldom, if ever, try any greater offence than small felonies within the benefit of clergy” 4 William Blackstone, Commentaries on the Laws of England 268 (1769).

2. A court held in some states four times a year with jurisdiction over misdemeanors and occasionally tasks of an administrative nature, such as the care of public roads and bridges. — Often shortened to Quarter Sessions Court. — Also termed Court of Quarter Sessions of the Peace.

COURT OF GREAT SESSIONS IN WALES

Court of Great Sessions in Wales. Hist. A common-law court established in 1543 in Wales with jurisdiction equivalent to that of the English assizes. • The Court of Great Sessions was bound to follow English law, but not necessarily English case precedent. — Also termed King's Great Sessions in Wales.

“There was no outcry when, in 1536, ‘the sinister usages and customs’ of the Welsh were abrogated and Welsh subjects were granted the same laws and liberties as the English.... A new system of courts, called the Great Sessions in Wales, was set up. The courts were to sit twice a year in four circuits, each comprising three counties, and to each circuit were appointed justices ‘learned in the laws of this realm’. These courts operated alongside the English courts, and they had the same jurisdiction in Wales as the King's Bench and Common Pleas had in England.... In 1830 the Great Sessions were abolished, and by complete procedural assimilation England and Wales became at last one unified jurisdiction, two extra circuits being added to the English assize system.” J.H. Baker, *An Introduction to English Legal History* 37–38 (3d ed. 1990).

COURT OF HIGH COMMISSION

Court of High Commission. Hist. Eccles. law. A tribunal responsible for inquiring into religious offenses such as the holding of heretical opinions, and absence from church. • Functioning as a court, the High Commission also prosecuted violations of the Acts of Supremacy and Uniformity (1559), the statutes that gave the Crown supreme power over the Church of England. The Commission's broad powers and use of civil-law procedures in ways counter to the common law (such as compelling suspects to testify against themselves) sparked opposition to its existence. Its close relationship with the Court of Star Chamber hastened its demise (along with the Star Chamber) in 1641. — Also termed High Commission Court.

“[T]he court of the king's high commission in causes ecclesiastical ... was intended to vindicate the dignity and peace of the church, by reforming, ordering, and correcting the ecclesiastical state and persons, and all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities. Under the shelter of which very general words, means were found in that and the two succeeding reigns, to vest in the high commissioners extraordinary and almost despotic powers, of fining and imprisoning; which they exerted much beyond the degree of the offence itself, and frequently over offences by no means of spiritual cognizance. For these reasons this court was justly abolished by Statute 16 Car. I, c. 11. And the weak and illegal attempt that was made to revive it, during the reign of King James the second, served only to hasten that infatuated prince's ruin.” 3 William Blackstone, *Commentaries on the Laws of England* 67–68 (1768).

COURT OF HONOR

Court of Honor. Hist. 1. English law. A feudal court of the manor. 2. English law. A court with jurisdiction to hear complaints concerning either affronts to honor or encroachments in precedence rights, heraldry, or coat-armor. 3. A tribunal of army officers convened to review and punish any dereliction from a code of honor.

COURT OF HUSTINGS

Court of Hustings (h<<schwa>>s-tingz). Hist. 1. English law. A local court with jurisdiction over real and mixed actions, held in the Guildhall of London before the Recorder, the Lord Mayor, and Sheriff (the latter two officials serving as honorary judges). • This court dates from before the Conquest. 2. Formerly, a local court in Virginia. — Also termed *curia burgi*. See HUSTING.

COURT OF IMPEACHMENT

COURT OF INQUIRY

court of inquiry. See COURT.

COURT OF INSTANCE

court of instance. See trial court under COURT.

COURT OF INTERNATIONAL TRADE, U.S.

Court of International Trade, U.S. See UNITED STATES COURT OF INTERNATIONAL TRADE .

COURT OF JUSTICE SEAT

Court of Justice Seat. See COURT OF THE CHIEF JUSTICE IN EYRE.

COURT OF JUSTICIARY, HIGH

Court of Justiciary, High. See HIGH COURT OF JUSTICIARY.

COURT OF KING'S BENCH

Court of King's Bench. See KING'S BENCH.

COURT OF LAST RESORT

court of last resort. See COURT.

COURT OF LAW

court of law. See COURT.

COURT OF LIMITED JURISDICTION

court of limited jurisdiction. See COURT.

COURT OF MAGISTRATES AND FREEHOLDERS

Court of Magistrates and Freeholders. Hist. A South Carolina court with criminal jurisdiction over alleged offenses committed by slaves and free persons of color.

COURT OF MILITARY APPEALS

Court of Military Appeals. See UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES .

COURT OF MILITARY REVIEW

Court of Military Review. See COURT OF CRIMINAL APPEALS(1).

COURT OF NISI PRIUS

court of nisi prius. See NISI PRIUS.

COURT OF ORDINARY

court of ordinary. See probate court under COURT.

COURT OF ORIGINAL JURISDICTION

court of original jurisdiction. See COURT.

COURT OF ORPHANS

Court of Orphans. Hist. In Maryland and Pennsylvania, a court exercising probate jurisdiction.

COURT OF OYER AND TERMINER

Court of Oyer and Terminer (oy-<<schwa>>r an[d] t<<schwa>>r-m<<schwa>>-n<<schwa>>r).1.Hist. An assize court commissioned by the Crown to pass through the counties two or more times a year and hear felonies and treason cases. • The judges sat by virtue of several commissions, each of which, strictly speaking, created a separate and distinct court. A judge with an oyer and terminer commission, for example, was allowed to hear only cases of felony and treason; he could not try persons charged with other criminal offenses. But if the judge also carried a commission of gaol delivery (as most did), he could try all prisoners held in gaol for any offense; in this way most Courts of Oyer and Terminer gathered full criminal jurisdiction. The jurisdiction of the assize courts was taken over by the Crown Court in 1971. See ASSIZE(1); COMMISSION OF OYER AND TERMINER; COMMISSION OF GAOL DELIVERY. 2. In some states, a court of higher criminal jurisdiction.

COURT OF OYER AND TERMINER AND GENERAL GAOL DELIVERY

Court of Oyer and Terminer and General Gaol Delivery.Hist. 1.A court that carries the commissions of oyer and terminer and gaol delivery. See COMMISSION OF OYER AND TERMINER; COMMISSION OF GAOL DELIVERY. 2. In Pennsylvania, a court of criminal jurisdiction.

COURT OF PECULIARS

Court of Peculiars.Hist. Eccles. law. A branch of the Court of Arches that had jurisdiction over the provincial parishes of Canterbury that were exempt from the jurisdiction of the diocesan bishop and responsible to the metropolitan only. • The Court of Peculiars was abolished in the 19th century. See COURT OF ARCHES ; PECULIAR.

COURT OF PETTY SESSIONS

court of petty sessions.See magistrate's court under COURT.

COURT OF PIEPOWDER

court of piepowder.See PIEPOWDER COURT.

COURT OF PLEAS

Court of Pleas.Hist. A court of the county palatine of Durham, having a local common-law jurisdiction. • It was abolished in 1873, and its jurisdiction was transferred to the High Court. — Also termed Court of Pleas of Durham.

COURT OF POLICIES OF INSURANCE

Court of Policies of Insurance.Hist. A court that determines in a summary way insurance-policy issues arising between merchants. • The Court's jurisdiction extended only to London, and appeal was taken to the Court of Chancery. The Court was abolished in 1863. — Also termed Court of Policies of Assurance.

COURT OF PRIVATE LAND CLAIMS

Court of Private Land Claims.Hist. A federal court — in existence from 1891 to 1895 — with

jurisdiction to hear private parties' claims to public-domain land located in the southwestern part of the United States and deriving from Spanish or Mexican grants.

COURT OF PROBATE

Court of Probate. 1.Hist. A court established in 1857 to receive the testamentary jurisdiction formerly held by the ecclesiastical courts. • In 1873 the Court was merged into the High Court of Justice, where its jurisdiction was exercised by the Probate Divorce and Admiralty (now Family) Division. 2. See probate court under COURT.

COURT OF QUARTER SESSIONS OF THE PEACE

Court of Quarter Sessions of the Peace.See COURT OF GENERAL QUARTER SESSIONS OF THE PEACE .

COURT OF QUEEN'S BENCH

Court of Queen's Bench.See QUEEN'S BENCH.

COURT OF RECORD

court of record.See COURT.

COURT OF REGARD

Court of Regard.Hist. A forest court responsible for looking into matters of waste and encroachment onto forest land (i.e., purpresture). • The Court also ensured that the feet of all mastiffs — a breed allowed in royal forests as guard dogs — within the forest were declawed and cut so as to prevent them from chasing deer.

COURT OF REQUESTS

Court of Requests.Hist. A royal court whose jurisdiction was mainly civil, though it exercised quasi-criminal jurisdiction in offenses such as riot and forgery. • Dating from 1483, the Court of Requests was a part of the Privy Council. It was disbanded in 1641 when Parliament limited the Privy Council's judicial functions.

“The establishment of the court of Requests was due to the large increase in the judicial business of the Council and the Chancery under the Tudors.... It was related both to the judicial side of the Council, which, as we shall see, came, in the course of the Tudor period, to be known as the court of Star Chamber, and to the court of Chancery.... [F]rom the end of Henry VIII's reign onwards, the legal assessors of the court assumed entire control, with the result that it became a court which was quite separate from the court of Star Chamber. These legal assessors were styled Masters of Requests, and from their title the court got its name.” 1 William Holdsworth, *A History of English Law* 412–13 (7th ed. 1956).

COURT OF REVIEW

court of review.See appellate court under COURT.

COURT OF SESSION

Court of Session. 1.Scots law. The supreme Scottish civil court. • Its jurisdiction corresponds generally to the English High Court of Justice. The Court of Session is divided into Outer House and Inner House. In Outer House, one judge hears cases of first instance. The Outer House's jurisdiction corresponds generally to the English High Court of Justice. The Outer House has two appellate chambers, the First and Second Division, in which three-judge panels sit. The Inner House's jurisdiction corresponds generally to the English Court of Appeal. The Court of Session also has several Lords Ordinary, who sit individually as trial judges. — Also termed Supreme Civil Court in Scotland. 2. In a few states, a court with jurisdiction over criminal cases.

COURT OF SHEPWAY

Court of Shepway.Hist. The Court of the Lord Warden of the Cinque Ports, exercising civil jurisdiction. • The civil jurisdiction of the Cinque Ports was abolished in 1855. See CINQUE PORTS.

COURT OF SPECIAL JURISDICTION

court of special jurisdiction.See limited court under COURT.

COURT OF SPECIAL SESSION

court of special session.See COURT.

COURT OF STAR CHAMBER

Court of Star Chamber.See STAR CHAMBER(1).

COURT OF SUMMARY JURISDICTION

court of summary jurisdiction.See magistrate's court under COURT.

COURT OF SWAINMOTE

Court of Swainmote.See COURT OF SWEINMOTE.

COURT OF SWEINMOTE

Court of Sweinmote (swayn-moht).Hist. A medieval forest court with jurisdiction over a variety of matters, esp. the right to graze animals during the summer when deer were fawning. • The forest freeholders (the sweins) made up the jury of the Court. By the 14th century, the Court's jurisdiction had expanded, and it acquired a form similar to the eyre courts. — Also spelled Court of Swainmote.

COURT OF TEINDS

Court of Teinds.See TEIND COURT.

COURT OF THE CHIEF JUSTICE IN EYRE

Court of the Chief Justice in Eyre (air).Hist. An eyre court responsible for trying offenses against the forest laws. • The jurisdiction of this Court was similar to that of the Court of Sweinmote. — Also termed Court of Justice Seat.

COURT OF THE EARL MARSHAL

Court of the Earl Marshal. See **COURT OF THE LORD HIGH CONSTABLE AND EARL MARSHAL** ; **HIGH COURT OF CHIVALRY**.

COURT OF THE LORD HIGH ADMIRAL

Court of the Lord High Admiral. See **HIGH COURT OF ADMIRALTY**.

COURT OF THE LORD HIGH CONSTABLE AND EARL MARSHAL

Court of the Lord High Constable and Earl Marshal. Hist. A court having jurisdiction over diverse military matters, such as treason, prisoners of war, and disputed coats of arms. • The Lord High Constable and the Earl Marshal were the top military officials of the Norman kings. After the office of Lord High Constable was forfeited in 1521, the court continued on as the Court of the Earl Marshal, but its jurisdiction was reduced to questions of chivalry only. Cf. **HIGH COURT OF CHIVALRY**.

COURT OF THE LORD HIGH STEWARD

Court of the Lord High Steward. Hist. A court commissioned to try a peer indicted for treason or a felony. • The Court met only if the House of Lords was not in session. The Lord High Steward sat as a judge and decided questions of law, and the peers decided facts only. The Court last sat in 1688.

COURT OF THE LORD HIGH STEWARD OF THE UNIVERSITIES

Court of the Lord High Steward of the Universities. Hist. A court convened to try scholars, esp. Oxford or Cambridge students, who have been indicted for treason, felony, or mayhem.

COURT OF THE MARSHALSEA

Court of the Marshalsea (mahr-sh<<schwa>>l-see). Hist. A court that moved about with the king, and had jurisdiction over certain cases arising within 12 miles of the king's residence (an area known as the verge). • The Court's steward and marshal acted as judges of the Court, and heard criminal cases and the common pleas of debt, covenant, and certain trespasses. The Court's migratory nature made it inconvenient for litigants, and prompted its abolition in 1849. — Also termed Court of the Steward and Marshal. Cf. **PALACE COURT**.

“Coke points out that all the Acts passed concerning this court restrained, or explained, but never added to its jurisdiction. He decided, in the Case of the Marshalsea, that it could not try the newer forms of action such as assumpsit and trover. Its once general jurisdiction had passed to the court of King's Bench, and the attitude of that court to the more limited court of the Marshalsea made the court of the Marshalsea almost useless. There were complaints in the seventeenth century of the conduct of its officials; and, as it was obliged to follow the king in his progresses, it was a court extremely inconvenient to use.” 1 William Holdsworth, *A History of English Law* 208 (7th ed. 1956).

COURT OF THE OFFICIAL PRINCIPAL

Court of the Official Principal. See COURT OF ARCHES.

COURT OF THE STEWARD AND MARSHAL

Court of the Steward and Marshal. See COURT OF THE MARSHALSEA.

COURT OF THE STEWARD OF THE KING'S HOUSEHOLD

Court of the Steward of the King's Household. Hist. A court having jurisdiction over criminal cases involving a member of the royal household. • This court's jurisdiction was at first limited to acts of violence by the king's servants toward a member of the king's council, but it was later given broader criminal authority. The Court was abolished in 1828.

COURT OF VERGE

Court of Verge. 1. VERGE(1). 2. VERGE(2).

COURT OF VETERANS APPEALS, U.S.

Court of Veterans Appeals, U.S. See UNITED STATES COURT OF VETERANS APPEALS.

COURT OF WARDS AND LIVERIES

Court of Wards and Liveries. Hist. A court created in 1540 to assert the Crown's right to income from a variety of feudal tenures. • The Court's unpopularity led to its abolition in 1660.

“[I]nquests of office were more frequently in practice than at present, during the continuance of the military tenures among us: when, upon the death of every one of the king's tenants, an inquest of office was held, called an inquisitio post mortem, to enquire of what lands he died seised, who was his heir, and of what age, in order to entitle the king to his marriage, wardship, relief, primer-seisin, or other advantages, as the circumstances of the case might turn out. To superintend and regulate these enquiries, the court of wards and liveries was instituted by statute 32 Hen. VIII c. 46 which was abolished at the restoration of king Charles the second, together with the oppressive tenures upon which it was founded.” 3 William Blackstone, Commentaries on the Laws of England 258 (1768).

COURTOISIE INTERNATIONALE

courtoisie internationale. See COMITY.

COURT ORDER

court order. See ORDER(1).

COURT-PACKING PLAN

court-packing plan. An unsuccessful proposal — made in 1937 by President Franklin D. Roosevelt — to increase the number of U.S. Supreme Court justices from 9 to 15. • The ostensible purpose of the proposal was to increase the Court's efficiency, but President Roosevelt wanted to appoint justices who would not block his administration's New Deal programs.

COURT PAPERS

court papers. All documents that a party files with the court, including pleadings, motions, notices, and the like. — Often shortened to papers. — Also termed suit papers.

COURT PROBATION

court probation. See bench probation under PROBATION.

COURT RECORDER

court recorder. See RECORDER.

COURT REPORTER

court reporter. 1. A person who records testimony, stenographically or by electronic or other means, and, when requested, prepares a transcript <the deposition could not start until the court reporter arrived>. — Also termed (in BrE) official shorthand writer. Cf. court recorder under RECORDER. [Cases: Courts 57; Trial 23. C.J.S. Stenographers §§ 2–21; Trial § 96.]
2. REPORTER OF DECISIONS.

COURT ROLL

court roll. Hist. A record of a manor's tenures; esp., a record of the terms by which the various tenants held their estates. • Copyhold tenure, for example, developed from the practice of maintaining court rolls. See COPYHOLD.

COURTROOM

courtroom. The part of a courthouse where trials and hearings take place. Cf. judge's chamber under CHAMBER. [Cases: Courts 72. C.J.S. Courts § 121.]

COURTROOM DEPUTY

courtroom deputy. See DEPUTY.

COURTROOM PRIVILEGE

courtroom privilege. See judicial privilege under PRIVILEGE(1).

COURT RULES

court rules. Regulations having the force of law and governing practice and procedure in the various courts, such as the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the U.S. Supreme Court Rules, and the Federal Rules of Evidence, as well as any local rules that a court promulgates. — Also termed rules of court. [Cases: Courts 78–85; Federal Civil Procedure 21. C.J.S. Courts §§ 7, 124–130, 132–134; Evidence § 7.]

COURTS OF THE FRANCHISE

courts of the franchise. See FRANCHISE COURT.

COURT SYSTEM

court system. The network of courts in a jurisdiction.

COURT TRIAL

court trial. See bench trial under TRIAL.

COURT WITNESS

court witness. See WITNESS.

COUSIN

cousin. 1. A child of one's aunt or uncle. — Also termed first cousin; full cousin; cousin-german. 2. A relative descended from one's ancestor (such as a grandparent) by two or more steps in a diverging line. 3. Any distant relative by blood or marriage; a kinsman or kinswoman.

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

cousin-in-law. 1. A husband or wife of one's cousin. 2. A cousin of one's husband or one's wife.

cousin once removed. 1. A child of one's cousin. 2. A cousin of one's parent.

cousin twice removed. 1. A grandchild of one's cousin. 2. A cousin of one's grandparent.

first cousin. See COUSIN(1).

second cousin. A person related to another by descending from the same great-grandfather or great-grandmother.

third cousin. A person related to another by descending from the same great-great-grandfather or great-great-grandmother.

COVENANT

covenant (k<<schwa>>v-<<schwa>>-n<<schwa>>nt), n.1. A formal agreement or promise, usu. in a contract.

absolute covenant. A covenant that is not qualified or limited by any condition. Cf. conditional covenant.

affirmative covenant. A covenant that obligates a party to do some act; esp., an agreement that real property will be used in a certain way. • An affirmative covenant is more than a restriction on the use of property. For the real-property sense, see affirmative covenant under COVENANT(4). [Cases: Covenants 49, 69.]

assertory covenant. One that affirmatively states certain facts; an affirming promise under seal.

auxiliary covenant (awg-zil-y<<schwa>>-ree). A covenant that does not relate directly to the primary subject of the agreement, but to something connected to it. Cf. principal covenant.

collateral covenant (k<<schwa>>-lat-<<schwa>>-r<<schwa>>l). A covenant entered into in connection with the grant of something, but that does not relate immediately to the thing granted; esp., a covenant in a deed or other sealed instrument not pertaining to the conveyed property. Cf. inherent covenant.

concurrent covenant. A covenant that requires performance by one party at the same time as another's performance.

conditional covenant. A covenant that is qualified by a condition. Cf. absolute covenant.

continuing covenant. A covenant that requires the successive performance of acts, such as an agreement to pay rent in installments.

covenant in deed. See express covenant.

covenant in law. See implied covenant.

covenant not to compete. See noncompetition covenant.

covenant not to execute. A covenant in which a party who has won a judgment agrees not to enforce it. • This covenant is most common in insurance law.

covenant not to sue. A covenant in which a party having a right of action agrees not to assert that right in litigation. — Also termed contract not to sue. [Cases: Release 7, 37. C.J.S. Release §§ 4, 48–49, 54, 61–62.]

