

**D.**

D.abbr.1.DISTRICT. 2.DEFENDANT. 3.DIGEST.

D.A.

D.A.abbr.1.DISTRICT ATTORNEY. 2. See deposit account under ACCOUNT.

**DACTYLOGRAPHY**

dactylography (dak-t<<schwa>>-log-r<<schwa>>-fee), n. The scientific study of fingerprints as a method of identification. — dactylographic (dak-til-<< schwa>>-graf-ik), adj.

DAF

DAF.abbr. DELIVERED AT FRONTIER.

**DAILIA**

dailia. See DALUS.

**DAILUS**

dailus. See DALUS.

**DAILY BALANCE**

daily balance. The final daily accounting for a day on which interest is to be accrued or paid.

average daily balance. The average amount of money in an account (such as a bank account or credit-card account) during a given period. • This amount serves as the basis for computing interest or a finance charge for the period.

**DAILY NEWSPAPER**

daily newspaper. See NEWSPAPER.

**DAISY CHAIN**

daisy chain. A series of purchases and sales of the same stock by a small group of securities dealers attempting to drive up the stock's price to attract unsuspecting buyers' interest. • Once the buyers have invested (i.e., are caught up in the chain), the traders sell for a quick profit, leaving the buyers with overpriced stock. This practice is illegal.

**DALUS**

dalus (day-l<<schwa>>s), n. [Law Latin “a dale”] Hist. 1. A dale; a ditch. 2. A measure of land being a thin strip of pasture between two plowed furrows. — Also termed dailus; dailia.

**DAMAGE**

damage,adj. Of or relating to monetary compensation for loss or injury to a person or property <a damage claim> <a damage award>. — Also termed damages <a damages claim>. Cf. DAMAGES.

damage,n. Loss or injury to person or property <actionable damage resulting from negligence>.

#### DAMAGE-CLEER

damage-cleer (dam-ij kleeer), n.[fr. Latin *damna clericorum* “clerk's compensation”] Hist. A set fee payable by a plaintiff to the Court of the Common Pleas, King's Bench, or Exchequer before execution on an award of damages. • The fee — later abolished by statute — was originally a gratuity to the court clerks for preparing special pleadings. It was later abolished by statute. — Also spelled *damage cleere*. — Also termed *damna clericorum*.

“Damage cleere, *damna clericorum*, was assessed by the tenth part in the common pleas, and by the twentieth part in the king's bench and exchequer, of all damages, exceeding five marks, recovered either by verdict, confession, or judgment of the court, in all actions upon the case, covenant, trespass, battery, false imprisonment, dower, and all others, wherein the damages were uncertain, which the plaintiff was obliged to pay to the prothonotary, or chief officer of that court, wherein they were recovered before he could have execution for them. But this is taken away by 17 Car. 2, c. 6.” *Termes de la Ley* 141 (1st Am. ed. 1812).

#### DAMAGE FEASANT

damage feasant (dam-ij fez-<<schwa>>nt orfee-z<<schwa>>nt), n.[fr. French *faisant dommage*] Hist. Doing damage. • This phrase usu. refers to injury to a person's land caused by another person's animals' trespassing on the property and eating the crops or treading the grass. By law, the owner of the damaged property could distrain and impound the animals until compensated by the animals' owner. But the impounder had to feed the animals and could not sell or harm them. The term was introduced during the reign of Edward III. — Also spelled *damage faisant*. — Also termed *damnum facientes*.

#### DAMAGE RULE

damage rule.See LEGAL-INJURY RULE.

#### DAMAGES

damages,n. pl. Money claimed by, or ordered to be paid to, a person as compensation for loss or injury <the plaintiff seeks \$8,000 in damages from the defendant>. — damage,adj.

“Damages are the sum of money which a person wronged is entitled to receive from the wrongdoer as compensation for the wrong.” Frank Gahan, *The Law of Damages* 1 (1936).

accumulative damages.Statutory damages allowed in addition to amounts available under the common law. — Also termed *enhanced damages*.

actual damages.An amount awarded to a complainant to compensate for a proven injury or

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loss; damages that repay actual losses. — Also termed compensatory damages; tangible damages; real damages. [Cases: Damages 15. C.J.S. Damages §§ 21–22.]

added damages. See punitive damages.

additional damages. Damages usu. provided by statute in addition to direct damages. • Additional damages can include expenses resulting from the injury, consequential damages, or punitive damages.

benefit-of-the-bargain damages. Damages that a breaching party to a contract must pay to the aggrieved party, equal to the amounts that the aggrieved party would have received, including profits, if the contract had been fully performed. — Also termed loss-of-bargain damages. [Cases: Damages 117.]

compensatory damages (k<<schwa>>m-pen-s<<schwa>>-tor-ee). 1. Damages sufficient in amount to indemnify the injured person for the loss suffered. — Often shortened to compensatories. 2. See actual damages. [Cases: Damages 15. C.J.S. Damages §§ 21–22.]

consequential damages. Losses that do not flow directly and immediately from an injurious act but that result indirectly from the act. [Cases: Damages 15–25. C.J.S. Damages §§ 21–38, 42; Parent and Child § 344.]

contemptuous damages. See nominal damages.

continuing damages. 1. Damages arising from the same injury. 2. Damages arising from the repetition of similar acts within a definite period.

cosmetic damages. The amount awarded to compensate for personal disfigurement.

damages for lost expectations. See expectation damages.

damages ultra (<<schwa>>l-tr<<schwa>>). Additional damages claimed by a plaintiff who is not satisfied with the amounts the defendant paid into court.

direct damages. See general damages.

discretionary damages. Damages (such as mental anguish or pain and suffering) that are not precisely measurable but are determined by the subjective judgment of a jury. — Also termed indeterminate damages.

double damages. Damages that, by statute, are twice the amount that the fact-finder determines is owed or twice the amount of actual damages awarded. • In some cases, double damages are awarded in addition to actual damages, so the effect is the same as treble damages. [Cases: Damages 227. C.J.S. Damages §§ 218–219, 383.]

enhanced damages. 1. See accumulative damages. 2. Patents. Damages for patent infringement in an amount up to three times that of compensatory damages, at the discretion of the court, based on the egregiousness of the defendant's conduct, including the willfulness of the infringement. [Cases: Patents 319(3). C.J.S. Patents § 569.]

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estimated damages. See liquidated damages.

excess damages. Damages awarded to an insured — beyond the coverage provided by an insurance policy — because the insurer did not settle the claim within policy limits. • If the insurer acted in bad faith in not settling, the insured may have a claim to recover the excess damages from the insurer. — Also termed excess-liability damages. [Cases: Insurance 3350. C.J.S. Insurance §§ 1160–1163, 1342.]

excessive damages. A jury award that grossly exceeds the amount warranted by law based on the facts and circumstances of the case; unreasonable or outrageous damages, which are subject to reduction by remittitur. See REMITTITUR. [Cases: Damages 127–140. C.J.S. Damages §§ 384–385, 387–394; Parent and Child § 344.]

exemplary damages. See punitive damages.

expectation damages. Compensation awarded for the loss of what a person reasonably anticipated from a transaction that was not completed. — Also termed expectancy damages; lost-expectation damages; damages for lost expectations. [Cases: Damages 23. C.J.S. Damages §§ 28–33.]

fee damages. Damages awarded to the owner of abutting property for injury caused by the construction and operation of an elevated railroad. • The term is used because the damage is to the property owner's easements of light, air, and access, which are parts of the fee.

foreseeable damages. Damages that a breaching party knew or should have known would result from a breach when the contract was made. [Cases: Damages 21. C.J.S. Damages §§ 30–33.]

future damages. Money awarded to an injured party for an injury's residual or projected effects, such as those that reduce the person's ability to function. • Examples are expected pain and suffering, loss or impairment of earning capacity, and projected medical expenses. [Cases: Damages 25. C.J.S. Damages § 42.]

general damages. Damages that the law presumes follow from the type of wrong complained of; specif., compensatory damages for harm that so frequently results from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved. • General damages do not need to be specifically claimed. — Also termed direct damages; necessary damages. [Cases: Damages 5. C.J.S. Damages §§ 3–6.]

gross damages. The total damages found before adjustments and offsets.

hedonic damages (hi-don-ik). Damages that attempt to compensate for the loss of the pleasure of being alive. • Such damages are not allowed in most jurisdictions. — Also termed (erroneously) hedonistic damages. [Cases: Damages 48–56.20. C.J.S. Damages §§ 94–104; Parent and Child § 344; Torts §§ 66–83.]

imaginary damages. See punitive damages.

inadequate damages. Damages insufficient to fully and fairly compensate the parties; damages bearing no reasonable relation to the plaintiff's injuries, indicating prejudice, mistake, or other fact to support setting aside a jury's verdict. [Cases: Damages 127–140. C.J.S. Damages §§ 384–385, 387–394; Parent and Child § 344.]

incidental damages. 1. Losses reasonably associated with or related to actual damages. 2. A seller's commercially reasonable expenses incurred in stopping delivery or in transporting and caring for goods after a buyer's breach. UCC § 2-710. [Cases: Sales 384(4).] 3. A buyer's expenses reasonably incurred in caring for goods after a seller's breach. UCC § 2-715(1). [Cases: Sales 418(19). C.J.S. Sales §§ 396, 400–401, 404–405.]

“What are incidental damages? The Code does not define incidental damages; rather 2–715(1) lists many expenses that are included as incidental damages. However, Comment 1 to 2–715 stresses that those listed ‘are not intended to be exhaustive’ but are merely illustrative of the typical kinds of incidental expenses that can be recovered under 2–715: (1) those associated with rightful rejection (for instance, inspection and storage); (2) those associated with a proper revocation of acceptance; and (3) those involved in effecting cover.” 1 James J. White & Robert S. Summers, Uniform Commercial Code § 10-3, at 561–62 (4th ed. 1995).

indeterminate damages. See discretionary damages.

intervening damages. Continuing damages that accrue during the pendency and prosecution of an unsuccessful appeal. • A lower court may include intervening damages in an award.

irreparable damages (i-rep-<<schwa>>-r<<schwa>>-b<<schwa>>l). Damages that cannot be easily ascertained because there is no fixed pecuniary standard of measurement, e.g., damages for a repeated public nuisance. — Also termed nonpecuniary damages.

land damages. See just compensation under COMPENSATION.

lawful damages. Those damages fixed by law and ascertained in a court of law.

liquidated damages. An amount contractually stipulated as a reasonable estimation of actual damages to be recovered by one party if the other party breaches. • If the parties to a contract have properly agreed on liquidated damages, the sum fixed is the measure of damages for a breach, whether it exceeds or falls short of the actual damages. — Also termed stipulated damages; estimated damages. See LIQUIDATED-DAMAGES CLAUSE. Cf. unliquidated damages; PENALTY CLAUSE. [Cases: Damages 74–84. C.J.S. Damages §§ 175–179, 184–194.]

“Where the terms of a contract specify a sum payable for non-performance, it is a question of construction whether this sum is to be treated as a penalty or as liquidated damages. The difference in effect is this: The amount recoverable in case of a penalty is not the sum named, but the damage actually incurred. The amount recoverable as liquidated damages is the sum named as such. In construing these terms a judge will not accept the phraseology of the parties; they may call the sum specified ‘liquidated damages,’ but if the judge finds it to be a penalty, he will treat it as such.” William R. Anson, Principles of the Law of Contract 470 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“The distinction between a penalty and genuine liquidated damages, as they are called, is not always easy to apply, but the Courts have made the task simpler by laying down certain guiding principles. In the first place, if the sum payable is so large as to be far in excess of the probable damage on breach, it is almost certainly a penalty. Secondly, if the same sum is expressed to be payable on any one of a number of different breaches of varying importance, it is again probably a penalty, because it is extremely unlikely that the same damage would be caused by these varying breaches. Thirdly, where a sum is expressed to be payable on a certain date, and a further sum in the event of default being made, this latter sum is prima facie a penalty, because mere delay in payment is unlikely to cause damage. Finally, it is to be noted that the mere use of the words ‘liquidated damages’ is not decisive, for it is the task of the Court and not of the parties to decide the true nature of the sum payable.” P.S. Atiyah, *An Introduction to the Law of Contract* 316–17 (3d ed. 1981).

loss-of-bargain damages. See benefit-of-the-bargain damages.

lost-expectation damages. See expectation damages.

moratory damages (mor-*<<schwa>>*-tor-ee or mahr-). Civil law. Damages for a delay in performing an obligation. La. Civ. Code arts. 1989, 1994. • There must be a default before these damages can be recovered, while compensatory damages are recoverable both for a failure of performance and for a defective performance.

multiple damages. Statutory damages (such as double or treble damages) that are a multiple of the amount that the fact-finder determines to be owed. — Also termed multiplied damages. See double damages; treble damages. [Cases: Damages 227. C.J.S. Damages §§ 218–219, 383.]

“[T]he statutory multiple damages differ from the common law punitive damages in that punitive damages involved no fixed sum or limit. The fixed limit of multiple damages not only reduces their threat to the defendant and the potential for abuse, it also reduces the possibility of a measured deterrence. Likewise, because the enhancement of the award is fixed by the statutory multiple, there is no occasion for introducing evidence of the defendant's wealth as there is in the case of common law punitive damages .... Perhaps a more important distinction is that multiple damages statutes may be enacted for entirely non-punitive purposes. Specifically, some double or treble damages statutes, and also specified ‘civil penalties,’ are intended to provide a kind of liquidated damages for actual losses that cannot be proved or that are otherwise unrecognized by the law.” Dan B. Dobbs, *Law of Remedies* § 3.12, at 359 (2d ed. 1993).

necessary damages. See general damages.

nominal damages. 1. A trifling sum awarded when a legal injury is suffered but when there is no substantial loss or injury to be compensated. 2. A small amount fixed as damages for breach of contract without regard to the amount of harm. — Also termed contemptuous damages. Cf. substantial damages. [Cases: Damages 8–14. C.J.S. Damages §§ 3, 12–20.]

“Nominal damages are damages awarded for the infraction of a legal right, where the extent of the loss is not shown, or where the right is one not dependent upon loss or damage, as in the

case of rights of bodily immunity or rights to have one's material property undisturbed by direct invasion. The award of nominal damages is made as a judicial declaration that the plaintiff's right has been violated." Charles T. McCormick, *Handbook on the Law of Damages* § 20, at 85 (1935).

"Nominal damages are awarded if the plaintiff establishes a breach of contract or a tort of the kind that is said to be 'actionable per se' but fails to establish a loss caused by the wrong. In the case of tort not actionable per se as, for example, negligence, if the plaintiff fails to establish a loss, the action will be dismissed. The practical significance of a judgment for nominal damages is that the plaintiff thereby establishes a legal right. The judgment has the effect of a declaration of legal rights and may deter future infringements or may enable the plaintiff to obtain an injunction to restrain a repetition of the wrong. The obtaining of nominal damages will also, in many cases, entitle a plaintiff to costs .... [Also,] nominal damages might serve as a peg upon which to hang an award of exemplary damages." S.M. Waddams, *The Law of Damages* 477–78 (3d ed. 1997).

nonpecuniary damages.Damages that cannot be measured in money. See irreparable damages.

particular damages.See special damages.

pecuniary damages (p<<schwa>>-kyoo-nee-er-ee). Damages that can be estimated and monetarily compensated. • Although this phrase appears in many old cases, it is now widely considered a redundancy — since damages are always pecuniary.

permanent damages.Damages for past, present, and future harm that cannot be avoided or remedied.

presumptive damages.See punitive damages.

prospective damages.Future damages that, based on the facts pleaded and proved by the plaintiff, can reasonably be expected to occur. [Cases: Damages 25. C.J.S. Damages § 42.]

proximate damages.Damages directly, immediately, and naturally flowing from the act complained of. Cf. speculative damages (1). [Cases: Damages 18. C.J.S. Damages §§ 23–25, 27.]

punitive damages.Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit; specif., damages assessed by way of penalizing the wrongdoer or making an example to others. • Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract. The Supreme Court has held that three guidelines help determine whether a punitive-damages award violates constitutional due process: (1) the reprehensibility of the conduct being punished; (2) the reasonableness of the relationship between the harm and the award; and (3) the difference between the award and the civil penalties authorized in comparable cases. *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996). — Also termed exemplary damages; vindictive damages; punitory damages; presumptive damages; added damages; aggravated damages; speculative damages; imaginary damages; smart money; punies. [Cases: Damages 87–94. C.J.S. Damages §§ 183, 195–217.]

“Although compensatory damages and punitive damages are typically awarded at the same time by the same decisionmaker, they serve distinct purposes. The former are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. The latter, which have been described as ‘quasi-criminal,’ operate as ‘private fines’ intended to punish the defendant and to deter future wrongdoing. A jury's assessment of the extent of a plaintiff's injuries is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation.” *Cooper Indus. v. Leatherman Tool*, 532 U.S. 424, 432, 121 S.Ct. 1678, 1683 (2001)(per Stephens, J.).

real damages.See actual damages.

reliance damages.Damages awarded for losses incurred by the plaintiff in reliance on the contract. [Cases: Damages 22.]

“Reliance damages are ... ‘real’ losses in a much more tangible way than losses of expectations. The distinction is nicely illustrated by *McRae v. Commonwealth Disposals Commission*.... In this case, ... the defendants sold a shipwrecked tanker which they advertised as lying on a certain reef in the Pacific, and the plaintiffs spent a substantial sum of money equipping a salvage expedition to go in search of the ship. The ship was wholly non-existent, and the plaintiffs were held entitled to damages. Here it was clear that the plaintiffs had incurred substantial expenses — real losses — in reliance on the contract, and the Australian High Court awarded these reliance damages to the plaintiffs.” P.S. Atiyah, *An Introduction to the Law of Contract* 311 (3d ed. 1981).

reliance-loss damages.A reimbursement for losses or expenses that the plaintiff suffers in reliance on the defendant's contractual promise that has been breached.

remote damages.See speculative damages (1).

rescissory damages (ri-sis-<<schwa>>-ree or ri-siz-). Damages contemplated to restore a plaintiff to the position occupied before the defendant's wrongful acts.

restitution damages.Damages awarded to a plaintiff when the defendant has been unjustly enriched at the plaintiff's expense.

“Suppose A pays money to B in pursuance of a contract which turns out to be void, or perhaps is subsequently frustrated: clearly A cannot sue B for breach of contract. B's promise to perform his side of the bargain is vitiated by the mistake or the frustrating event, so A's lost expectations are losses which he must just put up with. But his claim to repayment of the money is evidently much stronger: for this money is a tangible loss to A and a tangible enrichment to B. So in this sort of case the money will often be recoverable, though English lawyers think of this as a quasi-contractual claim to recover money as on a total failure of consideration, and not a contractual claim to restitution damages. There is, however, no strong reason for refusing to call this a contractual action, any more than there is a reason for calling an action for damages quasi-contractual.” P.S. Atiyah, *An Introduction to the Law of Contract* 312 (3d ed. 1981).

severance damages.In a condemnation case, damages awarded to a property owner for



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diminution in the fair market value of land as a result of severance from the land of the property actually condemned; compensation awarded to a landowner for the loss in value of the tract that remains after a partial taking of the land. [Cases: Eminent Domain 95–96. C.J.S. Eminent Domain §§ 84, 86, 105, 126–127, 142, 147, 152–153.]

special damages. Damages that are alleged to have been sustained in the circumstances of a particular wrong. • To be awardable, special damages must be specifically claimed and proved. — Often shortened to specials. — Also termed particular damages. See Fed. R. Civ. P. 9(g). [Cases: Damages 5. C.J.S. Damages §§ 3–6.]

speculative damages. 1. Damages that are so uncertain to occur that they will not be awarded. — Also termed remote damages. 2. See punitive damages.

statutory damages. Damages provided by statute (such as a wrongful-death-and-survival statute), as distinguished from damages provided under the common law. [Cases: Death 80.]

stipulated damages. See liquidated damages.

substantial damages. A considerable sum awarded to compensate for a significant loss or injury. Cf. nominal damages. [Cases: Damages 6, 10. C.J.S. Damages §§ 38–41, 299.]

“Substantial damages ... are the result of an effort at measured compensation, and are to be contrasted with nominal damages which are in no sense compensatory, but merely symbolic.” Charles T. McCormick, *Handbook on the Law of Damages* § 20, at 85 (1935).

tangible damages. See actual damages.

temperate damages. Rare. Reasonable damages.

temporary damages. Damages allowed for an intermittent or occasional wrong, such as a real-property injury whose cause can be removed or abated. [Cases: Damages 39. C.J.S. Damages § 57.]

treble damages. Damages that, by statute, are three times the amount that the fact-finder determines is owed. — Also termed triple damages. [Cases: Damages 227. C.J.S. Damages §§ 218–219, 383.]

uncertain damages. Damages that are not clearly the result of a wrong. • The rule against allowing recovery of uncertain damages refers to these damages, not damages that are uncertain only in amount. [Cases: Damages 6. C.J.S. Damages §§ 38–41, 299.]

unliquidated damages. Damages that cannot be determined by a fixed formula and must be established by a judge or jury. Cf. liquidated damages. [Cases: Damages 1, 6, 194. C.J.S. Damages §§ 1–2, 4–6, 38–41, 299.]

vindictive damages. See punitive damages.

DAMAGES, MITIGATION OF

damages, mitigation of. See MITIGATION-OF-DAMAGES DOCTRINE.

#### DAMAGES CLAUSE

damages clause. See SURFACE-DAMAGE CLAUSE.

#### DAMAGES FOR DETENTION

damages for detention. See noncontract demurrage under DEMURRAGE.

#### DAME

dame. 1. The legal title of the wife of a knight or baronet. 2. The female equivalent of a knight. 3. A form of address to a woman of high rank. 4. A matron. 5. Slang. A woman. — Also termed (in senses 1 & 2) *domina*.

#### DAMNA

damna (dam-n<<schwa>>), n. [fr. Latin *damnum* “damage; loss”] Hist. 1. Damages, exclusive of costs. 2. Damages, inclusive of costs. 3. The abbreviation of *damna clericorum*, the Latin equivalent to *damage-cleer*, being a portion of damages constituting the clerk's fee. See *DAMAGE-CLEER*.

#### DAMNA CLERICORUM

*damna clericorum* (dam-n<<schwa>> kler-<<schwa>>-kor-<<schwa>>m), n. See *DAMAGE-CLEER R.*

#### DAMNATUS

damnatus (dam-nay-t<<schwa>>s), n. [fr. Latin *damnare* “to condemn”] 1. Roman law. A person condemned, esp. in a capital case. 2. Hist. Something prohibited by law; something that is unlawful, as in *damnatus coitus* (“unlawful sexual connection”).

#### DAMN-FOOL DOCTRINE

damn-fool doctrine. Insurance. The principle that an insurer may deny (esp. liability) coverage when an insured engages in behavior that is so ill-conceived that the insurer should not be compelled to bear the loss resulting from the insured's actions. — Also termed *damned-fool doctrine*.

“The ‘damn foolish acts’ concept is not a perfect predictor of judicial decisions, both because of its own imprecision and because other considerations, such as a desire to assure an innocent third party a source of indemnification, may influence a court. However, especially when ... the insured who acted foolishly has sufficient resources to provide compensation to the injured persons, analysis of a coverage issue on the basis of a ‘damn fool’ doctrine is frequently a very effective approach both to predicting and to understanding outcomes.” Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 5.4, at 541 (1988).

## DAMNIFICATION

damnification, n. Something that causes damage <damnification in the form of a penalty>.