“A covenant not to sue is a promise by the creditor not to sue either permanently or for a limited period. If the promise is one never to sue it operates as a discharge just as does a release. The theory is that should the creditor sue despite his promise not to, the debtor has a counterclaim for damages for breach of the creditor's covenant not to sue which is equal to and cancels the original claim.... If the covenant is not to sue for a limited time, the modern view is that the covenant may be raised as an affirmative defense to any action brought in violation of the covenant.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 21-11, at 878–79 (3d ed. 1987).

dependent covenant. A covenant that imposes a duty that depends on the other party's prior performance. • Until the performance, the other party does not have to perform. Cf. concurrent covenant; independent covenant.

executed covenant. A covenant that has been fully performed.

executory covenant (eg-zek-y<<schwa>>-tor-ee). A covenant that remains unperformed in whole or in part.

express covenant. A covenant created by the words of the parties. — Also termed covenant in deed. Cf. implied covenant.

implied covenant. A covenant that can be inferred from the whole agreement and the conduct of the parties. — Also termed covenant in law. See implied term under TERM(2). Cf. express covenant.

implied covenant of good faith and fair dealing. An implied covenant to cooperate with the other party to an agreement so that both parties may obtain the full benefits of the agreement; an implied covenant to refrain from any act that would injure a contracting party's right to receive the benefit of the contract. • Breach of this covenant is often termed bad faith. See BAD FAITH (2). [Cases: Contracts 168. C.J.S. Contracts §§ 346–347.]

implied negative covenant. A covenant binding a grantor not to permit use of any reserved right in a manner that might destroy the benefits that would otherwise inure to the grantee.

independent covenant. A covenant that imposes a duty that does not depend on the other party's prior performance.

inherent covenant. A covenant that relates directly to land, such as a covenant of quiet enjoyment. Cf. collateral covenant.

intransitive covenant. A covenant whose performance does not pass from the original covenantor to the covenantor's representatives. Cf. transitive covenant.

joint covenant. A covenant that binds two or more covenantors together. Cf. several covenant.

negative covenant. A covenant that requires a party to refrain from doing something; esp., in a real-estate financing transaction, the borrower's promise to the lender not to encumber or transfer the real estate as long as the loan remains unpaid.

noncompetition covenant. A promise, usu. in a sale-of-business, partnership, or employment contract, not to engage in the same type of business for a stated time in the same market as the buyer, partner, or employer. • Noncompetition covenants are valid to protect business goodwill in the sale of a company. In other contexts, they are generally disfavored as restraints of trade: courts generally enforce them for the duration of the business relationship, but provisions that extend beyond the termination of that relationship must be reasonable in scope, time, and territory. — Also termed noncompetition agreement; noncompete covenant; covenant not to compete; restrictive covenant; promise not to compete; contract not to compete. [Cases: Contracts 115. C.J.S. Contracts §§ 249–254, 257–260.]

positive covenant. A covenant that requires a party to do something (such as to erect a fence within a specified time).

principal covenant. A covenant that relates directly to the principal matter of an agreement. Cf. auxiliary covenant.

protection covenant. See PROTECTION COVENANT.

restrictive covenant. See noncompetition covenant. (For the real-property sense, see restrictive covenant under COVENANT(4).)

several covenant. A covenant that binds two or more covenantors separately. — Also termed separate covenant. Cf. joint covenant.

transitive covenant. A covenant whose duty of performance passes from the original

covenantor to the covenantor's representatives. Cf. intransitive covenant.

2.TREATY. 3. A common-law action to recover damages for breach of contract under seal. 4. A promise made in a deed or implied by law; esp., an obligation in a deed burdening or favoring a landowner. See contract under seal under CONTRACT. [Cases: Covenants 1–84. C.J.S. Covenants §§ 2–37, 46–47.] — covenantal,adj.“A covenant is properly defined as a promise made in deed, although in practice the term is used rather more loosely to mean simply an obligation affecting a landowner whether created by deed or not.” Peter Butt, *Land Law* 334–35 (2d ed. 1988).

“In their nature, covenants are first cousins to easements appurtenant. The burdened land corresponds to a servient tenement, the benefitted land, to a dominant tenement. In concept, the main difference between easements and covenants is that, whereas an easement allows its holder to go upon and to do something upon the servient tenement, the beneficiary of a covenant may not enter the burdened land, but may require the owner of that land to do, or more likely not to do, something on that land.” Roger A. Cunningham et al., *The Law of Property* § 8.13, at 467 (2d ed. 1993).

affirmative covenant.An agreement that real property will be used in a certain way. • An affirmative covenant is more than a restriction on the use of property. It requires the owner to undertake certain acts on the property. For a more general definition of this term, see affirmative covenant under COVENANT(1).

covenant against encumbrances.A grantor's promise that the property has no visible or invisible encumbrances. • In a special warranty deed, the covenant is limited to encumbrances made by the grantor. — Also termed general covenant against encumbrances. Cf. special covenant against encumbrances. [Cases: Covenants 42, 64. C.J.S. Covenants § 19.]

covenant appurtenant (<<schwa>>-p<<schwa>>r-t<<schwa>>-n<<schwa>>nt). A covenant that is connected with the grantor's land; a covenant running with the land. Cf. covenant in gross. [Cases: Covenants 53–70. C.J.S. Covenants §§ 6, 25–31.]

covenant for further assurances.A covenant to do whatever is reasonably necessary to perfect the title conveyed if it turns out to be imperfect. See further assurance under ASSURANCE. [Cases: Covenants 44, 66. C.J.S. Covenants § 21.]

covenant for possession.A covenant giving a grantee or lessee possession of land.

covenant for quiet enjoyment. 1. A covenant insuring against the consequences of a defective title or any other disturbance of the title. [Cases: Covenants 43, 65. C.J.S. Covenants § 20.] 2. A covenant ensuring that the tenant will not be evicted or disturbed by the grantor or a person having a lien or superior title. • This covenant is sometimes treated as being synonymous with covenant of warranty. — Also termed covenant of quiet enjoyment.

covenant for title.A covenant that binds the grantor to ensure the completeness, security, and continuance of the title transferred. • This covenant usu. includes the covenants for seisin, against encumbrances, for the right to convey, for quiet enjoyment, and of warranty. [Cases: Covenants

38–48, 62–67. C.J.S. Covenants §§ 14–24, 29, 46–47.]

covenant in gross. A covenant that does not run with the land. Cf. covenant appurtenant.

covenant of good right to convey. See covenant of seisin.

covenant of habitability (hab-<<schwa>>-t<<schwa>>-bil-<<schwa>>-tee). See implied warranty of habitability under WARRANTY(2).

covenant of nonclaim. A covenant barring a grantor or the grantor's heirs from claiming title in the conveyed land.

covenant of quiet enjoyment. See covenant for quiet enjoyment.

covenant of seisin (see-zin). A covenant, usu. appearing in a warranty deed, stating that the grantor has an estate, or the right to convey an estate, of the quality and size that the grantor purports to convey. • For the covenant to be valid, the grantor must have both title and possession at the time of the grant. — Also termed covenant of good right to convey; right-to-convey covenant. [Cases: Covenants 40, 62. C.J.S. Covenants §§ 17, 29.]

covenant of warranty. A covenant by which the grantor agrees to defend the grantee against any lawful or rea-sonable claims of superior title by a third party and to indemnify the grantee for any loss sustained by the claim. • This covenant is sometimes treated as being synonymous with covenant for quiet enjoyment. The covenant is not breached if the grantor fails to defend the grantee against an invalid claim. See WARRANTY(1). [Cases: Cove-nants 46–48, 67. C.J.S. Covenants §§ 22–24, 29.]

covenant running with the land. A covenant that, because it relates to the land, binds successor grantees indefi-nitely. • The land cannot be conveyed without the covenant. — Also termed real covenant; covenant running with the title. [Cases: Covenants 53–70. C.J.S. Covenants §§ 6, 25–31.]

“The important consequence of a covenant running with the land is that its burden or benefit will thereby be imposed or conferred upon a subsequent owner of the property who never actually agreed to it. Running covenants thereby achieve the transfer of duties and rights in a way not permitted by traditional contract law.” Roger Bernhardt, *Real Property in a Nutshell* 212 (3d ed. 1993).

covenant running with the title. 1. A covenant that relates to the land but has a specific or reasonably deter-minable expiration time. 2. See covenant running with the land.

covenant to convey. A covenant in which the covenantor agrees to transfer an estate's title to the covenantee.

covenant to renew. An executory contract that gives a lessee the right to renew the lease.

covenant to stand seised (seezd). Archaic. A covenant to convey land to a relative. • This covenant could not be used to convey land to a stranger; the only consideration that supported the covenant was the relationship by blood or marriage. [Cases: Deeds 24. C.J.S. Deeds § 15.]

future covenant. A covenant that can be breached only upon interference with the possession of the grantee or the grantee's successors. • The covenants in this class are the covenant for further assurances, the covenant for quiet enjoyment, and the covenant of warranty. The distinction between future and present covenants becomes important in determining when the statute of limitations begins to run. Cf. present covenant.

general covenant against encumbrances. See covenant against encumbrances.

implied reciprocal covenant. A presumption that a promisee has, in return for a promise made respecting land, impliedly made a promise to the promisor respecting other land. — Also termed implied reciprocal servitude.

personal covenant. A covenant that creates a personal right or obligation enforceable only between the covenanting parties and that is not binding on the heirs or assigns of the parties. Cf. covenant running with the land.

present covenant. A covenant that can be breached only at the time of conveyance. • The three covenants in this class are the covenant against encumbrances, the covenant of right to convey, and the covenant of seisin. Cf. future covenant.

real covenant. See covenant running with the land.

restrictive covenant. 1. A private agreement, usu. in a deed or lease, that restricts the use or occupancy of real property, esp. by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put. • Some restrictive covenants, such as race-based restrictions on transfers, are unenforceable but do not necessarily void the deed. — Also termed restrictive covenant in equity; equitable easement; equitable servitude. [Cases: Covenants 49–52, 69.] 2. See noncompetition covenant under COVENANT(1).

right-to-convey covenant. See covenant of seisin.

special covenant against encumbrances. A grantor's promise that the property is free of encumbrances created by the grantor only, not the grantor's predecessors. See special warranty deed under DEED. Cf. covenant against encumbrances. [Cases: Covenants 42, 64. C.J.S. Covenants § 19.]

covenant, vb. To promise or undertake in a covenant; to agree formally.

COVENANTEE

covenantee (k<<schwa>>v-<<schwa>>-n<<schwa>>n-tee). The person to whom a promise by covenant is made; one entitled to the benefit of a covenant.

COVENANT MARRIAGE

covenant marriage. See MARRIAGE(1).

COVENANT OF GOOD RIGHT TO CONVEY

covenant of good right to convey. See covenant of seisin under COVENANT(4).

COVENANTOR

covenantor (k<<schwa>>v-<<schwa>>n<<schwa>>n-t<<schwa>>r or k<<schwa>>v-<<schwa>>n<<schwa>>n-tor). The person who makes a promise by covenant; one subject to the burden of a covenant. — Also spelled covenanter.

COVENANT TO PROTECT AGAINST DRAINAGE

covenant to protect against drainage. See PROTECTION COVENANT.

COVENTRY ACT

Coventry Act (k<<schwa>>v-<<schwa>>n-tree orkov-). An 1803 English statute establishing the death penalty for anyone who, with malice aforethought, did “cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject; with the intention in so doing to maim or disfigure him.”

“[At common law,] an injury such as cutting off [a man's] ear or nose did not constitute mayhem ... , because it did not result in permanent disablement, but merely disfigured the victim. This was corrected by an early English statute. It seems that an assault was made upon Sir John Coventry on the street by persons who waylaid him and slit his nose in revenge for obnoxious words uttered by him in Parliament. This emphasized the weakness of the law of mayhem, and the so-called ‘Coventry Act’ was passed [in 1803].” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 239–40 (3d ed. 1982).

COVENTURER

coventurer (koh-ven-ch<<schwa>>r-<<schwa>>r). A person who undertakes a joint venture with one or more persons. — Also termed co-adventurer. Cf. JOINT VENTURE . [Cases: Joint Ventures 1.1. C.J.S. Joint Ventures §§ 2–3, 20.]

COVER

cover, n. The purchase on the open market, by the buyer in a breach-of-contract dispute, of goods to substitute for those promised but never delivered by the seller. • Under UCC § 2-712, the buyer can recover from the seller the difference between the cost of the substituted goods and the original contract price. [Cases: Sales 418(7). C.J.S. Sales §§ 391–393, 403.]

COVERAGE

coverage, n. 1. Inclusion of a risk under an insurance policy; the risks within the scope of an insurance policy. [Cases: Insurance 2091.] — cover, vb.

dependent coverage. An insurance provision for protection of an insured's dependents.

full coverage. Insurance protection that pays for the full amount of a loss with no deduction.

2. The ratio between corporate pretax income and corporate liability for bond interest payments.

COVERAGE OPINION

coverage opinion. See OPINION(2).

COVERAGE RATIO

coverage ratio. A measurement of a firm's ability to cover its financing charges.

COVER-ALL CLAUSE

cover-all clause. See MOTHER HUBBARD CLAUSE(2).

COVERED-INTEREST ARBITRAGE

covered-interest arbitrage. See ARBITRAGE.

COVERED WAGES

covered wages. See WAGE.

COVER LETTER

cover letter. See TRANSMITTAL LETTER.

COVER NOTE

cover note. A written statement by an insurance agent confirming that coverage is in effect. • The cover note is distinguished from a binder, which is prepared by the insurance company.

COVERT BARON

covert baron (k<<schwa>>v-<<schwa>>rt bar-<<schwa>>n). [Law French] Hist. The condition or status of a married woman at common law. — Also written cover-baron. — Also termed covert de baron.

“By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-french a feme-covert; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture.” 1 William Blackstone, Commentaries on the Laws of England 430 (1765).

COVERT-ENTRY SEARCH WARRANT

covert-entry search warrant. See SEARCH WARRANT.

COVERTURE

coverture (k<<schwa>>v-<<schwa>>r-ch<<schwa>>r also -tyoor), n. Archaic. The condition of being a married woman <under former law, a woman under coverture was allowed to sue only through the personality of her husband>. See feme covert under FEME. [Cases: Husband and Wife 55.] — covert (k<<schwa>>v-<<schwa>>rt), adj.

“Coverture, is a french word signifying any thing that covereth, as apparell, a coverlet It is

particularly applied in our common lawe, to the estate and condition of a married woman, who by the lawes of our realme, is in (po-testate viri) and therefore disabled to contract with any, to the prejudice of her selfe or her husband, without his consent and privity; or at the least, without his allowance and confirmation.” John Cowell, *The Interpreter* (1607).

“Coverture is by law applied to the state and condition of a married woman, who is sub potestati viri, (under the power of her husband) and therefore unable to contract with any to the damage of herself or husband, without his consent and privity, or his allowance and confirmation thereof. When a woman is married she is called a *Femme covert*, and whatever is done concerning her during marriage is said to be done during coverture.” *The Pocket Lawyer and Family Conveyancer* 96 (3d ed. 1833).

COVER-UP

cover-up, n. Concealment of wrongdoing, esp. by a conspiracy of deception, nondisclosure, and destruction of evidence, usu. combined with a refusal to cooperate with investigators. • A cover-up often involves obstruction of justice. — cover up, vb.

COVIN

covin (k<<schwa>>v-<<schwa>>n). Hist. A secret conspiracy or agreement between two or more persons to injure or defraud another. — Also spelled covine.

“Covin is a secret assent determined in the hearts of two or more, to the prejudice of another: As if a tenant for term of life, or tenant in tail, will secretly conspire with another, that the other shall recover against the tenant for life the land which he holds, &c. in prejudice of him in the reversion.” *Termes de la Ley* 129 (1st Am. ed. 1812).

COVINOUS

covinous (k<<schwa>>v-<<schwa>>-n<<schwa>>s), adj. Hist. Of a deceitful or fraudulent nature.

COZEN

cozen (k<<schwa>>z-<<schwa>>n), vb. Hist. To cheat or defraud. — Also spelled cosen.

COZENING

cozening (k<<schwa>>z-<<schwa>>n-ing). Hist. A deceitful practice; the offense of cheating, or fraudulent dealing. — Also spelled cosening. Cf. *STELLIONATUS*.

“Cosening is an offence unnamed, whereby any thing is done guilefully in or out of contracts, which cannot be fitly termed by any speciall name. It is called *stellionatus* in the civile law....” John Cowell, *The Interpreter* (1607).

C.P

C.P.abbr.COURT OF COMMON PLEAS.

CPA

CPA.abbr.1. See certified public accountant under ACCOUNTANT. 2. See continued-prosecution application under PATENT APPLICATION.

CPC

CPC.abbr.Certificate of probable cause. See CERTIFICATE OF APPEALABILITY.

CPD

CPD.abbr.OFFICE OF COMMUNITY PLANNING AND DEVELOPMENT.

CPI

CPI.abbr.CONSUMER PRICE INDEX.

CPS

CPS.abbr.CHILD PROTECTIVE SERVICES.

CPSC

CPSC.abbr. CONSUMER PRODUCT SAFETY COMMISSION.

CPT

CPT.abbr. CARRIAGE PAID TO.

C.R

C.R.abbr.CURIA REGIS.

CRACK

crack,vb. Slang. 1. To open (a lock).2. To decode (security information); esp., to decipher or discover (a code, a password, etc. needed to break into a computer, network, server, or database). Cf. HACK. 3. To bypass (an encryption or a security device, esp. one designed to prevent unauthorized access, as in a cable television box, or copying, as in a DVD player).4. To hack (a computer, network, server, or database) with the intention of causing damage or disruption.

CRACKING

cracking,n. A gerrymandering technique in which a geographically concentrated political or racial group that is large enough to constitute a district's dominant force is broken up by district lines and dispersed throughout two or more districts. Cf. PACKING; STACKING(2). [Cases: Elections 12(6).]

CRAFT UNION

craft union.See UNION.

CRAMDOWN

cramdown,n. Court confirmation of a Chapter 11 bankruptcy plan despite the opposition of certain creditors. • Under the Bankruptcy Code, a court may confirm a plan — even if it has not

been accepted by all classes of creditors — if the plan (1) has been accepted by at least one impaired class, (2) does not discriminate unfairly, and (3) is fair and equitable. 11 USCA § 1129(b). [Cases: Bankruptcy 3563. C.J.S. Bankruptcy § 396.] — cram down,vb.

CRASHWORTHINESS DOCTRINE

crashworthiness doctrine.Products liability. The principle that the manufacturer of a product will be held strictly liable for injuries occurring in a collision, even if the collision results from an independent cause, to the extent that a defect in the product causes injuries above and beyond those that would have occurred in the collision itself. — Also termed second-collision doctrine; second-impact doctrine. [Cases: Products Liability 35.1, 36. C.J.S. Motor Vehicles §§ 409–411, 415–416, 418.]

CRASSA IGNORANTIA

crassa ignorantia (kras-*<<schwa>>* ig-n*<<schwa>>*-ran-shee-*<<schwa>>*).Hist. Gross ignorance, esp. in cir-cumstances in which a person was able to acquire knowledge and should have done so.

CRASSA NEGLIGENTIA

crassa negligentia (kras-*<<schwa>>* neg-li-jen-shee-*<<schwa>>*). [Latin] Hist. Crass negligence; gross negligence.

“In the Civil Law: Crassa negligentia is termed magna culpa or lata culpa, and it is in some cases deemed equivalent to fraud or deceit In the Common Law: it is defined to be the want of that care which every man of common sense, under the circumstances, takes of his own property.” Henry C. Adams, *A Juridical Glossary* 510 (1886).

CRASTINO

crastino (kras-t*<<schwa>>*-noh). [Law Latin] Hist. Tomorrow; on the morrow. • This referred to the return day of writs, Court terms always began on a saint's day; writs were returnable the day after.

CRAT

CRAT.abbr.Charitable-remainder annuity trust. See charitable remainder annuity trust under TRUST.

CREANCER

creancer (kree-*<<schwa>>*n-s*<<schwa>>*r). [Law French] Hist. A creditor. — Also spelled creansour.

CREATE A BLANK

create a blank.Parliamentary law. To amend a motion by striking out one or more terms and replacing them with blanks rather than different terms. See amendment by striking out and inserting under AMENDMENT(3). • This form allows a vote on several competing proposals at

one time, rather than the usual process of voting separately on each proposal. See BLANK(2).

CREATIONISM

creationism. The teaching of the biblical version of the creation of the universe. • The United States Supreme Court held unconstitutional a Louisiana law that forbade the teaching of the theory of evolution unless biblical creation was also taught. The Court found that the law violated the Establishment Clause of the First Amendment because it lacked a “clear secular purpose.” *Edwards v. Aguillard*, 482 U.S. 578, 107 S.Ct. 2573 (1987). See ANTI-EVOLUTION STATUTE.

scientific creationism. A doctrine holding that the biblical account of creation is supported by scientific evidence.

CREATION SCIENCE

creation science. The interpretation of scientific evidence, arguments, and knowledge to support creationism. See CREATIONISM.

CREATIVE SENTENCE

creative sentence. See alternative sentence under SENTENCE.

CREATIVE WORK

creative work. See work of authorship under WORK(2).

CREATIVITY

creativity. Copyright. The degree to which a work displays imaginativeness beyond what a person of very ordinary talents might create. • Labor and expense are not elements of creativity; for that reason, they are not protected by copyright. *Feist Pubs., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 111 S.Ct. 1282 (1991). Cf. ORIGINALITY; SWEAT-OF-THE-BROW DOCTRINE . [Cases: Copyrights and Intellectual Property 12. C.J.S. Copyrights and Intellectual Property §§ 19–20, 92.]

“Where creativity refers to the nature of the work itself, originality refers to the nature of the author's contribution to the work. Thus, a public domain painting may evince great creativity, but if a copyright claimant adds nothing of his own to it, by way of reproduction or otherwise, then copyright will be denied on the basis of lack of originality. Conversely, a work may be entirely the product of the claimant's independent efforts, and hence original, but may nevertheless be denied protection as a work of art if it is completely lacking in any modicum of creativity.” 1 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 2.08[B][2], at 2-88 (Supp. 1995).

CREATOR

creator. See SETTLOR(1).

CREATURE

creature. See ANIMAL.

 CREATURE OF STATUTE

creature of statute.A doctrine, governmental agency, etc. that would not exist but for a legislative act that brought it into being.

CREDENTIAL

credential. (usu. pl.) 1. A document or other evidence that proves one's authority or expertise. 2. A testimonial that a person is entitled to credit or to the right to exercise official power. 3. The letter of credence given to an ambassador or other representative of a foreign country. 4.Parliamentary law. Evidence of a delegate's entitlement to be seated and vote in a convention or other deliberative assembly. • Before the meeting begins, the evidence usu. takes the form of a certificate or proof of election or appointment, which the delegate presents to a credentials committee so that the committee can list the delegate on its roster. During the meeting, the evidence usu. takes the form of a badge or card that the credentials committee issues to each delegate on its roster. See credentials committee under COMMITTEE. — credential,vb.

CREDENTIALS COMMITTEE

credentials committee.See COMMITTEE.

CREDIBILITY

credibility,n. The quality that makes something (as a witness or some evidence) worthy of belief. [Cases: Evidence 588. C.J.S. Evidence §§ 1318–1320, 1322, 1329.] — credible,adj.

CREDIBLE EVIDENCE

credible evidence.See EVIDENCE.

CREDIBLE WITNESS

credible witness.See WITNESS.

CREDIT

credit,n.1. Belief; trust <the jury gave credit to Benson's version>.2. One's ability to borrow money; the faith in one's ability to pay debts <a customer with good credit>.3. The time that a seller gives the buyer to make the payment that is due <30 days' credit>.4. The availability of funds either from a financial institution or under a letter of credit <the bank extended a line of credit to the customer>.

bank credit.Credit that a bank makes available to a borrower.

consumer credit.Credit extended to an individual to facilitate the purchase of consumer goods and services. [Cases: Consumer Credit 1. C.J.S. Interest and Usury; Consumer Credit § 274.]

installment credit.Consumer credit scheduled to be repaid in two or more payments, usu. at regular intervals. • The seller ordinarily exacts finance charges.

noninstallment credit.Consumer credit arranged to be repaid in a single payment. • Examples

include doctors' and plumbers' bills.

revolving credit. A consumer-credit arrangement that allows the borrower to buy goods or secure loans on a continuing basis as long as the outstanding balance does not exceed a specified limit. — Also termed open credit; revolving charge account. Cf. revolver loan under LOAN. [Cases: Consumer Credit 34. C.J.S. Interest and Usury; Consumer Credit § 319.]

5.LETTER OF CREDIT <the bank issued a credit in favor of the exporter>.6. A deduction from an amount due; an accounting entry reflecting an addition to revenue or net worth <confirm that the credit was properly applied to my account>. Cf. DEBIT. 7.TAX CREDIT <the \$500 credit reduced their income-tax liability by \$500>.

accumulated-earnings credit.Tax. A deduction allowed in arriving at a corporation's accumulated taxable income. • It offsets the base on which the tax is assessed by reducing the taxable base by the greater of \$250,000 or the accumulated earnings retained for the reasonable needs of the corporation, reduced by the net capital gain. IRC (26 USCA) § 535. See accumulated-earnings tax under TAX.

credit,vb.1. To believe <the jury did not credit this testimony>.2. To enter (as an amount) on the credit side of an account <the account was credited with \$500>.

CREDITABLE

creditable. 1. Worthy of being believed; credible <creditable evidence>.2. Capable of being ascribed or credited <creditable service time>.3. Reputable; respectable <creditable witness>.

CREDIT BALANCE

credit balance.Accounting. The status of an account when the sum of the credit entries exceeds the sum of the debit entries.

CREDIT BUREAU

credit bureau.An organization that compiles information on people's creditworthiness and publishes it in the form of reports that are used chiefly by merchants and service providers who deal directly with customers. • The practices of credit bureaus are regulated by federal (and often state) law. Most bureaus are members of the Associated Credit Bureaus of America. Cf. CREDIT-REPORTING BUREAU. [Cases: Credit Reporting Agencies 1–4. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 2–22.]

CREDIT CARD

credit card.An identification card used to obtain items on credit, usu. on a revolving basis. See revolving credit under CREDIT. Cf. DEBIT CARD. [Cases: Consumer Credit 8. C.J.S. Interest and Usury; Consumer Credit §§ 348–349.]

CREDIT-CARD CRIME

credit-card crime.The offense of using a credit card to purchase something with knowledge that (1) the card is stolen or forged, (2) the card has been revoked or canceled, or (3) the card's use

is unauthorized. [Cases: Consumer Credit 20. C.J.S. Interest and Usury; Consumer Credit §§ 315–316, 365.]

CREDIT FREEZE

credit freeze.See FREEZE.

CREDIT INSURANCE

credit insurance.See INSURANCE.

CREDIT LIFE INSURANCE

credit life insurance.See LIFE INSURANCE.

CREDIT LINE

credit line.See LINE OF CREDIT.

CREDIT MEMORANDUM

credit memorandum.A document issued by a seller to a buyer confirming that the seller has credited (i.e., reduced) the buyer's account because of an error, return, or allowance.

CREDIT MOBILIER

credit mobilier.A company or association that carries on a banking business by making loans on the security of personal property.

CREDITOR

creditor. 1. One to whom a debt is owed; one who gives credit for money or goods. — Also termed debtee. 2. A person or entity with a definite claim against another, esp. a claim that is capable of adjustment and liquidation. 3.Bankruptcy. A person or entity having a claim against the debtor predating the order for relief concerning the debtor. [Cases: Bankruptcy 2822.C.J.S. Bankruptcy §§ 239, 241.] 4.Roman law. One to whom any obligation is owed, whether contractual or otherwise. Cf. DEBTOR.

attaching creditor.A creditor who has caused an attachment to be issued and levied on the debtor's property. [Cases: Attachment 16. C.J.S. Attachment § 9.]

bond creditor.A creditor whose debt is secured by a bond.

catholic creditor.Scots law. A person who has a security interest in more than one piece of the debtor's property.

certificate creditor.A creditor of a municipal corporation who receives a certificate of indebtedness rather than payment because the municipality cannot pay the debt. Cf. warrant creditor.

conditional creditor.Civil law. A creditor who has either a future right of action or a right of action in expectancy.

creditor at large. A creditor who has not established the debt by reducing it to judgment, or who has not otherwise secured a lien on any of the debtor's property.

domestic creditor. A creditor who resides in the same state or country as the debtor or the debtor's property.

double creditor. A creditor who has a lien on two funds. Cf. single creditor.

execution creditor. A judgment creditor who has caused an execution to issue on the judgment. [Cases: Execution 17. C.J.S. Executions § 20.]

foreign creditor. A creditor who resides in a different state or country from that of the debtor or the debtor's property.

gap creditor. Bankruptcy. A creditor who extends credit to, lends money to, or has a claim arise against the debtor in the period between the filing of an involuntary bankruptcy petition and the entry of the order for relief. • Under the Bankruptcy Code, a gap creditor's claim receives second priority, immediately below administrative claims. 11 USCA §§ 502(f), 507(a)(2). [Cases: Bankruptcy 2833. C.J.S. Bankruptcy § 240.]

general creditor. See unsecured creditor.

hypothetical creditor. Bankruptcy. An actual or code-created judicial-lien creditor or bona fide purchaser who establishes a bankruptcy trustee's status under the Bankruptcy Code's priority scheme, claiming property through the debtor at the time of the bankruptcy filing. 11 USCA § 544. — Also termed hypothetical lien creditor. [Cases: Bankruptcy 2704, 2705. C.J.S. Bankruptcy §§ 123, 134, 158.]

joint creditor. A creditor who is entitled, along with another creditor, to demand payment from a debtor.

judgment creditor. See JUDGMENT CREDITOR.

junior creditor. A creditor whose claim accrued after that of another creditor; a creditor who holds a debt that is subordinate to another's.

known creditor. A creditor whose identity or claim is either known or reasonably ascertainable by the debtor. • Known creditors are entitled to notice of the debtor's bankruptcy or corporate dissolution, as well as notice of any deadline for filing proofs of claim.

lien creditor. A creditor whose claim is secured by a lien on the debtor's property. UCC § 9-102(a)(52). [Cases: Secured Transactions 140. C.J.S. Secured Transactions § 92.]

preferred creditor. A creditor with a superior right to payment, such as a holder of a perfected security interest as compared to a holder of an unsecured claim. [Cases: Secured Transactions 138–140, 168. C.J.S. Secured Transactions §§ 88, 90–92, 106–107, 119–124.]

principal creditor. A creditor whose claim or demand greatly exceeds the claims of other creditors.

prior creditor. A creditor who is given priority in payment from the debtor's assets.

secondary creditor. A creditor whose claim is subordinate to a preferred creditor's.

secured creditor. A creditor who has the right, on the debtor's default, to proceed against collateral and apply it to the payment of the debt. UCC § 9-102(a)(72). — Also termed secured party.

“ ‘Secured party’ means (A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding; (B) a person that holds an agricultural lien; (C) a consignor; (D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold; or (E) if a security interest or agricultural lien is created or provided for in favor of a trustee, agent, collateral agent, or other representative, that representative.” UCC § 9-102(a)(72).

single creditor. In the marshaling of assets, a creditor with a lien on one fund. Cf. double creditor.

specialty creditor. A creditor to whom an heir is liable for a decedent's debts to the extent of the land inherited. • Historically, unless the creditor obtained a judgment against the debtor before the debtor's death, the creditor's right of action on the debt was limited to the decedent's lawful heir. If the debtor devised the land to a stranger, the creditor's claim was defeated. See HEIR(1).

“There were three exceptions to this rule that a fee simple estate was not liable to the creditors of the deceased. Debts due to the Crown and debts due to judgment creditors were enforceable against the land notwithstanding the death of the owner, and thirdly, if the fee simple tenant had in his lifetime executed a deed whereby he covenanted for himself and his heirs to pay a sum of money, the creditor (called a specialty creditor) could make the heir liable for the debt to the extent of the land which had descended to him. But this privilege of the specialty creditor was not at first enforceable against an equitable fee simple, and it was strictly limited to a right of action against the heir of the deceased, so that the creditor was defrauded of his money if the deceased devised his land to a stranger.” G.C. Cheshire, *Modern Law of Real Property* 738 (3d ed. 1933).

subsequent creditor. A creditor whose claim comes into existence after a given fact or transaction, such as the recording of a deed or the execution of a voluntary conveyance.

unsecured creditor. A creditor who, upon giving credit, takes no rights against specific property of the debtor. — Also termed general creditor.

warrant creditor. A creditor of a municipal corporation who is given a municipal warrant for the amount of the claim because the municipality lacks the funds to pay the debt. Cf. certificate creditor. [Cases: Municipal Corporations 896. C.J.S. Municipal Corporations §§ 801, 1636.]

CREDITOR BENEFICIARY

creditor beneficiary. See BENEFICIARY.

CREDITOR DOMINII

creditor dominii (kred-i-tor d<<schwa>>-min-ee-I). [Law Latin] Hist. The creditor who is entitled to ownership of an object; a secured creditor.

“Creditor dominii.... In commodate the lender is creditor of the subject, and on the bankruptcy of the borrower may vindicate his right of property and recover the subject itself” John Trayner, Trayner's Latin Maxims 114 (4th ed. 1894).

CREDITOR'S BILL

creditor's bill. An equitable suit in which a judgment creditor seeks to reach property that cannot be reached by the process available to enforce a judgment. — Also termed creditor's suit. [Cases: Debtor and Creditor 11. C.J.S. Assignments for Benefit of Creditors § 26; Creditor and Debtor §§ 95–105.]

CREDITOR'S CLAIM

creditor's claim. See CLAIM(5).

CREDITORS' COMMITTEE

creditors' committee. Bankruptcy. A committee comprising representatives of the creditors in a Chapter 11 proceeding, formed to negotiate the debtor's plan of reorganization. • Generally, a committee has no fewer than 3 and no more than 11 members and serves as an advisory body. 11 USCA § 1102. [Cases: Bankruptcy 3024. C.J.S. Bankruptcy §§ 193, 373.]

CREDITORS' COMPOSITION

creditors' composition. See COMPOSITION(1).

CREDITORS' MEETING

creditors' meeting. See MEETING.

CREDITOR'S SUIT

creditor's suit. See CREDITOR'S BILL.

CREDIT RATING

credit rating. An evaluation of a potential borrower's ability to repay debt, prepared by a credit bureau at the request of a lender. [Cases: Credit Reporting Agencies 1–4. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 2–22.]

CREDIT REPORT

credit report. 1. A credit bureau's report on a person's financial status, usu. including the approximate amounts and locations of a person's bank accounts, charge accounts, loans, and other debts, bill-paying habits, defaults, bankruptcies, foreclosures, marital status, occupation, income, and lawsuits. See CREDIT BUREAU. 2. The report of a credit-reporting bureau, usu. including highly personal information gathered through interviews with a person's friends, neighbors, and coworkers. See CREDIT-REPORTING BUREAU. [Cases: Credit Reporting Agencies 1–4.]

C.J.S. Credit Reporting Agencies; Consumer Protection §§ 2–22.]

CREDIT-REPORTING BUREAU

credit-reporting bureau. An organization that, on request, prepares investigative reports not just on people's creditworthiness but also on personal information gathered from various sources, including interviews with neighbors, friends, and coworkers. • These reports are used chiefly by employers (for prospective employees), insurance companies (for applicants), and landlords (for prospective tenants). — Also termed investigating bureau. Cf. CREDIT BUREAU. [Cases: Credit Reporting Agencies 1–4. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 2–22.]

CREDITRIX

creditrix (kred-<<schwa>>-triks), n. [fr. Latin credere “to lend, entrust”] Civil law. Archaic. A female creditor.

CREDIT SALE

credit sale. See SALE.

CREDIT SERVICE CHARGE

credit service charge. See SERVICE CHARGE(2).

CREDIT-SHELTER TRUST

credit-shelter trust. See bypass trust under TRUST.

CREDIT SLIP

credit slip. A document that allows a store customer to either purchase another item or receive cash or credit for merchandise that the customer has returned to the store.

CREDIT UNION

credit union. A cooperative association that offers low-interest loans and other consumer banking services to persons sharing a common bond — often fellow employees and their family members. • Most credit unions are regulated by the National Credit Union Administration. State-chartered credit unions are also subject to regulation by the chartering state, and they may be regulated by state banking boards. [Cases: Building and Loan Associations 1–6, 24–40. C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 2–7, 9–19, 31–32, 45, 66–113, 115, 144–145.]

“Credit unions were the last major thrift institutions developed in the United States What distinguished credit unions from mutual savings banks and savings and loan associations was their emphasis on a common bond of workers, church members, or people in a local area, wanting to borrow relatively small amounts at reasonable interest rates from each other, and help each other save to meet these short-term needs. Their goal was to provide a low interest rate alternative ... to loan sharks and pawnbrokers.” William A. Lovett, *Banking and Financial Institutions Law in a Nutshell* 284 (1997).

CREDITWORTHY

creditworthy,adj. (Of a borrower) financially sound enough that a lender will extend credit in the belief that default is unlikely; fiscally healthy. — creditworthiness,n.

CREEPING ACQUISITION

creeping acquisition.See ACQUISITION.

CREEPING TENDER OFFER

creeping tender offer.See creeping acquisition under ACQUISITION.

C REORGANIZATION

C reorganization.See REORGANIZATION(2).

CRESCENDO RENTAL

crescendo rental.See RENTAL.

CRETION

cretion (kree-sh<<schwa>>n), n. [fr. Latin cernere “to decide”] Roman law. 1. A method or form of accepting an inheritance by an heir who is appointed in a testament. • Cretion usu. had to be declared within 100 days from the date on which an heir received notice of the appointment.

“In the old law it was the practice to fix a time limit, usually of one hundred days, within which the heir was to make a formal acceptance, with the addition that if he failed to do so, he was to be disinherited and a substitute was to take the inheritance in his place. This formal acceptance was known as cretio from the Latin verb cernere — to decide. The practice had fallen into disuse before Justinian, who formally abolished it.” R.W. Lee, *The Elements of Roman Law* 199 (4th ed. 1956).

2. The period within which an heir might decide whether to accept an inheritance. — Also termed (in Latin) cretio (kree-shee-oh). — cretionary (kree-sh<<schwa>>n-er-ee), adj.

CREW MEMBER

crew member.See SEAMAN.

CRF

CRF.abbr.CRIMINAL-REFERRAL FORM.

CRIB

crib,n.[Origin unknown] Hist. An enclosure at the side of a court where the apprentices stood to learn the law. • For a full history of this term and its variants, see J.H. Baker, “The Pecunes,” in *The Legal Profession and the Common Law* 171, 173 (1986). — Also spelled cribbe; crubbe. — Also termed pecune.

CRI DE PAIS

cri de pais. See CRY DE PAIS.

CRIER

crier (krI-⟨schwa⟩r). 1. An officer of the court who makes public pronouncements as required by the court. Cf. BAILIFF(1). — Also termed court crier. [Cases: Courts 58. C.J.S. Courts § 108.] 2. An auctioneer. — Also spelled cryer.

CRIEZ LA PEEZ

criez la peez (krI-eez l⟨schwa⟩ pees). [Law French] Hist. Rehearse the concord (or peace).
 • This phrase was used to confirm the conveyance of land by fine. The serjeant or countor in attendance read the phrase aloud in court. See FINE(1).

CRIM. CON.

crim. con. abbr. CRIMINAL CONVERSATION.

CRIME

crime. An act that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding. — Also termed criminal wrong. See OFFENSE(1).

“Understanding that the conception of Crime, as distinguished from that of Wrong or Tort and from that of Sin, involves the idea of injury to the State of collective community, we first find that the commonwealth, in literal conformity with the conception, itself interposed directly, and by isolated acts, to avenge itself on the author of the evil which it had suffered.” Henry S. Maine, *Ancient Law* 320 (17th ed. 1901).