## DAMNIFY

damnify, vb. To cause loss or damage to; to injure <the surety was damnified by the judgment obtained against it>.

## DAMNI INJURIA ACTIO

damni injuria actio (dam-nĭ in-joor-ee-<<schwa>> ak-shee-oh). [Latin "an action for wrongful damage"] See actio damni injuria under ACTIO.

## DAMNOSA AUT LUCROSA

damnosa aut lucrosa (dam-noh-s<<schwa>> awt loo-kroh-s<<schwa>>). [Latin] Hist. Disadvantageous or advantageous. • The heir to a succession had to determine whether it was hurtful or advantageous to him to take up the estate before actually doing so. See ANNUS DELIBERANDI.

## DAMNOSA HEREDITAS

damnosa hereditas (dam-noh-s<<schwa>> h<<schwa>>-red-i-tas), n. [Latin "an injurious inheritance"] 1. Roman & civil law. An inheritance more onerous than beneficial, esp. because it is burdened with debt. 2. English law. A bankrupt debtor's property that creditors will disclaim under the bankruptcy laws because debt on the property will exceed revenues. 3. Generally, anything that is acquired but turns out to be disadvantageous. — Also spelled damnosa haereditas.

## DAMNOUS

damnous (dam-n<<schwa>>s), adj. Causing loss or damage.

## DAMNO VITANDO

damno vitando. See CERTANS DE DAMNO VITANDO; IN DAMNO VITANDO.

## DAMNUM

damnum (dam-n<<schwa>>m), n. [Latin] A loss; damage suffered. Pl. damna.

## DAMNUM ABSQUE INJURIA

damnum absque injuria (dam-n<<schwa>>m ab-skwee in-joor-ee-<<schwa>>). See DAMNUM SINE INJURIA.

## DAMNUM EMERGENS

damnum emergens (dam-n<<schwa>>m i-m<<schwa>>r-jenz). [Latin "damage arising"] Hist. An actual realized loss (such as a decline in the value of property) as opposed to an expected future loss (such as loss of profit); consequential loss.

“These kinds of damage are distinguished by the commentators as *damnum emergens* and *lucrum cessans*, which may be rendered ‘positive damage’ and ‘loss of profit.’ The first may be immediate (e.g., my slave is killed or has lost an eye), or consequential (I have lost his services — I have incurred medical expenses — he was one of a troupe of singers and the whole troupe is less valuable in consequence of his death or injury). Where there is no pecuniary loss there is no action. An action does not lie ... for striking a slave if his value to me has not been depreciated by the blow nor for trespass to land unattended by damage.” R.W. Lee, *The Elements of Roman Law* 394 (4th ed. 1956).

#### DAMNUM ET INTERESSE

*damnum et interesse* (dam-n<<schwa>>m et in-t<<schwa>>r-es-ee). [Latin] Scots law. The loss and damage sustained.

“*Damnum et interesse*. — The loss and interest; or, as the words may also be translated, damage, and its issues or consequences. The words are used by Erskine in treating of the liability of cautioners who become bound to see a specific act performed. Failing performance, the cautioners are liable to the creditors for the *damnum et interesse* — that is, the actual and consequential damage suffered through non-performance on the part of the debtor.” John Trayner, *Trayner's Latin Maxims* 134 (4th ed. 1894).

#### DAMNUM FACIENTES

*damnum facientes* (dam-n<<schwa>>m fay-shee-en-teez), n. See DAMAGE FEASANT.

#### DAMNUM FATALE

*damnum fatale* (dam-n<<schwa>>m f<<schwa>>-tay-lee). [Latin “unavoidable damage”] Roman law. Damage caused by an unavoidable circumstance, such as a storm or a shipwreck, for which bailees or others will not be held liable. • But an exception was made for damages resulting from theft.

“The liability of innkeepers, carriers, and stable keepers, at Roman law, was provided for in the praetor's edict. They were under an obligation to restore all goods which the guests or passengers had with them, or left in their charge, and they could not defend themselves by showing the utmost degree of diligence. Unavoidable accident, which no human prudence would avert or provide against, *damnum fatale*, or overwhelming force, *vis maior*, were, however, an adequate defense .... It was particularly noted that theft by a third person would not be permitted as a defense and the reason assigned was the fact that travelers have scarcely any chance to protect themselves against collusion between the innkeeper and the thief.” Max Radin, *Handbook of Roman Law* 254 (1927).

#### DAMNUM INFECTUM

*damnum infectum* (dam-n<<schwa>>m in-fek-t<<schwa>>m). [Latin] Roman law. Loss not yet suffered but threatened or apprehended, as when a neighbor's building is likely to collapse onto one's property.

## DAMNUM INJURIA DATUM

damnum injuria datum (dam-n<<schwa>>m in-joor-ee-<<schwa>> day-t<<schwa>>m). [Latin] Roman law. Willful or negligent damage to corporeal property; damage for which compensation was given under the Aquilian law. • In this phrase, the word damnum refers to economic loss, not the physical damage (if any). See *actio legis Aquiliae* under ACTIO.

## DAMNUM SINE INJURIA

damnum sine injuria (dam-n<<schwa>>m sI-nee in-joor-ee-<<schwa>> orsin-ay). [Latin “damage without wrongful act”] Loss or harm that is incurred from something other than a wrongful act and occasions no legal remedy. • An example is a loss from fair trade competition. — Also termed *damnum absque injuria*; *absque injuria damnum*; *absque injuria*. Cf. INJURIA ABSQUE DAMNO. [Cases: Damages 3. C.J.S. Damages § 7.]

“There are cases in which the law will suffer a man knowingly and wilfully to inflict harm upon another, and will not hold him accountable for it. Harm of this description — mischief that is not wrongful because it does not fulfil even the material conditions of responsibility — is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law (*in jus*), not in its modern and corrupt sense of harm.” John Salmond, *Jurisprudence* 372–73 (Glanville L. Williams ed., 10th ed. 1947).

“There are many forms of harm of which the law takes no account. Damage so done and suffered is called *damnum sine injuria*, and the reasons for its permission by the law are various and not capable of exhaustive statement. For example, the harm done may be caused by some person who is merely exercising his own rights; as in the case of the loss inflicted on individual traders by competition in trade, or where the damage is done by a man acting under necessity to prevent a greater evil.” R.F.V. Heuston, *Salmond on the Law of Torts* 13 (17th ed. 1977).

## DAN

Dan (dan), n.[fr. Latin *dominus*] Archaic. In England, an honorable title for a man; the English equivalent of the Spanish *Don*. • The term was replaced by the terms *Master*, *Mister*, and *Sir*.

## D &amp; O LIABILITY INSURANCE

D & O liability insurance. See *directors' and officers' liability insurance* under INSURANCE.

## DANELAW

danelaw (dayn-law). Hist. 1. A system of rules, introduced by the Danes during their invasions of England primarily in the ninth century and maintained principally in the midland and eastern counties where the invasions occurred. • Danelaw was the prevailing law in these regions from the reign of King Edgar to Edward the Confessor, who compiled a uniform law that included some Danelaw components. 2. The counties in England where the Danish law was enforced primarily in the ninth and tenth centuries. — Also termed *danelage*; *lex Danorum*; *denelage*.

“The Danish invasions of the ninth century subjected the eastern parts of the island to new Scandinavian influences. Where the Danes conquered, their ‘Danelaw’ prevailed. The very word ‘law’ is believed to have been given to the English language by the Danes.” J.H. Baker, *An Introduction to English Legal History* 3 (3d ed. 1990).

#### DANGER

danger. 1. Peril; exposure to harm, loss, pain, or other negative result. 2. A cause of peril; a menace.

apparent danger. 1. Obvious danger; real danger. — Also termed patent danger. 2. Criminal law. The perceived danger in one person's actions toward another, as a result of which it seems necessary for the threatened person to use force in self-defense. See SELF-DEFENSE. [Cases: Homicide 787.]

deterrent danger. An obvious danger that an occupier of land creates to discourage trespassers, such as a barbed-wire fence or spikes on the top of a wall.

extraordinary danger. See extraordinary hazard under HAZARD.

imminent danger. 1. An immediate, real threat to one's safety that justifies the use of force in self-defense. 2. Criminal law. The danger resulting from an immediate threatened injury sufficient to cause a reasonable and prudent person to defend himself or herself. [Cases: Homicide 789.]

patent danger. See apparent danger (1).

retributive danger. A concealed danger that an occupier of land creates to injure trespassers. • A retributive danger is lawful only to the extent that it could be justified if the occupier had inflicted the injury personally or directly to the trespasser. Thus, a spring gun or a land mine is an unlawful means of defending land against a trespasser.

seeming danger. Danger that a reasonable person would perceive to be real, even if it is not.

unavoidable danger. 1. Inescapable danger. 2. A danger that is unpreventable, esp. by a person operating a vessel.

#### DANGER-CREATION DOCTRINE

danger-creation doctrine. The theory that if a state's affirmative conduct places a person in jeopardy, then the state may be liable for the harm inflicted on that person by a third party. • This is an exception to the general principle that the state is not liable for an injury that a third party inflicts on a member of the public. — Also termed danger-creation exception. Cf. SPECIAL-RELATIONSHIP DOCTRINE. [Cases: States 112.2(1).]

#### DANGERIA

dangeria, n. Hist. Payment by forest tenants to the lord so that they can plow and sow in the same season as pannage. See PANNAGE.

#### DANGER-INVITES-RESCUE DOCTRINE

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danger-invites-rescue doctrine. See RESCUE DOCTRINE.

#### DANGER OF NAVIGATION

danger of navigation. See PERIL OF THE SEA.

#### DANGER OF RIVER

danger of river. See PERIL OF THE SEA.

#### DANGER OF THE SEA

danger of the sea. See PERIL OF THE SEA.

#### DANGEROUS

dangerous, adj. 1. (Of a condition, situation, etc.) perilous; hazardous; unsafe <a dangerous intersection>. 2. (Of a person, an object, etc.) likely to cause serious bodily harm <a dangerous weapon> <a dangerous criminal>.

imminently dangerous. (Of a person, behavior, activity, or thing) reasonably certain to place life and limb in peril. • This term is relevant in several legal contexts. For example, if a mental condition renders a person imminently dangerous to self or others, he or she may be committed to a mental hospital. And the imminently dangerous behavior of pointing a gun at someone's head could subject the actor to criminal and tort liability. Further, the manufacturer of an imminently dangerous product may be held to a strict-liability standard in tort.

inherently dangerous. (Of an activity or thing) requiring special precautions at all times to avoid injury; dangerous per se. See DANGEROUS INSTRUMENTALITY; INHERENTLY DANGEROUS ACTIVITY.

#### DANGEROUS CONDITION

dangerous condition. See CONDITION(4).

#### DANGEROUS CONDUCT

dangerous conduct. See unreasonably dangerous conduct under CONDUCT.

#### DANGEROUS CRIMINAL

dangerous criminal. See CRIMINAL.

#### DANGEROUS DRUG

dangerous drug. See DRUG.

#### DANGEROUS EXPOSURE

dangerous exposure. See EXPOSURE.

#### DANGEROUS INSTRUMENTALITY

dangerous instrumentality. An instrument, substance, or condition so inherently dangerous that it may cause serious bodily injury or death without human use or interference. • It may serve as the basis for strict liability. See ATTRACTIVE-NUISANCE DOCTRINE. Cf. deadly weapon under WEAPON. [Cases: Negligence 305–307, 1172–1178. C.J.S. Negligence §§ 170, 176–179, 399, 476–477, 494–526.]

#### DANGEROUS LUNATIC

dangerous lunatic. See LUNATIC.

#### DANGEROUS OCCUPATION

dangerous occupation. See OCCUPATION.

#### DANGEROUS-PROPENSITY TEST

dangerous-propensity test. See DANGEROUS-TENDENCY TEST.

#### DANGEROUS-PROXIMITY TEST

dangerous-proximity test. Criminal law. A common-law test for the crime of attempt, focusing on whether the defendant is dangerously close to completing the offense. • Factors include the gravity of the potential crime, the apprehension of the victim, and the uncertainty of the crime's occurrence. See ATTEMPT(2). [Cases: Criminal Law 44. C.J.S. Criminal Law §§ 114–123.]

#### DANGEROUS SITUATION

dangerous situation. Under the last-clear-chance doctrine, the circumstance in which a plaintiff operating a motor vehicle has reached a perilous position (as on the path of an oncoming train) that cannot be escaped by the exercise of ordinary care. — Also termed situation of danger. See LAST-CLEAR-CHANCE DOCTRINE. [Cases: Automobiles 227. C.J.S. Motor Vehicles §§ 963–970.]

#### DANGEROUS-TENDENCY TEST

dangerous-tendency test. A propensity of a person or animal to inflict injury. • The test is used, esp. in dog-bite cases, to determine whether an owner will be held liable for injuries caused by the owner's animal. — Also termed dangerous-propensity test. [Cases: Animals 70. C.J.S. Animals §§ 172, 176–183, 186, 188–189, 198, 200.]

#### DANGEROUS WEAPON

dangerous weapon. See WEAPON.

#### DANGER-UTILITY TEST

danger-utility test. See RISK-UTILITY TEST.

#### DANISM

danism (dan-iz-<<schwa>>m), n. [fr. Greek daneismos “a loan”] Hist. The lending of money



on usury.

#### DARDEN<TT> HEARING

Darden hearing. Criminal procedure. An ex parte proceeding to determine whether disclosure of an informer's identity is pertinent to establishing probable cause when there is otherwise insufficient evidence to establish probable cause apart from the arresting officer's testimony about an informer's communications. • The defense attorney may be excluded from the hearing but can usu. submit questions to be used by the judge in the examination. *People v. Darden*, 313 N.E.2d 49 (N.Y. 1974). [Cases: Criminal Law 627.10. C.J.S. Criminal Law §§ 533–540.]

#### DARE

dare (dair-ee), vb. [Latin “to give”] Roman law. 1. To give; to transfer (something, esp. property). • The transfer can be made to discharge a debt, to create an obligation, or to make a gift. 2. To appoint a representative.

#### DARE AD REMANENTIAM

dare ad remanentiam (dair-ee ad rem-<<schwa>>-nen-shee-<<schwa>>m), vb. [Latin “to give in fee or forever”] To transfer (esp. a remainder) in fee or forever.

#### DARPA

DARPA.abbr.DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.

#### DARRAIGN

darraign (d<<schwa>>-rayn), vb. [fr. Latin *derationare*; fr. French *disrener*] Hist. 1. To displace; to disarrange. 2. To respond to an accusation; to settle a dispute. — Also spelled *deraigh*; *dereyne*.

#### DARREIN

darrein (dar-ayn), adj. [fr. French *dernier* “the last”] The last, as in *darrein presentment* (“the last presentment”). See *DARREIN CONTINUANCE*; *assize of darrein presentment* under *ASSIZE*(8).

#### DARREIN CONTINUANCE

darrein continuance (dar-ayn k<<schwa>>n-tin-yoo-<<schwa>>nts), n. [fr. French *dernier continuance* “the last continuance”] Hist. Every plea of a new matter after the last entry of a plea on the record. • Every entry of a pleading after the first pleading on the record was called a continuance. — Also spelled *dareyne continuance*.

#### DARREIN PRESENTMENT

darrein presentment (dar-ayn pri-zent-m<<schwa>>nt), n. See *assize of darrein presentment* under *ASSIZE*(8).

#### DARREIN SEISIN

darrein seisin (dar-ayn see-zin), n.[French "last seisin"] Hist. A tenant's plea in a writ of right. See SEISIN.

#### DATABASE

database. A compilation of information arranged in a systematic way and offering a means of finding specific elements it contains, often today by electronic means. • Unless the information itself is original, a database is not protected by U.S. copyright law. Elsewhere, it may be protected as a distinct class of "literary works," or it may be the subject of sui generis intellectual-property laws. See SWEAT-OF-THE-BROW DOCTRINE. [Cases: Copyrights and Intellectual Property 12(3).]

#### DATABASE DIRECTIVE

Database Directive.See DIRECTIVE ON THE LEGAL PROTECTION OF DATABASES.

#### DATA PROTECTION

data protection.Any method of securing information, esp. information stored on a computer, from being either physically lost or seen by an unauthorized person.

#### DATE

date. 1. The day when an event happened or will happen <date of trial>.2. A period of time in general <at a later date>.3. An appointment at a specified time <no dates are available>.

answer date.See answer day under DAY.

appearance date.See answer day under DAY.

date of bankruptcy.Bankruptcy. The date when a court declares a person to be bankrupt; the date of bankruptcy adjudication. • This date may coincide with the voluntary-filing date. [Cases: Bankruptcy 2202.]

date of cleavage.Bankruptcy. The filing date of a voluntary-bankruptcy petition. • With a few exceptions, only the debts existing at this time are dischargeable.

date of injury.Torts. The inception date of an injury; the date of an accident causing an injury.

date of invention.Patents. For purposes of a patent application, the date when the creation was reduced to practice. • If the invention has not been built, the date of invention is the date when the patent application is filed, since that is a constructive reduction to practice.

date of issue. 1.Commercial law. An arbitrary date (for notes, bonds, and other documents in a series) fixed as the beginning of the term for which they run; the date that a stock or bond bears on its face, not the date on which it is actually signed, delivered, or put into circulation. • When a bond is delivered to a purchaser, it is considered "issued." But this concept is distinguishable from the "date of issue," which remains fixed, regardless of the date of sale or delivery. 2.Insurance. The date specified in the policy as the "date of issue," not the date on which the policy is executed or delivered, and regardless of other dates that may be specified in the policy or elsewhere, such as

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the date that the policy is to “take effect.” [Cases: Insurance 3125(5). C.J.S. Insurance § 852.]

date of maturity.Commercial law. The date when a debt falls due, such as a debt on a promissory note or bond. [Cases: Bills and Notes 129. C.J.S. Bills and Notes; Letters of Credit §§ 86–89, 91–99.]

declaration date.Corporations. The date when corporate directors declare a dividend. Cf. DIVIDEND DATE; EX-DIVIDEND DATE. [Cases: Corporations 152. C.J.S. Corporations §§ 295–299.]

dividend date.See DIVIDEND DATE.

effective filing date.Patents. The date that a patent application is considered to have been filed. • The actual filing date may be later, as for a continuing application. But under the doctrine of continuity, the child application is usu. entitled to the filing date of the parent application to prove priority. — Also termed parent filing date. See CONTINUITY. [Cases: Patents 110. C.J.S. Patents § 156.]

filing date. 1. Generally, the date when any document is delivered to the appropriate authority. 2.Patents. The date when a patent application is filed. • The filing date closes the door on prior art; starts the clock on the period of eligibility to file in other countries; sets the priority date for public use, disclosure, or sale; and (absent other evidence) establishes the date of constructive reduction to practice. 3.Trademarks. The date when a trademark application is filed.

parent filing date.See effective filing date.

payable date.Corporations. The official date on which shareholder dividends or distributions become payable. — Also termed record date.

payment date.Corporations. The date on which stock dividends or interest checks are paid to shareholders.

priority date.Patents. The date that will determine which applicant in an interference proceeding will get a patent. • The priority date is also the cutoff date for prior art. In the United States the priority date is the date of invention; in the rest of the world it is the date on which the patent application was filed. See FIRST-TO-FILE SYSTEM; FIRST-TO-INVENT SYSTEM.

record date.Corporations. The date on which a stockholder must own shares to be entitled to vote or receive a dividend. — Also termed date of record. See EX-DIVIDEND DATE. [Cases: Corporations 155(2), 194, 197. C.J.S. Corporations §§ 301, 364–367, 373, 375–378.]

settlement date.Securities. 1. The date on which an investor must pay the broker for securities purchased. 2. The date on which a seller must deliver negotiable certificates for securities sold.

submission date. 1. The date that a case is to be submitted to a court for determination. 2. The date on which an investor must pay the broker for securities purchased. 3. The date on which a seller must deliver negotiable certificates for securities sold.

DATE CERTAIN

date certain. A fixed or appointed day; a specified day, esp. a date fixed by an instrument such as a deed. Cf. TIME CERTAIN(1). — Also termed (in French law) date certaine (dat sair-tayn).

#### DATE OF RECORD

date of record. See record date under DATE.

#### DATE RAPE

date rape. See RAPE.

#### DATIO

datio (day-shee-oh), n. [fr. Latin dare “to give”] Roman law. 1. An act of giving, as in datio in solutum (“giving in payment”). 2. An appointment, as in datio tutoris (“appointment of a guardian”). Pl. dationes (day-shee-oh-nee-z).

#### DATIO IN SOLUTUM

datio in solutum (day-shee-oh in s<<schwa>>-l[y]oo-t<<schwa>>m). Roman law. The discharging of an obligation by the giving and acceptance of something other than the thing due.

#### DATION

dation (day-sh<<schwa>>n), n. [fr. Latin dare “to give”] Civil law. A grant of something the recipient is actually entitled to, such as an office.

#### DATION EN PAIEMENT

dation en paiement (day-sh<<schwa>>n in pay-m<<schwa>>nt or da-syon ahn pay-mon), n. [French “a giving in payment”] Civil law. 1. An exchange of something instead of money to satisfy a debt. See ACCORD AND SATISFACTION. [Cases: Accord and Satisfaction 13. C.J.S. Accord and Satisfaction §§ 25–27, 29.] 2. Louisiana law. A contract in which the obligor gives a thing to the obligee, who accepts it in payment of a debt. La. Civ. Code art. 2655. • Dation en paiement requires court approval after petition and notice. 3. A method of satisfying a mortgage debt by transferring the mortgaged property when the mortgage exceeds the property's value and the mortgage-holder is willing to accept the property in satisfaction of the debt. [Cases: Mortgages 304. C.J.S. Mortgages §§ 451, 475.]

#### DATIVE

dativ (day-tiv), n. [fr. French datif “of giving”] 1. Roman & civil law. An appointment made by judicial or magisterial authority; esp., something granted that is not provided by law or a will. • In Scotland, an executor-dativ is a court-appointed executor. 2. Hist. Something that can be given or retracted at will, such as an appointment to a nonperpetual office. — Also spelled datif.

#### DATIVE CURATORSHIP

dativ curatorship. See dativ tutorship under TUTORSHIP.

#### DATIVE TUTORSHIP

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datave tutorship. See TUTORSHIP.

#### DATUM

datum (day-t<<schwa>>m), n. [fr. Latin dare “to give”] 1. A piece of information. Pl. data. 2. Hist. Something given or executed. 3. A date.

#### DATUS BONIS

datus bonis (day-t<<schwa>>s boh-nis). [Latin] Scots law. (Of a person) appointed to manage an estate.

#### DAUBERT<TT> HEARING

Daubert hearing (dah-b<<schwa>>rt or doh-behr). A hearing conducted by federal district courts, usu. before trial, to determine whether proposed expert testimony meets the federal requirements for relevance and reliability, as clarified by the Supreme Court in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). [Cases: Evidence 508, 546, 555. C.J.S. Evidence §§ 527, 597–601, 609–610, 624–625, 627, 634, 649, 652, 677, 680, 682–684, 687–688, 713, 729.]