“It is a curious fact that all the minor acts enumerated in the penal code of a state like, say, New York are in law called crimes, which term includes both murder and overparking. It is a strong term to use for the latter, and of course the law has for centuries recognized that there are more serious and less serious crimes. At the common law, however, only two classes were recognized, serious crimes or felonies, and minor crimes or misdemeanors.” Max Radin, *The Law and You* 91 (1948).

administrative crime. An offense consisting of a violation of an administrative rule or regulation that carries with it a criminal sanction.

commercial crime. A crime that affects commerce; esp., a crime directed toward the property or revenues of a commercial establishment. • Examples include robbery of a business, embezzlement, counterfeiting, forgery, prostitution, illegal gambling, and extortion. See 26 CFR § 403.38.

common-law crime. A crime that is punishable under the common law, rather than by force of statute. Cf. statutory crime.

complainantless crime. See victimless crime.

computer crime. A crime involving the use of a computer, such as sabotaging or stealing

electronically stored data. — Also termed **cybercrime**. [Cases: Telecommunications 461.15. C.J.S. Telegraphs, Telephones, Radio, and Television § 221.]

consensual crime. See **victimless crime**.

constructive crime. A crime that is built up or created when a court enlarges a statute by altering or straining the statute's language, esp. to drawing unreasonable implications and inferences from it. — Also termed **implied crime**; **presumed crime**.

continuous crime. 1. A crime that continues after an initial illegal act has been consummated; a crime that involves ongoing elements. • An example is illegal U.S. drug importation. The criminal act is completed not when the drugs enter the country, but when the drugs reach their final destination. 2. A crime (such as driving a stolen vehicle) that continues over an extended period. Cf. **instantaneous crime**.

corporate crime. A crime committed by a corporation's representatives acting on its behalf. • Examples include price-fixing and consumer fraud. Although a corporation as an entity cannot commit a crime other than through its representatives, it can be named as a criminal defendant. — Also termed **organizational crime**. Cf. **occupational crime**. [Cases: Corporations 526. C.J.S. Corporations §§ 736–739.]

credit-card crime. See **CREDIT-CARD CRIME**.

crime against nature. See **SODOMY**.

crime against the environment. See **ENVIRONMENTAL CRIME**.

crime malum in se. See **MALUM IN SE**.

crime malum prohibitum. See **MALUM PROHIBITUM**.

crime of omission. An offense that carries as its material component the failure to act.

crime of passion. A crime committed in the heat of an emotionally charged moment, with no opportunity to reflect on what is happening. See **HEAT OF PASSION**.

crime of violence. See **violent crime**.

crime without victims. See **victimless crime**.

cybercrime. See **computer crime**.

economic crime. A nonphysical crime committed to obtain a financial gain or a professional advantage.

“There are two major styles of economic crime. The first consists of crimes committed by businessmen as an adjunct to their regular business activities. Businessmen's responsibilities give them the opportunity, for example, to commit embezzlement, to violate regulations directed at their areas of business activity, or to evade the payment of taxes. This style of economic crime is often called **white-collar crime**. The second style of economic crime is the provision of illegal goods and services or the provision of goods and services in an illegal manner. Illegal provision of

goods and services requires coordinated economic activity similar to that of normal business, but all of those engaged in it are involved in crime. The madam operating a brothel has many concerns identical to the manager of a resort hotel, and the distributor of marijuana must worry about the efficacy of his distribution system just as does a distributor of any other product. This type of economic crime is often called organized crime because the necessity of economic coordination outside the law leads to the formation of criminal groups with elaborate organizational customs and practices." Edmund W. Kitch, "Economic Crime," in 2 Encyclopedia of Crime and Justice 670, 671 (Sanford H. Kadish ed., 1983).

environmental crime. See ENVIRONMENTAL CRIME.

expressive crime. A crime committed for the sake of the crime itself, esp. out of frustration, rage, or other emotion, rather than for financial gain. Cf. instrumental crime.

federal crime. See FEDERAL CRIME.

general-intent crime. A crime that involves performing a particular act without intending a further act or a further result.

hate crime. A crime motivated by the victim's race, color, ethnicity, religion, or national origin. • Certain groups have lobbied to expand the definition by statute to include a crime motivated by the victim's disability, gender, or sexual orientation. Cf. hate speech under SPEECH. [Cases: Civil Rights 1808; Sentencing and Punishment 753. C.J.S. Civil Rights § 222; Criminal Law §§ 1495, 1527.]

high crime. A crime that is very serious, though not necessarily a felony. • Under the U.S. Constitution, a government officer's commission of a "high crime" is, along with treason and bribery, grounds for removal from office. U.S. Const. art. II, § 4. See IMPEACHABLE OFFENSE.

implied crime. See constructive crime.

inchoate crime. See inchoate offense under OFFENSE(1).

index crime. See index offense under OFFENSE(1).

infamous crime (in-f<<schwa>>-m<<schwa>>s). 1. At common law, a crime for which part of the punishment was infamy, so that one who committed it would be declared ineligible to serve on a jury, hold public office, or testify. • Examples are perjury, treason, and fraud. [Cases: Officers and Public Employees 31. C.J.S. Officers and Public Employees §§ 28–30.] 2. A crime punishable by imprisonment in a penitentiary. • The Fifth Amendment requires a grand-jury indictment for the prosecution of infamous (or capital) crimes, which include all federal felony offenses. See indictable offense under OFFENSE(1). Cf. noninfamous crime.

"At common law an infamous crime was one ... inconsistent with the common principles of honesty and humanity. Infamous crimes were treason, felony, all offenses found in fraud and which came within the general notion of the *crimen falsi* of the civil law, piracy, swindling, cheating, barratry, and the bribing of a witness to absent himself from a trial, in order to get rid of

his evidence.” Justin Miller, *Handbook of Criminal Law* § 8, at 25 (1934).

instantaneous crime. A crime that is fully completed by a single act, as arson or murder, rather than a series of acts. • The statute of limitations for an instantaneous crime begins to run with its completion. Cf. continuous crime.

instrumental crime. A crime committed to further another end or result; esp., a crime committed to obtain money to purchase a good or service. Cf. expressive crime.

international crime. See INTERNATIONAL CRIME.

major crime. See FELONY(1).

noninfamous crime. A crime that does not qualify as an infamous crime. Cf. infamous crime.

occupational crime. A crime that a person commits for personal gain while on the job. Cf. corporate crime.

organizational crime. See corporate crime.

organized crime. See ORGANIZED CRIME.

personal-condition crime. See status crime.

personal crime. A crime (such as rape, robbery, or pickpocketing) that is committed against an individual's person.

political crime. See POLITICAL OFFENSE.

predatory crime. A crime that involves preying upon and victimizing individuals. • Examples include robbery, rape, and carjacking.

preliminary crime. See inchoate offense under OFFENSE(1).

presumed crime. See constructive crime.

quasi-crime. Hist. 1. An offense not subject to criminal prosecution (such as contempt or violation of a municipal ordinance) but for which penalties or forfeitures can be imposed. • The term includes offenses that give rise to qui tam actions and forfeitures for the violation of a public duty. 2. An offense for which someone other than the actual perpetrator is held liable, the perpetrator being presumed to act on the command of the responsible party. See quasi-delict (1) under DELICT.

serious crime. 1. See serious offense under OFFENSE(1). 2. FELONY(1).

signature crime. A distinctive crime so similar in pattern, scheme, or modus operandi to previous crimes that it identifies a particular defendant as the perpetrator.

spontaneous crime. A criminal act that occurs suddenly and without premeditation in response to an unforeseen stimulus. • For example, a husband who discovers his wife in bed with another man and shoots him could be said to have committed an affectively spontaneous crime.

status crime.A crime of which a person is guilty by being in a certain condition or of a specific character. • An example of a status crime is vagrancy. — Also termed status offense; personal-condition crime.

statutory crime.A crime punishable by statute. Cf. common-law crime.

street crime.Crime generally directed against a person in public, such as mugging, theft, or robbery. — Also termed visible crime.

strict-liability crime.A crime that does not require a mens rea element, such as traffic offenses and illegal sales of intoxicating liquor. [Cases: Criminal Law 21. C.J.S. Criminal Law § 31.]

substantive crime.See substantive offense under OFFENSE(1).

vice crime.A crime of immoral conduct, such as gambling or prostitution.

victimless crime.A crime that is considered to have no direct victim, usu. because only consenting adults are involved. • Examples are possession of illicit drugs and deviant sexual intercourse between consenting adults. — Also termed consensual crime; crime without victims; complainantless crime.

“When a man's house has been robbed or his brother murdered, he is likely to take this complaint vigorously to the police and demand action. His presence on the scene dramatizes the need for law enforcement and gives sense and purpose to the work of the police and district attorney. In contrast, the absence of a prosecuting witness surrounds ‘crimes without victims’ with an entirely different atmosphere. Here it is the police who must assume the initiative. If they attempt to work without the aid of informers, they must resort to spying, and this spying is rendered all the more distasteful because what is spied upon is sordid and pitiable.” Lon L. Fuller, *Anatomy of the Law* 44 (1968).

violent crime.A crime that has as an element the use, attempted use, threatened use, or substantial risk of use of physical force against the person or property of another. 18 USCA § 16; USSG § 2E1.3. — Also termed crime of violence.

visible crime.See street crime.

war crime.See WAR CRIME.

white-collar crime.See WHITE-COLLAR CRIME.

CRIME AGAINST HUMANITY

crime against humanity.Int'l law. A brutal crime that is not an isolated incident but that involves large and systematic actions, often cloaked with official authority, and that shocks the conscience of humankind. • Among the specific crimes that fall within this category are mass murder, extermination, enslavement, deportation, and other inhumane acts perpetrated against a population, whether in wartime or not. See Statute of the International Criminal Court, art. 3 (37 ILM 999).

CRIME AGAINST INTERNATIONAL LAW

crime against international law. See CRIME AGAINST THE LAW OF NATIONS.

CRIME AGAINST PEACE

crime against peace. Int'l law. An international crime in which the offenders plan, prepare, initiate, or wage a war of aggression or a war in violation of international peace treaties, agreements, or assurances.

CRIME AGAINST THE LAW OF NATIONS

crime against the law of nations. Int'l law. 1. A crime punishable under internationally prescribed criminal law or defined by an international convention and required to be made punishable under the criminal law of the member states. 2. A crime punishable under international law; an act that is internationally agreed to be of a criminal nature, such as genocide, piracy, or engaging in the slave trade. — Also termed crime against international law.

CRIME AGAINST THE PERSON

crime against the person. See CRIMES AGAINST PERSONS.

CRIME-FRAUD EXCEPTION

crime-fraud exception. The doctrine that neither the attorney–client privilege nor the attorney–work-product privilege protects attorney–client communications that are in furtherance of a current or planned crime or fraud. *Clark v. United States*, 289 U.S. 1, 53 S.Ct. 465 (1933); *In re Grand Jury Subpoena Duces Tecum*, 731 F.2d 1032 (2d Cir. 1984). [Cases: Federal Civil Procedure 1600(3); Witnesses 201(2). C.J.S. Witnesses § 336.]

CRIME INSURANCE

crime insurance. See INSURANCE.

CRIME MALUM IN SE

CRIME MALUM PROHIBITUM

CRIMEN

crimen (krI-m<<schwa>>n), n. [Latin] 1. An accusation or charge of a crime. 2. A crime. Pl. crimina (krim-<<schwa>>-n<<schwa>>).

crimen expilatae hereditatis (krI-m<<schwa>>n eks-p<<schwa>>-lay-tee h<<schwa>>-red-i-tay-tis). Roman law. A false claimant's willful spoliation of an inheritance.

crimen falsi (krI-m<<schwa>>n fal-sIorfawl-sI). [Latin “the crime of falsifying”] 1. A crime in the nature of perjury. — Also termed falsum. 2. Any other offense that involves some element of dishonesty or false statement. See Fed. R. Evid. 609(a)(2). [Cases: Witnesses 337(12).]

“The starting point [for perjury] seems to have been the so-called crimen falsi — crime of falsifying. In the beginning, perhaps, one convicted of perjury was deemed too untrustworthy to be permitted to testify in any other case, and the idea grew until the term ‘crimen falsi’ included

any crime involving an element of deceit, fraud or corruption.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 26 (3d ed. 1982).

crimen feloniae imposuit (krI-m<<schwa>>n f<<schwa>>-loh-nee-ee im-poz-y<<schwa>>-wit). To accuse or charge with a felony.

crimen furti (krI-m<<schwa>>n f<<schwa>>r-tI). [Latin “the crime of stealing”] See THEFT.

crimen incendii (krI-m<<schwa>>n in-sen-dee-I). [Latin “the crime of burning”] See ARSON.

crimen innominatum (krI-m<<schwa>>n i-nom-<<schwa>>-nay-t<<schwa>>m). [Latin “the nameless crime”] See SODOMY.

crimen majestatis (krI-m<<schwa>>n maj-<<schwa>>-stay-tis). [Latin “crime against majesty”] Hist. High treason; any crime against the king's person or dignity; LESE MAJESTY. • Under Roman law, *crimen majestatis* denoted any enterprise by a Roman citizen or other person against the republic or the emperor. — Also termed *crimen laesae majestatis*. See LESE MAJESTY. Cf. PERDUELLIO.

crimen plagii (krI-m<<schwa>>n play-jee-I). [Latin] Roman law. See PLAGIUM.

crimen raptus (krI-m<<schwa>>n rap-t<<schwa>>s). [Latin “the crime of rape”] See RAPE.

crimen repetundarum (krI-m<<schwa>>n rep-<<schwa>>-t<<schwa>>n-dair-<<schwa>>m). [Latin “accusation of (money) to be repaid”] Roman law. 1. A charge of extortion brought against a Roman provincial governor. 2. Any act of misgovernment or oppression on the part of a magistrate or official.

crimen roberiae (krI-m<<schwa>>n r<<schwa>>-beer-ee-ee). [Latin “the crime of robbery”] ROBBERY.

CRIME OF OMISSION

crime of omission. See CRIME.

CRIME OF PASSION

crime of passion. See CRIME.

CRIME OF VIOLENCE

crime of violence. See violent crime under CRIME.

CRIMES AGAINST PERSONS

crimes against persons. A category of criminal offenses in which the perpetrator uses or threatens to use force. • Examples include murder, rape, aggravated assault, and robbery. — Also termed crimes against the person. Cf. offense against the person under OFFENSE(1).

CRIMES AGAINST PROPERTY

crimes against property. A category of criminal offenses in which the perpetrator seeks to derive an unlawful benefit from — or do damage to — another's property without the use or threat of force. • Examples include burglary, theft, and arson (even though arson may result in injury or death). — Also termed property crimes. Cf. offense against property under OFFENSE(1).

CRIMES AGAINST THE PERSON

crimes against the person. See CRIMES AGAINST PERSONS.

CRIME SCORE

crime score. A number assigned from an established scale, indicating the relative seriousness of an offense based on the nature of the injury or the extent of property damage. • Prosecutors use crime scores and defendant scores to promote uniform treatment of similar cases and to alert them to which cases need extensive pretrial preparation. Cf. DEFENDANT SCORE.

CRIME STATISTICS

crime statistics. Figures compiled by a governmental agency to show the incidence of various types of crime within a defined geographic area during a specified time.

CRIME WITHOUT VICTIMS

crime without victims. See victimless crime under CRIME.

CRIMINA EXTRAORDINARIA

crimina extraordinaria (krim-<<schwa>>-n<<schwa>>
ek-stor-d<<schwa>>-nair-ee-<<schwa>>). [Latin] Roman law. Extraordinary crimes; crimes not brought before a *quaestio perpetua*. • These crimes carried no fixed penalty and were punished according to the judge's discretion.

CRIMINAL

criminal, adj. 1. Having the character of a crime; in the nature of a crime < criminal mischief>. 2. Connected with the administration of penal justice < the criminal courts>.

criminal, n. 1. One who has committed a criminal offense. 2. One who has been convicted of a crime.

dangerous criminal. A criminal who has either committed a violent crime or used force in trying to escape from custody.

episodic criminal. 1. A person who commits crimes sporadically. 2. A person who commits crimes only during periods of intense stress, as in the heat of passion.

habitual criminal. See RECIDIVIST.

state criminal. 1. A person who has committed a crime against the state (such as treason); a political criminal. 2. A person who has committed a crime under state law.

CRIMINAL ACTION

criminal action. See ACTION(4).

CRIMINAL ANARCHY

criminal anarchy. See ANARCHY.

CRIMINAL ANTHROPOLOGY

criminal anthropology. See CRIMINOLOGY.

CRIMINAL ASSAULT

criminal assault. See ASSAULT.

CRIMINAL ATTEMPT

criminal attempt. See ATTEMPT.

CRIMINAL BANKRUPTCY

criminal bankruptcy. See bankruptcy fraud under FRAUD.

CRIMINAL BATTERY

criminal battery. See BATTERY(1).

CRIMINAL BEHAVIOR

criminal behavior. Conduct that causes social harm and is defined and punished by law.

CRIMINAL CAPACITY

criminal capacity. See CAPACITY(3).

CRIMINAL CHARGE

criminal charge. See CHARGE(1).

CRIMINAL CODE

criminal code. See PENAL CODE.

CRIMINAL COERCION

criminal coercion. See COERCION.

CRIMINAL CONSPIRACY

criminal conspiracy. See CONSPIRACY.

CRIMINAL CONTEMPT

criminal contempt. See CONTEMPT.

CRIMINAL CONVERSATION

criminal conversation. Archaic. A tort action for adultery, brought by a husband against a third

party who engaged in sexual intercourse with his wife. • Criminal conversation has been abolished in most jurisdictions. — Abbr. crim. con. See HEARTBALM STATUTE. [Cases: Husband and Wife 340–354.]

“An action (whether of trespass or case is uncertain, but probably trespass) formerly lay against one who had committed adultery with the wife of the plaintiff. It was known as an action for criminal conversation. The wife's consent was irrelevant. The action was distinct from that of enticement: one may commit adultery without enticing a wife away from her husband. The action was no doubt a necessity when divorce could only be obtained by Act of Parliament: as Parliament was not a tribunal suitable for trying allegations of adultery it was reasonable to require the petitioner to establish the truth of his allegations before a court of law. The action might also have been justified on the ground that the plaintiff is in substance complaining of the invasion of privacy of his marriage, and the insult thereby caused to his honour as a husband.” R.F.V. Heuston, *Salmond on the Law of Torts* 358 (17th ed. 1977).

CRIMINAL COURT

criminal court. See COURT.

CRIMINAL-COURT JUDGE

criminal-court judge. See JUDGE.

CRIMINAL DAMAGE TO PROPERTY

criminal damage to property. 1. Injury, destruction, or substantial impairment to the use of property (other than by fire or explosion) without the consent of a person having an interest in the property. [Cases: Malicious Mischief 1. C.J.S. Malicious or Criminal Mischief or Damage to Property §§ 2–5.] 2. Injury, destruction, or substantial impairment to the use of property (other than by fire or explosion) with the intent to injure or defraud an insurer or lienholder. Cf. ARSON.

CRIMINAL DEFENDANT

criminal defendant. One who is accused in a criminal proceeding.

CRIMINAL DESERTION

criminal desertion. See DESERTION.

CRIMINAL FORFEITURE

criminal forfeiture. See FORFEITURE.

CRIMINAL FRAUD

criminal fraud. See FRAUD.

CRIMINAL HOMICIDE

criminal homicide. See HOMICIDE.

CRIMINAL INFRINGEMENT

criminal infringement. See INFRINGEMENT.

CRIMINAL INSTRUMENT

criminal instrument. 1. Something made or adapted for criminal use. Model Penal Code § 5.06(1)(a). 2. Something commonly used for criminal purposes and possessed under circumstances showing an unlawful purpose. Model Penal Code § 5.06(1)(b). — Also termed instrument of crime.

CRIMINAL-INSTRUMENTALITY RULE

criminal-instrumentality rule. The principle that when a criminal act is committed, that act — rather than the victim's negligence that made the crime possible — will be considered to be the crime's proximate cause.

CRIMINAL INTENT

criminal intent. 1. INTENT(1). 2. MENS REA.

CRIMINALISM

criminalism. 1. A pathological tendency toward criminality. 2. Archaic. The branch of psychiatry dealing with habitual criminals.

CRIMINALIST

criminalist (krim-*<<schwa>>-n<<schwa>>-l-ist*). 1. A person who practices criminalistics as a profession. 2. Archaic. One versed in criminal law. 3. Archaic. A psychiatrist who treats criminals. 4. Archaic. A habitual criminal.

CRIMINALISTICS

criminalistics (krim-*<<schwa>>-n<<schwa>>-lis-tiks*), n. The science of crime detection, usu. involving the subjection of physical evidence to laboratory analysis, including ballistic testing, blood-fluid and tissue analysis, and other tests. Cf. CRIMINOLOGY. — criminalistic, adj.

CRIMINALITER

criminaliter (krim-*<<schwa>>-nay-l<<schwa>>-t<<schwa>>-r*), adv. [Latin] Criminally. Cf. CIVILITER(1).

CRIMINALITY

criminality (krim-*<<schwa>>-nal<<schwa>>-tee*). 1. The state or quality of being criminal. 2. An act or practice that constitutes a crime. See DOUBLE CRIMINALITY.

CRIMINALIZATION

criminalization (krim-*<<schwa>>-n<<schwa>>-l<<schwa>>-zay-sh<<schwa>>-n*), n. 1. The act or an instance of making a previously lawful act criminal, usu. by passing a statute. Cf. DECRIMINALIZATION; CIVILIZATION. [Cases: Criminal Law 3. C.J.S. Affray § 14; Criminal Law § 19.] 2. The process by which a person develops into a criminal.

CRIMINALIZE

criminalize (krim-*<<schwa>>-n<<schwa>>l-Iz*), vb. To make illegal; to outlaw.

CRIMINAL JURISDICTION

criminal jurisdiction. See JURISDICTION.

CRIMINAL JUSTICE

criminal justice. 1. The methods by which a society deals with those who are accused of having committed crimes. See LAW ENFORCEMENT(1). 2. The field of study pursued by those seeking to enter law enforcement as a profession. • Many colleges offer degrees in criminal justice, typically after two to four years of study. — Also termed (in sense 2) police science; law enforcement.

CRIMINAL-JUSTICE SYSTEM

criminal-justice system. The collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded. • The system typically has three components: law enforcement (police, sheriffs, marshals), the judicial process (judges, prosecutors, defense lawyers), and corrections (prison officials, probation officers, and parole officers). — Also termed law-enforcement system.

CRIMINAL LAW

criminal law. The body of law defining offenses against the community at large, regulating how suspects are investigated, charged, and tried, and establishing punishments for convicted offenders. — Also termed penal law.

“The criminal law represents the pathology of civilization.” Morris R. Cohen, *Reason and Law* 70 (1961).

“Often the term ‘criminal law’ is used to include all that is involved in ‘the administration of criminal justice’ in the broadest sense. As so employed it embraces three different fields, known to the lawyer as (1) the substantive criminal law, (2) criminal procedure, and (3) special problems in the administration and enforcement of criminal justice.... The phrase ‘criminal law’ is more commonly used to include only that part of the general field known as the substantive criminal law” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1, 5 (3d ed. 1982).

CRIMINAL LAWYER

criminal lawyer. See LAWYER.

CRIMINAL LETTER

criminal letter. Scots law. A summons.

CRIMINAL LIBEL

criminal libel. See LIBEL.

CRIMINALLY NEGLIGENT HOMICIDE

criminally negligent homicide. See negligent homicide under **HOMICIDE**.

CRIMINAL MISCARRIAGE

criminal miscarriage. Hist. See **ABORTION(1)**.

CRIMINAL MISCHIEF

criminal mischief. See **MALICIOUS MISCHIEF**.

CRIMINAL NEGLECT OF FAMILY

criminal neglect of family. See **NONSUPPORT**.

CRIMINAL NEGLIGENCE

criminal negligence. See **NEGLIGENCE**.

CRIMINAL NONSUPPORT

criminal nonsupport. See **NONSUPPORT**.

CRIMINAL OFFENSE

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

CRIMINAL OPERATION

criminal operation. Hist. **ABORTION(1)**.

CRIMINAL PLEA

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

CRIMINAL POLICY

criminal policy. The branch of criminal science concerned with protecting against crime. • It draws on information provided by criminology, and its subjects for investigation are (1) the appropriate measures of social organization for preventing harmful activities, and (2) the treatment to be accorded to those who have caused harm, whether the offenders are to be given warnings, supervised probation, or medical treatment, or whether they are to suffer serious deprivations of life or liberty, such as imprisonment or capital punishment.

CRIMINAL POSSESSION

criminal possession. See **POSSESSION**.

CRIMINAL PROCEDURE

criminal procedure. The rules governing the mechanisms under which crimes are investigated, prosecuted, ad-judicated, and punished. • It includes the protection of accused persons' constitutional rights.

CRIMINAL PROCEEDING

criminal proceeding. See PROCEEDING.

CRIMINAL PROCESS

criminal process. See PROCESS.

CRIMINAL PROSECUTION

criminal prosecution. See PROSECUTION(2).

CRIMINAL PROTECTOR

criminal protector. An accessory after the fact to a felony; one who aids or harbors a wrongdoer after the commission of a crime. [Cases: Compounding Offenses 3.5; Criminal Law 74. C.J.S. Compounding Offenses § 5; Criminal Law § 140.]

CRIMINAL-REFERRAL FORM

criminal-referral form. A form once required by federal regulatory authorities (from 1988 to 1996) for reporting every instance when a bank employee or affiliate committed or aided in committing a crime such as credit-card fraud, employee theft, or check-kiting. • This form, like the suspicious-transaction report, has since been super-seded by the suspicious-activity report. — Abbr. CRF. See SUSPICIOUS-ACTIVITY REPORT.

CRIMINAL REGISTRATION

criminal registration. See REGISTRATION(1).

CRIMINAL RESPONSIBILITY

criminal responsibility. See RESPONSIBILITY(2), (3).

CRIMINAL SANCTION

criminal sanction. See SANCTION.

CRIMINAL SCIENCE

criminal science. The study of crime with a view to discovering the causes of criminality, devising the most effective methods of reducing crime, and perfecting the means for dealing with those who have committed crimes. • The three main branches of criminal science are criminology, criminal policy, and criminal law.

CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE

criminal sexual conduct in the first degree. See FIRST-DEGREE SEXUAL CONDUCT.

CRIMINAL SOLICITATION

criminal solicitation. See SOLICITATION(2).

CRIMINAL STATUTE

criminal statute. See STATUTE.

CRIMINAL SYNDICALISM

criminal syndicalism. See SYNDICALISM.

CRIMINAL TERM

criminal term. See TERM(5).

CRIMINAL TRESPASS

criminal trespass. See TRESPASS.

CRIMINAL WRONG

criminal wrong. See CRIME.

CRIMINATE

criminate, vb. See INCRIMINATE.

CRIMINATION

crimination (krim-⟨schwa⟩-nay-sh⟨schwa⟩n), n. 1. INCRIMINATION. 2. An accusation or strong censure.

CRIMINATIVE

criminative (krim-⟨schwa⟩-nay-tiv), adj. Of, relating to, or involving incrimination or accusation. Cf. IN-FIRMATIVE.

CRIMINOGENIC

criminogenic (krim-⟨schwa⟩-n⟨schwa⟩-jen-ik), adj. Tending to cause crime or criminality. — crimino-genesis, n.

CRIMINOLOGY

criminology (krim-⟨schwa⟩-nol-⟨schwa⟩-jee), n. The study of crime and criminal punishment as social phenomena; the study of the causes of crime and the treatment of offenders, comprising (1) criminal biology, which examines causes that may be found in the mental and physical constitution of an offender (such as hereditary tendencies and physical defects), and (2) criminal sociology, which deals with inquiries into the effects of environment as a cause of criminality. — Also termed criminal anthropology. Cf. CRIMINALISTICS; PE-NOLOGY. — criminological (krim-⟨schwa⟩-n⟨schwa⟩-loj-⟨schwa⟩-k⟨schwa⟩l), adj. — crimi-nologist, n.

comparative criminology. The scholarly study of the similarities and differences between the criminal-justice systems of different nations.

environmental criminology. The scholarly study of areas where crime occurs and of why offenders are active in those areas. — Also termed geography of crime; ecology of crime.

CRIMPING

crimping.Hist. The offense of decoying and confining persons to force them into military service. Cf. IM-PRESSMENT(3).

CRIT

crit. An adherent to the critical-legal-studies school of thought. — Also termed CLSer; Critic; critter.

fem-crit. A feminist adherent of critical legal studies.

CRITICAL EVIDENCE

critical evidence.See EVIDENCE.

CRITICAL LEGAL STUDIES

Critical Legal Studies. 1. A school of thought advancing the idea that the legal system perpetuates the status quo in terms of economics, race, and gender by using manipulable concepts and by creating an imaginary world of social harmony regulated by law. • The Marxist wing of this school focuses on socioeconomic issues. Fem-crits emphasize gender hierarchy, whereas critical race theorists focus on racial subordination. See fem-crit under CRIT; CRITICAL RACE THEORY. 2. The body of work produced by adherents to this school of thought. — Abbr. CLS.

CRITICAL LIMITATION

critical limitation.Patents. A limitation essential either to the operativeness of an invention or to the patentability of a patent claim for the invention. [Cases: Patents 165(2). C.J.S. Patents § 289.]

CRITICAL RACE THEORY

Critical Race Theory. 1. A reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities. • The term first appeared in 1989. Critical race theorists observe that even if the law is couched in neutral language, it cannot be neutral because those who fashioned it had their own subjective perspectives that, once enshrined in law, have disadvantaged minorities and even perpetuated racism. 2. The body of work produced by adherents to this theory. — Abbr. CRT.

CRITICAL STAGE

critical stage.Criminal procedure. A point in a criminal prosecution when the accused's rights or defenses might be affected by the absence of legal representation. • Under the Sixth Amendment, a critical stage triggers the accused's right to appointed counsel. Examples of critical stages include preliminary hearings, jury selection, and (of course) trial. Cf. ACCUSATORY STAGE . [Cases: Criminal Law 641.3(2); Double Jeopardy 59.C.J.S. Criminal Law §§ 213, 218, 282.]

CRITTER

critter. See CRIT.

CROP INSURANCE

crop insurance. See INSURANCE.

CROP RENT

crop rent. See RENT(1).

CROPS

crops. Products that are grown, raised, and harvested. • Crops usu. are from the soil, but fruit grown on trees are also considered crops. [Cases: Crops 1. C.J.S. Crops §§ 1-5, 9.]

annual crops. 1. Crops that must be planted each year, such as cotton, wheat, barley, corn, carrots, potatoes, and melons. 2. Crops for which the produce in any single year is mainly the result of attention and care exerted in the same agricultural year, such as hops and sugar cane.

away-going crops. A tenant's crops that were sown and will not be ready to harvest before the tenancy expires. • The tenant retains the ownership of the crops after the tenancy expires.

basic crops. Crops (such as wheat and corn) that are usu. subject to government-price supports.

growing crops. Crops that are in the process of growth. • Growing crops are goods under UCC § 2-105(1). Judicial decisions vary on the growth stage at which a crop becomes a growing crop and on whether pasturage grass is a growing crop. Cf. FARM PRODUCT. [Cases: Crops 1. C.J.S. Crops §§ 1-5, 9.]

standing crops. Crops that have not been harvested or otherwise severed from the land.

CROSS

cross, n. 1. CROSS-EXAMINATION. 2. A sale of a large amount of publicly traded stock between two private parties. • Although the transaction does not happen on the exchange floor, it typically requires exchange permission.

CROSS-ACTION

cross-action. 1. ACTION(4). 2. CROSS-CLAIM.

CROSS-APPEAL

cross-appeal. See APPEAL.

CROSS-BILL

cross-bill. See BILL(2).

CROSS-CLAIM

cross-claim, n. A claim asserted between codefendants or coplaintiffs in a case and that relates

to the subject of the original claim or counterclaim. See Fed. R. Civ. P. 13(g). — Also termed cross-action; cross-suit. Cf. COUN-TERCLAIM. [Cases: Federal Civil Procedure 786; Pleading 147, 148, 149; Set-off and Counterclaim 10.] — cross-claim,vb. — cross-claimant,n.

“The courts have not always distinguished clearly between a cross-claim and a counterclaim, and have used one name where the other is proper under the rules, perhaps because in some states, and in the old equity practice, the term cross-complaint or cross-bill is used for what the rules regard as a counterclaim. Under Rule 13 a counterclaim is a claim against an opposing party, while a cross-claim is against a co-party. Further there is not the same freedom in asserting cross-claims that the rules provide for counterclaims. An unrelated claim against an opposing party may be asserted as a permissive counterclaim, but only claims related to the subject matter of the original action, or property involved therein, are appropriate as cross-claims.” Charles Alan Wright, *The Law of Federal Courts* § 80, at 574 (5th ed. 1994).

CROSS-COLLATERAL

cross-collateral. See COLLATERAL.

CROSS-COLLATERAL CLAUSE

cross-collateral clause. An installment-contract provision allowing the seller, if the buyer defaults, to repossess not only the particular item sold but also every other item bought from the seller on which a balance remained due when the last purchase was made. — Also termed dragnet clause.

CROSS-COLLATERALIZATION

cross-collateralization. See cross-collateral under COLLATERAL.

CROSS-COMPLAINT

cross-complaint. 1. A claim asserted by a defendant against another party to the action. — Also termed (in some jurisdictions) cross-petition. [Cases: Federal Civil Procedure 786; Pleading 148, 149. C.J.S. Pleading §§ 203, 206.] 2. A claim asserted by a defendant against a person not a party to the action for a matter relating to the subject of the action.

CROSS-DEFAULT CLAUSE

cross-default clause. A contractual provision under which default on one debt obligation triggers default on another obligation.

CROSS-DEFENDANT

cross-defendant. The party against whom a cross-claim is asserted. Cf. CROSS-PLAINTIFF
F.

CROSS-DEMAND

cross-demand. See DEMAND(1).

CROSSED CHECK

crossed check. See CHECK.

CROSS-ELASTICITY OF DEMAND

cross-elasticity of demand. Antitrust. A relationship between two products, usu. substitutes for each other, in which a price change for one product affects the price of the other.

CROSS-ERROR

cross-error. See ERROR(2).

CROSS-EXAMINATION

cross-examination, n. The questioning of a witness at a trial or hearing by the party opposed to the party who called the witness to testify. • The purpose of cross-examination is to discredit a witness before the fact-finder in any of several ways, as by bringing out contradictions and improbabilities in earlier testimony, by suggesting doubts to the witness, and by trapping the witness into admissions that weaken the testimony. The cross-examiner is typically allowed to ask leading questions but is traditionally limited to matters covered on direct examination and to credibility issues. — Also termed cross-interrogation. Cf. DIRECT EXAMINATION; RE-CROSS-EXAMINATION. [Cases: Witnesses 266–284, 330. C.J.S. Witnesses §§ 445–498, 500–507, 579.] — cross-examine, vb.

CROSS-INTERROGATORY

cross-interrogatory. See INTERROGATORY.

CROSS-LICENSE

cross-license. See LICENSE.

CROSS-MARRIAGE

cross-marriage. See MARRIAGE(1).

CROSS-MOTION

cross-motion. See MOTION(1).

CROSS-OFFER

cross-offer, n. Contracts. An offer made to another in ignorance that the offeree has made the same offer to the offeror. — cross-offer, vb. — cross-offeror, n.

CROSS-PETITION

cross-petition. See CROSS-COMPLAINT.

CROSS-PLAINTIFF

cross-plaintiff. The party asserting a cross-claim. Cf. CROSS-DEFENDANT.

CROSS-PURCHASE BUY-SELL AGREEMENT

cross-purchase buy-sell agreement. 1.BUY-SELL AGREEMENT(1).2. A partnership insurance plan in which each partner individually buys and maintains enough insurance on the life or lives of other partners to purchase a deceased or expelled partner's equity.

CROSS-QUESTION

cross-question. See QUESTION(1).

CROSS-RATE

cross-rate. The exchange rate between two currencies expressed as the ratio of two foreign exchange rates in terms of a common third currency (usu. the U.S. dollar). • Foreign-exchange-rate dealers use cross-rate tables to look for arbitrage opportunities. See ARBITRAGE.

CROSS-REFERENCE

cross-reference,n. An explicit citation to a related provision within the same or a closely related document; esp., the explicit citation in a continuing patent application to all interrelated applications, back to the original filing. • A cross-reference alone does not incorporate the disclosure of the parent application. Cf. INCORPORATION BY REFERENCE(1), (2). — cross-reference,vb.

CROSS-REMAINDER

cross-remainder. See REMAINDER.

CROSS-SUIT

cross-suit. See CROSS-CLAIM.

CROWN

Crown.1.KING. 2.QUEEN(1).

CROWN CASE

Crown case.English law. A criminal action.

CROWN COURT

Crown Court.An English court having jurisdiction over major criminal cases. • Crown Courts date from 1971, when they assumed the criminal jurisdiction of the Assize Courts and all the jurisdiction of the Courts of Quarter Sessions.

CROWN JEWEL

crown jewel.A company's most valuable asset, esp. as valued when the company is the subject of a hostile takeover. • A common antitakeover device is for the target company to sell its crown jewel to a third party so that the company will be less attractive to an unfriendly suitor.

CROWN-JEWEL DEFENSE

crown-jewel defense. An antitakeover device in which the target company agrees to sell its most valuable assets to a third party if a hostile bid is tendered, so that the company will be less attractive to an unfriendly suitor. Cf. SCORCHED-EARTH DEFENSE; PAC-MAN DEFENSE.

CROWN LAND

Crown land. See LAND.

CROWN LOAN

Crown loan. See LOAN.

CRT

CRT. abbr. 1. CRITICAL RACE THEORY. 2. See charitable-remainder trust under TRUST.

CRUCIAL EVIDENCE

crucial evidence. See critical evidence under EVIDENCE.

CRUEL AND ABUSIVE TREATMENT

cruel and abusive treatment. See ABUSE(2).

CRUEL AND INHUMANE TREATMENT

cruel and inhumane treatment. See extreme cruelty under CRUELTY.

CRUEL AND UNUSUAL PUNISHMENT

cruel and unusual punishment. See PUNISHMENT.

CRUELTY

cruelty. The intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human; abusive treatment; outrage. Cf. ABUSE; INHUMAN TREATMENT; INDIGNITY.

“When William Blake opined that ‘Cruelty has a human heart’, he posited the physical and emotional forms which cruelty may take. But when is one party so cruel to the other that it goes to the heart of the marriage and justifies dissolution? A New York court defined cruelty as bodily harm, or a reasonable apprehension of bodily harm, which endangers life, limb, or health and renders marital cohabitation unsafe or improper. Some states are reluctant to permit divorce when there has been only emotional suffering without physical harm. And in a marriage of long duration, some courts require that the cruelty be more extreme to justify divorce than if the relationship has been brief. Acts constituting the ground must continue over an extended period of time unless they are so severe as to shock the conscience, or raise the probability that it would be unsafe for the innocent party if the couple remain together.” Walter Wadlington & Raymond C. O'Brien, *Family Law in Perspective* 73 (2001).

cruelty to a child. See child abuse under ABUSE.

cruelty to animals. A malicious or criminally negligent act that causes an animal to suffer pain or death. [Cases: Animals 38. C.J.S. Animals §§ 99–104, 108.]

extreme cruelty. As a ground for divorce, one spouse's physical violence toward the other spouse, or conduct that destroys or severely impairs the other spouse's mental health. — Also termed cruel and inhumane treatment. Cf. ABUSE (2). [Cases: Divorce 34. C.J.S. Divorce § 19.]

legal cruelty. Cruelty that will justify granting a divorce to the injured party; specif., conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm. [Cases: Divorce 27. C.J.S. Divorce § 22.]

mental cruelty. As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse. See EMOTIONAL DISTRESS. [Cases: Divorce 27. C.J.S. Divorce § 22.]

physical cruelty. As a ground for divorce, actual personal violence committed by one spouse against the other. [Cases: Divorce 27(3, 6). C.J.S. Divorce §§ 24, 27, 29–31.]

CRUELTY TO A CHILD

CRUELTY TO CHILDREN

cruelty to children. See child abuse under ABUSE.

CRUMMEY POWER

Crummey power. The right of a beneficiary of a Crummey trust to withdraw gifts made to the trust up to a maximum amount (often the lesser of the annual exclusion or the value of the gift made to the trust) for a certain period after the gift is made. • The precise characteristics of a Crummey power are established by the settlor of a Crummey trust. Typically, the power is exercisable for 30 days after the gift is made and permits withdrawals up to \$5,000 or 5% of the value of the trust. A beneficiary may allow the power to lapse without making any demand for distribution. See Crummey trust under TRUST; annual exclusion under EXCLUSION.

CRUMMEY TRUST

Crummey trust. See TRUST.

CRY DE PAIS

cry de pais (krī d<<schwa>> pay). [Law French] Hist. The cry of the country. • The hue and cry after an offender raised by the country (i.e., the people). — Also spelled cri de pais. See HUE AND CRY(1).

CRYER

cryer. See CRIER.

CSAAS

CSAAS.abbr.CHILD-SEXUAL-ABUSE-ACCOMMODATION SYNDROME.