#### DAUBERT<TT> TEST

Daubert test. A method that federal district courts use to determine whether expert testimony is admissible under Federal Rule of Evidence 702, which generally requires that expert testimony consist of scientific, technical, or other specialized knowledge that will assist the fact-finder in understanding the evidence or determining a fact in issue. • In its role as “gatekeeper” of the evidence, the trial court must decide whether the proposed expert testimony meets the requirements of relevance and reliability. The court applies the test outside the jury's presence, usu. during a pretrial Daubert hearing. At the hearing, the proponent must show that the expert's underlying reasoning or methodology and its application to the facts are scientifically valid. In ruling on admissibility, the court considers a flexible list of factors, including (1) whether the theory can be or has been tested, (2) whether the theory has been subjected to peer review or publication, (3) the theory's known or potential rate of error and whether there are standards that control its operation, and (4) the degree to which the relevant scientific community has accepted the theory. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 113 S.Ct. 2786 (1993). Similar scrutiny must be applied to nonscientific expert testimony. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 119 S.Ct. 1167 (1999). Variations of the Daubert test are applied in the trial courts of most states. [Cases: Evidence 508, 546, 555. C.J.S. Evidence §§ 527, 597–601, 609–610, 624–625, 627, 634, 649, 652, 677, 680, 682–684, 687–688, 713, 729.]

#### DAUGHTER

daughter. A parent's female child; a female child in a parent–child relationship.

#### DAUGHTER-IN-LAW

daughter-in-law. The wife of one's son.

## DAVIS-BACON ACT

Davis-Bacon Act. A federal law originally enacted in 1931 to regulate the minimum-wage rates payable to employees of federal public-works projects. 40 USCA § 276a.

## DAY

day. 1. Any 24-hour period; the time it takes the earth to revolve once on its axis <we have a day to prepare a mandamus petition>. [Cases: Time 8.C.J.S. Time §§ 8-10.] 2. The period between the rising and the setting of the sun <day or night>. — Also termed natural day. 3. Sunlight <we can see it in the day>. 4. The period when the sun is above the horizon, along with the period in the early morning and late evening when a person's face is discernible. 5. Any specified time period, esp. as distinguished from other periods <the good old days> <a day's work>. — Also termed (in senses 2-4) daytime. Cf. NIGHT.

adjournment day. 1. The day on which an organization, such as a court or legislature, adjourns. 2. Hist. A later day appointed by the judges at regular sittings at nisi prius to try an issue of fact not then ready for trial.

adjournment day in error. Hist. A day scheduled for completion of matters not finished on the affirmance day of the term.

affirmance day general. Hist. In the Court of Exchequer, a day appointed after the beginning of every term to affirm or reverse judgments.

answer day. The last day for a defendant to file and serve a responsive pleading in a lawsuit. • Under the Federal Rules of Civil Procedure, a defendant generally must serve an answer (1) within 20 days after being served with the summons and complaint, or (2) if a defendant timely waives service at the plaintiff's request, within 60 days after the request for waiver was sent. Fed. R. Civ. P. 4(d), 12(a). — Also termed answer date; appearance date; appearance day.

artificial day. The period from the rising to the setting of the sun. — Also termed solar day; civil day; dies solaris.

astronomical day. See solar day (2).

banking day. See BANKING DAY.

business day. A day that most institutions are open for business, usu. a day on which banks and major stock exchanges are open, excluding Saturdays and Sundays.

calendar day. A consecutive 24-hour day running from midnight to midnight. — Also termed natural day. [Cases: Time 8. C.J.S. Time §§ 8-10.]

civil day. See artificial day.

clear day. One of many full, consecutive days between (1) the date when a period, measured in days, begins and (2) the date when an event that ends the period occurs. • For example, if a statute or contract requires a party to give another party five clear days of notice of a hearing, and

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the hearing is scheduled to be held on the 31st day of the month, the party giving notice must do so by the 25th day of the month so that five full (clear) days elapse between but not including the 25th and 31st.

common day. In England, an ordinary court day.

court day. A day on which a particular court is open for court business. See Fed. R. Civ. P. 6(a); Fed. R. Crim. P. 45(a).

day of demurrage. Maritime law. A day beyond the days allowed for loading or unloading cargo. • A fine is usu. assessed for each day of delay. See DEMURRAGE. Cf. LAYDAY.

dedication day. Hist. A day on which people from several villages gathered in one place to celebrate the feast day of the saint and patron of a church.

entire day. An undivided day, rather than parts of two or more days aggregated to form a 24-hour period. • An entire day must have a legal, fixed, precise time to begin and end. A statute referring to an entire day contemplates a 24-hour period beginning and ending at midnight. [Cases: Time 8. C.J.S. Time §§ 8–10.]

ferial day (feer-ee-<<schwa>>l). Hist. 1. A day free from labor, pleading, and service of process; a holiday. 2. A working day, under a 1449 statute (27 Hen. 6, ch. 5).

juridical day (juu-rid-i-k<<schwa>>l). A day on which legal proceedings can be held. — Also termed judicial day. Cf. nonjudicial day; NONJURIDICAL.

law day. See LAW DAY.

lay day. See LAYDAY.

legislative day. A day that begins when a legislative body reconvenes after a recess or adjournment, and ends when the body next recesses or adjourns until a different calendar day. • A legislative day may extend over several calendar days.

love day. Hist. 1. A day when neighbors amicably settled a dispute. 2. A day when one neighbor helped another without payment.

natural day. 1. The 24-hour period from midnight to midnight. — Also termed calendar day. [Cases: Time 8. C.J.S. Time §§ 8–10.] 2. The period between sunrise and sunset. — Also termed artificial day.

nonjudicial day. A day when courts do not sit or when legal proceedings cannot be conducted, such as a Sunday or legal holiday. See LEGAL HOLIDAY; NON JURIDICUS. Cf. juridical day. [Cases: Time 8. C.J.S. Time §§ 8–10.]

peremptory day. A day assigned for trial or hearing, without further opportunity for postponement.

quarter day. Hist. One of four days during a year that money owed (such as rent) was legally or customarily payable. • In England and Wales the quarter days are Lady Day, March 25;

Midsummer Day, June 24; Michaelmas Day, September 29; and Christmas Day, December 25. In Scotland the traditional quarter or term days are Candlemas, February 2; Whitsunday (or Whitsuntide), May 15; Lammas, August 1; and Martinmas, November 11. Scotland's statutory quarter or term days are the 28th of February, May, August, and November. If a document specifies a different date for a quarter day, then the specified date controls. — Also termed (in Scots law) term day.

return day. 1. A day on which a defendant must appear in court (as for an arraignment). [Cases: Criminal Law 228. C.J.S. Criminal Law § 344.] 2. A day on which a defendant must file an answer. 3. A day on which a proof of service must be returned to court. — Also termed rule day. [Cases: Federal Civil Procedure 512; Pleading 131. C.J.S. Pleading § 198.] 4. A day on which a writ of execution must be returned to court. [Cases: Execution 333. C.J.S. Executions § 323.] 5. A day specified by law for counting votes in an election. — Also termed return date. [Cases: Elections 126(7), 241. C.J.S. Elections § 119(1).]

solar day. 1. See artificial day. 2. The 24-hour period from noon to noon. — Also termed astronomical day.

term day.Scots law. See quarter day.

#### DAYBOOK

daybook. A merchant's original record of daily transactions.

#### DAY FINE

day fine.See FINE(5).

#### DAY IN COURT

day in court. 1. The right and opportunity, in a judicial tribunal, to litigate a claim, seek relief, or defend one's rights. 2. The right to be notified and given an opportunity to appear and to be heard when one's case is called.

#### DAY LOAN

day loan.See LOAN.

#### DAY OF DEMURRAGE

day of demurrage.See DAY.

#### DAY ORDER

day order.See ORDER(8).

#### DAY RULE

day rule.See DAY WRIT.

#### DAYS IN BANK



days in bank. Particular days set aside by the Court of Common Pleas for specific matters, including the appearance of parties and service of process. — Also termed dies in banco.

“There are in each of these terms stated days called days in bank, dies in banco; that is, days of appearance in the court of common pleas. They are generally at the distance of about a week from each other, and regulated by some festival of the church. On some one of these days in bank all original writs must be made returnable ....” 3 William Blackstone, Commentaries on the Laws of England 277 (1768).

#### DAYSMAN

daysman (dayz-m<<schwa>>n). Hist. 1. An arbitrator; an elected judge; an umpire. 2. A day laborer. — Also spelled deiesman.

#### DAYS OF GRACE

days of grace. 1. GRACE PERIOD. 2. Int'l law. A timed exemption from prize law that is granted to enemy merchant ships when they are caught unawares by the outbreak of war.

#### DAYTIME

daytime. 1. DAY(2); 2. DAY(3); 3. DAY(4).

#### DAY TRADING

day trading. See TRADING.

#### DAYWORK

daywork. 1. Short-term employment that is intended to last only for a day, or for a few days. 2. Hist. In England, a measure of land being the amount of arable land that can be plowed in a day. — Also termed daywere.

#### DAYWORK DRILLING CONTRACT

daywork drilling contract. See DRILLING CONTRACT.

#### DAY WRIT

day writ. English law. A Queen's Bench writ allowing a prisoner to leave prison to conduct business (such as attending trial at the Court of Assizes), as long as the prisoner returns by 9 p.m. — Also termed day rule.

#### D.B.

D.B. abbr. DOMESDAY BOOK.

#### D/B/A

d/b/a. abbr. Doing business as. • The abbreviation usu. precedes a person's or business's assumed name <Paul Smith d/b/a Paul's Dry Cleaners>.

D.B.E.

d.b.e.abbr.DE BENE ESSE.

D.B.N.

d.b.n.abbr.See administration de bonis non under ADMINISTRATION.

D.B.N.C.T.A.

d.b.n.c.t.a.abbr.See administration de bonis non cum testamento annexo under ADMINISTRATION.

D.C.

D.C.abbr.1.DISTRICT OF COLUMBIA. 2. See district court under COURT.

DCAA

DCAA.abbr.DEFENSE CONTRACT AUDIT AGENCY.

DCF

DCF. See discounted cash flow under CASH FLOW.

DCMA

DCMA.abbr.DEFENSE CONTRACT MANAGEMENT AGENCY.

DDOS

DDoS.abbr.Distributed denial-of-service attack. See DENIAL-OF-SERVICE ATTACK.

DDP

DDP.abbr. 1.DELIVERED DUTY PAID. 2.DISCLOSURE DOCUMENT PROGRAM.

DDU

DDU.abbr.DELIVERED DUTY UNPAID.

DE

de (d<<schwa>> or duu). [French] Of; about. • This is a French preposition often used to show the genitive case, as in breve de droit (“writ of right”).

de (dee or day). [Latin] Of; about; concerning; respecting; by; from; out of; affecting. • This preposition is used in the titles of English statutes, of original and judicial writs, and of court proceedings.

DEACON

deacon. 1.Eccles. law. In certain churches, a member of the clerical order who assists the priest in various duties, including the presentation of the sacrament. • It is the third order of the

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Church of England below bishops and priests. A deacon is not allowed to consecrate the Holy Communion or pronounce absolution but can perform most of the other priestly duties. 2. An elected or appointed officer of a church who assists a minister or priest in various duties.

**DEAD-AND-BURIED COMPANY**

dead-and-buried company. See COMPANY.

**DEAD ASSET**

dead asset. See ASSET.

**DEADBEAT**

deadbeat. Slang. A person who does not pay debts or financial obligations (such as child-support payments, fines, and legal judgments), usu. with the suggestion that the person is also adept or experienced at evading creditors.

**DEADBEAT DAD**

deadbeat dad. Slang. A father who has not paid or who is behind in making child-support payments.

**DEADBEAT MOM**

deadbeat mom. Slang. 1. A mother who has not paid or who is behind in making child-support payments. • This term is used far less frequently than either deadbeat dad or deadbeat parent, probably because nearly ten times as many men as women fail to support (or are ordered to support) their children financially after divorce. 2. An able-bodied mother whose income is derived from welfare payments, not from gainful employment.

**DEADBEAT PARENTS PUNISHMENT ACT**

Deadbeat Parents Punishment Act. A 1998 federal statute that makes it a felony, punishable by up to two years in prison, for failure to pay child support if the obligor has crossed state lines in an attempt to avoid paying the support. • The Act provides felony penalties if (1) a person travels across state lines intending to evade a child-support obligation that is over \$5,000 or that has remained unpaid longer than one year, or (2) a person willfully fails to pay support for a child living in a different state if that obligation is greater than \$10,000 or if it remains unpaid for more than two years. The Act supersedes the Child Support Recovery Act of 1994. The greatest change in the new statute is the provision regarding the obligor's crossing of state lines in an effort to evade the support obligation. 42 USCA § 228. — Abbr. DPPA. See CHILD SUPPORT RECOVERY ACT OF 1994.

**DEADBORN**

deadborn. See STILLBORN.

**DEAD CORPORATION**

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dead corporation. See dissolved corporation under CORPORATION.

**DEAD FREIGHT**

dead freight. See FREIGHT.

**DEADHAND CONTROL**

deadhand control. The convergence of various legal doctrines that allow a decedent's control of wealth to influence the conduct of a living beneficiary; esp., the use of executory interests that vest at some indefinite and remote time in the future to restrict alienability and to ensure that property remains in the hands of a particular family or organization. • Examples include the lawful use of conditional gifts, contingent future interests, and the Clafin-trust principle. The rule against perpetuities restricts certain types of deadhand control, which is sometimes referred to either as the power of the mortua manus (dead hand) or as trying to retain property in mortua manu. See RULE AGAINST PERPETUITIES.

**DEAD LETTER**

dead letter. 1. A law or practice that, although not formally abolished, is no longer used, observed, or enforced. 2. A piece of mail that can be neither delivered nor returned because it lacks correct addresses for both the intended recipient and the sender. [Cases: Postal Service 24.C.J.S. Postal Service and Offenses Against Postal Laws § 20.]

**DEADLOCK**

deadlock, n. 1. A state of inaction resulting from opposition, a lack of compromise or resolution, or a failure of election. See tie vote under VOTE (3). 2. Corporations. The blocking of corporate action by one or more factions of shareholders or directors who disagree about a significant aspect of corporate policy. [Cases: Corporations 553(5), 592. C.J.S. Corporations §§ 760, 811, 813–816, 818, 821, 824, 830–831.] — deadlock, vb.

**DEADLOCKED JURY**

deadlocked jury. See hung jury under JURY.

**DEADLY FORCE**

deadly force. See FORCE.

**DEADLY WEAPON**

deadly weapon. See WEAPON.

**DEADLY WEAPON PER SE**

deadly weapon per se. See WEAPON.

**DEAD MAN'S PART**

dead man's part. 1. Archaic. By custom in certain places, the portion of a dead man's estate set

aside for mass services; later, that portion set aside as payment for the administrator. • That portion ranged from one-third (if the deceased had a wife and children) to the entire estate (if the deceased had no wife or children).

“If the deceased leaves a widow and children, his substance ... is divided into three parts; one of which belongs to the widow, another to the children, and the third to the administrator: if only a widow, or only children, they shall respectively, in either case, take one moiety, and the administrator the other: if neither widow nor child, the administrator shall have the whole. And this portion, or dead man's part, the administrator was wont to apply to his own use, till the statute I Jac. II. c. 17 declared that the same should be subject to the statute of distributions.” 2 William Blackstone, *Commentaries on the Laws of England* 518 (1766).

“If a testator leaves neither wife nor child, he can give away the whole of his movable goods. If the testator leaves wife but no child, or child but no wife, his goods must, after his debts have been paid, be divided into two halves; one of these can be disposed of by his will, it is ‘the dead's part,’ the other belongs to the widow, or (as the case may be) to the child or children.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 349 (2d ed. 1899).

2.Scots law. The part of the movable estate that may be disposed of by will in any way the testator wishes; specif., the part of a dead man's personal estate not legally reserved for his spouse or children and capable of being bequeathed by will or falling upon intestacy to his next of kin. — Also termed dead's part.

#### DEAD MAN'S STATUTE

dead man's statute. A law prohibiting the admission of a decedent's statement as evidence in certain circumstances, as when an opposing party or witness seeks to use the statement to support a claim against the decedent's estate. — Also termed dead person's statute. [Cases: Witnesses 125.C.J.S. Witnesses § 215.]

#### DEAD MARRIAGE

dead marriage. See MARRIAGE(1).

#### DE ADMENSURATIONE DOTIS

de admensuratione dotis (dee ad-men-s[y]uu-ray-shee-oh-nee doh-tis), n. [Law Latin “of the admeasurement of dower”] Hist. A writ available to an heir (or the heir's guardian if the heir is an infant) to reduce the dower of the ancestor's widow who, while the heir was an infant, was assigned more dower than she was entitled to.

“If the heir or his guardian do not assign her dower within the term of quarantine, or do assign it unfairly, she has her remedy at law, and the sheriff is appointed to assign it. Or if the heir (being under age) or his guardian assign more than she ought to have, it may be afterwards remedied by writ of admeasurement of dower.” 2 William Blackstone, *Commentaries on the Laws of England* 136 (1766).

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**DEAD PERSON'S STATUTE**

dead person's statute. See **DEAD MAN'S STATUTE**.

**DEAD PLEDGE**

dead pledge. Archaic. See **MORTGAGE**(1).

**DEAD RENT**

dead rent. A mining-lease payment, either in addition to or as part of the royalty, that must be made whether or not the mine is working. • The purpose of the provision is to secure the working of the mine. See delay rental under **RENTAL**. [Cases: Mines and Minerals 70. C.J.S. Mines and Minerals §§ 218, 223–224.]

**DEAD-SHIP DOCTRINE**

dead-ship doctrine. Maritime law. The rule that admiralty law no longer applies to a ship when its purpose has been so changed that it is no longer a vessel because it has no further navigation function. [Cases: Admiralty 6. C.J.S. Admiralty §§ 26–32.]

**DEAD'S PART**

dead's part. See **DEAD MAN'S PART**.

**DEAD STOCK**

dead stock. Goods that remain in inventory because there is no market for them.

**DEAD STORAGE**

dead storage. The stowage of goods, esp. motor vehicles, for a long time in a public storage area, as opposed to the daily or regular stowage of goods in active use. Cf. **LIVE STORAGE**. [Cases: Insurance 2278(13). C.J.S. Insurance § 938.]

**DEAD TIME**

dead time. See **TIME**.

**DEAD USE**

dead use. A future use.

**DE ADVISAMENTO CONSILII NOSTRI**

de advisamento consilii nostri (dee ad-vi-z<<schwa>>-men-toh k<<schwa>>n-sil-ee-Inos-trI). [Law Latin] With or by the advice of our council. • This phrase was formerly used in writs of summons to Parliament.

**DE AEQUITATE**

de aequitate (dee ee-kw<<schwa>>-tay-tee). [Latin] In equity.

## DE AESTIMATO

de aestimato (dee es-ti-may-toh). [Latin “for the estimation of something in money”] Roman law. An action available to an owner of goods against a person who received the goods but failed, after a certain period, to either pay the owner an agreed price after finding a purchaser or return the goods to the owner. • The transaction, or aestimatum, was an innominate contract often used by traveling merchants or second-hand dealers who, after purchasing items, could then resell them at higher prices or return them to the owner. — Also termed *actio aestimatoria*.

## DE AETATE PROBANDA

de aetate probanda (dee ee-tay-tee proh-ban-d<<schwa>>), n.[Law Latin “of (about) proving age”] Hist. A writ ordering the sheriff to summon a jury to determine whether an heir of a tenant holding an estate directly of the Crown was old enough to receive the estate.

## DEAFFOREST

deafforest. See DISAFFOREST.

## DEAL

deal,n.1. An act of buying and selling; the purchase and exchange of something for profit <a business deal>.2. An arrangement for mutual advantage <the witness accepted the prosecutor's deal to testify in exchange for immunity>.3. An indefinite quantity <a great deal of money>.

deal,vb.1. To distribute (something) <to deal drugs>.2. To transact business with (a person or entity) <to deal with the competitor>.3. To conspire with (a person or entity) <to deal for the account>.

## DEALER

dealer,n.1. A person who purchases goods or property for sale to others; a retailer. 2. A person or firm that buys and sells securities for its own account as a principal, and then sells to a customer. See DEAL, n. & vb.

registered dealer.A dealer registered or required to be registered under the Securities Exchange Act of 1934. [Cases: Securities Regulation 40.10–40.16. C.J.S. Securities Regulation §§ 154–163, 165–168.]

## DEALER'S TALK

dealer's talk.See PUFFING(1).

## DE ALLOCATIONE FACIENDA

de allocatione facienda (dee al-<<schwa>>-kay-shee-oh-nee fay-shee-en-d<< schwa>>), n.[Law Latin “for making allowance”] Hist. A writ directed to the treasurer and barons of the Exchequer allowing certain officers (such as accountants and customs collectors) to have in their accounts the funds necessary to make certain payments.

## DE ALODE PARENTUM

de alode parentum (dee al-*<<schwa>>*-dee p*<<schwa>>*-ren-t*<<schwa>>*m). [Law Latin] Hist. From freehold of one's parents.

“De alode parentum. — Lands descending by inheritance from parents were said to be so acquired, in contradistinction to lands held in feu ... and to those acquired by a singular title. Subsequently the phrase acquired a more comprehensive signification, as all lands were, in process of time, termed allodial, in which the holder had a right of absolute property, without rendering any service therefor, or recognising any superior therein, and of which he had an unlimited power of disposal.” John Trayner, *Trayner's Latin Maxims* 137 (4th ed. 1894).

## DE ALTO ET BASSO

de alto et basso (dee al-toh et bas-oh), n.[Law Latin “of high and low”] Hist. The total submission of all differences — great or small — to arbitration.

## DE AMBITU

de ambitu (dee am-bi-tyoo). [Latin “of going around”] Of devious methods of securing a position, as through bribery. • Several Roman laws (such as the *Lex Julia de Ambitu*) dealt with these methods, such as prohibiting electoral bribery.

## DE AMPLIORI GRATIA

de ampliori gratia (dee am-pli-or-Igray-shee-*<<schwa>>*). [Latin] Of more abundant or more full grace.

## DEAN

dean. 1.Eccles. law. An officer who leads a chapter, parish, or other subdivision of a diocese, usu. upon a bishop's request or appointment.

“A dean and chapter are the council of the bishop, to assist him with their advice in affairs of religion, and also in the temporal concerns of his see .... All ancient deans are elected by the chapter, by conge d'eslire from the king, and letters missive of recommendation; in the same manner as bishops: but in those chapters, that were founded by Henry VIII out of the spoils of the dissolved monasteries, the deanery is donative .... The chapter, consisting of canons or prebendaries, are sometimes appointed by the king, sometimes by the bishop, and sometimes elected by each other.” 1 William Blackstone, *Commentaries on the Laws of England* 370–71 (1765).

2. In a school, college, or university, the administrative or academic head. • In larger schools, there may be several kinds of deans, such as a dean of admissions and a dean of student affairs. Within a university, there may be deans of specific schools. [Cases: Colleges and Universities 7.C.J.S. Colleges and Universities §§ 15–18.] 3. The head or commander of a group of ten, such as ten soldiers or ten monks.

## DE ANNO BISSEXTILI



de anno bissextili (dee an-oh bis-sek-stī-II), n.[Law Latin “of the bissextile year”] Hist. A law of Henry III advising the justices of the bench that in a case requiring something to be done within a year, the leap-year day and the day before should be counted as one day.

#### DE ANNUA PENSIONE

de annua pensione (dee an-yoo-<<schwa>> pen-shee-oh-nee), n.[Law Latin “of annual pension”] Hist. A royal writ demanding payment from an abbey or prior, of a yearly pension for the king's chaplain named in the writ.

#### DE ANNUO REDITU

de annuo reditu (dee an-yoo-oh red-i-tyoo), n.[Law Latin “for a yearly rent”] Hist. A writ to recover an annuity payable in goods or money.