CSE AGENCY

CSE agency.abbr.CHILD-SUPPORT-ENFORCEMENT AGENCY.

CSREES

CSREES.abbr. COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE.

CSV

CSV. See cash surrender value under VALUE(2).

C.T.A.

c.t.a.abbr.See administration cum testamento annexo under ADMINISTRATION.

CUCKING STOOL

cucking stool.See CASTIGATORY.

CUI ANTE DIVORTIUM<TT>

cui ante divortium (kI [or kwIor kwee] an-tee d<<schwa>>-vor-shee-<<schwa>>m). [Law Latin “to whom before divorce”] Hist. A writ of entry enabling a divorced woman to recover land that she had held in fee but that her husband had sold without her permission during the marriage. • The name of this writ derives from the words within it: cui ipsa ante divortium inter eos celebratum, contradicere non potuit (“whom she, before the divorce between them, could not gainsay”). The writ was abolished in 1833. — Also termed sur cui ante divortium.

CUI BONO?

Cui bono?[Latin] For whose advantage?; Who benefits? • The exclamation may be used to ask who benefited from the results of a crime, usu. to cast suspicion without offering evidence of guilt. Despite the literal meaning, the term is more often used to mean “what's the good of it?” or “what benefits are there?”

CUI IN VITA

cui in vita (kI [or kwIor kwee] in vI-t<<schwa>>). [Law Latin “to whom in the life”] Hist. A writ of entry enabling a woman to recover land that she had held in fee but that her deceased husband had sold without her permission. • It is so called from the words of the writ: cui ipsa in vita sua contradicere non potuit (“whom she, in his lifetime, could not gainsay”). — Also termed sur cui in vita.

“Cui in vita, is a writ of entry, which a Widow hath against him, to whom her Husband alienated her Lands or Tenements in his life time, which must specifie, that During his life, she could not withstand it.” Thomas Blount, Nomo-Lexicon: A Law-Dictionary (1670).

CUJUS CONTRARIUM EST VERUM

cujus contrarium est verum (k[y]oo-j<<schwa>>s k<<schwa>>n-trair-ee-<<schwa>>m est

veer-⟨schwa⟩m). [Latin] Hist. The contrary of which is the truth.

CUJUS HAEREDIBUS MAXIME PROSPICITUR

cujus haeredibus maxime prospicitur (k[y]oo-j⟨schwa⟩s h⟨schwa⟩-red-i-b⟨schwa⟩s mak-s⟨schwa⟩-mee proh-spis-i-t⟨schwa⟩r). [Latin] Hist. Whose heirs are chiefly regarded.

“Cujus haeredibus maxime prospicitur... This is a rule of construction to be attended to in ascertaining from the terms of a destination, in whom the fee of a property is vested, the ordinary rule being, that he is the fiar whose heirs are preferred. Thus, a conveyance to ‘A and B jointly, and the heirs of B,’ gives A merely a joint right of liferent, and gives B the fee. Under such a destination, B is so absolutely the fiar that his rights cannot be impaired by any acts, even onerous, of A, who is held, as we have said, to be a liferenter.” John Trayner, *Trayner's Latin Maxims* 121 (4th ed. 1894).

CULPA

culpa (k⟨schwa⟩l-p⟨schwa⟩). [Latin] 1.Roman & civil law. Fault, neglect, or negligence; unintentional wrong. See NEGLIGENCE. Cf. DILIGENTIA; CASUS (1); DOLUS(1).2.Roman law. Conduct that made a party to a contract, or quasi-contract, liable to the other party.

lata culpa (lay-t⟨schwa⟩ k⟨schwa⟩l-p⟨schwa⟩). [Latin “grave fault”] Gross negligence amounting to bad fath (dolus). • This phrase occurs most commonly in bailment law and in the law of the transport of persons. — Also termed culpa lata. See gross negligence under NEGLIGENCE.

levis culpa (lee-vis k⟨schwa⟩l-p⟨schwa⟩). [Latin “slight fault”] 1. Ordinary negligence. 2. Failure to act as the ideal paterfamilias should. — Also termed culpa levis; culpa levis in concreto. See ordinary negligence under NEGLIGENCE.

levissima culpa (l⟨schwa⟩-vis⟨schwa⟩-m⟨schwa⟩ k⟨schwa⟩l-p⟨schwa⟩). [Latin “the slightest fault”] Slight negligence. — Also termed culpa levissima. See slight negligence under NEGLIGENCE.

CULPABILIS

culpabilis (k⟨schwa⟩l-pay-b⟨schwa⟩-lis), adj.[Latin] Hist. Guilty.

CULPABILITY

culpability (k⟨schwa⟩l-p⟨schwa⟩-bil⟨schwa⟩-tee), n. Blameworthiness; the quality of being culpable. • Except in cases of absolute liability, criminal culpability requires a showing that the person acted purposely, knowingly, recklessly, or negligently with respect to each material element of the offense. See Model Penal Code § 2.02.

“The concept of culpability is used as a reference point to assess the defendant's guilt and punishment even though, in the two contexts, culpability denotes different aspects of the

defendant and the murder. At the guilt phase, culpability is most often used to refer to the state of mind that the defendant must possess. Also at the guilt phase, culpability may reflect a broader judgment about the defendant: when he is culpable for his conduct, it means that he is blameworthy and deserves punishment. At the punishment phase, the concept of culpability stands as the benchmark for when the death penalty is an appropriate punishment.” Phyllis L. Crocker, *Concepts of Culpability and Deathworthiness*, 66 *Fordham L. Rev.* 21, 35–36 (1997).

CULPABLE

culpable (k<<schwa>>l-p<<schwa>>-b<<schwa>>l), adj.1. Guilty; blameworthy. 2. Involving the breach of a duty.

CULPABLE ACCIDENT

culpable accident.See ACCIDENT.

CULPABLE HOMICIDE

culpable homicide.See HOMICIDE.

CULPABLE INTOXICATION

culpable intoxication.See voluntary intoxication under INTOXICATION.

CULPABLE NEGLIGENCE

culpable neglect.See NEGLIGENCE.

CULPABLE NEGLIGENCE

culpable negligence.See NEGLIGENCE.

CULPA-IN-CONTRAHENDO DOCTRINE

culpa-in-contrahendo doctrine.[Law Latin “fault in contracting”] The principle that parties must act in good faith during preliminary contract negotiations; esp., the principle that a breach by the offeror after the offeree has begun performance of a unilateral contract and is stopped by the offeror before completion will give rise to liability in tort. [Cases: Contracts 319(1); Torts 6, 12. C.J.S. Contracts § 593; Torts §§ 5, 16–22, 54, 59–65.]

CULPA LATA

culpa lata.See lata culpa under CULPA.

CULPA LEVIS

culpa levis.See levis culpa under CULPA.

CULPA LEVIS IN CONCRETO

culpa levis in concreto.See levis culpa under CULPA.

CULPA LEVISSIMA

culpa levissima. See levissima culpa under CULPA.

CULPRIT

culprit. 1. A person accused or charged with the commission of a crime. 2. A person who is guilty of a crime. • Culprit may be a running together of cul, shortened from the Latin culpabilis (“guilty”), and prit, from Old French prest (“ready”), two words formerly used to orally plead at the outset of a criminal case.

“When the prisoner hath thus pleaded not guilty, non culpabilis... the clerk of the assise, or clerk of the arraigns, on behalf of the crown replies, that the prisoner is guilty, and that he is ready to prove him so. This is done by two monosyllables in the same spirit of abbreviation, ‘cul. prit.’ which signifies first that the prisoner is guilty, (cul. culpable, or culpabilis) and then that the king is ready to prove him so; prît, praesto sum, or paratus verificare.... How our courts came to express a matter of this importance in so odd and obscure a manner ... can hardly be pronounced with certainty. It may perhaps, however, be accounted for by supposing that these were at first short notes, to help the memory of the clerk, and remind him what he was to reply; or else it was the short method of taking down in court, upon the minutes, the replication and averment; ‘cul. prît’: which afterwards the ignorance of succeeding clerks adopted for the very words to be by them spoken. But however it may have arisen, the joining of issue ... seems to be clearly the meaning of this obscure expression; which has puzzled our most ingenious etymologists, and is commonly understood as if the clerk of the arraigns, immediately on plea pleaded, had fixed an opprobrious name on the prisoner, by asking him, ‘culprit, how wilt thou be tried?’ ” 4 William Blackstone, Commentaries on the Laws of England 333–34 (1769).

CULTURA

cultura (k<<schwa>>l-t[y]oor-<<schwa>>). [Law Latin] Hist. A piece of tillable land; tillage.

CULTURAL AGREEMENT

cultural agreement. Int'l law. A bilateral or multilateral agreement between nations for the purpose of furthering cultural or intellectual relations.

CULTURAL DEFENSE

cultural defense. Criminal law. A defense to prosecution for a criminal act — often child abuse, child neglect, or child endangerment — that, according to the defendant, results from his or her cultural background. • This defense is sometimes raised by those accused of female genital mutilation. See FEMALE GENITAL MUTILATION .

CULTURAL PROPERTY

cultural property. Int'l law. Movable and immovable property that has cultural significance, whether in the nature of antiquities and monuments of a classical age or important modern items of fine arts, decorative arts, and architecture. • Some writers prefer the term cultural heritage, which more broadly includes intangible cultural things such as folklore, crafts, and skills.

CULVERTAGE

culvertage (k<<schwa>>l-v<<schwa>>r-tij), n. Hist.1.The status of villeinage. 2. The condition of being reduced to villeinage or serfdom by forfeiture and degradation.

CUM ASTRICITIS MULTURIS

cum astrictis multuris (k<<schwa>>m <<schwa>>-strik-tis m<<schwa>>l-t[y]oor-is). [Law Latin] Hist. With defined payments for grinding; with astricted multures. • The phrase appeared in reference to portions of grain that the landholder was bound to pay a certain mill in exchange for grinding the remainder of the grain. See MOLI-TURAE.

CUM AUCUPATIONIBUS, VENATIONIBUS, ET PISCATIONIBUS

cum aucupationibus, venationibus, et piscationibus (k<<schwa>>m awk-y<<schwa>>-pay-shee-oh-n<<schwa>>-b<<schwa>>s, vi-nay-shee-oh-n<<schwa>>-b<<schwa>>s, et pi-skay-shee-oh-n<<schwa>>-b<<schwa>>s). [Latin] Scots law. With fowlings, huntings, and fishings. • The phrase was part of a clause granting the legal right to hunt and fish on the conveyed land if the right was accompanied by actual possession of the land for a specific period.

CUM BENEFICIO INVENTARII

cum beneficio inventarii. See BENEFICIUM INVENTARII.

CUM COMMUNI PASTURA

cum communi pastura (k<<schwa>>m k<<schwa>>-myoo-nIpas-ch<<schwa>>r-<<schwa>>). [Law Latin] Hist. With common pasturage. • This phrase granted a servitude of pasture, not a right of common, on property.

CUM CURIIS EARUMQUE EXITIBUS

cum curiis earumque exitibus (k<<schwa>>m kyoor-ee-is ee-<<schwa>>-r<<schwa>>m-kwee ek-sit-i-b<<schwa>>s). [Law Latin] Hist. With courts, and the results or profits of the same. • The phrase appeared in reference to the right of the Baron courts to any of those courts' profits, as distinguished from the obligation of the King's courts to turn over all profits to the King.

CUM CURIIS ET BLOODWITIS

cum curiis et bloodwitis (k<<schwa>>m kyoor-ee-is et bl<<schwa>>d-wi-tis). [Law Latin] Scots law. With the power of holding courts and fining for blood. • Property disposed of cum curiis et bloodwitis entitled the purchaser of a barony to cumulative jurisdiction over barony matters.

CUM DECIMIS INCLUSIS ET NUNQUAM ANTEA SEPARATIS

cum decimis inclusis et nunquam antea separatis (k<<schwa>>m des-<<schwa>>-mis in-kloo-sis et n<<schwa>>n-kwam an-tee-<<schwa>> sep-<<schwa>>-ray-tis). [Law Latin] Scots law. With the tithes included, and never before separated. • This phrase exempted conveyed land from the payment of tithes.

CUM DIVIDEND

cum dividend. With dividend. • Stocks purchased cum dividend entitle the buyer to any pending declared dividends. Cf. EX DIVIDEND.

CUM DOMIBUS, AEDIFICIIS

cum domibus, aedificiis (k<<schwa>>m dom-<<schwa>>-b<<schwa>>s, ee-di-fish-ee-is). [Law Latin] Scots law. With houses, buildings. • These words in a conveyance included within the conveyance every structure erected on the conveyed land.

CUM EFFECTU

cum effectu (k<<schwa>>m i-fek-t[y]oo). [Latin] Hist. With effect; in effect.

“Prescription does not run against any one ... unless he is able to act in defence of his right cum effectu.... Under the old feudal system the casualty of ward was not incurred except where the vassal alienated his lands cum effectu. Thus, if the vassal was interdicted and disposed without the consent of his interdictors, his conveyance being reducible was not effectual, and the casualty was not incurred.” John Trayner, Trayner's Latin Maxims 127–28 (4th ed. 1894).

CUM EXCESSU MODERAMINIS

cum excessu moderaminis (k<<schwa>>m ek-ses-[y]oo mod-<<schwa>>-ray-m<<schwa>>-nis). [Law Latin] Scots law. In excess of the limits. • The phrase appeared in reference to the legal limits on the use of violence as a means of self-defense.

CUM FABRILIBUS, BRASINIS, ET BRUERIIS

cum fabrilibus, brasinis, et brueriis (k<<schwa>>m f<<schwa>>-bril-<<schwa>>-b<<schwa>>s, br<<schwa>>-sI-n<<schwa>>s, et broo-er-ee-is). [Law Latin] Scots law. With forges, maltkilns, and breweries. • A tenant was restricted from building these structures on land unless the tenant first obtained the superior's permission.

CUM FOSSA ET FURCA

cum fossa et furca (k<<schwa>>m fos-<<schwa>> et f<<schwa>>-r-k<<schwa>>). [Law Latin] Hist. With pit and gallows. • In ancient charters, this phrase granted Baron courts the right to try capital offenses and to inflict capital punishment.

CUM GRANO SALIS

cum grano salis (k<<schwa>>m gray-noh say-lis or kuum grah-noh sah-lis). [Latin] With a grain of salt; with allowance for exaggeration; with reservations.

CUM HEREZELDIS

cum herezeldis (k<<schwa>>m her-<<schwa>>-zel-dis). [Latin] Scots law. With herezelds; with the best things that move. • The phrase appeared in reference to a tenant's best horse, cow, or other animal, when the animal was customarily transferred to the landlord on the death of the tenant.

CUM LIBERA ET PLENA ADMINISTRACIONE

cum libera et plena administracione (k<<schwa>>m lib-<<schwa>>r-<<schwa>> et plee-n<<schwa>> ad-min-<<schwa>>-stray-shee-oh-nee). [Law Latin] Scots law. With full and free power of administration. • The phrase appeared in reference to the powers that one could grant to certain agents, such as attorneys.

CUM LIBERO EXITU ET INTROITU

cum libero exitu et introitu (k<<schwa>>m lib-<<schwa>>r-<<schwa>> ek-si-t[y]oo et in-troh-<<schwa>>-t[y]oo). [Law Latin] Hist. With free exit and entry.

CUM MARITAGIO

cum maritagio (k<<schwa>>m mar-<<schwa>>-tay-jee-oh). [Law Latin] Scots law. With the marriage portion. • The phrase appeared in reference to the required payment to a superior upon the marriage of the superior's ward.

CUM MOLENDINIS ET MULTURIS

cum molendinis et multuris (k<<schwa>>m m<<schwa>>-len-di-nis et m<<schwa>>l-ch<<schwa>>-r-is). [Law Latin] Scots law. With mills and multures. Cf. MOLITURAE.

CUM NOTA

cum nota (k<<schwa>>m noh-t<<schwa>>). [Latin] Scots law. With a distinguishing mark. • The phrase appeared in reference to otherwise inadmissible testimony that a judge could allow after considering the testimony's merit or believability.

CUM OMNI CAUSA

cum omni causa (k<<schwa>>m ahm-nlkaw-z<<schwa>>). [Latin] Roman law. With every advantage derived from a given transaction, such as a sale.

CUM ONERE

cum onere (k<<schwa>>m on-<<schwa>>-ree). [Latin] With the burden. • An item acquired cum onere is taken subject to existing burdens and charges.

CUM ONERE DEBITORUM DEFUNCTI

cum onere debitorum defuncti (k<<schwa>>m on-<<schwa>>r-ee deb-i-tor-<<schwa>>m di-f<<schwa>>ngk-tl). [Latin] Hist. With the burden of the decedent's debts. • The phrase appeared in reference to an heir's position after entering a succession.

CUM PERTINENTIIS

cum pertinentiis (k<<schwa>>m p<<schwa>>r-<<schwa>>-nen-shee-is). [Latin] With the appurtenances. • In a conveyance of land, the conveyance included not only everything belonging to the land, but also rights incident to it.

CUM PISCARIIS

cum piscariis (k<<schwa>>m pis-kair-ee-is). [Law Latin] Scots law. With fishings. • The phrase was used to convey an express grant of fishing rights without the necessity of also possessing the right for a prescribed period. Cf. CUM PISCATIONIBUS.

CUM PISCATIONIBUS

cum piscationibus (k<<schwa>>m pis-kay-shee-oh-n<<schwa>>-b<<schwa>>s). [Law Latin] Hist. With fishing or fisheries. • The phrase was used to convey the express grant of a fishing right only if the grant was accompanied by possession of the right for a prescribed period. Cf. CUM PISCARIIS.

CUM RIGHTS

cum rights. With rights. • A cum rights purchaser of stock is entitled to rights that have been declared but not distributed, such as the right to purchase additional shares at a stated price. — Also termed rights on.

CUM SATIS FURORE IPSO PUNIATUR

cum satis furore ipso puniatur (k<<schwa>>m sat-is fyuu-ror-ree ip-soh pyoo-nee-ay-t<<schwa>>r). [Latin] Hist. Since he is sufficiently punished by the insanity itself. • The phrase appeared in reference to the principle that an insane person is not criminally responsible for his or her acts. It was a forerunner to the modern insanity defense.

CUM SUA CAUSA ET LABE

cum sua causa et labe (k<<schwa>>m s[y]oo-<<schwa>> kaw-z<<schwa>> et lay-bee). [Latin] Hist. With its advantages and its defects.

CUM SUO ONERE

cum suo onere (k<<schwa>>m s[y]oo-oh on-<<schwa>>r-ee). [Latin] Hist. With its burden. • The phrase appeared in reference to a vassal's land encumbrances that the superior was bound to accept upon the vassal's resignation.

CUM TESTAMENTO ANNEXO

cum testamento annexo (k<<schwa>>m tes-t<<schwa>>-men-toh <<schwa>>-nek-soh). See administration cum testamento annexo under ADMINISTRATION.

CUM TITULO

cum titulo (k<<schwa>>m tich-[y]<<schwa>>-loh). [Law Latin] Hist. With the title.

CUMULATIO CRIMINUM

cumulatio criminum (kyoo-my<<schwa>>-lay-shee-oh krim-<<schwa>>-n<<schwa>>m). [Law Latin] Hist. The accumulation of crimes; the charging of more than one crime in an indictment.

CUMULATIVE APPROACH

cumulative approach. See UNITY OF ART.

CUMULATIVE DIVIDEND

cumulative dividend. See DIVIDEND.

CUMULATIVE-EFFECTS DOCTRINE

cumulative-effects doctrine. The rule that a transaction affecting interstate commerce in a trivial way may be taken together with other similar transactions to establish that the combined effect on interstate commerce is not trivial and can therefore be regulated under the Commerce Clause. [Cases: Commerce 7(2). C.J.S. Commerce § 6.]

CUMULATIVE ERROR

cumulative error. See ERROR(2).

CUMULATIVE-ERROR ANALYSIS

cumulative-error analysis. Appellate scrutiny of whether all the individual harmless errors made in a trial had the cumulative effect of prejudicing the outcome. • If they did, the harmless errors taken together may amount to reversible error.

CUMULATIVE EVIDENCE

cumulative evidence. See EVIDENCE.

CUMULATIVE INCOME BOND

cumulative income bond. See income bond under BOND(3).

CUMULATIVE LEGACY

cumulative legacy. See accumulative legacy under LEGACY.

CUMULATIVELY HARMFUL BEHAVIOR

cumulatively harmful behavior. See HARMFUL BEHAVIOR.