#### DEAN OF GUILD

Dean of Guild.Scot's law. In certain burghs, the head of the Guild or Merchant Company, with jurisdiction in maritime and mercantile disputes.

#### DEAN OF GUILD COURT

Dean of Guild Court.Scots law. The court presided over by the Dean of Guild. • In modern times the court dealt with municipal affairs, esp. building regulations. All such courts were abolished in 1975.

#### DEAN OF THE ARCHES

Dean of the Arches.English law. The presiding judge of the Court of Arches. See COURT OF ARCHES.

#### DE APOSTATA CAPIENDO

de apostata capiendo (dee <<schwa>>-pos-t<<schwa>>-t<<schwa>> kap-ee-en-doh), n.[Law Latin “of the taking of an apostate”] Hist. A writ ordering a sheriff to apprehend and return to a monastery a person who had entered the monastery, professed the religious order, and then left and wandered around the country.

#### DE ARBITRATIONE FACTO

de arbitratione facto (dee ahr-bi-tray-shee-oh-nee fak-toh), n.[Law Latin “of arbitration had”] Hist. A writ staying an action already settled by arbitration.

#### DE ARRESTANDIS BONIS NE DISSIPENTUR

de arrestandis bonis ne dissipentur (dee ar-<<schwa>>-stan-dis boh-nis nee dis-<<schwa>>-pen-t<<schwa>>r), n.[Law Latin “of goods arrested lest they be dispersed”] Hist. A writ to seize goods from a party to ensure that the goods do not disappear while a lawsuit is pending.

#### DE ARRESTANDO IPSUM QUI PECUNIAM RECEPIT

de arrestando ipsum qui pecuniam recepit (dee ar-<<schwa>>-stan-doh ip-s<< schwa>>m kwI p<<schwa>>-kyoo-nee-<<schwa>>m ri-see-pit), n.[Law Latin “for the apprehension of one who took the king's money”] Hist. A writ ordering the arrest of a person who took the king's money for war service, and then hid to keep from serving.

#### DE ASPORTATIS RELIGIOSORUM

de asportatis religiosorum (dee as-por-tay-tis ri-lij-ee-oh-sor-<<schwa>>m), n.[Law Latin “concerning the property of religious persons carried away”] Hist. A statute of Edward I passed to curb alienation of clerical possessions, including the removal of those possessions to foreign countries.

#### DE ASSISA PROROGANDA

de assisa proroganda (dee <<schwa>>-sI-z<<schwa>> proh-r<<schwa>>-gan-d<< schwa>>), n.[Law Latin “of the proroguing of an assize”] Hist. A writ ordering justices to postpone an assize because a party is busy in the Crown's service.

#### DEATH

death. The ending of life; the cessation of all vital functions and signs. — Also termed decease; demise.

accidental death. A death that results from an unusual event, one that was not voluntary, intended, expected, or foreseeable.

brain death. The bodily condition of showing no response to external stimuli, no spontaneous movements, no breathing, no reflexes, and a flat reading (usu. for a full day) on a machine that measures the brain's electrical activity. — Also termed legal death.

civil death. 1. Archaic. At common law, the loss of rights — such as the rights to vote, make contracts, inherit, and sue — by a person who has been outlawed or convicted of a serious crime, or who is considered to have left the temporal world for the spiritual by entering a monastery.

“In one large department of law the fiction [civil death] is elegantly maintained. A monk or nun can not acquire or have any proprietary rights. When a man becomes ‘professed in religion,’ his heir at once inherits from him any land that he has, and, if he has made a will, it takes effect at once as though he were naturally dead.” 1 Frederick Pollock & Frederic W. Maitland, *History of English Law* 434 (2d ed. 1898).

“Civil death arises from outlawry; it seems doubtful whether there are any other circumstances to which the phrase is now applicable.” William R. Anson, *Principles of the Law of Contract* 193 n.(b) (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. In some states, the loss of rights — such as the rights to vote and hold public office — by a person serving a life sentence. Cf. civil disability under **DISABILITY**(3). [Cases: Officers and Public Employees 31. C.J.S. Officers and Public Employees §§ 28–30.] 3. The state of a corporation that has formally dissolved or become bankrupt, leaving an estate to be administered

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for the benefit of shareholders and creditors. — Also termed (in senses 2 & 3) legal death. [Cases: Corporations 617(1). C.J.S. Corporations § 852.]

compensable death. Workers' compensation. A death that, because it occurred in the course of employment, entitles the employee's heirs to compensation. [Cases: Workers' Compensation 408–510. C.J.S. Workmen's Compensation §§ 245–287.]

death by one's own hand. See SUICIDE(1).

immediate death. 1. See instantaneous death. 2. A death occurring within a short time after an injury or seizure, but not instantaneously.

“A distinction has been made between ‘instantaneous’ and ‘immediate’ death .... As an example of ‘immediate’ rather than ‘instantaneous’ death ... the situation in which a blow on the head produces unconsciousness and renders the victim incapable of intelligent thought, speech, or action for several minutes until he dies.” 22A Am. Jur. 2d Death § 43, at 159 (1988).

instantaneous death. Death occurring in an instant or within an extremely short time after an injury or seizure. • It is a factor in determining an award of damages for the victim's pain and suffering. — Sometimes also termed immediate death.

“Although the possibility of a death that is truly simultaneous with the injury that caused it has been denied, it has been pointed out that death may be so contemporaneous with the fatal injury as to be instantaneous in the sense that there could be no recovery for the victim's pain and suffering. Ordinarily, death is not regarded as instantaneous if an appreciable length of time elapsed between the injury and the death. Indeed, even where the injury causing the death is necessarily fatal and death results therefrom in a few moments, it has been held that although it would commonly be called an instantaneous death, still if the injured person survives the injury for a brief period, it may not be said that the death is instantaneous .... In such case it is immaterial that the period of time between the injury and death is short.” 22A Am. Jur. 2d Death § 43, at 158 (1988).

legal death. 1. See brain death. 2. See civil death (2). 3. See CIVIL DEATH (3).

natural death. 1. Bodily death, as opposed to civil death. 2. Death from causes other than accident or violence; death from natural causes. — Also termed *mors naturalis*. Cf. violent death. See NATURAL-DEATH ACT.

presumptive death. Death inferred from proof of the person's long, unexplained absence, usu. after seven years. See ENOCH ARDEN LAW. [Cases: Death 1–2. C.J.S. Death §§ 1, 3, 8–14.]

simultaneous death. The death of two or more persons in the same mishap, under circumstances that make it impossible to determine who died first. See UNIFORM SIMULTANEOUS DEATH ACT; COMMON DISASTER; COMMORIENTES.

violent death. Death accelerated by human intervention and resulting from a sharp blow, explosion, gunfire, or the like. Cf. natural death.

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DEATH, CONTEMPLATION OF

death, contemplation of. See CONTEMPLATION OF DEATH.

DEATH ACTION

death action. See WRONGFUL-DEATH ACTION.

DEATHBED DECLARATION

deathbed declaration. See dying declaration under DECLARATION(6).

DEATHBED DEED

deathbed deed. See DEED.

DEATH BENEFIT

death benefit. See BENEFIT.

DEATH BY MISADVENTURE

death by misadventure. See ACCIDENTAL KILLING.

DEATH BY ONE'S OWN HAND

DEATH CASE

death case. 1. A criminal case in which the death penalty may be or has been imposed.  
2. WRONGFUL-DEATH ACTION.

DEATH CERTIFICATE

death certificate. An official document issued by a public registry verifying that a person has died, with information such as the date and time of death, the cause of death, and the signature of the attending or examining physician. [Cases: Health 398.]

DEATH-DAMAGE STATUTE

death-damage statute. Archaic. See WRONGFUL-DEATH STATUTE.

DEATH DUTY

death duty. 1. DUTY(4). 2. See estate tax under TAX.

DEATH-KNELL DOCTRINE

death-knell doctrine. A rule allowing an interlocutory appeal if precluding an appeal until final judgment would moot the issue on appeal and irreparably injure the appellant's rights. • Once recognized as an exception to the final-judgment rule, the doctrine was limited by the U.S. Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 98 S.Ct. 2454 (1978). There, the Court held that the death-knell doctrine does not permit an immediate appeal of an order denying class certification. But the doctrine still applies in some contexts. For example, the doctrine allows

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an immediate appeal of the denial of a temporary restraining order when the lack of an appeal would leave nothing to be considered in the trial court. *Woratzek v. Arizona Bd. of Executive Clemency*, 117 F.3d 400 (9th Cir. 1997). — Also termed death-knell exception. See FINAL-JUDGMENT RULE. [Cases: Appeal and Error 68, 73(2); Federal Courts 572.1. C.J.S. Appeal and Error §§ 82–84, 94.]

#### DEATH ON THE HIGH SEAS ACT

Death on the High Seas Act. A federal law, enacted in 1920, permitting a wrongful-death action to be filed in U.S. district court for a death occurring on the high seas. 46 USCA app. §§ 761–767. — Abbr. DOHSA. [Cases: Death 7, 13. C.J.S. Death §§ 17–18, 28, 32, 36.]

#### DEATH PENALTY

death penalty. 1. CAPITAL PUNISHMENT. 2. A penalty that makes a person or entity ineligible to participate in an activity that the person or entity previously participated in. • The penalty is usu. imposed because of some type of gross misconduct. 3. See death-penalty sanction under SANCTION.

#### DEATH-PENALTY SANCTION

death-penalty sanction. See SANCTION.

#### DEATH-QUALIFIED JURY

death-qualified jury. See JURY.

#### DEATH ROW

death row. The area of a prison where those who have been sentenced to death are confined.

#### DEATH SENTENCE

death sentence. See SENTENCE.

#### DEATHSMAN

deathsmen. An executioner; a hangman.

#### DEATH STATUTE

death statute. A law that protects the interests of a decedent's family and other dependents, who may recover in damages what they would reasonably have received from the decedent if the death had not occurred. Cf. SURVIVAL STATUTE. [Cases: Death 7, 10. C.J.S. Death §§ 17–18, 21, 28, 102.]

#### DEATH TAX

death tax. 1. See estate tax under TAX. 2. See inheritance tax under TAX.

#### DEATH TRAP

death trap. 1. A structure or situation involving an imminent risk of death. 2. A situation that, although seemingly safe, is actually quite dangerous.

#### DEATH WARRANT

death warrant. See WARRANT(1).

#### DE ATTORNATO RECIPIENDO

de attornato recipiendo (dee a-tor-nay-toh ri-sip-ee-en-doh), n. [Law Latin “of receipt of an attorney”] Hist. A writ requiring a court to receive and admit an attorney for a party.

#### DE AUDIENDO ET TERMINANDO

de audiendo et terminando (dee aw-dee-en-doh et t<<schwa>>r-mi-nan-doh), n. [Law Latin “for hearing and determining”] Hist. A writ or commission directing certain justices to hear and resolve particular cases resulting from a riot, including those involving heinous misdemeanors, breaches of the peace, and trespass. Cf. COMMISSION OF OYER AND TERMINER.

#### DE AVERIIS CAPTIS IN WITHERNAMIAM

de averiis captis in withernamium (dee <<schwa>>-veer-ee-is kap-tis in with-<<schwa>>r-nay-mee-<<schwa>>m), n. [Law Latin “for taking cattle in withernam”] Hist. A writ directing a sheriff to detain a defendant's cattle because the defendant had unlawfully taken the plaintiff's cattle out of the county. • The defendant's cattle would be detained until the sheriff could replevy the plaintiff's cattle.

#### DE AVERIIS REPLEGIANDIS

de averiis replegiandis (dee <<schwa>>-veer-ee-is ri-plee-jee-an-dis), n. [Law Latin “of replevying beasts”] Hist. A writ ordering a sheriff to replevy someone's beasts or chattels that had been unlawfully taken and detained. • This is the old writ of replevin. — Also termed de replegiore de averiis.

#### DE BANCO

de banco (dee or d<<schwa>> bang-koh). [Law Latin] Of the bench. • In England, the term applied to justices of the Court of Common Pleas.

#### DEBARMENT

debarment, n. The act of precluding someone from having or doing something; exclusion or hindrance. — debar, vb.

#### DEBASEMENT

debasement. 1. The act of reducing the value, quality, or purity of something; esp., the act of lowering the value of coins by either reducing the weight of gold and silver in the coins or increasing the coins' alloy amounts. 2. Degradation. 3. The state of being degraded.

#### DEBATE

debate, n. Parliamentary law. Formal consideration of a motion's merits in the form of speeches for, against, or otherwise addressing the motion. See CONSIDERATION(2). — debatable,adj. — debatability,n.

controlled debate.Debate in which a designated manager, usu. a partisan leader, leads each side and allots time for speeches. — Also termed controlled time.

extended debate.Debate that continues beyond an otherwise applicable limit. See EXTEND DEBATE.

floor debate.The legislative process of debating a proposed bill before an entire chamber rather than before a committee. [Cases: States 32. C.J.S. States §§ 48–50.]

limited debate.Debate with restrictions. See LIMIT DEBATE.

pro–con debate.A debate that adheres to the parliamentary principle that speeches should alternate between opposing viewpoints. • Sometimes those seeking the floor on one side outnumber those on the other side, in which case the chair may allow two (or more) speeches in a row on the same side of the question.

#### DEBATE AGENDA

debate agenda.See debate calendar under CALENDAR(4).

#### DEBATE CALENDAR

debate calendar.See CALENDAR(4).

#### DEBAUCH

debauch (di-bawch), vb.1.Archaic. To draw (a person) away from duty; to lead (a person) astray. 2. To corrupt (a person) with lewdness; to seduce (someone).3. To mar or spoil (a person or thing).

#### DEBAUCHERY

debauchery (di-bawch-<<schwa>>-ree), n. Excessive indulgence in sensual pleasures; sexual immorality or excesses. — debauch,vb.

#### DEBELLATIO

debellatio (deb-<<schwa>>-lay-shee-oh). [Latin] Int'l law. A means of ending a war and acquiring territory when one of the belligerent countries has been so soundly defeated that its adversary is able to decide alone the fate of the defeated country's territory; conquest followed by annexation. — Also termed subjugation.

“[There are] three possible alternative meanings of debellatio in international law. The first is that debellatio denotes the change wrought by the conquest and total subjugation of a State together with that State's annexation by the conqueror. The second view is that debellatio corresponds to the total defeat of an enemy State, its occupation, and the elimination of a vital

component of Statehood; in this view, debellatio implies the extinction of the old State, but it leaves open the legal future of the occupied territory (annexation or the founding of one or more new States). The third view is that debellatio only describes a factual situation and that even the elimination of all the State organs combined with the occupation of the territory does not exclude the continuing existence of that State. It is mainly the second and the third meanings of debellatio which have been advocated for the situation of Germany since the end of World War II.” Karl-Ulrich Meyn, “Debellatio,” in 1 Encyclopedia of Public International Law 166 (1992).

#### DE BENE ESSE

de bene esse (dee bee-nee es-ee also day ben-ay es-ay), adv.[Law Latin “of well-being”] As conditionally allowed for the present; in anticipation of a future need <Willis's deposition was taken de bene esse>. [Cases: Pretrial Procedure 63. C.J.S. Pretrial Procedure §§ 3–10, 18–20, 35–54.] — Abbr. d.b.e. — de bene esse,adj.

#### DEBENTURE

debenture (di-ben-ch<<schwa>>r). [fr. L. debentur “there are owed”] 1. A debt secured only by the debtor's earning power, not by a lien on any specific asset. • Originally, this was the first word of a deed detailing sums acknowledged to be owed. 2. An instrument acknowledging such a debt. 3. A bond that is backed only by the general credit and financial reputation of the corporate issuer, not by a lien on corporate assets. — Also termed debenture bond; unsecured bond; naked debenture; plain bond. Cf. BOND(3). [Cases: Corporations 470. C.J.S. Corporations §§ 664–665.]

“The word ‘debenture’ in its archaic sense was applied to a form given under seal as an acknowledgment for goods supplied to the Royal Household, and as such probably meant a charge on Public Funds. The term was further applied to drawback certificates issued for repayment, on the exportation of goods, of duty which had already been paid upon them, and this term is still so used by H.M. Customs.... The word is now, however, generally used to indicate an acknowledgment of indebtedness given under seal by an incorporated company, containing a charge on assets of the company, and carrying an agreed rate of interest until payment, but the variety of the forms which a debenture may take makes it difficult to find a good general definition in any reported case.” Thomas Froude & Eric V.E. White, *The Practice Relating to Debentures* 1 (1935).

convertible debenture.A debenture that the holder may change or convert into some other security, such as stock. [Cases: Corporations 473. C.J.S. Corporations § 670.]

convertible subordinated debenture.A debenture that is subordinate to another debt but can be converted into a different security.

sinking-fund debenture.A debenture that is secured by periodic payments into a fund established to retire long-term debt.

subordinate debenture.A debenture that is subject to the prior payment of ordinary debentures and other indebtedness.



4.English law. A company's security for a monetary loan. • The security usu. creates a charge on company stock or property. 5. A customhouse certificate providing for a refund of the duties on imported goods when the importer reexports the goods rather than selling them in the country where they were imported.

#### DEBENTURE BOND

debenture bond.See DEBENTURE(3).

#### DEBENTURE INDENTURE

debenture indenture.An indenture containing obligations not secured by a mortgage or other collateral. • It is a long-term financing vehicle that places the debenture holder in substantially the same position as a bondholder secured by a first mortgage.

#### DEBENTURE STOCK

debenture stock. 1. Stock that is issued under a contract providing for periodic, fixed payments. [Cases: Corporations 470. C.J.S. Corporations §§ 664–665.] 2.English law. A type of bond representing money borrowed by a company using its property or other fixed assets as security.

#### DEBET ET DETINET

debet et detinet (dee-bet ordebet-et et det-i-net ordet-<<schwa>>-n<<schwa>>t). [Law Latin] Hist. He owes and detains. • This phrase was used in declarations in actions for debt when the original creditor sued the original debtor. The declaration stated that the defendant “owes to” as well as “detains from” the plaintiff the debt or thing in question; thus, the action was said to be “in the debet et detinet.” But if the action was brought against someone other than the original debtor (such as an executor, for a debt due from the testator), then the action was said to be “in the detinet alone.” Cf. DETINET.

#### DEBET SINE BREVE

debet sine breve (dee-bet ordebet-et sI-nee breevorbree-vee), n.[Law Latin “debt without a writ”] 1. An action for debt commenced under a bill rather than a writ. 2. A debt confessed by judgment. — Abbr. d.si.ib. — Also termed debitum sine breve; debit sans breve. See CONFESSION OF JUDGMENT.

#### DE BIEN ET DE MAL

de bien et de mal (d<<schwa>> byen ay d<<schwa>> mal). [Law French] See DE BONO ET MALO(1).

#### DE BIENS LE MORT

de biens le mort (d<<schwa>> beenz l<<schwa>> mor[t]). [Law French] Hist. Of the goods of the deceased.

#### DE BIGAMIS

de bigamis (dee big-<<schwa>>-mis), n.[Law Latin “concerning men twice married”] Hist. The statute of 4 Edw. st. 3, so called from the opening words of the fifth chapter. See BIGAMUS.

#### DEBIT

debit. 1. A sum charged as due or owing. 2. In bookkeeping, an entry made on the left side of a ledger or account, noting an increase in assets or a decrease in liabilities. 3. An account balance showing that something remains due to the holder of the account. Cf. CREDIT(6).

#### DEBITA FUNDI

debita fundi (deb-i-t<<schwa>> f<<schwa>>n-dI). [Law Latin] Scots law. Debts attaching to the soil; debts affecting the land.

#### DEBITA LAICORUM

debita laicorum (deb-i-t<<schwa>> lay-<<schwa>>-kor-<<schwa>>m), n.[Law Latin “debts of laity”] Hist. The debts recoverable in civil courts.

#### DEBIT CARD

debit card.A card used to pay for purchases by electronic transfer from the purchaser's bank account. Cf. CREDIT CARD.

#### DEBITI ET CREDITI CONTRIBUTIO

debiti et crediti contributio (deb-i-tI et kred-i-tI kon-tri-byoo-shee-oh). [Law Latin] Civil law. A balancing of debit and credit. • The phrase appeared in reference to setoff.

#### DEBITOR

debitor (deb-i-tor), n. Roman law. Someone who has a legal obligation to someone else. Cf. CREDITOR(1). Pl. debitores.

#### DEBITOREM LOCUPLETEM ESSE

debitorem locupletem esse (deb-i-tor-<<schwa>>m lok-yoo-plee-t<<schwa>>m es-ee). [Latin] Hist. That the debtor is solvent. • In assigning a debt, a creditor might sometimes warrant that the debtor had the money to pay it.

#### DEBITOR NON PRAESUMITUR DONARE

debitor non praesumitur donare (deb-i-tor non pri-zyoo-mi-tur doh-nair-ee), n.[Law Latin “a debtor is not presumed to make a gift”] Hist. The presumption that any payment from a debtor is intended to satisfy the debt, unless the disposition clearly shows the debtor's intent to make a donation.

#### DEBITO TEMPORE

debito tempore (deb-i-toh tem-p<<schwa>>-ree). [Latin] Hist. In due time.

#### DEBITRIX

debitrix (deb-*<<schwa>>*-triks), n.[Latin] Archaic. Civil law. A female debtor.

#### DEBIT SANS BREVE

debit sans breve.See DEBET SINE BREVE.

#### DEBITUM

debitum (deb-i-t*<<schwa>>*m), n.[Latin “a debt”] Roman law. Money or other thing that is actually owed, where there is both a duty and liability to repay; an actionable debt. Cf. INDEBITUM.

#### DEBITUM FRUCTUUM

debitum fructuum (deb-i-t*<<schwa>>*m fr*<<schwa>>*k-choo-*<<schwa>>*m). [Law Latin] Hist. A debt upon the fruits; that is, a debt from the fruit of the land, not from the land itself. • Tithes, for example, were usu. payable debitum fructuum.

#### DEBITUM IN DIEM

debitum in diem (deb-i-t*<<schwa>>*m in dI-*<<schwa>>*m). [Latin “a debt to a date”] Hist. A debt payable at a future date. • The phrase appeared in reference to a debt that is due but for which the time for payment had not yet arrived. See UBI DIES CESSIT, LICET NONDUM VENERIT.

#### DEBITUM IN PRAESENTI SOLVENDUM IN FUTURO

debitum in praesenti solvendum in futuro (deb-i-t*<<schwa>>*m in pri-zen-tI sol-ven-d*<<schwa>>*m in fyoo-t[y]oor-oh). [Latin] A present debt (or obligation) to be paid at a future time; a debt or obligation complete when contracted, but of which the performance cannot be required until some future period.

#### DEBITUM REALE

debitum reale (deb-i-t*<<schwa>>*m ree-ay-lee). [Law Latin] Hist. A real debt; a debt on land, as distinguished from a personal obligation.

#### DEBITUM SINE BREVE

debitum sine breve.See DEBET SINE BREVE.

#### DEBITUM SUBESSE

debitum subesse (deb-i-t*<<schwa>>*m s*<<schwa>>*b-es-ee). [Latin] Hist. That the debt is due.

#### DE BONIS ASPORTATIS

de bonis asportatis (dee boh-nis as-p*<<schwa>>*r-tay-tis). See trespass de bonis asportatis under TRESPASS.

#### DE BONIS NON

de bonis non (dee boh-nis non). See administration de bonis non under ADMINISTRATION.

#### DE BONIS NON ADMINISTRATIS

de bonis non administratis (dee boh-nis non ad-min-<<schwa>>-stray-tis). [Law Latin] Hist. Of the goods not administered. • When the first administrator of an intestate estate dies or is removed, the second administrator is called an administrator bonis non, who administers the goods not administered by the previous executor.

#### DE BONIS NON AMOVENDIS

de bonis non amovendis (dee boh-nis non ay-moh-ven-dis), n.[Latin “of goods not to be moved”] Hist. A writ directing the sheriffs of London to make sure that a defendant's goods are not removed while the defendant's writ of error on a judgment is pending.

#### DE BONIS PROPRIIS

de bonis propriis (dee boh-nis proh-pree-is), n.[Law Latin “of his own goods”] Hist. A judgment allowing execution on an administrator's individual property rather than the property of an estate, as when the administrator mismanages the estate. Cf. DE BONIS TESTATORIS.

#### DE BONIS TESTATORIS

de bonis testatoris (dee boh-nis tes-t<<schwa>>-tor-is), n.[Law Latin “of the goods of the testator”] Hist. A judgment awarding execution on a testator's property, rather than the individual property of an administrator. Cf. DE BONIS PROPRIIS .

#### DE BONIS TESTATORIS AC SI

de bonis testatoris ac si (dee boh-nis tes-t<<schwa>>-tor-is ak sI). [Law Latin “from the goods of the testator if he has any, and if not, from those of the executor”] Hist. A judgment holding an executor responsible if the testator's estate is insufficient or if the executor falsifies a pleading as a release.

#### DE BONNE MEMOIRE

de bonne memoire (d<<schwa>> bawn mem-wahr). [Law French] Of sound mind; of good memory. — Also spelled de bone memorie. See MIND AND MEMORY; COMPOS MENTIS .

#### DE BONO ET MALO

de bono et malo (dee boh-noh et mal-oh), n.[Law Latin “for good and evil”] Hist1.For good and evil. • A criminal defendant indicated full submission to the jury's verdict by placing himself or herself at the jury's mercy de bono et malo. — Also termed de bien et de mal. 2. A special writ of jail delivery issued by the justices of assize to enable them to try all criminal defendants who were in jail where the court traveled. • Formerly, the judges were required to issue a separate writ for every prisoner. This was replaced by a general commission of jail delivery.

“[T]hey have ... a commission of general gaol delivery; which empowers them to try and

deliver every prisoner, who shall be in the gaol when the judges arrive at the circuit town, whenever indicted, or for whatever crime committed. It was anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called the writs de bono et malo: but, these being found inconvenient and oppressive, a general commission for all the prisoners has long been established in their stead. So that, one way or other, the gaols are cleared, and all offenders tried, punished, or delivered, twice in every year: a constitution of singular use and excellence.” 4 William Blackstone, Commentaries on the Laws of England 267 (1769).

#### DE BONO GESTU

de bono gestu (dee boh-noh jes-t[y]oo). [Law Latin] For good behavior.

#### DEBT

debt. 1. Liability on a claim; a specific sum of money due by agreement or otherwise <the debt amounted to \$2,500>.2. The aggregate of all existing claims against a person, entity, or state <the bank denied the loan application after analyzing the applicant's outstanding debt>.3. A nonmonetary thing that one person owes another, such as goods or services < her debt was to supply him with 20 international first-class tickets on the airline of his choice>.4. A common-law writ by which a court adjudicates claims involving fixed sums of money <he brought suit in debt>. — Also termed (in sense 4) writ of debt. [Cases: Debt, Action of 1. C.J.S. Debt, Action Of §§ 1–2, 7–11.]

“The action of debt lies where a party claims the recovery of a debt; that is, a liquidated or certain sum of money due him. The action is based upon contract, but the contract may be implied, either in fact or in law, as well as express; and it may be either a simple contract or a specialty. The most common instances of its use are for debts: (a) Upon unilateral contracts express or implied in fact. (b) Upon quasi-contractual obligations having the force and effect of simple contracts. (c) Upon bonds and covenants under seal. (d) Upon judgments or obligations of record. (e) Upon obligations imposed by statute.” Benjamin J. Shipman, Handbook of Common-Law Pleading § 52, at 132 (Henry Winthrop Ballantine ed., 3d ed. 1923).

active debt.Civil law. A debt due to another person.

ancestral debt.An ancestor's debt that an heir can be compelled to pay.

antecedent debt. 1.Contracts. An old debt that may serve as consideration for a new promise if the statute of limitations has run on the old debt. See PREEXISTING-DUTY RULE. [Cases: Contracts 67. C.J.S. Contracts §§ 121–122.] 2.Bankruptcy. A debtor's prepetition obligation that existed before a debtor's transfer of an interest in property. • For a transfer to be preferential, it must be for or on account of an antecedent debt. See PREFERENTIAL TRANSFER. [Cases: Bankruptcy 2612. C.J.S. Bankruptcy §§ 142–143.]

bad debt.A debt that is uncollectible and that may be deductible for tax purposes. [Cases: Internal Revenue 3420. C.J.S. Internal Revenue § 275.]

bonded debt.A debt secured by a bond; a business or government debt represented by issued

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bonds.

community debt. A debt that is chargeable to the community of husband and wife. See COMMUNITY PROPERTY. [Cases: Husband and Wife 268.]

consumer debt. A debt incurred by someone primarily for a personal, family, or household purpose. [Cases: Bankruptcy 2185, 2254, 2618. C.J.S. Bankruptcy §§ 55, 150, 348.]

“What are ‘consumer’ debts? Section 101(8) defines a consumer debt as follows: ‘consumer debt means debt incurred by an individual primarily for a personal, family, or household purpose.’ The touchstone is the debtor's use of the money. The nature of the collateral, the business of the creditor and the form of the loan are all irrelevant. A loan of \$25,000 from a Credit Union to pay for a child's education is a consumer debt, but the same loan used to finance the opening of an accounting business is not a consumer debt. This is so irrespective of the nature of the collateral put up for the debt.” David G. Epstein et al., Bankruptcy § 7-45, at 579 (1993).

contingent debt. A debt that is not presently fixed but that may become fixed in the future with the occurrence of some event.

convertible debt. A debt whose security may be changed by a creditor into another form of security.

debt by simple contract. See simple-contract debt.

debt by special contract. See special-contract debt.

debt by specialty contract. See special-contract debt.

debt of record. A debt evidenced by a court record, such as a judgment.

desperate debt. 1. Uncollectible debt. 2. A debt taken on by one who is either insolvent or on the verge of insolvency.

exigible debt. A liquidated and demandable debt; a matured claim.

fixed debt. Generally, a permanent form of debt commonly evidenced by a bond or debenture; long-term debt. — Also termed fixed liability.

floating debt. Short-term debt that is continuously renewed to finance the ongoing operations of a business or government.

fraudulent debt. A debt created by fraudulent practices.

funded debt. 1. A state or municipal debt to be paid out of an accumulation of money or by future taxation. [Cases: Municipal Corporations 951. C.J.S. Municipal Corporations §§ 1704–1705.] 2. Secured long-term corporate debt meant to replace short-term, floating, or unsecured debt.

general debt. A governmental body's debt that is legally payable from general revenues and is backed by the full faith and credit of the governmental body. [Cases: Municipal Corporations

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894. C.J.S. Municipal Corporations §§ 1634, 1934.]

hypothecary debt. A lien on an estate.

individual debt. (usu. pl.) Debt personally owed by a partner, rather than by the partnership. [Cases: Partnership 144. C.J.S. Partnership § 159.]

installment debt. A debt that is to be repaid in a series of payments at regular times over a specified period.

judgment debt. A debt that is evidenced by a legal judgment or brought about by a successful lawsuit against the debtor.

legal debt. A debt recoverable in a court of law.

liquidated debt. A debt whose amount has been determined by agreement of the parties or by operation of law.

liquid debt. A debt that is due immediately and unconditionally.

long-term debt. Generally, a debt that will not come due within the next year.

mutual debts. Cross-debts of the same kind and quality between two persons. Cf. SETOFF(2).

national debt. See NATIONAL DEBT.

nondischargeable debt. A debt (such as one for delinquent taxes) that is not released through bankruptcy. [Cases: Bankruptcy 3341–3362. C.J.S. Bankruptcy §§ 316–336, 344, 348.]

passive debt. A debt that, by agreement between the debtor and creditor, is interest-free.

preferential debt. A debt that is legally payable before others, such as an employee's wages.

privileged debt. A debt that has priority over other debts if a debtor becomes insolvent; a secured debt.

public debt. A debt owed by a municipal, state, or national government. [Cases: Municipal Corporations 869. C.J.S. Municipal Corporations § 1609.]

pure debt. See pure obligation under OBLIGATION.

secured debt. A debt backed by collateral.

short-term debt. Collectively, all debts and other liabilities that are payable within one year. — Also termed current liability.

simple-contract debt. A debt that is either oral or written but is not of record and not under seal. — Also termed debt by simple contract.

special-contract debt. A debt due, or acknowledged to be due, by an instrument under seal, such as a deed of covenant or sale, a lease reserving rent, or a bond. — Also termed debt by special contract; debt by specialty contract; specialty debt.

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“Any contract in short whereby a determinate sum of money becomes due to any person, and is not paid but remains in action merely, is a contract of debt. And, taken in this light, it comprehends a great variety of acquisition; being usually divided into debts of record, debts by special, and debts by simple contract.” 2 William Blackstone, Commentaries on the Laws of England 464 (1766).

subordinate debt. A debt that is junior or inferior to other types or classes of debt.

unliquidated debt. A debt that has not been reduced to a specific amount, and about which there may be a dispute.

unsecured debt. A debt not supported by collateral or other security.

#### DEBT ADJUSTMENT

debt adjustment. See DEBT POOLING.

#### DEBT CAPITAL

debt capital. See CAPITAL.

#### DEBT CONSOLIDATION

debt consolidation. See DEBT POOLING.

#### DEBTEE

debtee. Archaic. See CREDITOR(1).

#### DEBT-EQUITY RATIO

debt-equity ratio. See DEBT-TO-EQUITY RATIO.

#### DEBT FINANCING

debt financing. See FINANCING.

#### DEBT INSTRUMENT

debt instrument. A written promise to repay a debt, such as a promissory note, bill, bond, or commercial paper. [Cases: Bills and Notes 28. C.J.S. Bills and Notes; Letters of Credit §§ 2–3, 7–9, 12, 22, 75.]

#### DEBT LIMITATION

debt limitation. A ceiling placed on borrowing by an individual, business, or government. • The constitutions of many states prohibit the states from incurring debt in excess of a stated amount. Other state constitutions allow states to incur debt above a stated amount only through a vote of the people. — Also termed limitation on indebtedness. [Cases: States 115. C.J.S. States §§ 216, 218–222.]

#### DEBT OF RECORD



debt of record. See DEBT.

## DEBTOR

debtor. 1. One who owes an obligation to another, esp. an obligation to pay money.  
2. Bankruptcy. A person who files a voluntary petition or against whom an involuntary petition is filed — Also termed bankrupt. [Cases: Bankruptcy 2221. C.J.S. Bankruptcy § 45.]

“Section 101 [of the Bankruptcy Code] also introduces us to the language of modern bankruptcy practice. It tells us, for instance, that the person whom a bankruptcy case concerns is a debtor. A person or a firm in bankruptcy is no longer called a bankrupt. Although that word retains some currency among lay people, among bankruptcy lawyers it sounds old-fashioned and precious.” Douglas G. Baird, *Elements of Bankruptcy* 6 (2001).

3. Secured transactions. A person who either (1) has a property interest — other than a security interest or other lien — in collateral, even if the person is not an obligor, or (2) is a seller of accounts, chattel paper, payment intangibles, or promissory notes. UCC § 9-102(a)(28). — Abbr. Dr. [Cases: Secured Transactions 12, 21. C.J.S. Secured Transactions §§ 7, 10, 12, 19, 36.]

absent debtor. A debtor who lacks the intent to defraud creditors but is beyond the geographic reach of ordinary service of process.

absconding debtor. A debtor who flees from creditors to avoid having to pay a debt. • Absconding from a debt was formerly considered an act of bankruptcy. See ACT OF BANKRUPTCY.

account debtor. A person obligated on an account, chattel paper, or general intangible. • The UCC exempts from the definition of account debtor a person obligated to pay a negotiable instrument, even if the instrument constitutes chattel paper. UCC § 9-102(a)(3).

common debtor. Scots law. A debtor whose property has been arrested by more than one creditor.

concealed debtor. A debtor who hides from creditors, usu. with the intent to defraud the creditors or to avoid service of process, but does not leave the community or move out of state.

joint debtor. One of two or more debtors jointly liable for the same debt.

judgment debtor. See JUDGMENT DEBTOR.

new debtor. Secured transactions. A person who becomes bound as debtor under a security agreement previously entered into by another person. UCC §§ 9-102(a)(56), 9-203(e).

solvent debtor. A debtor who owns enough property to cover all outstanding debts and against whom a creditor can enforce a judgment.

## DEBTOR-IN-POSSESSION

debtor-in-possession. Bankruptcy. A Chapter 11 or 12 debtor that continues to operate its business as a fiduciary to the bankruptcy estate. • With certain exceptions, the

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debtor-in-possession has all the rights, powers, and duties of a Chapter 11 trustee. — Abbr. DIP. [Cases: Bankruptcy 3622, 3672. C.J.S. Bankruptcy §§ 374, 417.]

#### DEBTOR REHABILITATION

debtor rehabilitation. See REHABILITATION(3).

#### DEBTOR'S ACT OF 1869

Debtor's Act of 1869. An English statute that, among other things, (1) abolished imprisonment for debt except in certain cases, as when a debtor owed a debt to the Crown or a debtor had money but refused to pay a debt, (2) abolished arrest by mesne process, that is, by compelling the defendant to appear and give bail unless it was believed that the defendant would leave the country, (3) made it a misdemeanor to obtain credit under false pretenses or to defraud creditors, and (4) defined how warrants and judgment orders would be executed.

#### DEBTOR'S EXAMINATION

debtor's examination. Bankruptcy. A meeting between a debtor and his or her creditors during which the creditors ask the debtor questions designed to uncover information about the location and extent of the debtor's assets and the dischargeability of debts. • The examination may be conducted under § 343 of the Bankruptcy Code or Rule 2004 of the Federal Rules of Bankruptcy Procedure. The bankruptcy trustee may be present and preside over the initial § 343 examination, which is held shortly after the bankruptcy filing. But the party (usu. a creditor) who requests a Rule 2004 examination presides over the meeting, which can be held at any time. See 11 USCA § 343; Fed. R. Bankr. P. 2004.

#### DEBTOR'S PETITION

debtor's petition. See voluntary petition under PETITION.

#### DEBTOR'S PROPERTY

debtor's property. See PROPERTY OF THE DEBTOR.

#### DEBT POOLING

debt pooling. An arrangement by which a person's debts are consolidated and creditors agree to accept lower monthly payments or to take less money. — Also termed debt consolidation; debt adjustment.

#### DEBT RATIO

debt ratio. A corporation's total long-term and short-term liabilities divided by the firm's total assets. • A low debt ratio indicates conservative financing and thus usu. an enhanced ability to borrow in the future. — Also termed debt-to-total-assets ratio.

#### DEBT RETIREMENT

debt retirement. Repayment of debt; RETIREMENT(3).

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**DEBT SECURITY**

debt security. See SECURITY.

**DEBT SERVICE**

debt service. 1. The funds needed to meet a long-term debt's annual interest expenses, principal payments, and sinking-fund contributions. 2. Payments due on a debt, including interest and principal.

**DEBT-TO-EQUITY RATIO**

debt-to-equity ratio. A corporation's long-term debt divided by its owners' equity, calculated to assess its capitalization. — Also termed debt-equity ratio; debt-to-net-worth ratio.

**DEBT-TO-TOTAL-ASSETS RATIO**

debt-to-total-assets ratio. See DEBT RATIO.

**DECA**

DeCA. abbr. DEFENSE COMMISSARY AGENCY.

**DE CAETERO**

de caetero (dee see-t<<schwa>>-roh). [Latin “about the other”] Henceforth; in the future. — Also spelled de cetero.

**DE CALCETO REPARANDO**

de calceto reparando (dee kal-s<<schwa>>-toh rep-<<schwa>>-ran-doh), n. [Law Latin “for repairing a causeway”] Hist. A writ directing a sheriff to distraint residents of a place to repair a road.

**DECALVATIO**

decalvatio (dee-kal-vay-shee-oh). Hist. The act of cutting off a person's hair to symbolize a total loss of honor. • Although some early legal historians interpreted this Germanic practice as scalping, a leading historian of the early 20th century insisted that it referred only to the cutting of hair. See Munroe Smith, *The Development of European Law* 99 (1928).

**DECANATUS**

decanatus (dek-<<schwa>>-nay-t<<schwa>>s), n. [Law Latin] Hist. A group of ten people; a decenary. See DECANUS.

**DECANIA**

decania (di-kay-nee-<<schwa>>), n. [Law Latin] Hist. A dean's office; a dean's territory.

**DECANUS**

decanus (di-kay-n<<schwa>>s), n. [fr. Greek dekanos “a dean”] 1. Roman law. An officer

commanding ten soldiers. 2.Eccles. & civil law. A leader of ten people, as in decanus monasticus (“dean of ten monks”).3. The dean of a cathedral.

#### DE CAPITALIBUS DOMINUS FEODI

de capitalibus dominus feodi (dee kap-<<schwa>>-tay-l<<schwa>>-b<<schwa>>s dom-<<schwa>>-n<<schwa>>s fee-<<schwa>>-di). [Law Latin] Hist. From the highest lord of the fee. • This term was primarily used in old charters to state that the tenure of an estate was to be held of the chief lord of the fee, rather than of the immediate grantor.

#### DECAPITATION

decapitation (dee-kap-<<schwa>>-tay-sh<<schwa>>n).Hist. The act of cutting off a head; a beheading. • This was once a common method of capital punishment.

#### DE CAPITE MINUTIS

de capite minutis (dee kap-<<schwa>>-tee mi-n[y]oo-tis). [Latin “of those who have lost their status”] Roman law. A title in the Digest, referring to people who lost their civil status. See CAPITIS DEMINUTIO.

#### DECARCERATION

decarceration. See DISIMPRISONMENT.

#### DE CARTIS REDDENDIS

de cartis reddendis (dee kahr-tis ri-den-dis), n.[Law Latin “for restoring charters”] Hist. A writ ordering redelivery of a charter or deed; a writ of detinue. See DETINUE.

#### DE CATALIS REDDENDIS

de catallis reddendis (dee k<<schwa>>-tal-is ri-den-dis), n.[Law Latin “of chattels to be restored”] Hist. A writ ordering a bailee to deliver chattels kept from the owner. • This was replaced by the writ of detinue. See DETINUE.

#### DE CAUTIONE ADMITTENDA

de cautione admittenda (dee kaw-shee-oh-nee ad-mi-ten-d<<schwa>>), n.[Law Latin “of security to be taken”] Hist. A writ commanding a bishop who had ordered an excommunicated person held for contempt, even though the prisoner had offered bail and promised to obey the church in the future, to take the offered security and order the prisoner's release.

#### DECEASE

decease,n. See DEATH.

decease,vb. To die; to depart from life.

#### DECEASED

deceased,n. See DECEDENT.

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 DECEDENT

decedent (di-see-d<<schwa>>nt), n. A dead person, esp. one who has died recently. • This term is little used outside law. It typically appears in legal proceedings or administrative inquiries. — Also termed deceased.

nonresident decedent. A decedent who was domiciled outside the jurisdiction in question (such as probate jurisdiction) at the time of death.

## DECEDENT'S ESTATE

decedent's estate. See ESTATE(3).

## DECEIT

deceit, n. 1. The act of intentionally giving a false impression <the juror's deceit led the lawyer to believe that she was not biased>. 2. A false statement of fact made by a person knowingly or recklessly (i.e., not caring whether it is true or false) with the intent that someone else will act upon it. See fraudulent misrepresentation under MISREPRESENTATION. [Cases: Fraud 3.] 3. A tort arising from a false representation made knowingly or recklessly with the intent that another person should detrimentally rely on it <the new homeowner sued both the seller and the realtor for deceit after discovering termites>. See FRAUD; MISREPRESENTATION. — deceive, vb.

“The tort of deceit consists in the act of making a wilfully false statement with the intent that the plaintiff shall act in reliance on it, and with the result that he does so act and suffers harm in consequence.... There are four main elements in this tort: (1) there must be a false representation of fact; (2) the representation must be made with knowledge of its falsity; (3) it must be made with the intention that it should be acted on by the plaintiff, or by a class of persons which includes the plaintiff, in the manner which resulted in damage to him; (4) it must be proved that the plaintiff has acted upon the false statement and has sustained damage by so doing.” R.F.V. Heuston, *Salmond on the Law of Torts* 387 (17th ed. 1977).

## DECEITFUL PLEA

deceitful plea. See sham pleading under PLEADING(1).

## DECEM TALES

decem tales (des-em tay-leez), n. [Law Latin “ten such people”] Hist. A writ directing a sheriff to summon ten people for a jury panel when a sufficient number have not already appeared.

## DECENVIRI LITIBUS JUDICANDIS

decenviri litibus judicandis (di-sem-v<<schwa>>-rIII-ti-b<<schwa>>s joo-d<<schwa>>-kan-dis). [Latin “ten persons to decide lawsuits”] Roman law. A group of five senators and five knights who assisted the elected magistrate in deciding legal disputes concerning liberty. — Also spelled decenviri stlitibus judicandis.

## DECENARY

decenary.Hist. A town or district consisting of ten freeholding families. • A freeholder of the decenary (a decennarius) was bound by frankpledge to produce any wrongdoer living in the decenary. — Also spelled decennary. — Also termed decenna; tithing. Cf. FRANKPLEDGE.

“The civil division of the territory of England is into counties, of those counties into hundreds, of those hundreds into tithings or towns. Which division, as it now stands, seems to owe its original to king Alfred; who, to prevent the rapines and disorders which formerly prevailed in the realm, instituted tithings; so called from the Saxon, because ten freeholders, with their families, composed one. These all dwelt together, and were sureties or free pledges to the king for the good behavior of each other; and, if any offence was committed in their district, they were bound to have the offender forthcoming. And therefore anciently no man was suffered to abide in England above forty days, unless he were enrolled in some tithing or decenary.” 1 William Blackstone, Commentaries on the Laws of England 110 (1765).

#### DECENCY

decency. The state of being proper, as in speech or dress; the quality of being seemly.

#### DECENNA

decenna (di-sen-*<<schwa>>*), n.[fr. Latin decem “ten”] See DECENARY.

#### DECENNARIUS

decennarius (des-*<<schwa>>*-nair-ee-*<<schwa>>*s), n.[Law Latin “a deciner”] One of ten families of freeholders comprising a decenary. See DECENARY.

#### DECENNARY

decennary. See DECENARY.

#### DECEPTIVE ACT

deceptive act.As defined by the Federal Trade Commission and most state statutes, conduct that is likely to deceive a consumer acting reasonably under similar circumstances. — Also termed deceptive practice; deceptive sales practice. [Cases: Consumer Protection 4; Trade Regulation 861. C.J.S. Credit Reporting Agencies; Consumer Protection §§ 29–31, 33–34, 36–39; Trade-Marks, Trade-Names, and Unfair Competition § 380.]