CUMULATIVE OFFENSE

cumulative offense. See OFFENSE(1).

CUMULATIVE PREFERENCE SHARE

cumulative preference share. See cumulative preferred stock under STOCK.

CUMULATIVE PREFERRED STOCK

cumulative preferred stock. See STOCK.

CUMULATIVE PUNISHMENT

cumulative punishment. See PUNISHMENT.

CUMULATIVE REMEDY

cumulative remedy. See REMEDY.

CUMULATIVE SENTENCES

cumulative sentences. See consecutive sentences under SENTENCE.

CUMULATIVE STOCK

cumulative stock. See cumulative preferred stock under STOCK.

CUMULATIVE SUPPLEMENT

cumulative supplement. See POCKET PART.

CUMULATIVE TESTIMONY

cumulative testimony. See TESTIMONY.

CUMULATIVE TRAVERSE

cumulative traverse. See TRAVERSE.

CUMULATIVE VOTING

cumulative voting. See VOTING.

CUMULATIVE ZONING

cumulative zoning. See ZONING.

CUM VIRGINITAS VEL CASTITAS CORRUPTA RESTITUI NON POSSIT

cum virginitas vel castitas corrupta restitui non possit (k<<schwa>>m v<< schwa>>r-jin-i-tas vel kas-ti-tas k<<schwa>>-r<<schwa>>p-t<<schwa>> ri-stich-[y]oo-I non pahs-it). [Latin] Hist. & Scots law. Since virginity or chastity once violated cannot be restored. • The phrase was used to explain the basis for imposing severe punishment for rape.

CUPOS

CUPOS. abbr. A cohabiting unmarried person of the opposite sex. • Although this term is intended to be synonymous with “POSSLQ” (a person of the opposite sex sharing living quarters), it is more literally precise because it excludes married persons. See POSSLQ.

CUR.

cur. abbr. CURIA(3).

CURA

cura (kyoor-<<schwa>>), n. [Latin] Roman law. A guardianship that protects the interests of minors who are between puberty and the age of 25, or incapacitated persons. Pl. curae. Cf.

TUTELA.

“Cura was a form of guardianship indicated by the necessities of the case, with respect to persons who, though sui juris, were in need of protection. It was not regarded as a substitute for patria potestas as tutela was.... It extended to the person as well as the property, and in the latter respect is much the same as in the case of the tutela of infants.” R.W. Leage, *Roman Private Law* 122 (C.H. Ziegler ed., 2d ed. 1930).

cura furiosi (kyoor-<<schwa>> fyoor-ee-oh-sI). A guardianship for an insane person who was mentally inca-pacitated.

“The cura furiosi empowered and bound the curator to manage the property of the lunatic on the lunatic's behalf.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 492 (James Crawford Ledlie trans., 3d ed. 1907).

cura minoris (kyoor-<<schwa>> mi-nor-is). A form of guardianship for a minor under 25 whose capacity of action was complete, but whose judgment might be defective. Pl. cura minorum.

cura prodigi (kyoor-<<schwa>> prah-d<<schwa>>-jI). A form of guardianship for a spendthrift, usu. at the request of the person's agnatic family.

“The cura prodigi differed from the cura furiosi in that the prodigus, unlike the furiosus, was himself capable of performing any act by which he acquired a right or benefit. The appointment of a curator, however, precluded the prodigus from performing any act which operated to alienate property or to subject him to a liability; any such act, in order to be effectual, had to be concluded either by the curator on behalf of the prodigus or by the prodigus with the approval of the curator.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 492 (James Crawford Ledlie trans., 3d ed. 1907).

CURA ANIMARUM

cura animarum (kyoor-<<schwa>> an-<<schwa>>-mair-<<schwa>>m). [Law Latin] Hist. Eccles. law. The cure of souls; the care of souls.

CUR. ADV. VULT

cur. adv. vult.abbr.CURIA ADVISARI VULT.

CURATE

curate (kyuur-it).Eccles. law. 1. A person in charge of a parish; a pastor. 2. A member of the clergy who receives a stipend or salary to assist a vicar, rector, or pastor; an assistant to a parish priest. [Cases: Religious Societies 27. C.J.S. Religious Societies § 43.]

CURATIO

curatio (ky<<schwa>>-ray-shee-oh), n. [fr. Latin cura “care”] Roman law. 1. The power or duty of managing the interests of a youth or incapacitated person. 2. The office of a curator. Pl. curationes (ky<<schwa>>-ray-shee-oh-nee). See CURA.

CURATIVE ADMISSIBILITY

curative admissibility. See **ADMISSIBILITY**.

CURATIVE-ADMISSIBILITY DOCTRINE

curative-admissibility doctrine. See **DOCTRINE OF CURATIVE ADMISSIBILITY**.

CURATIVE INSTRUCTION

curative instruction. See **JURY INSTRUCTION**.

CURATIVE STATUTE

curative statute. See **STATUTE**.

CURATOR

curator (kyuur-⟨⟨schwa⟩⟩-t⟨⟨schwa⟩⟩r orkyuur-ay-t⟨⟨schwa⟩⟩r or kyuu-ray-tor), n.1. Roman law. (ital). A person who manages the affairs of another; a guardian. Pl. curatores (ky⟨⟨schwa⟩⟩r-⟨⟨schwa⟩⟩-tor-eez). See **CURA**.

“Although the control of a Tutor ceased when the Pupillus had attained manhood and become invested with his political rights, it must have frequently happened that the youth would be involved in business which he would be incapable of regulating with advantage at that early age, and would, at all events, if wealthy, be open to fraud and imposition. Hence arose the practice of nominating a Curator, whose authority extended to the twenty-fifth year of the ward, but who did not necessarily, like a Tutor, exercise a general superintendence, being frequently no-minated for one special purpose....Curatores were appointed also to manage the affairs of persons beyond the age of twenty-five, who, in consequence of being insane, deaf and dumb, or affected with some incurable disease, were incapable of attending to their own concerns.” William Ramsay, *A Manual of Roman Antiquities* 299–300 (Rodolfo Lanciani ed., 15th ed. 1894).

curator ad litem (kyuu-ray-tor ad II-t⟨⟨schwa⟩⟩m). A curator appointed by a court to represent the interests of a youth, or an incapacitated or unborn person, during the proceedings before the court. [Cases: *Infants* 76. C.J.S. *Infants* § 222.]

curator bonis (kyuu-ray-tor boh-nis). [Latin “a guardian of property”] 1. Roman law. A guardian appointed to care for property, esp. for the benefit of creditors. 2. Scots law. A person appointed by a court to manage an estate, esp. of a minor or an insane person. — Also termed *curator ad bona*.

curator bonorum (kyuu-ray-tor b⟨⟨schwa⟩⟩-nor-⟨⟨schwa⟩⟩m). A person appointed by a court to administer the estate of an insolvent person.

2. A temporary guardian or conservator appointed by a court to care for the property or person of a minor or incapacitated person. [Cases: *Guardian and Ward* 13(6).]

interim curator. Archaic. A person appointed by a justice of the peace to hold a felon's property until a royal administrator could be assigned the task.

3.Civil law. A guardian who manages the estate of a minor, an absent person, or an incapacitated person. Pl. curatores.[Cases: Absentees 5; Guardian and Ward 1. C.J.S. Absentees §§ 7–14.]

curator ad hoc (kyuu-ray-tor ad hok). A court-appointed curator who manages a single matter or transaction. See special guardian under GUARDIAN. [Cases: Absentees 5; Infants 76. C.J.S. Absentees §§ 7–14; In-fants § 222.]

curator rei (kyuu-ray-tor ree-I). [Latin] Scots law. A guardian of an estate, as distinguished from a tutor, who is a guardian of a person. — Also termed curator datur rei.

4.Parliamentary law. An officer charged with custody of an organization's valuable property.

CURATOR AD BONA

curator ad bona (kyuu-ray-tor ad boh-n<<schwa>>). See curator bonis under CURATOR(1).

CURATORSHIP

curatorship. The office of a curator or guardian.

dative curatorship.See dative tutorship under TUTORSHIP.

CURATORY

curatory,n. Scots law. The management by a curator of the affairs of someone incapable, esp. consent to the legal acts of a minor to cure the minor's legal incapacity.

CURATRIX

curatrix (kyuu-ray-triks).Archaic. A female curator.

CURB

curb. See TRADING CURB.

CURE

cure,n.1. A seller's right under the UCC to correct a nonconforming delivery of goods, usu. within the contract period. UCC § 2-508. [Cases: Sales 166(1). C.J.S. Sales §§ 176, 182.]

2.Maritime law. Restoration to health after disease or injury; medical attention and nursing care during a period of convalescence. See MAINTENANCE AND CURE; MAXIMUM CURE. — curative,adj.

cure,vb. To remove legal defects or correct legal errors. • For example, curing title involves removing defects from title to unmarketable land so that title becomes marketable.

CURE BY VERDICT

cure by verdict.See AIDER BY VERDICT.

CURFEW

curfew (k<<schwa>>r-fyoo). 1.Hist. A law requiring that all fires be extinguished at a certain time in the evening, usu. announced by the ringing of a bell. 2. A regulation that forbids people (or certain classes of them, such as minors) from being outdoors or in vehicles during specified hours. [Cases: Infants 13. C.J.S. Infants §§ 5, 92–93, 95–98.]

CURIA

curia (kyoor-ee-<<schwa>>), n. [Latin] 1.Roman law. One of 30 divisions (three tribes of ten curiae) into which the Roman people were said to be divided by Romulus. See comitia curiata under COMITIA. 2.Roman law. A legislative gathering, esp. of the Roman Senate; the building used for the gathering. 3.Hist. A judicial tribunal held in the sovereign's palace; a royal court. — Abbr. cur. 4.Hist. A court. 5. The papal court, including its functionaries and officials.

“The word curia in classical Latin is used in a number of ways. Apparently, it meant at first a subdivision of the people. It was also used, by a transfer which is not too clear, for the building in which the Roman Senate met. By an almost inevitable development it became the word for the Senate itself and later the ordinary designation for the Council in municipalities of the later Empire.... How much of this was still recalled in Medieval times, we cannot tell, but ... in the early Middle Ages, curia was a common word to describe both the groups of men who generally were found in attendance on pope, emperor, king or prince, and the groups which were summoned by him to give him counsel. The curia in the latter sense, however, was not really a casual group of persons, summoned spas-modically to advise the king or any other person. It had come to be in Feudal Europe the ordinary Latin word for the general meeting of the lord's vassals, which itself grew out of the Germanic mot or thing.... The Curia of the king was in theory a larger and more important example of the same kind of assemblage.” Max Radin, *Handbook of Anglo-American Legal History* 46–48 (1936).

CURIA ADMIRALITATIS

curia admiralitatis (kyoor-ee-<<schwa>> ad-m<<schwa>>-ral-<<schwa>>-tay-tis). [Law Latin] See HIGH COURT OF ADMIRALTY.

CURIA ADVISARI VULT

curia advisari vult (kyoor-ee-<<schwa>> ad-v<<schwa>>-sair-iv<<schwa>>lt). [Latin] The court will be advised; the court will consider. • This phrase signaled a court's decision to delay judgment pending further consideration. In England, the phrase is still used in all Court of Appeal decisions when the judgment is reserved; that is, not delivered after the hearing. — Abbr. cur. adv. vult; c.a.v.

CURIA BARONIS

curia baronis (kyoor-ee-<<schwa>> b<<schwa>>-roh-nis). [Law Latin] See COURT BARON .

CURIA BURGI

curia burgi (kyoor-ee-<<schwa>> b<<schwa>>-r-jI). See COURT OF HUSTINGS.

CURIA CANCELLARIA

curia cancellaria. See CANCELLARIA.

CURIA CHRISTIANITATIS

curia Christianitatis (kyoor-ee-⟨⟨schwa⟩⟩ kris-tee-an-⟨⟨schwa⟩⟩-tay-tis). [Law Latin “a court Christian”] Hist. An ecclesiastical court. See ecclesiastical court under COURT.

CURIA CLAUDENDA

curia claudenda (kyoor-ee-⟨⟨schwa⟩⟩ klaw-den-d⟨⟨schwa⟩⟩). See DE CURIA CLAUDENDA .

CURIA COMITATUS

curia comitatus (kyoor-ee-⟨⟨schwa⟩⟩ kom-⟨⟨schwa⟩⟩-tay-t⟨⟨schwa⟩⟩s). [Law Latin] See COUNTY COURT.

CURIA DOMINI

curia domini (kyoor-ee-⟨⟨schwa⟩⟩ dom-⟨⟨schwa⟩⟩-nI). [Law Latin “lord's court”] Hist. A lord's house or hall, used as a meeting place for tenants during court sessions.

CURIA MAGNA

curia magna (kyoor-ee-⟨⟨schwa⟩⟩ mag-n⟨⟨schwa⟩⟩). [Law Latin “great court”] Hist. An ancient name for Parliament.

CURIA PALATII

curia palatii (kyoor-ee-⟨⟨schwa⟩⟩ p⟨⟨schwa⟩⟩-lay-shee-I). [Law Latin “court of the palace”] PALACE COURT.

CURIA REGIS

Curia Regis (kyoor-ee-⟨⟨schwa⟩⟩ ree-jis). [Latin “king's court”] Hist. (sometimes not cap.)
1. The chief court in early Norman England, established by William the Conqueror. • The curia regis was a body of advisers who traveled with the king, advising him on political matters and acting as an appellate court in important or complicated cases. Over time the functions of the curia regis became exclusively judicial in nature. — Also termed King's Court; aula regis. — Abbr. C.R.

“[W]e are tempted to use terms which are more precise than those that were current in the twelfth century. In particular we are wont to speak of the Curia Regis without remembering that the definite article is not in our documents. Any court held in the king's name by the king's delegates is Curia Regis. Thus the institution of what in course of time will be a new tribunal, a Court of King's Bench or a Court of Common Pleas, may be found in some small rearrangement, some petty technical change, which at the moment passes unnoticed.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 153 (2d ed. 1898).

“[A small] body collects round the king, a body of administrators selected from the ranks of the baronage and of the clergy. At its head stands the chief-justiciar, the king's right-hand man, his viceroy when the king is, as often he is, in his foreign dominions.... This body when it sits for financial purposes constitutes the Exchequer (Scaccarium), so called from the chequered cloth which lies on the table, convenient for the counting of money. Also it forms a council and court of law for the king; it is a curia Regis, the king's court, and its members are justitiiarii, justiciars or justices of this court. Under Henry I they are sent into the counties to collect taxes and to hold pleas; they are then justitiiarii errantes, justitiiarii itinerantes. During the whole period the term curia Regis seems loosely used to cover both the sessions of this permanent body and the assembly of the tenants in chief; the former may perhaps be regarded as a standing committee of the latter.” F.W. Maitland, *The Constitutional History of England* 63–64 (1908; repr. 1955).

“The focal point of royal government was the curia regis (king's court), the body of advisers and courtiers who attended the king and supervised the administration of the realm. It was not a specific court of law, any more than the eyre was, but rather was the descendant of the Anglo-Saxon witengemot (meeting with the witan, or royal advisers) and the ancestor of the king's council which later subdivided into parliament and the privy council.” J.H. Baker, *An Introduction to English Legal History* 20 (3d ed. 1990).

2. The sessions of this court.

CURING TITLE

curing title. The act of removing defects from a land title to make it marketable.

CURRENCY

currency. An item (such as a coin, government note, or banknote) that circulates as a medium of exchange. See LEGAL TENDER. [Cases: United States 34. C.J.S. United States §§ 162–163.]

blocked currency. Currency or bank deposits that, by government restriction, may be used only within the country where they are located.

fractional currency. Paper money worth less than one dollar; esp., the currency issued by the federal government from 1863 to 1876.

hard currency. Currency backed by reserves, esp. gold and silver reserves.

national currency. Currency approved by a national government and placed in circulation as a medium of ex-change. See LEGAL TENDER. [Cases: United States 34. C.J.S. United States §§ 162–163.]

postal currency. A fractional currency bearing a facsimile of postage stamps during the Civil War.

soft currency. Currency not backed by reserves and therefore subject to sharp fluctuations in value.

United States currency. Currency issued under the authority of the federal government.

CURRENCY ARBITRAGE

currency arbitrage. See ARBITRAGE.

CURRENCY MARKET

currency market. See foreign-exchange market under MARKET.

CURRENCY SWAP

currency swap. See SWAP.

CURRENT ACCOUNT

current account. See ACCOUNT.

CURRENT ASSET

current asset. See ASSET.

CURRENT-COST ACCOUNTING

current-cost accounting. A method of measuring assets in terms of replacement cost. • This approach accounts for inflation by recognizing price changes in a company's assets and restating the assets in terms of their current cost.

CURRENTE TERMINO

currente termino (k<<schwa>>r-ren-tee t<<schwa>>r-mi-noh). [Law Latin] Scots law. During the currency of the term. • The phrase might be used in leases.

CURRENT EXPENSE

current expense. See operating expense under EXPENSE.

CURRENT FUNDS

current funds. See FUNDS(2).

CURRENT INCOME

current income. See INCOME.

CURRENT LIABILITY

current liability. 1. See short-term debt under DEBT. 2. LIABILITY.

CURRENT MARKET VALUE

current market value. The price at which an asset can be sold within the present accounting period.

CURRENT MONEY

current money. See MONEY.

CURRENT OBLIGATION

current obligation. See OBLIGATION.

CURRENT REVENUE

current revenue. See current income under INCOME.

CURRENT WAGES

current wages. See WAGE.

CURRENT YIELD

current yield. See YIELD.

CURRIT QUATTUOR PEDIBUS

currīt quattuor pedibus (k<<schwa>>r-it kwah-too-<<schwa>>r ped-<<schwa>>-b<<schwa>>s). [Law Latin] It runs on four feet; it runs on all fours. See ON ALL FOURS .

CURSITOR

cursor (k<<schwa>>r-s<<schwa>>-t<<schwa>>r). Hist. A chancery clerk responsible for making out original writs. • Cursor derives from the writs de cursu that the clerks wrote out.

CURSITOR BARON

cursor baron. Hist. An officer of the Court of Exchequer with administrative, but not judicial, duties. • Over time, as the Barons of the Exchequer took on more judicial rather than fiscal duties, the need for someone with financial experience became apparent. So in 1610 a cursor baron was appointed to sit alongside the judges. The office was abolished in 1856.

CURSOR

cursor (k<<schwa>>r-s<<schwa>>r). Eccles. law. An inferior officer of the papal court.

CURTESY

curtesy (k<<schwa>>r-t<<schwa>>-see). At common law, a husband's right, upon his wife's death, to a life estate in the land that his wife owned during their marriage, assuming that a child was born alive to the couple. • This right has been largely abolished. Traditionally, the full phrase was estate by the curtesy of England (or Scotland). — Also spelled (esp. in Scots law) courtesy. — Also termed tenancy by the curtesy. Cf. DOWER. [Cases: Dower and Curtesy 1. C.J.S. Dower §§ 2, 5–6, 136–138.]

curtesy consummate (k<<schwa>>r-t<<schwa>>-see k<<schwa>>n-s<<schwa>>m-it orkahn-s<<schwa>>-mit). The interest the husband has in his wife's estate after her death.

curtesy initiate (k<<schwa>>r-t<<schwa>>-see i-nish-ee-it). The interest the husband has in his wife's estate after the birth of issue capable of inheriting, and before the death of the wife.

CURTILAGE

curtilage (k<<schwa>>r-t<<schwa>>-lij). The land or yard adjoining a house, usu. within an enclosure. • Under the Fourth Amendment, the curtilage is an area usu. protected from warrantless searches. — Also termed (in Latin) curtillium. See OPEN-FIELDS DOCTRINE. Cf. MESSUAGE. [Cases: Searches and Seizures 27. C.J.S. Searches and Seizures §§ 36, 71.]

CURTILES TERRAE

curtiles terrae (k<<schwa>>r-tl-leez ter-ee). [Law Latin] COURT LANDS.

CURTILLIUM

curtillium (k<<schwa>>r-til-ee-<<schwa>>m). [Law Latin] CURTILAGE.

CUSHION

cushion. See EQUITY(7).

CUSHION BOND

cushion bond. See BOND(3).

CUSTODE ADMITTENDO

custode admittendo (k<<schwa>>-stoh-dee ad-mi-ten-doh). See DE CUSTODE ADMITTENDO .

CUSTODE AMOVENDO

custode amovendo (k<<schwa>>-stoh-dee ay-moh-ven-doh). See DE CUSTODE AMOVENDO.