#### DECEPTIVE ADVERTISING

deceptive advertising.See FALSE ADVERTISING.

#### DECEPTIVE PRACTICE

deceptive practice.See DECEPTIVE ACT.

#### DECEPTIVE SALES PRACTICE

deceptive sales practice.See DECEPTIVE ACT.

## DECEPTIVE WARRANTY

deceptive warranty. See WARRANTY(2).

## DECERN

decern (di-s<<schwa>>rn), vb. Scots law. To decree; to give final judgment.

“Before the judgment or interlocutor of any court in Scotland can be extracted, to the effect of warranting execution, it must import a decree. Hence, all extractable judgments close with the word ‘decern.’ ” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 287 (George Watson ed., 7th ed. 1890).

## DE CERTIFICANDO

de certificando (dee s<<schwa>>r-ti-fi-kan-doh), n. [Law Latin “about something to be certified”] A writ requiring something to be certified, similar to certiorari. See CERTIFICANDO DE RECOGNITIONE STAPULAE.

## DECERTIFY

decertify, vb. 1. To revoke the certification of. 2. To remove the official status of (a labor union) by withdrawing the right to act as a collective-bargaining agent. [Cases: Labor Relations 216. C.J.S. Labor Relations §§ 191–192, 210.] 3. (Of a court) to overrule a previous order that created a class for purposes of a class action; to officially undo (a class). [Cases: Federal Civil Procedure 173; Parties 35.49. C.J.S. Parties § 36.] Cf. CERTIFY. — decertification, n.

## DE CERTIORANDO

de certiorando (dee s<<schwa>>r-shee-<<schwa>>-ran-doh), n. [Law Latin “about certification”] A writ ordering a sheriff to certify a fact.

## DECESSUS

decessus (di-ses-<<schwa>>s), n. [fr. Latin decedere “to depart”] 1. Roman law. A death. 2. A departure. • This term has been used in both the civil and common law, esp. in reference to the desertion of a ground in a previous pleading in favor of another. See DEPARTURE.

## DE CETERO

de cetero. See DE CAETERO.

## DE CHAMPERTIA

de champertia (dee kam-p<<schwa>>r-shee-<<schwa>>), n. [Law Latin “about champerty”] Hist. A writ ordering justices of the bench to enforce the champerty laws. See CHAMPERTOR; CHAMPERTY.

## DE CHAR ET DE SANK

de char et de sank (d<<schwa>> shahr ay d<<schwa>> sangk). [Law French] Hist. Of flesh

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and blood.

#### DE CHIMINO

de chimino (dee kim-*<<schwa>>*-noh), n.[Law Latin “writ of way”] Hist. A writ to enforce a right-of-way.

#### DE CIBARIIS UTENDIS

de cibariis utendis (dee si-bair-ee-*<<schwa>>*s yoo-ten-dis), n.[Law Latin “of victuals to be used”] Hist. The statute of 10 Edw. 3, ch. 3 restraining entertainment expenses. • This was one of several statutes limiting luxury spending.

#### DECIES TANTUM

decies tantum (desh-ee-eez ordee-shee-eez tan-t*<<schwa>>*m), n.[Law Latin “ten times as much”] Hist. A writ ordering a juror who accepted a bribe for a verdict to pay ten times the bribery amount, half to the suing party and half to the Crown.

“Decies tantum is a writ that lies where a juror in any inquest takes money of the one part or other, to give his verdict; then he shall pay ten times as much as he hath received: and every one that will sue may have this action, and shall have the one half, and the king the other .... And the same law is of all other actions popular, where one part is to the king, the other to the party that sues. Also the embracers, who procure such inquests, shall be punished in the same manner, and they shall have imprisonment a year. But no justice shall inquire thereof ex officio, but only at the suit of the party.” *Termes de la Ley* 146 (1st Am. ed. 1812).

#### DECIMAE

decimae (des-*<<schwa>>*-mee), n.[fr. Latin decem “ten”] Eccles. law. 1. The tenth part of the annual profits of a benefice originally payable to the Pope, and later to the Crown by 26 Hen. 8, ch. 3.

“The tenths, or decimae, were the tenth part of the annual profit of each living ... which was also claimed by the holy see .... But this claim of the pope met with a vigorous resistance from the English parliament; and a variety of acts were passed to prevent and restrain it .... But the popish clergy, blindly devoted to the will of a foreign master, still kept it on foot; sometimes more secretly, sometimes more openly and avowedly .... And, as the clergy expressed this willingness to contribute so much of their income to the head of the church, it was thought proper (when in the same reign the papal power was abolished, and the king was declared the head of the church of England) to annex this revenue to the crown ....” 1 William Blackstone, *Commentaries on the Laws of England* 274 (1765).

2. Tithes paid to the church, often in grain or wool.

#### DECIMAE GARBALES

decimae garbales (des-i-mee gahr-bay-leez). [Law Latin] Hist. Eccles. law. Tithe sheaves; grain tithes. • The parish rector was entitled to each tenth sheaf of the cut grain as a tithe.



## DECIMAE RECTORIAE

decimae rectoriae (des-i-mee rek-tor-ee-ee). [Law Latin] Hist. Eccles. law. Parsonage tithes; that is, fixed tithes payable to the parson of a parish. • The right to levy such tithes could not be lost by prescription.

## DECIMAE VICARIAE

decimae vicariae (des-i-mee vI-kair-ee-ee). [Law Latin] Hist. Eccles. law. Vicarage tithes. • Vicars received tithes from various sources (such as from wool or eggs) according to need or custom. The right to levy them could not be lost by prescription.

## DECIMATION

decimation (des-<<schwa>>-may-sh<<schwa>>n).1. A major destruction of people; a great loss of life. 2.Hist. A tithing; a payment of the tenth part. 3.Hist. A punishment, esp. by death, of every tenth person by lot. • Under Roman law, decimatio referred to the punishment by lot of every tenth soldier in a legion for mutiny or cowardice.

## DECISION

decision,n.1. A judicial or agency determination after consideration of the facts and the law; esp., a ruling, order, or judgment pronounced by a court when considering or disposing of a case. See JUDGMENT(1); OPINION(1). — decisional,adj.

appealable decision.A decree or order that is sufficiently final to receive appellate review (such as an order granting summary judgment), or an interlocutory decree or order that is immediately appealable, usu. by statute (such as an order denying immunity to a police officer in a civil-rights suit). — Also termed reviewable issue. See COLLATERAL-ORDER DOCTRINE. [Cases: Appeal and Error 24–135. C.J.S. Appeal and Error §§ 35, 41–153, 189–191, 319, 736, 772, 774–775, 846, 848; Justices of the Peace§ 234(1, 2, 3).]

final decision.See final judgment under JUDGMENT.

interlocutory decision.See interlocutory order under ORDER(2).

unreasonable decision.An administrative agency's decision that is so obviously wrong that there can be no difference of opinion among reasonable minds about its erroneous nature. [Cases: Administrative Law and Procedure 763. C.J.S. Public Administrative Law and Procedure § 224.]

2.Parliamentary law. VOTE(4).3.Parliamentary law. The chair's ruling on a point of order. See appeal from the decision of the chair under APPEAL.

## DECISIONAL LAW

decisional law.See CASELAW.

## DECISION-MAKING RESPONSIBILITY

decision-making responsibility.The authority to come to a binding resolution of an issue. •

For example, in child-rearing, decision-making responsibility involves the authority to make significant decisions on a child's behalf, including decisions about education, religious training, and healthcare.

#### DECISION ON THE MERITS

decision on the merits. See judgment on the merits under JUDGMENT.

#### DECISIVE OATH

decisive oath. See OATH.

#### DECISORY OATH

decisory oath. See decisive oath under OATH.

#### DECKER TEST

Decker test. See SUBJECT-MATTER TEST.

#### DECLARANT

declarant (di-klair-*<<schwa>>*nt), n.1. One who has made a statement *<in accordance with the rules of evidence, the statement was offered to prove the declarant's state of mind>*.2. One who has signed a declaration, esp. one stating an intent to become a U.S. citizen *<the declarant grew up in Italy>*. — declarant, adj.

#### DECLARATION

declaration, n.1. A formal statement, proclamation, or announcement, esp. one embodied in an instrument. Cf. AFFIDAVIT.

declaration of alienage. The declaration of a citizen or subject having dual citizenship that the person wishes to renounce the citizenship of one state. • For the declaration to be effective, the person making it must be of full age and not under any disability.

declaration of default. A creditor's notice to a debtor regarding the debtor's failure to perform an obligation, such as making a payment.

declaration of dividend. A company's setting aside of a portion of its earnings or profits for distribution to its shareholders. See DIVIDEND. [Cases: Corporations 152. C.J.S. Corporations §§ 295–299.]

declaration of homestead. A statement required to be filed with a state or local authority to prove property ownership in order to claim homestead-exemption rights. See HOMESTEAD. [Cases: Homestead 41.]

declaration of intention. An alien's formal statement resolving to become a U.S. citizen and to renounce allegiance to any other government or country. [Cases: Aliens 68(2).]

declaration of legitimacy. A formal or legal pronouncement that a child is legitimate. [Cases:

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Children Out-of-Wedlock 1, 8. C.J.S. Children Out-of-Wedlock §§ 2–11, 23.]

declaration of trust. 1. The act by which the person who holds legal title to property or an estate acknowledges that the property is being held in trust for another person or for certain specified purposes. [Cases: Trusts 1. C.J.S. Trover and Conversion §§ 1–9, 14–18.] 2. The instrument that creates a trust. — Also termed (in sense 2) trust instrument; trust deed; trust agreement. [Cases: Trusts 19. C.J.S. Trover and Conversion § 35.]

judicial declaration.Hist. Scots law. 1. A party's statement, made in court and transcribed, about a case's material facts. 2. An accused's statement, made after an arrest and taken down in writing.

2.Int'l law. The part of a treaty containing the stipulations under which the parties agree to conduct their actions; TREATY(1).3.Int'l law. A country's unilateral pronouncement that affects the rights and duties of other countries.

declaration of war.A country's announcement that it is officially engaged in war against another country. [Cases: War and National Emergency 7. C.J.S. War and National Defense §§ 2, 5.]

4. A document that governs legal rights to certain types of real property, such as a condominium or a residential subdivision. [Cases: Condominium 3. C.J.S. Estates §§ 197–201, 203–206.] 5. A listing of the merchandise that a person intends to bring into the United States. • This listing is given to U.S. Customs when one enters the country. [Cases: Customs Duties 65. C.J.S. Customs Duties §§ 82–84.] 6.Evidence. An unsworn statement made by someone having knowledge of facts relating to an event in dispute. [Cases: Evidence 266–313. C.J.S. Evidence §§ 259–260, 267, 285–338, 340–341, 343.]

deathbed declaration.See dying declaration.

declaration against interest.A statement by a person who is not a party to a suit and is not available to testify at trial, discussing a matter that is within the declarant's personal knowledge and is adverse to the declarant's interest. • Such a statement is admissible into evidence as an exception to the hearsay rule. Fed. R. Evid. 804(b)(3). See admission against interest under ADMISSION. — Also termed self-disserving declaration. See admission against interest under ADMISSION(1). [Cases: Criminal Law 417(15); Evidence 272. C.J.S. Criminal Law § 960; Evidence §§ 293–294, 296–298.]

declaration of pain.A person's exclamation of present pain, which operates as an exception to the hearsay rule. Fed. R. Evid. 803(3). [Cases: Criminal Law 419(2.20); Evidence 268. C.J.S. Criminal Law § 862; Evidence §§ 314–318, 325, 327–328, 330.]

declaration of state of mind.A person's state-of-mind statement that operates as an exception to the hearsay rule. Fed. R. Evid. 803(3). [Cases: Criminal Law 419(2.20); Evidence 268. C.J.S. Criminal Law § 862; Evidence §§ 314–318, 325, 327–328, 330.]

dying declaration.A statement by a person who believes that death is imminent, relating to the

cause or circumstances of the person's impending death. • The statement is admissible in evidence as an exception to the hearsay rule. — Also termed deathbed declaration; ante mortem statement. [Cases: Evidence 275.5; Homicide 1075. C.J.S. Evidence § 288.]

“[A] rule peculiar to criminal cases is the exception to the rule respecting hearsay evidence which renders dying declarations as to the cause of death admissible in trials for murder or manslaughter.... The earliest emphatic statement of it ... is to be found in Woodcock's case, decided in 1789 .... This case refers to a decision in 1720 ... and to the case of *R. v Reason and Tranter*, decided in 1722. That case, however, says nothing as to any limitation on the rule. A series of cases from 1678 to 1765 show that during that period declarations of deceased persons as to the cause of their death were admitted even though the declarants had hopes of recovery when they were made.” 1 James Fitzjames Stephen, *A History of the Criminal Law of England* 447–48 (1883).

self-disserving declaration. See declaration against interest.

self-serving declaration. An out-of-court statement made to benefit one's own interest. [Cases: Criminal Law 413; Evidence 271. C.J.S. Criminal Law § 877; Evidence § 289.]

7. Common-law pleading. The plaintiff's first pleading in a civil action. • It is an amplification of the original writ on which the action is founded, with the additional circumstances of the time and place of injury. In a real action, the declaration is called a count. Today the equivalent term in English law is statement of claim; in most American jurisdictions, it is called a petition or complaint. — Also termed narratio. See COUNT(2), (3). Cf. PLEA (2). [Cases: Pleading 41. C.J.S. Pleading § 96.] “The declaration is a statement of all material facts constituting the plaintiff's cause of action in a methodical and legal form. It consists of the following parts: (a) Statement of title of court. (b) Statement of venue in the margin. (c) The commencement. (d) The body, or statement of the cause of action. (e) The conclusion.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 76, at 192 (Henry Winthrop Ballantine ed., 3d ed. 1923).

declaration in chief. A declaration for the principal cause of action.

8. A formal, written statement — resembling an affidavit but not notarized or sworn to — that attests, under penalty of perjury, to facts known by the declarant. • Such a declaration, if properly prepared, is admissible in federal court with the same effect as an affidavit. 28 USCA § 1746. — Also termed declaration under penalty of perjury; unsworn declaration under penalty of perjury. Cf. AFFIDAVIT. 9. Int'l law. An oral or written statement, unilaterally made, by which a state expresses its will, intent, or opinion when acting in the field of international relations. 10. See declaratory judgment under JUDGMENT. 11. DECLARATION OF RIGHTS. — declare, vb. — declaratory, adj.

#### DECLARATION AFTER FINAL REJECTION

declaration after final rejection. See affidavit after final rejection under AFFIDAVIT.

#### DECLARATION DATE

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declaration date. See DATE.

#### DECLARATION OF A DESIRE FOR A NATURAL DEATH

declaration of a desire for a natural death. See LIVING WILL.

#### DECLARATION OF ALIENAGE

#### DECLARATION OF CONTINUED USE

declaration of continued use. See DECLARATION OF USE.

#### DECLARATION OF ESTIMATED TAX

declaration of estimated tax. A required IRS filing by certain individuals and businesses of current estimated tax owed, accompanied by periodic payments of that amount. • The requirement ensures current collection of taxes from taxpayers (such as self-employed persons) whose incomes are not fully taxed by payroll withholding. IRC (26 USCA) §§ 6315, 6654. [Cases: Internal Revenue 4832, 5219.40. C.J.S. Internal Revenue §§ 733, 821.]

#### DECLARATION OF INCONTESTABILITY

declaration of incontestability. Trademarks. A sworn statement submitted by the owner of a registered mark after five years of registration, averring that the mark has been in continuous use in commerce for at least five consecutive years since registration, that the mark has not become generic, that there has been no final adverse decision to ownership in the mark, and that there is no pending proceeding in the U.S. Patent and Trademark Office or courts involving the mark. • The statement entitles the mark to immunity from some legal challenges under § 15 of the Lanham Act. — Also termed affidavit of incontestability; affidavit under § 15; declaration under § 15; Section 15 affidavit; Section 15 declaration. [Cases: Trade Regulation 251. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 149, 199–201.]

#### DECLARATION OF INDEPENDENCE

Declaration of Independence. The formal proclamation of July 4, 1776, in the name of the people of the American colonies, asserting their independence from the British Crown and announcing themselves to the world as an independent nation.

#### DECLARATION OF LEGITIMACY

declaration of legitimacy. See DECLARATION(1).

#### DECLARATION OF NO DEFENSES

declaration of no defenses. See WAIVER OF DEFENSES.

#### DECLARATION OF PAIN

declaration of pain. See DECLARATION(6).

#### DECLARATION OF PARIS

Declaration of Paris. An international agreement, signed by Great Britain, France, Turkey, Sardinia, Austria, Prussia, and Russia in 1856 (at the end of the Crimean War), providing that (1) privateering is illegal, (2) with the exception of contraband, a neutral flag covers an enemy's goods, (3) with the exception of contraband, neutral goods cannot be confiscated under a hostile flag, and (4) a blockade must work to be binding. • The agreement was later adopted by most other maritime powers, except the United States and a few others.

“The Declaration of Paris is one of the greatest triumphs won by commercial interests over the strict rules of maritime warfare. Its importance resides in its first three articles. Article 4 did no more than formulate a principle acknowledged for more than a century. Construed strictly it requires an impossibility; for no blockade, however strict, can always ‘prevent access to the coast of the enemy.’ But it is clear that the words were meant to be understood in a reasonable sense as merely prohibitory of ineffective or ‘paper’ blockades .... Article 1 struck at a most objectionable practice. The current of opinion had long been running strongly against the use of privateers.... Article 2 ... has provoked an enormous amount of controversy. Together with Article 3 it amounted to a new departure in the law of maritime capture. Up to 1856 the great naval powers had been divided between the old principle that the liability of goods to capture should be determined by the character of their owner, and the more modern principle ... that the character of the ship in which the goods were laden should settle their fate.” 1 R.H. Inglis Palgrave, *Palgrave's Dictionary of Political Economy* 520–21 (Henry Higgs ed., 2d ed. 1925).

#### DECLARATION OF RIGHTS

declaration of rights. 1. An action in which a litigant requests a court's assistance not because any rights have been violated but because those rights are uncertain. • Examples include suits for a declaration of legitimacy, for declaration of nullity of marriage, and for the authoritative interpretation of a will. 2. DECLARATORY JUDGMENT. — Often shortened to declaration.

#### DECLARATION OF STATE OF MIND

declaration of state of mind. See DECLARATION(6).

#### DECLARATION OF TAKING ACT

Declaration of Taking Act. The federal law regulating the government's taking of private property for public use under eminent domain. 40 USCA § 258a. • Fair compensation must be paid for the property. [Cases: Eminent Domain 167. C.J.S. Eminent Domain § 202.]

#### DECLARATION OF TRUST

declaration of trust. See DECLARATION(1).

#### DECLARATION OF USE

declaration of use. Trademarks. A sworn statement submitted by a registered mark's owner averring that the registered mark is currently in use in commerce, and providing a specimen or facsimile of the mark's use. • The § 8 affidavit must be filed (1) the fifth or sixth year following registration, and (2) the year before the end of every ten-year period after the date of registration.

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If a registered mark's owner fails to file a § 8 affidavit within the required time, the U.S. Patent and Trademark Office may cancel the registration. The term comes from § 8 of the Lanham Act. — Also termed affidavit of continued use; affidavit of use; affidavit under § 8; section 8 affidavit; declaration of continued use; declaration under § 8; Section 8 declaration; statement of use. Cf. INCONTESTABILITY STATUS; CANCELLATION (4).

**DECLARATION OF WAR**

declaration of war. See DECLARATION(3).

**DECLARATION UNDER PENALTY OF PERJURY**

declaration under penalty of perjury. See DECLARATION(8).

**DECLARATION UNDER § 8**

declaration under § 8. See DECLARATION OF USE.

**DECLARATION UNDER § 15**

declaration under § 15. See DECLARATION OF INCONTESTABILITY.

**DECLARATOR**

declarator. See action of declarator under ACTION(4).

**DECLARATOR OF TRUST**

declarator of trust (di-klar-⟨schwa⟩-t⟨schwa⟩r or di-klair-⟨schwa⟩-t⟨schwa⟩r or -tor). A common-law action against a trustee who holds property under a title ex facie for the trustee's own benefit.

**DECLARATORY**

declaratory (di-klar-⟨schwa⟩-tor-ee or di-klair-), adj. 1. Clear; manifest <a declaratory statute>. 2. Explanatory <a declaratory judgment>.

declaratory, n. See action of declarator under ACTION(4).

**DECLARATORY ACT**

declaratory act. See declaratory statute under STATUTE.

**DECLARATORY DECREE**

declaratory decree. See declaratory judgment under JUDGMENT.

**DECLARATORY JUDGMENT**

declaratory judgment. See JUDGMENT.

**DECLARATORY-JUDGMENT ACT**

declaratory-judgment act. A federal or state law permitting parties to bring an action to

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determine their legal rights and positions regarding a controversy not yet ripe for adjudication, as when an insurance company seeks a determination of coverage before deciding whether to cover a claim. 28 USCA §§ 2201, 2202. See declaratory judgment under JUDGMENT. [Cases: Declaratory Judgment 21. C.J.S. Declaratory Judgments §§ 5, 7.]

#### DECLARATORY PART OF A LAW

declaratory part of a law.A portion of a law clearly defining rights to be observed or wrongs to be avoided.

#### DECLARATORY PRECEDENT

declaratory precedent.See PRECEDENT.

#### DECLARATORY STATUTE

declaratory statute.See STATUTE.

#### DECLARATORY THEORY

declaratory theory.The belief that judges' decisions never make law but instead merely constitute evidence of what the law is. • This antiquated view — held by such figures as Coke and Blackstone — is no longer accepted.

“There are ... at least three good reasons why the declaratory theory should have persisted for some time after the modern English doctrine [of precedent] had begun to take shape. In the first place, it appealed to believers in the separation of powers, to whom anything in the nature of judicial legislation would have been anathema. Secondly, it concealed a fact which Bentham was anxious to expose, namely, that judge-made law is retrospective in its effect. If in December a court adjudges that someone is liable, in consequence of his conduct during the previous January, it would certainly appear to be legislating retrospectively, unless the liability is based on an earlier Act of Parliament, or unless the court is simply following a previous decision. A way of disguising the retrospective character of such a judgment would be to maintain the doctrine that the court really was doing no more than state a rule which anyone could have deduced from well-known principles or common usage, for the conduct in question would then have been prohibited by the law as it stood in January. The third reason for the persistence of the declaratory theory may be thought to justify its retention in a revised form today. When confronted with a novel point, judges always tend to speak as though the answer is provided by the common law.” Rupert Cross & J.W. Harris, *Precedent in English Law* 30 (4th ed. 1991).

#### DECLARED TRUST

declared trust.See express trust under TRUST.

#### DE CLARO DIE

de claro die (dee klair-oh dI-ee). [Law Latin “by clear day”] By daylight.

#### DE CLAUSO FRACTO



de clauso fracto (dee klaw-zoh frak-toh). [Law Latin] Of a breach of close. See TRESPASS QUARE; CLAUSUM FREGIT.

#### DE CLERICO ADMITTENDO

de clerico admittendo (dee kler-*<<schwa>>*-koh ad-mi-ten-doh), n.[Law Latin “for admitting a clerk”] Hist. A writ of execution commanding a bishop to accept a nominee for a vacant benefice. • A benefice's patron could enforce the right to fill a vacancy (the right of presentation) in the Court of Common Pleas by writ of quare impedit. — Also termed admittendo clerico; ad admittendum clericum. Cf. ADVOWSON; PRESENTATION(2); QUARE IMPEDIT.