CUSTODES LIBERTATIS ANGLIAE AUCTORITATE PARLIAMENTI

custodes libertatis angliae auctoritate parlamenti (k<<schwa>>-stoh-deez lib-<<schwa>>r-tay-tis ang-glee-ee awk-tor-<<schwa>>-tay-tee parl-[y]<<schwa>>-men-tl). [Latin] Hist. Guardians of the liberty of England by the authority of Parliament. • The style of all writs and judicial process that issued during the period between the execution of Charles I (January 1649) and the proclamation of Oliver Cromwell as Lord Protector (December 1653).

CUSTODES PACIS

custodes pacis (k<<schwa>>-stoh-deez pay-sis). [Latin] Hist. Guardians (or conservators) of the peace. See PEACE OFFICER.

CUSTODIAE CAUSA

custodiae causa (k<<schwa>>-stoh-dee-ee kaw-z<<schwa>>). [Latin] Scots law. For keeping; for preserving. • The phrase described a bailment's purpose.

CUSTODIAL ACCOUNT

custodial account. See ACCOUNT.

CUSTODIA LEGIS

custodia legis. See IN CUSTODIA LEGIS.

CUSTODIAL INTERFERENCE

custodial interference. Family law. 1. The abduction of a child or the inducement of a minor child to leave the parent legally entitled to custody or not to return to the parent entitled to legal custody. 2. Any hindrance to a parent's rightful access to a child. • The Restatement (Second) of Torts § 700 (1977) provides for an action in tort by the parent entitled to custody against one who, with knowledge that the parent does not consent, either takes the child or compels or induces the child to leave or not to return to the parent legally entitled to custody. — Also termed custody interference.

CUSTODIAL INTERROGATION

custodial interrogation. See INTERROGATION.

CUSTODIAL PARENT

custodial parent. See PARENT.

CUSTODIAL RESPONSIBILITY

custodial responsibility. Family law. Physical child custody and supervision, usu. including overnight responsibility for the child. • This term encompasses visitation and sole, joint, and shared custody. Both parents share responsibility for the child regardless of the amount of time they spend with the child. See CUSTODY.

CUSTODIAL TRUST

custodial trust. See TRUST.

CUSTODIAN

custodian, n. 1. A person or institution that has charge or custody (of a child, property, papers, or other valuables); GUARDIAN. • In reference to a child, a custodian has either legal or physical custody. See CAREGIVER. 2. Bankruptcy. A prepetition agent who has taken charge of any asset belonging to the debtor. 11 USCA § 101(11). [Cases: Bankruptcy 2021.1.] — custodianship, n.

CUSTODIAN BANK

custodian bank. See BANK.

CUSTODIA TERRAE ET HAEREDIS

custodia terrae et haeredis. See DE CUSTODIA TERRAE ET HAEREDIS.

CUSTODY

custody, n. 1. The care and control of a thing or person for inspection, preservation, or security.

constructive custody. Custody of a person (such as a parolee or probationer) whose freedom is

controlled by legal authority but who is not under direct physical control.

penal custody.Custody intended to punish a criminal offender. [Cases: Escape 1. C.J.S. Escape §§ 2–3, 5–10, 12, 27, 44.]

physical custody.See PHYSICAL CUSTODY(1).

preventive custody.Custody intended to prevent further dangerous or criminal behavior.

protective custody.The government's confinement of a person for that person's own security or well-being, such as a witness whose safety is in jeopardy or an incompetent person who may harm others. [Cases: Witnesses 20. C.J.S. Witnesses § 69.]

2.Family law. The care, control, and maintenance of a child awarded by a court to a responsible adult. • Custody involves legal custody (decision-making authority) and physical custody (caregiving authority), and an award of custody usu. grants both rights. In a divorce or separation proceeding between the parents, the court usu. awards custody to one of them, unless both are found to be unfit, in which case the court may award custody to a third party, typically a relative. In a case involving parental dereliction, such as abuse or neglect, the court may award custody to the state for placing the child in foster care if no responsible relative or family friend is willing and able to care for the child. — Also termed child custody; legal custody; managing conservatorship; parental functions. See managing conservator (2) under CONSERVATOR; PARENTING PLAN. [Cases: Child Custody 1–992. C.J.S. Parent and Child §§ 55–155, 157, 203, 321–325, 377.]

divided custody.An arrangement by which each parent has exclusive physical custody and full control of and responsibility for the child part of the time, with visitation rights in the other parent. • For example, a mother might have custody during the school year, and the father might have custody during the summer vacation. [Cases: Child Custody 210.]

joint custody.An arrangement by which both parents share the responsibility for and authority over the child at all times, although one parent may exercise primary physical custody. • In most jurisdictions, there is a rebuttable presumption that joint custody is in the child's best interests. Joint-custody arrangements are favored unless there is so much animosity between the parents that the child or children will be adversely affected by a joint-custody arrangement. An award of joint custody does not necessarily mean an equal sharing of time; it does, however, mean that the parents will consult and share equally in the child's upbringing and in decision-making about up-bringing. In a joint-custody arrangement, the rights, privileges, and responsibilities are shared, though not necessarily the physical custody. In a joint-custody arrangement, physical custody is usu. given to one parent. In fact, awards of joint physical custody, in the absence of extraordinary circumstances, are usu. found not to be in the best interests of the child. — Also termed shared custody; joint managing conservatorship. [Cases: Child Custody 120–155.]

“The statutes, and the cases as well, differ over the definition of joint custody. It is most often defined as meaning only that both parents will share in the decisions concerning the child's care, education, religion, medical treatment and general welfare.” Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 19.5, at 815 (2d ed. 1988).

legal custody. 1.CUSTODY(2), (3).2. The authority to make significant decisions on a child's behalf, including decisions about education, religious training, and healthcare.

physical custody.See PHYSICAL CUSTODY(2), (3).

residential custody.See PHYSICAL CUSTODY(2).

shared custody.See joint custody.

sole custody.An arrangement by which one parent has full control and sole decision-making responsibility — to the exclusion of the other parent — on matters such as health, education, religion, and living arrangements. [Cases: Child Custody 20–88. C.J.S. Parent and Child §§ 56–93.]

split custody.An arrangement in which one parent has custody of one or more children, while the other parent has custody of the remaining children. • Split custody is fairly uncommon, since most jurisdictions favor keeping siblings together.

3. The detention of a person by virtue of lawful process or authority. — Also termed legal custody. [Cases: Arrest 68(3). C.J.S. Arrest §§ 43–44.] — custodial,adj.

CUSTODY DECREE

custody decree.See DECREE.

CUSTODY DETERMINATION

custody determination.Family law. A court order determining custody and visitation rights. • The order typically does not include any instructions on child support or other monetary obligations.

CUSTODY EVALUATION

custody evaluation.See HOME-STUDY REPORT.

CUSTODY HEARING

custody hearing.See HEARING.

CUSTODY INTERFERENCE

custody interference.See CUSTODIAL INTERFERENCE.

CUSTODY OF THE LAW

custody of the law.The condition of property or a person being under the control of legal authority (as a court or law officer). See IN CUSTODIA LEGIS .

CUSTODY PROCEEDING

custody proceeding.Family law. An action to determine who is entitled to legal or physical custody of a child. • Legal custody gives one the right to make significant decisions regarding the child, and physical custody gives one the right to physical care and control of the child. See

CUSTODY; custody hearing under HEARING.

CUSTOM

custom,n.1. A practice that by its common adoption and long, unvarying habit has come to have the force of law. See USAGE. [Cases: Customs and Usages 1. C.J.S. Customs and Usages § 1.] — customary,adj.

conventional custom.A custom that operates only indirectly through the medium of agreements, so that it is accepted and adopted in individual instances as conventional law between the parties to those agreements. — Also termed usage. See USAGE.

general custom. 1. A custom that prevails throughout a country and constitutes one of the sources of the law of the land. [Cases: Customs and Usages 1–22. C.J.S. Customs and Usages §§ 1–48.] 2. A custom that businesses recognize and follow. See trade usage under USAGE.

legal custom.A custom that operates as a binding rule of law, independently of any agreement on the part of those subject to it. — Often shortened to custom.

local custom.A custom that prevails in some defined locality only, such as a city or county, and constitutes a source of law for that place only. — Also termed particular custom; special custom. [Cases: Customs and Usages 1–22. C.J.S. Customs and Usages §§ 1–48.]

2. (pl.) Duties imposed on imports or exports. 3. (pl.) The agency or procedure for collecting such duties.

CUSTOMAL

customal,n. See CUSTOMARY.

CUSTOM AND USAGE

custom and usage.General rules and practices that have become generally adopted through unvarying habit and common use. Cf. CUSTOM(1); USAGE. [Cases: Customs and Usages 1–22. C.J.S. Customs and Usages §§ 1–48.]

CUSTOMARY

customary,n. A record of all the established legal and quasi-legal practices within a community. — Also termed customal; customal.

CUSTOMARY COURT BARON

customary court baron.See COURT BARON.

CUSTOMARY DISPATCH

customary dispatch.See DISPATCH.

CUSTOMARY ESTATE

customary estate.See COPYHOLD.

CUSTOMARY FREEHOLD

customary freehold. See COPYHOLD.

CUSTOMARY INTERNATIONAL LAW

customary international law. See INTERNATIONAL LAW.

CUSTOMARY INTERPRETATION

customary interpretation. See INTERPRETATION.

CUSTOMARY LAW

customary law. Law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and intrinsic a part of a social and economic system that they are treated as if they were laws. — Also termed consuetudinary law.

“In contrast with the statute, customary law may be said to exemplify implicit law. Let us, therefore, describe customary law in terms that will reveal to the maximum this quality of implicitness. A custom is not declared or enacted, but grows or develops through time. The date when it first came into full effect can usually be assigned only within broad limits. Though we may be able to describe in general the class of persons among whom the custom has come to prevail as a standard of conduct, it has no definite author; there is no person or defined human agency we can praise or blame for its being good or bad. There is no authoritative verbal declaration of the terms of the custom; it expresses itself not in a succession of words, but in a course of conduct.” Lon L. Fuller, *Anatomy of the Law* 71 (1968).

CUSTOMARY SEISIN

customary seisin. See quasi-seisin under SEISIN.

CUSTOMARY TENANT

customary tenant. See TENANT.

CUSTOMERS' GOODS

customers' goods. See GOODS.

CUSTOMER'S MAN

customer's man. See registered representative under REPRESENTATIVE.

CUSTOMER'S PERSON

customer's person. See registered representative under REPRESENTATIVE.

CUSTOMHOUSE

customhouse. A building or office, esp. at a port, where duties or customs are collected and where ships are cleared for entering or leaving the port. — Also spelled customshouse.

CUSTOMHOUSE BROKER

customhouse broker. See **BROKER**.

CUSTOM OF YORK

custom of York. See **YORK, CUSTOM OF**.

CUSTOMS AND PATENT APPEALS, COURT OF

Customs and Patent Appeals, Court of. See **COURT OF CUSTOMS AND PATENT APPEALS**.

CUSTOMS BROKER

customs broker. See customhouse broker under **BROKER**.

CUSTOMS COOPERATION COUNCIL

Customs Cooperation Council. A specialized intergovernmental organization for the study of customs questions. • Established in 1952, the Council has its headquarters in Brussels. — Abbr. CCC.

CUSTOMS COURT, U.S.

Customs Court, U.S. See **UNITED STATES CUSTOMS COURT**.

CUSTOMS DUTY

customs duty. See **DUTY**(4).

CUSTOMS FRONTIER

customs frontier. Int'l law. The territorial boundary at which a country imposes customs duties.

CUSTOMS UNION

customs union. Int'l law. A combination of two or more countries within a single customs area with a common external tariff, though each participating country remains politically independent. • The effect is that tariffs originally levied on the traffic of goods between those countries are abolished or else successively dismantled according to an agreed-upon scheme, and that common tariffs are imposed on imports from non-members.

CUSTOS

custos (k<<schwa>>s-tahs alsok<<schwa>>s-t<<schwa>>s). [Latin] Hist. A keeper, protector, or guardian.

CUSTOS BREVIUM

Custos Brevium (k<<schwa>>s-tahs bree-vee-<<schwa>>m). [Law Latin “keeper of the writs”] Hist. A clerk who receives and files the writs returnable to the Courts of King's Bench and

Common Pleas. • The office was abolished in 1837. — Also termed Keeper of the Briefs.

CUSTOS MARIS

custos maris (k<<schwa>>s-tahs mar-is). [Law Latin “warden of the sea”] Hist. A high-ranking naval officer; an admiral. — Also termed seaward; seward.

CUSTOS MORUM

custos morum (k<<schwa>>s-tahs mor-<<schwa>>m). [Law Latin] Custodian of morals <H.L.A. Hart believed that courts should not be seen as the custos morum>. • This name was sometimes used in reference to the Court of King's Bench.

“[H]e [Viscount Simonds] approved the assertion of Lord Mansfield two centuries before that the Court of King's Bench was the custos morum of the people and had the superintendency of offences contra bonos mores.” Patrick Devlin, *The Enforcement of Morals* 88 (1968).

CUSTOS PLACITORUM CORONAE

custos placitorum coronae (k<<schwa>>s-tahs plas-<<schwa>>-tor-<<schwa>>m k<<schwa>>-roh-nee). [Law Latin] See CORONATOR.

CUSTOS ROTULORUM

Custos Rotulorum (k<<schwa>>s-tahs roch-y<<schwa>>-lor-<<schwa>>m or rot-y<<schwa>>-lor-<<schwa>>m). [Law Latin “keeper of the pleas of the Crown”] Hist. The principal justice of the peace in a county, responsible for the rolls of the county sessions of the peace. — Also termed Keeper of the Rolls.

CUSTOS SIGILLI

Custos Sigilli. See KEEPER OF THE GREAT SEAL.

CUSTOS SPIRITUALIUM

custos spiritualium (k<<schwa>>s-tahs spir-i-choo-ay-lee-<<schwa>>m or -tyoo-ay-lee-<<schwa>>m). [Law Latin “keeper of the spiritualities”] Eccles. law. A member of the clergy responsible for a diocese's spiritual jurisdiction during the vacancy of the see.

CUSTOS TERRAE

custos terrae (k<<schwa>>s-tahs ter-ee). [Law Latin “keeper of the land”] Hist. Guardian, warden, or keeper of the land.

CUSTUMA

custuma (k<<schwa>>s-ch<<schwa>>-m<<schwa>> or k<<schwa>>s-ty<<schwa>>-m<<schwa>>). [French coustum “toll” or “tribute”] Hist. A duty or impost.

CUSTUMAL

custumal, n. See CUSTOMARY.

CUTPURSE

cutpurse.Hist. A person who steals by cutting purses; a pickpocket.

CVA

CVA.abbr.United States Court of Veterans Appeals. See UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS .

CVSG

CVSG.abbr.A call for the view of the Solicitor General — an invitation from the U.S. Supreme Court for the Solicitor General's view on a pending petition for writ of certiorari in a case in which, though the government is not a party, governmental interests are involved.

CWTH.

Cwth.abbr.COMMONWEALTH(4).

CXT

CXT.abbr.See common external tariff under TARIFF(2).

CYBERCRIME

cybercrime. See computer crime under CRIME.

CYBERLAW

cyberlaw (sI-b<<schwa>>r-law). The field of law dealing with the Internet, encompassing cases, statutes, regulations, and disputes that affect people and businesses interacting through computers. • Cyberlaw addresses issues of online speech and business because of the nature of the medium, including intellectual-property rights, free speech, privacy, e-commerce, and safety, as well as questions of jurisdiction. — Also termed cyberspace law.

“Much of the hoopla about ‘cyberspace law’ relates more to climbing the steep learning curve of [the Internet's] technological complexities than to changes in fundamental legal principles. To the extent there was ‘new’ law, it was almost entirely case-by-case development, in accordance with accepted and well-understood basic legal principles, albeit applied to new technology and new circumstances.” Jay Dratler Jr., *Cyberlaw* § 1.01, at 1–3 (2001).

CYBERPATENT

cyberpatent. See business-method patent under PATENT(3).2. See Internet patent under PATENT(3).

CYBERPAYMENT

cyberpayment. A transfer of money over the Internet, usu. through a payment service. — Also termed Internet payment.

CYBERPIRACY

cyberpiracy.Trademarks. The act of registering a well-known name or mark (or one that is confusingly similar) as a website's domain name, usu. for the purpose of deriving revenue. • One form of cyberpiracy is cybersquatting. Another is using a similar name or mark to mislead consumers. For example, a site called Nikee.com that sold Nikee-branded athletic shoes and sporting goods would draw customers away from the famous Nike brand. [Cases: Trade Regulation 350.1. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 119.] — cyberpirate,n.

CYBERSPACE LAW

cyberspace law.See CYBERLAW.

CYBERSQUATTING

cybersquatting. The act of reserving a domain name on the Internet, esp. a name that would be associated with a company's trademark, and then seeking to profit by selling or licensing the name to the company that has an interest in being identified with it. • The practice was banned by federal law in 1999. See ANTICYBERS-QUATTING CONSUMER PROTECTION ACT. [Cases: Telecommunications 461.15. C.J.S. Telegraphs, Telephones, Radio, and Television § 221.]

CYBERSTALKING

cyberstalking. The act of threatening, harassing, or annoying someone through multiple e-mail messages, as through the Internet, esp. with the intent of placing the recipient in fear that an illegal act or an injury will be inflicted on the recipient or a member of the recipient's family or household.

CYBERTERRORISM

cyberterrorism. See TERRORISM.

CYBERTHEFT

cybertheft. The act of using an online computer service, such as one on the Internet, to steal someone else's property or to interfere with someone else's use and enjoyment of property. • Examples of cybertheft are hacking into a bank's computer records to wrongfully credit one account and debit another, and interfering with a copyright by wrongfully sending protected material over the Internet. [Cases: Telecommunications 461.15. C.J.S. Telegraphs, Telephones, Radio, and Television § 221.]

CYCLICAL

cyclical (sI-kl<<schwa>>-k<<schwa>>l orsik-l<<schwa>>-k<<schwa>>l), adj. (Of a stock or an industry) characterized by large price swings that occur because of government policy, economic conditions, and seasonal changes.

CY PRES

cy pres (see prayor sI). [Law French “as near as”] 1. The equitable doctrine under which a court reforms a written instrument with a gift to charity as closely to the donor's intention as

possible, so that the gift does not fail. • Courts use cy pres esp. in construing charitable gifts when the donor's original charitable purpose cannot be fulfilled. It is also used to distribute unclaimed portions of a class-action judgment or settlement funds to a charity that will advance the interests of the class. Cf. DOCTRINE OF APPROXIMATION . [Cases: Charities 37. C.J.S. Charities §§ 36–37.]

“The cy pres doctrine has been much discussed, if not a little severely criticised, and in many cases misunders-tood.... The cy pres doctrine is one under which Courts of Chancery act, when a gift for charitable uses cannot be applied according to the exact intention of the donor. In such cases the courts will apply the gift, as nearly as possible (cy pres) in conformity with the presumed general intention of the donor; for it is an established maxim in the interpretation of wills, that a court is bound to carry the will into effect if it can see a general intention consistent with the rules of law, even if the particular mode or manner pointed out by the testator cannot be followed.” George T. Bispham, *The Principles of Equity* § 104, at 113–14 (11th ed. 1931).

“Although the reason for the adoption of the cy pres rule by the English chancery court in the middle ages is not known, various hypotheses as to the motives of the court have been suggested. The most plausible theory is that the chancellors, being ecclesiastics and trained in Roman law, resurrected this civil law doctrine in order to save gifts made for religious purposes and thereby subject the property to church control. Justification for the use of the doctrine was laid on the shoulders of the donor, the idea being that since the object of the testator in donating the money to charity was to obtain an advantageous position in the kingdom of heaven, he ought not to be frustrated in this desire because of an unexpected or unforeseen failure.” Edith L. Fisch, *The Cy Pres Doctrine in the United States* 4 (1950).

2. A statutory provision that allows a court to reform a will, deed, or other instrument to avoid violating the rule against perpetuities. See RULE AGAINST PERPETUITIES.

CYROGRAPHARIUS

cyrographarius (sI-roh-gr<<schwa>>-fair-ee-<<schwa>>s). [Law Latin] Hist. See CHIROGRAPH(4).

CYROGRAPHUM

cyrographum (sI-rog-r<<schwa>>-f<<schwa>>m). [Law Latin] See CHIROGRAPH(2).