#### DE CLERICO CAPTO PER STATUTUM MERCATORIUM DELIBERANDO

de clerico capto per statutum mercatorium deliberando (dee kler-*<<schwa>>*-koh kap-toh p*<<schwa>>*r st*<<schwa>>*-tyoo-t*<<schwa>>*m m*<<schwa>>*r-k*<<schwa>>*-tor-ee-*<<schwa>>*m di-lib-*<<schwa>>*-ran-doh), n.[Law Latin “for delivering a clerk arrested on a statute merchant”] Hist. A writ ordering the release of a clerk imprisoned for breaching a statute merchant. — Often shortened to de clerico capto per statutum mercatorium.

#### DE CLERICO CONVICTO COMMISSO GAOLAE IN DEFECTU ORDINARII DELIBERANDO

de clerico convicto commisso gaolae in defectu ordinarii deliberando. See CLERICO CONVICTO COMMISSO GAOLAE IN DEFECTU ORDINARII DELIBERANDO.

#### DE CLERICO INFRA SACROS ORDINES CONSTITUTO, NON ELIGENDO IN OFFICIUM

de clerico infra sacros ordines constituto, non eligendo in officium (dee kler-*<<schwa>>*-koh in-fr*<<schwa>>* sak-rohs or-di-neeZ kon-sti-tyoo-toh, non el-i-jen-doh in *<<schwa>>*-fish-ee-*<<schwa>>*m). [Law Latin “for not electing a clerk in holy orders to office”] Hist. A writ ordering a cleric's release from secular office. • The writ was addressed to the bailiff or other person who had forced a cleric to take a bailiwick or other secular office.

#### DE CLERO

de clero (dee kleeer-oh), n.[Law Latin “concerning the clergy”] The statute of 25 Edw. 3 addressing clerical matters, including presentations and indictments.

#### DECLINATION

declination (dek-l*<<schwa>>*-nay-sh*<<schwa>>*n).1. A deviation from proper course <declination of duty>.2. An act of refusal <declination of a gift>.3. A document filed by a fiduciary who chooses not to serve. 4. At common law, a plea to the court's jurisdiction by reason of the judge's personal interest in the lawsuit. — Also termed (esp. in sense 2) declinature.

#### DECLINATORY EXCEPTION

declinatory exception (di-klIn-*<<schwa>>*-tor-ee). See EXCEPTION(1).

#### DECLINATORY PLEA

declinatory plea.Hist. A pretrial plea claiming benefit of clergy. — Also termed plea of sanctuary. See BENEFIT OF CLERGY.

#### DECLINING-BALANCE DEPRECIATION METHOD

declining-balance depreciation method.See DEPRECIATION METHOD.

#### DECOCTOR

decoctor (di-kok-t*<<schwa>>*r or -tor), n.[fr. Latin *deciquere* “to waste”] Roman law. A bankrupt; a defaulting debtor.

#### DE COELO USQUE AD INFEROS

de coelo usque ad inferos (dee see-loh *<<schwa>>*s-kwee ad in-f*<<schwa>>*r-ohs). [Latin] From heaven to the center of the earth. • This phrase expressed a common-law maxim about the extent of a real-property owner's ownership interest in the property.

#### DECOLLATIO

decollatio (dee-kah-lay-shee-oh), n.[fr. Latin *de* “off” + *collum* “neck”] Hist. In England and Scotland, an act of beheading. See DECAPITATION.

#### DECOLONIZATION

decolonization.Int'l law. The process by which a colonial power divests itself of sovereignty over a colony — whether a territory, a protectorate, or a trust territory — so that the colony is granted autonomy and eventually attains independence.

#### DE COMMUNI DIVIDUNDO

de communi dividundo.See *actio de communi dividundo* under ACTIO.

#### DE COMON DROIT

de comon droit (d*<<schwa>>* kah-m*<<schwa>>*n droyt). [Law French] Hist. By the common law; of common right. See COMMON LAW.

#### DE COMPUTO

de computo (dee kom-py*<<schwa>>*-toh), n.[Law Latin “of account”] Hist. A writ ordering a defendant to either give a reasonable accounting to the plaintiff or explain why such an accounting should not be required. • This was the foundation for an action of account. See ACCOUNT(3), (4).

#### DE CONCILIO CURIAE

de concilio curiae (dee k*<<schwa>>*n-sil-ee-oh kyoor-ee-ee). [Law Latin] By the advice of the court; by the direction of the court. — Also spelled *de consillio curiae*.

## DE CONFLICTU LEGUM

De Conflictu Legum (dee k<<schwa>>n-flik-too lee-g<<schwa>>m), n.[Latin] Concerning the conflict of laws. • This is a title to several works on the conflict of laws.

## DE CONJUNCTIM FEOFFATIS

De Conjunctim Feoffatis (dee k<<schwa>>n-j<<schwa>>ngk-t<<schwa>>m fee-fay-tis), n.[Law Latin “concerning persons jointly enfeoffed”] Hist. The title of the statute of Edward I preventing delays caused by tenants pleading, in novel disseisins or other actions, that someone else was jointly seised with them.

## DE CONSANGUINEO

de consanguineo (dee kon-sang-gwin-ee-oh), n. See COSINAGE.

## DE CONSANGUINITATE

de consanguinitate (dee kon-sang-gwin-i-tay-tee), n. See COSINAGE.

## DE CONSILIO

de consilio (dee k<<schwa>>n-sil-ee-oh). [Law Latin] Of counsel. • This term often referred to the advice or counsel to commit a crime.

## DECONSTRUCTION

deconstruction,n. In critical legal studies, a method of analyzing legal principles or rules by breaking down the supporting premises to show that these premises might also advance the opposite rule or result. — Also termed trashing. — deconstructionist,adj. & n.

## DE CONTINUANDO ASSISAM

de continuando assisam (dee k<<schwa>>n-tin-yoo-an-doh <<schwa>>-sI-z<<schwa>>m), n.[Law Latin “for continuing an assize”] A writ to continue an assize.

## DE CONTUMACE CAPIENDO

de contumace capiendo (dee kon-ty<<schwa>>-may-see kap-ee-en-doh), n.[Law Latin “for arresting a contumacious person”] Hist. A writ issuing out of the Court of Chancery at the request of an ecclesiastical court that has found a person to be in contempt. • This writ came into use after the Ecclesiastical Courts Act of 1813 removed ecclesiastical courts' power to excommunicate litigants who failed to comply with a court order. Cf. EXCOMMUNICATO CAPIENDO .

“In 1812 the case of Mary Ann Dix — a woman not of age, who was imprisoned for two years on a writ de excommunicato capiendo for not paying costs in a suit for defamation — aroused the Legislature. In the following year it was enacted that excommunication should cease to exist as part of the process of the ecclesiastical courts to enforce appearance, and as a punishment for contempt.... [F]or the writ de excommunicato capiendo was substituted the writ de contumace capiendo; and the rules applying to the older writ were made applicable to the new.” 1

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William Holdsworth, *A History of English Law* 632 (7th ed. 1956).

#### DE COPIA LIBELLI DELIBERANDA

de copia libelli deliberanda (dee koh-pee-*<<schwa>>* li-bel-I di-lib-*<<schwa>>*-ran-d*<<schwa>>*), n.[Law Latin “for delivering a copy of a libel”] Hist. Eccles. law. A writ ordering an ecclesiastical-court judge (such as the Dean of Arches) to provide the defendant with a copy of the plaintiff's complaint.

#### DE CORONATORE ELIGENDO

de coronatore eligendo (dee kor-*<<schwa>>*-n*<<schwa>>*-tor-ee el-i-jen-doh), n.[Law Latin “for electing a coroner”] Hist. A writ ordering a sheriff to call an election of a coroner to fill a vacant office. See CORONER(2).

#### DE CORONATORE EXONERANDO

de coronatore exonerando (dee kor-*<<schwa>>*-n*<<schwa>>*-tor-ee eg-zon-*<<schwa>>*-ran-doh), n.[Law Latin “for removing a coroner”] A writ ordering the sheriff to remove a coroner from office for a reason stated in the writ. See CORONER (2).

“The coroner is chosen for life: but may be removed, either by being made sheriff, or chosen verderor, which are offices incompatible with the other; or by the king's writ de coronatore exonerando, for a cause to be therein assigned, as that he is engaged in other business, is incapacitated by years or sickness, hath not a sufficient estate in the county, or lives in an inconvenient part of it.” 1 William Blackstone, *Commentaries on the Laws of England* 336 (1765).

#### DE CORPORE COMITATUS

de corpore comitatus (dee kor-p*<<schwa>>*-ree kom-*<<schwa>>*-tay-t*<<schwa>>*s). [Law Latin] From the body of the county. • This term was esp. used to distinguish a body of the county at large from a smaller area or de vicineto (“from a neighborhood”).

#### DE CORRODIO HABENDO

de corrodio habendo (dee k*<<schwa>>*-roh-dee-oh h*<<schwa>>*-ben-doh), n.[Law Latin “writ for having a corody”] Hist. A writ to obtain an allowance, esp. of meat or other sustenance, from a religious house for a royal servant living there.

#### DECORUM

decorum.Parliamentary law. The customs of formality and courtesy observed by the members and chair in conducting business.

#### DECOY

decoy,vb. Slang.To entice (a person) without force; to inveigle <the victim was decoyed out of her home> <the defendant was decoyed into the county and then served with process>. See ENTRAPMENT.

## DECOY LETTER

decoy letter. A letter prepared and mailed to detect a criminal who has violated the postal or revenue laws. [Cases: Postal Service 31.8, 42. C.J.S. Postal Service and Offenses Against Postal Laws § 56.]

## DECREASED CAPACITY

decreased capacity. See CAPACITY(4).

## DECREASING TERM INSURANCE

decreasing term insurance. See INSURANCE.

## DECREASING TERM LIFE INSURANCE

decreasing term life insurance. See decreasing term insurance under INSURANCE.

## DECREE

decree, n. 1. Traditionally, a judicial decision in a court of equity, admiralty, divorce, or probate — similar to a judgment of a court of law < the judge's decree in favor of the will's beneficiary >. 2. A court's final judgment. 3. Any court order, but esp. one in a matrimonial case < divorce decree >. See JUDGMENT; ORDER(2); DECISION. [Cases: Divorce 152. C.J.S. Divorce §§ 222, 230–234.]

“The chief differences between decrees in equity and judgments at common law are as follows: The former are pronounced by courts of equity; the latter, by courts of law. The former result from an investigation and determination of the rights of the parties by the means provided and according to the principles recognized in equity jurisprudence; the latter result from an investigation and determination made by the more limited means and more inflexible rules of the common law. The former may be adjusted to all the varieties of interest and of circumstance, and may contain such directions as are needed to carry them into effect, both in letter and in spirit; the latter are in an invariable form, general in terms, and absolute for plaintiff or defendant. And the former often enforce rights not recognized by the common law .... The term ‘judgment’ is frequently used in a broad sense to include decrees in equity.” 1 A.C. Freeman, *A Treatise of the Law of Judgments* § 12, at 23–24 (Edward W. Tuttle ed., 5th ed. 1925).

agreed decree. A final judgment, the terms of which are agreed to by the parties.

consent decree. A court decree that all parties agree to. — Also termed consent order. [Cases: Federal Civil Procedure 2397; Judgment 87. C.J.S. Judgments § 186.]

custody decree. A decree awarding or modifying child custody. • The decree may be included in the decree for a related proceeding — such as a divorce — or it may be a separate order.

decree absolute. A ripened decree nisi; a court's decree that has become unconditional because the time specified in the decree nisi has passed. — Also termed order absolute; rule absolute.

decree absolutor (ab-zol-vi-t<<schwa>>r or -tor), n. Scots law. A judgment for a defendant,

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either by a dismissal of a claim or by an acquittal. — Also termed decret absolvitor.

decree ad factum praestandum.Scots law. A court order requiring that a party specifically perform an act, such as to deliver property. See IMPRISONMENT FOR DEBT.

decree arbitral (ahr-bi-tr<<schwa>>l), n. Scots law. 1. An arbitration award. 2. A form for an arbitration award. — Also termed decret arbitral.

decree cognitionis causa (kog-nish-ee-oh-nis kaw-z<<schwa>>), n. Scots law. A judgment in a suit involving a plaintiff creditor suing a debtor's heir to attach the heir's lands. — Also termed decret cognitionis causa.

decree condemnator (kon-dem-nay-t<<schwa>>r or -tor), n. Scots law. A judgment for the plaintiff. — Also termed decret condemnator.

decree dative.Scots law. A decree appointing an executor.

decree nisi (nI-sI). A court's decree that will become absolute unless the adversely affected party shows the court, within a specified time, why it should be set aside. — Also termed nisi decree; order nisi; rule nisi. See NISI.

decree of constitution.Scots law. A judgment declaring the extent of a debt or obligation.

decree of distribution.An instrument by which heirs receive the property of a deceased person. [Cases: Executors and Administrators 508. C.J.S. Executors and Administrators § 864.]

decree of forthcoming.Scots law. A court order that commands a third party in possession of a debtor's property to deliver the property to the creditor for liquidation or satisfaction of a debt. — Also termed decree of furthcoming

decree of insolvency.A probate-court decree declaring an estate's insolvency. [Cases: Executors and Administrators 408–419. C.J.S. Executors and Administrators §§ 693–705.]

decree of locality.Scots law. A Teind Court order allocating what share of a clergyman's stipend will be paid by each heir in the parish.

decree of modification.Scots law. A Teind Court order modifying a stipend for the clergy.

decree of nullity.A decree declaring a marriage to be void ab initio. See ANNULMENT; NULLITY OF MARRIAGE.

decree of registration. 1. A court order that quiets title to land and directs recording of the title. 2.Scots law. CONFESSION OF JUDGMENT.

decree of valuation.Scots law. A decree of the Teind Court determining the extent and value of a heritor's teinds.

decree pro confesso (proh k<<schwa>>n-fes-oh).Equity practice. A decree entered in favor of the plaintiff as a result of the defendant's failure to timely respond to the allegations in the plaintiff's bill; esp., a decree entered when the defendant has defaulted by not appearing in court at

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the prescribed time. — Also termed decree taken pro confesso. [Cases: Equity 417–420.]

“A decree pro confesso in equity is similar to a default judgment in an action at law. If a defendant in an equity suit fails to answer the plaintiff's petition within the prescribed time period, the bill will be taken pro confesso, and a decree entered in favor of the plaintiff .... However, whereas a default judgment in an action at law effects an admission of pleaded facts and conclusions of law ... a decree pro confesso in an equity action admits only the material and well pleaded facts in the petition and does not admit the legal claims upon which the plaintiff seeks relief.” 27A Am. Jur. 2d Equity § 249, at 733–34 (1996).

deficiency decree. See deficiency judgment under JUDGMENT.

divorce decree. A final judgment in a suit for divorce. • A divorce decree dissolves the marriage and usu. resolves all matters concerning property and children. Generally, matters concerning children can be modified in a post-divorce action if there has been a substantial change in circumstances.

final decree. See final judgment under JUDGMENT.

interlocutory decree. See interlocutory judgment under JUDGMENT.

#### DECREE NUNC PRO TUNC

decree nunc pro tunc. See judgment nunc pro tunc under JUDGMENT.

#### DECREE OF FURTHCUMING

decree of furthcuming. See decree of forthcoming under DECREE.

#### DECREET

decreet (di-kreet), n. [fr. Latin decretum] Archaic Scots law. A court's final judgment; a decree. • Decree is now the usual term.

decreet absolutor (ab-zol-vi-t<<schwa>>r or -tor), n. See decree absolutor under DECREE.

decreet arbitral (ahr-bi-tr<<schwa>>l), n. See decree arbitral under DECREE.

decreet cognitionis causa (kog-nish-ee-oh-nis kaw-z<<schwa>>), n. See decree cognitionis causa under DECREE.

decreet condemnator (kon-dem-nay-t<<schwa>>r or -tor), n. See decree condemnator under DECREE.

#### DECREE TAKEN PRO CONFESSO

decree taken pro confesso. See decree pro confesso under DECREE.

#### DECREMENTUM MARIS

decrementum maris (dek-r<<schwa>>-men-t<<schwa>>m mar-is). [Latin “decrease of the sea”] The receding of the sea from the land.

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**DECREPIT**

decrepit (di-krep-it), adj. (Of a person) disabled; physically or mentally incompetent to such an extent that the individual would be helpless in a personal conflict with a person of ordinary health and strength.

**DECRETA**

decreta (di-kree-t<<schwa>>), n.[Latin "decisions"] Roman law. Judgments of magistrates; esp., sentences pronounced by the emperor as the supreme judge. See **DECRETUM**.

"Decreta. In Roman law decisions of magistrates given after investigation of a case by cognitio... and in particular, decisions of the emperor as judge of first instance after trial by cognitio, or as a judge of appeal. As the highest authority in the State the emperor could interpret the law freely and even introduce new principles. Consequently imperial decisions were authoritative interpretations of the law or even innovatory and regarded as statements binding for the future, and as such quoted by the jurists. They were not only communicated to the parties but recorded in the records of the imperial court and private persons might obtain copies of them." David M. Walker, *The Oxford Companion to Law* 343 (1980).

**DECRETAL**

decretal (di-kree-t<<schwa>>l), adj. Of or relating to a decree.

**DECRETAL CHILD SUPPORT**

decretal child support. See **CHILD SUPPORT**.

**DECRETAL INTERDICT**

decretal interdict. See **INTERDICT(1)**.

**DECRETAL ORDER**

decretal order. See **ORDER(2)**.

**DECRETALS**

decretals (di-kree-t<<schwa>>lz), n. Eccles. law. Canonical epistles written either by the Pope or by the Pope and his cardinals to settle controversial matters; esp., the second part of the *Corpus Juris Canonici*, canonical epistles consisting mainly of: (1) *Decretales Gregorii Noni*, a collection by Raymundus Barcinus, chaplain to Gregory IX, dating from about 1227; (2) *Decretales Bonifacii Octavi*, a collection by Boniface VIII in the year 1298; (3) *Clementinae*, a collection of Clement V, published in the year 1308; and (4) the *Extravagantes*, a collection by John XXII and other bishops. — Also (in Law Latin) *Decretales*. See **CANON LAW**.

**DECRETIST**

decretist (di-kree-tist), n. In medieval universities, a law student; esp., a student or commentator on Gratian's *Decretum*.



## DECRETUM

decretum (di-kree-t<<schwa>>m), n.[Latin “a decision having mandatory force”] 1.Roman law. A decision of a magistrate, esp. a judgment by the emperor at first instance or on appeal. • A decretum of the emperor was a type of imperial constitution. 2.Eccles. law. An ecclesiastical law, as distinguished from a secular law. Pl. decreta.See DECRETA.

## DECRETUM GRATIANI

Decretum Gratiani (di-kree-t<<schwa>>m gray-shee-ay-nI), n.[Latin “Gratian's decree”] See CONCORDIA DISCORDANTIUM CANONUM.

## DECRIMINALIZATION

decriminalization,n. The legislative act or process of legalizing an illegal act <many doctors seek the decriminalization of euthanasia>. Cf. CRIMINALIZATION(1). [Cases: Criminal Law 15. C.J.S. Criminal Law § 29.] — decriminalize,vb.

## DECROWNING

decrowning. The act of depriving someone of a crown.

## DECRY

decry (di-krI), vb. To speak disparagingly about (someone or something).

## DE CUJUS

de cuius (dee kyoo-j<<schwa>>s orkI-<<schwa>>s). [Latin] From whom. • This term is used to designate (1) the person by or through whom another claimed something, or (2) the person whose legal position is in issue.

## DE CURIA CLAUDENDA

de curia claudenda (dee kyoor-ee-<<schwa>> klaw-den-d<<schwa>>), n.[Law Latin “of enclosing a court”] Hist. A writ ordering a person to build a wall or fence around his or her house to avoid disturbing a neighbor.

## DECURIO

decurio (di-kyoor-ee-oh), n.[Latin “a decurion”] Roman law. A municipal senator belonging to a municipal council responsible for managing the internal affairs of the municipality.

## DE CURSU

de cursu (dee k<<schwa>>r-s[y]oo). [Law Latin] Of course. • This term usu. refers to regular, formal proceedings as distinguished from incidental, summary proceedings.

## DE CUSTODE ADMITTENDO

de custode admittendo (dee k<<schwa>>-stoh-dee ad-mi-ten-doh), n.[Law Latin “of admitting a guardian”] Hist. A writ to admit a guardian.

## DE CUSTODE AMOVENDO

de custode amovendo (dee k<<schwa>>-stoh-dee ay-moh-ven-doh), n.[Law Latin “of removing a guardian”] Hist. A writ to remove a guardian.

## DE CUSTODIA TERRAE ET HAEREDIS

de custodia terrae et haeredis (dee k<<schwa>>-stoh-dee-<<schwa>> ter-ee et her-<<schwa>>-dis), n.[Law Latin “of right of ward”] Hist. A writ allowing a guardian in a knight's service to obtain custody of an infant ward.

## DE DEBITO

de debito (dee deb-i-toh), n.[Law Latin “of debt”] Hist. A writ of debt. — Sometimes shortened to debito.

## DE DEBITORE IN PARTES SECANDO

de debitore in partes secando (dee deb-i-tor-ee in pahr-teez si-kan-doh). [Latin “of cutting a debtor in pieces”] Roman law. The title of a law in the Twelve Tables, meaning either literally to cut a debtor into pieces or merely to divide the debtor's estate. See TWELVE TABLES.

“DE DEBITORE IN PARTES SECANDO.... [S]ome writers contending for the literal signification, while others have supposed it to be only a figurative expression .... The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius and Taylor .... The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (semoto omni cruciatu) in the Roman Code itself .... This is also the opinion of Gibbon, Gravina, Pothier, Hugo and Niebuhr.” 1 Alexander Burrill, *A Law Dictionary and Glossary* 432 (2d ed. 1867).

## DE DECEPTIONE

de deceptione (dee di-sep-shee-oh-nee), n.[Law Latin “of deceit”] Hist. A writ available to a party who was deceived and damaged by someone acting in the party's name.

## DE DEONERANDA PRO RATA PORTIONIS

de deoneranda pro rata portionis (dee dee-on-<<schwa>>-ran-d<<schwa>> proh ray-t<<schwa>> por-shee-oh-nis), n.[Law Latin “of the disburdening of a pro rata share”] Hist. A writ for someone who is forced to pay rent that others are supposed to contribute to proportionately.

## DEDI

dedi (dee-di). [Latin] Hist. I have given. • Dedi is a conveyancing term that implies a warranty of title. Cf. CONCESSI.

“Dedi is a warranty in law to the feoffee and his heirs: as if it be said in a feoffment A. B. hath given and granted, & c. it is a warranty.” *Termes de la Ley* 148 (1st Am. ed. 1812).

## DEDICATION

dedication, n. Property. The donation of land or creation of an easement for public use. [Cases: Dedication 1–28. C.J.S. Dedication §§ 1–12, 14–30, 56–64.] — dedicate, vb. — dedicatory, adj.

common-law dedication. A dedication made without a statute, consisting in the owner's appropriation of land, or an easement in it, for the benefit or use of the public, and the acceptance, by or on behalf of the land or easement. — Often shortened to dedication. [Cases: Dedication 1–21. C.J.S. Dedication §§ 1–12, 14–26, 56–64.]

dedication by adverse user. A dedication arising from the adverse, exclusive use by the public with the actual or imputed knowledge and acquiescence of the owner. [Cases: Dedication 20. C.J.S. Dedication § 22.]

express dedication. A dedication explicitly manifested by the owner. [Cases: Dedication 17.]

implied dedication. A dedication presumed by reasonable inference from the owner's conduct. [Cases: Dedication 18–20. C.J.S. Dedication §§ 15, 17–22.]

statutory dedication. A dedication for which the necessary steps are statutorily prescribed, all of which must be substantially followed for an effective dedication. [Cases: Dedication 22. C.J.S. Dedication § 27.]

tacit dedication. A dedication of property for public use arising from silence or inactivity and without an express agreement.

## DEDICATION AND RESERVATION

dedication and reservation. A dedication made with reasonable conditions, restrictions, and limitations.

## DEDICATION DAY

dedication day. See DAY.

## DE DIE IN DIEM

de die in diem (dee dI-ee in dI-<<schwa>>m). [Law Latin] From day to day; daily.

## DEDI ET CONCESSI

dedi et concessi (dee-dI et k<<schwa>>n-ses-I). [Law Latin] I have given and conveyed. • These were the words generally used to convey a gift.

## DEDIMUS ET CONCESSIMUS

dedimus et concessimus (ded-<<schwa>>m<<schwa>>s et k<<schwa>>n-ses-i-m<<schwa>>s). [Law Latin] We have given and granted. • These words were used in a conveyance when there was more than one grantor or when the grant was from the Crown.

## DEDIMUS POTESTATEM

dedimus potestatem (ded-⟨schwa⟩-m⟨schwa⟩s poh-tes-tay-t⟨schwa⟩m). [Law Latin “we have given power”] 1. A commission issuing from the court before which a case is pending, authorizing a person named in the commission to compel the attendance of certain witnesses, to take their testimony on the written interrogatories and cross-interrogatories attached to the commission, to reduce the answers to writing, and to send it sealed to the court issuing the commission. 2. In England, a chancery writ commissioning the persons named in the writ to take certain actions, including administering oaths to defendants and justices of the peace. • The writ was formerly used to commission a person to take action such as acknowledging a fine and appointing an attorney for representation in court. Before the Statute of Westminster (1285), an attorney could not appear on behalf of a party without this writ. — Also termed *dedimus potestatem de attorno faciendo*.

“Dedimus potestatem is a writ that lies where a man sues in the king's court, or is sued, and cannot well travel, then he shall have this writ directed to some justice, or other discreet person in the country, to give him power to admit some man for his attorney, or to levy a fine, or to take his confession, or his answer, or other examination, as the matter requires.” *Termes de la Ley* 148 (1st Am. ed. 1812).

#### DEDITICII

dediticii (ded-i-tish-ee-I-or dee-di-tI-shee-I), n. pl.[Latin “those who have surrendered”] Roman law. The lowest class of freemen whose members were ineligible for Roman citizenship, including enemies granted freedom in exchange for surrender, or, under the *Lex Aelia Sentia*, manumitted slaves convicted of a crime in a court, or branded or put in chains by their former owners. • Dediticii who were formerly slaves were not allowed to live within 100 miles of Rome. Justinian abolished this status. — Also spelled *dedititii*. — Sing. *dediticius*, *dedititius*.

“Dediticii ... were not reduced to slavery, but to a condition quite analogous. They were not allowed to make a will, or to take under one; they never obtained Roman citizenship, and they could not come within one hundred miles of the city of Rome.” Andrew Stephenson, *A History of Roman Law* § 119, at 324 (1912).

“Slaves who before manumission had been subjected to degrading punishment (e.g. had been branded or made to fight in the arena) were given, on manumission, a special status, viz. that of enemies surrendered at discretion (*dediticii*). A *dediticius*, though free and not a slave, had none of the rights of a citizen, could never under any circumstances better his position (e.g. become a citizen), and was not allowed to live within 100 miles of Rome.” R.W. Leage, *Roman Private Law* 67 (C.H. Ziegler ed., 2d ed. 1942).

#### DEDITION

dedition (di-dish-⟨schwa⟩n), n.[fr. Latin *deditio* “give up”] A surrender of something, such as property.

#### DE DIVERSIS REGULIS JURIS ANTIQUI

de diversis regulis juris antiqui (dee di-v⟨schwa⟩r-sis reg-y⟨schwa⟩-lis joor-is

an-tI-kwI). [Latin “of various rules of ancient law”] Roman law. The last title in the Digest, containing 211 maxims. See DIGEST(2).

#### DE DOLO MALO

de dolo malo (dee doh-loh mal-oh). [Latin] Of or based on fraud. See ACTIO DE DOLO MALO .

#### DE DOMO REPARANDA

de domo reparanda (dee doh-moh rep-<<schwa>>-ran-d<<schwa>>), n.[Law Latin “to repair a house”] Hist. A writ ordering a cotenant to contribute to the expenses of maintaining common property.

#### DE DONIS CONDITIONALIBUS

De Donis Conditionalibus (dee doh-nis k<<schwa>>n-dish-ee-<<schwa>>-nal-i-b<<schwa>>s). An English statute, enacted in 1285, that gave rise to the ability to create a fee tail. — Often shortened to De Donis. — Sometimes written de donis conditionalibus.

“[T]he statute de donis of 13 Edw. I... was intended to check the judicial construction, that had, in a great degree, discharged the conditional fee from the limitation imposed by the grant. Under that statute, fees conditional were changed into estates tail ....” 4 James Kent, Commentaries on American Law \*444 (George Comstock ed., 11th ed. 1866).

“[A]fter De Donis, the formula ‘to A and the heirs of his body’ gave to A an estate known as an estate in fee tail. Because A had no power to transfer an estate in fee simple absolute, it became theoretically possible for persons like O to tie up the ownership of land in a single family for hundreds of years. We say theoretically possible because by 1472 a way would be found for the tenant in tail (as A was called) to transfer an estate in fee simple absolute despite De Donis.” Thomas F. Bergin & Paul G. Haskell, Preface to Estates in Land and Future Interests 29 (2d ed. 1984).

#### DE DOTE ASSIGNANDA

de dote assignanda (dee doh-tee as-ig-nan-d<<schwa>>), n.[Law Latin “for assigning dower”] Hist. A writ ordering a royal escheater to provide dower to a widow of a tenant holding an estate directly from the Crown.

#### DE DOTE UNDE NIL HABET

de dote unde nil habet (dee doh-tee <<schwa>>n-dee nil hay-bet), n.[Law Latin “of dower whereof she has none”] A writ ordering a tenant interfering with a widow's right to dower to provide a reasonable dower. — Also termed writ of dower.

“DE DOTE UNDE NIL HABET. This is a writ of right in its nature .... It must be brought by the widow as demandant, against the tenant of the freehold, that is, the heir or his alienee, and its effect is to enable the former to recover from the latter the seisin of a third part of the tenements in demand, to be set forth to her in severalty by metes and bounds, together with damages and costs.”

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1 Alexander M. Burrill, *A Law Dictionary and Glossary* 433 (2d ed. 1867).

### DEDUCTIBLE

deductible,adj. Capable of being subtracted, esp. from taxable income. See DEDUCTION(2).

deductible,n.1. Under an insurance policy, the portion of the loss to be borne by the insured before the insurer becomes liable for payment. Cf. SELF-INSURED RETENTION N. [Cases: Insurance 2106, 2523.]

straight deductible.A deductible that is a specified, fixed amount.

2. The insurance-policy clause specifying the amount of this portion.

### DEDUCTION

deduction,n.1. The act or process of subtracting or taking away. 2.Tax. An amount subtracted from gross income when calculating adjusted gross income, or from adjusted gross income when calculating taxable income. — Also termed tax deduction. Cf. EXEMPTION(3); TAX CREDIT. [Cases: Internal Revenue 3270–3516; Taxation 1031.1–1046. C.J.S. Internal Revenue §§ 33, 55, 58, 63, 140, 146–205, 209–265, 267–268, 270–287, 329–330, 335, 409, 489, 671, 673, 799–800; Taxation §§ 1738–1755.]

additional standard deduction.The sum of the additional amounts that a taxpayer who turns 65 or becomes blind before the close of the taxable year is entitled to deduct. [Cases: Internal Revenue 3295; Taxation 1031.1. C.J.S. Taxation §§ 1738–1739.]

charitable deduction.A deduction for a contribution to a charitable enterprise that has qualified for tax-exempt status in accordance with IRC (26 USCA) § 501(c)(3) and is entitled to be deducted in full by the donor from the taxable estate or from gross income. See CHARITABLE CONTRIBUTION(2); CHARITABLE ORGANIZATION. [Cases: Internal Revenue 3337; Taxation 1031.1. C.J.S. Internal Revenue §§ 186, 212, 215–222, 276; Taxation §§ 1738–1739.]

deduction in respect of a decedent.A deduction that accrues to the point of death but is not recognizable on the decedent's final income-tax return because of the accounting method used, such as an accrued-interest expense of a cash-basis debtor.

itemized deduction.An expense (such as a medical expense, home-mortgage interest, or a charitable contribution) that can be subtracted from adjusted gross income to determine taxable income.

marital deduction.A federal tax deduction allowed for lifetime and testamentary transfers from one spouse to another. IRC (26 USCA) §§ 2056, 2523. [Cases: Internal Revenue 4169. C.J.S. Internal Revenue § 535.]

miscellaneous itemized deduction.Generally, an itemized deduction of job or investment expenses; a deduction other than those allowable in computing adjusted gross income, those enumerated in IRC (26 USCA) § 67(b), and personal exemptions. • This type of deduction is allowed only to an itemizing taxpayer whose total miscellaneous itemized deductions exceed a

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statutory percentage of adjusted gross income.

standard deduction. A specified dollar amount that a taxpayer can deduct from adjusted gross income, instead of itemizing deductions, to determine taxable income. [Cases: Internal Revenue 3295; Taxation 1031.1. C.J.S. Taxation §§ 1738–1739.]

3. The portion of a succession to which an heir is entitled before a partition. 4. The act or process of reasoning from general propositions to a specific application or conclusion. Cf. INDUCTION(2). — deduct (for senses 1–3), vb. — deduce (for sense 4), vb.

#### DEDUCTION FOR NEW

deduction for new. See NEW-FOR-OLD(1).

#### DEDUCTION IN RESPECT OF A DECEDENT

deduction in respect of a decedent. See DEDUCTION.

#### DEDUCTIS DEBITIS

deductis debitis (di-d<<schwa>>k-tis deb-i-tis). [Latin] Hist. The debts being deducted. • Before an estate could be ascertained, the debts had to be deducted.

#### DE EA RE ITA CENSUERE

de ea re ita censuere (dee ee-<<schwa>> ree I-t<<schwa>> sen-s[y]oo-<<schwa>>-ree). [Latin] Concerning that matter they have so decreed. • This phrase was used to record decrees of the Roman senate. — Abbr. d.e.r.i.c.

#### DEED

deed, n. 1. Something that is done or carried out; an act or action. 2. A written instrument by which land is conveyed. 3. At common law, any written instrument that is signed, sealed, and delivered and that conveys some interest in property. — Also termed (in senses 2 & 3) evidence of title. See contract under seal under CONTRACT. Cf. CONVEYANCE; BILL OF SALE. — deed, vb.

“A deed is a writing sealed and delivered. For if either a parchment without writing be delivered as one's deed, yet it is not his deed, though an obligation be afterwards written in it: or if it be a writing but not sealed at the time of the delivery of it as his deed, it is a scrole and not his deed. Or if I make and seal a deed, and the party take it without my delivery, I may plead it is not my deed.” Sir Henry Finch, *Law, or a Discourse Thereof* 108 (1759).

“What then is a deed? Unfortunately the word is not free from ambiguity. In the original and technical sense a deed is a written instrument under the seal of the party executing it. Because, however, of the wide use of such instruments in the conveyance of real estate, it has come to mean in popular acceptance any formal conveyance for the transfer of land or of an interest therein. The dual use of the term has crept into the language of courts and law writers, so that in the reading of cases it is difficult to determine whether the word is used in the first and original sense, or whether

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it connotes a formal instrument of the type ordinarily employed for the conveyance of land.” Ray Andrews Brown, *The Law of Personal Property* § 46, at 118–19 (2d ed. 1955).

“All deeds are documents, but not all documents are deeds. For instance, a legend chalked on a brick wall, or a writing tattooed on a sailor's back may be documents but they are not deeds. A deed is, therefore, a particular kind of document. It must be a writing and a writing on paper or its like, e.g., vellum or parchment. Any instrument under seal is a deed if made between private persons. It must be signed, sealed, and delivered. A deed must either (a) effect the transference of an interest, right or property, or (b) create an obligation binding on some person or persons, or (c) confirm some act whereby an interest, right, or property has already passed.” Gerald Dworkin, *Odgers' Construction of Deeds and Statutes* 1 (5th ed. 1967).

**absolute deed.**A deed that conveys title without condition or encumbrance. — Also termed deed absolute.

**administrator's deed.**A document that conveys property owned by a person who has died intestate.

**bargain-and-sale deed.**A deed that conveys property to a buyer for valuable consideration but that lacks any guarantee from the seller about the validity of the title. See BARGAIN AND SALE. [Cases: Deeds 22. C.J.S. Deeds § 16.]

**composition deed.**A deed reflecting the terms of an agreement between a debtor and a creditor to discharge or adjust a debt. [Cases: Debtor and Creditor 10. C.J.S. Assignments for Benefit of Creditors § 26; Creditor and Debtor §§ 84–94.]

**counterdeed.** A secret deed, executed either before a notary or under a private seal, that voids, invalidates, or alters a public deed.

**deathbed deed.**Rare. A deed executed by a grantor shortly before death. • The grantor need not be aware that he or she is near death when the deed is executed.

**deed absolute.**See absolute deed.

**deed in fee.**A deed conveying the title to land in fee simple, usu. with covenants.

**deed in lieu of foreclosure.**A deed by which a borrower conveys fee-simple title to a lender in satisfaction of a mortgage debt and as a substitute for foreclosure. • This deed is often referred to simply as “deed in lieu.” [Cases: Mortgages 293. C.J.S. Mortgages §§ 441–443.]

**deed of covenant.**A deed to do something, such as a document providing for periodic payments by one party to another (usu. a charity) for tax-saving purposes. • The transferor can deduct taxes from the payment and, in some cases, the recipient can reclaim the deducted tax.

**deed of distribution.**A fiduciary's deed conveying a decedent's real estate.

**deed of gift.**A deed executed and delivered without consideration. — Also termed gratuitous deed.



deed of inspectorship.Hist. An instrument reflecting an agreement between a debtor and creditor to appoint a receiver to oversee the winding up of the debtor's affairs on behalf of the creditor.

deed of partition.A deed that divides land held by joint tenants, tenants in common, or coparceners. [Cases: Partition 96. C.J.S. Partition §§ 141–142.]

deed of release.A deed that surrenders full title to a piece of property upon payment or performance of specified conditions.

deed of separation.An instrument governing a spouse's separation and maintenance. [Cases: Husband and Wife 278.]

deed of settlement. 1. A deed to settle something, such as the distribution of property in a marriage. 2.English law. A deed formerly used to form a joint-stock company.

deed of trust.A deed conveying title to real property to a trustee as security until the grantor repays a loan. • This type of deed resembles a mortgage. — Also termed trust deed; trust indenture; indemnity mortgage. — Also termed common-law mortgage. [Cases: Mortgages 8. C.J.S. Mortgages §§ 5–6, 10.]

deed poll.A deed made by and binding on only one party, or on two or more parties having similar interests. • It is so called because, traditionally, the parchment was “polled” (that is, shaved) so that it would be even at the top (unlike an indenture). — Also spelled deed-poll. Cf. INDENTURE.

deed to lead uses.A common-law deed prepared before an action for a fine or common recovery to show the object of those actions.

deed without covenants.See quitclaim deed.

defeasible deed.A deed containing a condition subsequent causing title to the property to revert to the grantor or pass to a third party.

derivative deed.See secondary conveyance under CONVEYANCE.

disentailing deed.Hist. A tenant in tail's assurance that the estate tail will be barred and converted into an estate in fee. • The Fines and Recoveries Act (3 & 4 Will. 4 ch. 74) introduced this way of barring an entail. It authorized nearly every tenant in tail, if certain conditions were met, to dispose of the land in fee simple absolute and thus to defeat the rights of all persons claiming under the tenant.

donation deed.A deed granted by the government to a person who either satisfies the statutory conditions in a donation act or redeems a bounty-land warrant. See DONATION ACT; BOUNTY-LAND WARRANT.

full-covenant-and-warranty deed.See warranty deed.

general warranty deed.See warranty deed.

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gift deed. A deed given for a nominal sum or for love and affection.

good deed. A deed that conveys good title as opposed to a deed that is merely good in form. — Also termed lawful deed.

grant deed. A deed containing, or having implied by law, some but not all of the usual covenants of title; esp., a deed in which the grantor warrants that he or she (1) has not previously conveyed the estate being granted, (2) has not encumbered the property except as noted in the deed, and (3) will convey to the grantee any title to the property acquired after the date of the deed.

gratuitous deed. See deed of gift.

inclusive deed. See inclusive grant under GRANT.

indented deed. See INDENTURE(2).

latent deed. A deed kept in a strongbox or other secret place, usu. for 20 years or more.

lawful deed. See good deed.

mineral deed. A conveyance of an interest in the minerals in or under the land. [Cases: Mines and Minerals 55. C.J.S. Mines and Minerals §§ 158–160, 169.]

mortgage deed. The instrument creating a mortgage. • A mortgage deed typically must contain (1) the name of the mortgagor, (2) words of grant or conveyance, (3) the name of the mortgagee, (4) a property description sufficient to identify the mortgaged premises, (5) the mortgagor's signature, and (6) an acknowledgment. To be effective and binding, a mortgage deed must also be delivered. [Cases: Mortgages 42. C.J.S. Mortgages § 93.]

onerous deed. Scots law. A deed given in exchange for a valuable consideration, often as part of a marriage settlement.

quitclaim deed. A deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid. — Often shortened to quitclaim. — Also termed deed without covenants. Cf. warranty deed. [Cases: Deeds 25, 121. C.J.S. Deeds §§ 17, 261.]

“A quitclaim deed purports to convey only the grantor's present interest in the land, if any, rather than the land itself. Since such a deed purports to convey whatever interest the grantor has at the time, its use excludes any implication that he has good title, or any title at all. Such a deed in no way obligates the grantor. If he has no interest, none will be conveyed. If he acquires an interest after executing the deed, he retains such interest. If, however, the grantor in such deed has complete ownership at the time of executing the deed, the deed is sufficient to pass such ownership.... A seller who knows that his title is bad or who does not know whether his title is good or bad usually uses a quitclaim deed in conveying.” Robert Kratovil, *Real Estate Law* 49 (6th ed. 1974).

release deed. A deed that is issued once a mortgage has been discharged, explicitly releasing

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and reconveying to the mortgagor the entire interest conveyed by an earlier deed of trust. [Cases: Mortgages 309. C.J.S. Mortgages §§ 451, 465–466, 477–478.]

sheriff's deed. A deed that gives ownership rights in property bought at a sheriff's sale. [Cases: Execution 241. C.J.S. Executions § 224.]

special warranty deed. 1. A deed in which the grantor covenants to defend the title against only those claims and demands of the grantor and those claiming by and under the grantor. [Cases: Covenants 48, 67. C.J.S. Covenants §§ 24, 29.] 2. In a few jurisdictions, a quitclaim deed. Cf. warranty deed. [Cases: Deeds 25, 121. C.J.S. Deeds §§ 17, 261.]

statutory deed. A warranty-deed form prescribed by state law and containing certain warranties and covenants even though they are not included in the printed form.

support deed. A deed by which a person (usu. a parent) conveys land to another (usu. a son or daughter) with the understanding that the grantee will support the grantor for life. • Support deeds often result in litigation.

tax deed. A deed showing the transfer of title to real property sold for the nonpayment of taxes. See office grant under GRANT; tax sale under SALE. Cf. TAX CERTIFICATE. [Cases: Taxation 774. C.J.S. Taxation § 1445.]

title deed. A deed that evidences a person's legal ownership of property. See TITLE.

trust deed. See deed of trust.

warranty deed. A deed containing one or more covenants of title; esp., a deed that expressly guarantees the grantor's good, clear title and that contains covenants concerning the quality of title, including warranties of seisin, quiet enjoyment, right to convey, freedom from encumbrances, and defense of title against all claims. — Also termed general warranty deed; full-covenant-and-warranty deed. See WARRANTY(1). Cf. quitclaim deed; special warranty deed. [Cases: Covenants 46–48, 67. C.J.S. Covenants §§ 22–24, 29.]

wild deed. A recorded deed that is not in the chain of title, usu. because a previous instrument connected to the chain of title has not been recorded.

#### DEED BOX

deed box. Archaic. A box in which deeds of land title are traditionally kept. • Such a box is considered an heirloom in the strict sense. See HEIRLOOM(1).

#### DEED OF AGENCY

deed of agency. A revocable, voluntary trust for payment of a debt.

#### DEED OF CRIME

deed of crime. See ACTUS REUS.

#### DEED OF FEOFFMENT

deed of feoffment. See FEOFFMENT(3).

#### DE EJECTIONE CUSTODIAE

de ejectione custodiae (dee ee-jek-shee-oh-nee k<<schwa>>s-toh-dee-ee). [Latin “ejectment of a ward”] Hist. A writ available to a guardian after being ejected from the ward's land during the ward's minority. • The writ lay to recover the land or person of the ward, or both. The French equivalent was ejectment de garde.

#### DE EJECTIONE FIRMAE

de ejectione firmae (dee ee-jek-shee-oh-nee f<<schwa>>r-mee). [Latin “ejectment of farm”] Hist. A writ or action of trespass to obtain the return of lands or tenements to a lessee for a term of years that had been ousted by the lessor or by a reversioner, remainderman, or stranger. • The lessee was then entitled to a writ of ejection to recover, at first, damages for the trespass only, but later the term itself, or the remainder of it, with damages. This action is the foundation of the modern action of ejectment. See EJECTMENT.

“A writ then of ejectione firmae, or action of trespass in ejectment, lieth, where lands or tenements are let for a term of years; and afterwards the lessor, reversioner, remainder-man, or any stranger, doth eject or oust the lessee of his term. In this case he shall have his writ of ejection, to call the defendant to answer for entering on the lands so demised to the plaintiff for a term that is not yet expired, and ejecting him. And by this writ the plaintiff shall recover back his term, or the remainder of it, with damages.” 3 William Blackstone, Commentaries on the Laws of England 199 (1768).

#### DEEM

deem, vb. 1. To treat (something) as if (1) it were really something else, or (2) it had qualities that it does not have <although the document was not in fact signed until April 21, it explicitly states that it must be deemed to have been signed on April 14>. 2. To consider, think, or judge <she deemed it necessary>.

“ ‘Deem’ has been traditionally considered to be a useful word when it is necessary to establish a legal fiction either positively by ‘deeming’ something to be what it is not or negatively by ‘deeming’ something not to be what it is.... All other uses of the word should be avoided .... Phrases like ‘if he deems fit’ or ‘as he deems necessary’ or ‘nothing in this Act shall be deemed to ...’ are objectionable as unnecessary deviations from common language. ‘Thinks’ or ‘considers’ are preferable in the first two examples and ‘construed’ or ‘interpreted’ in the third.... ‘Deeming’ creates an artificiality and artificiality should not be resorted to if it can be avoided.” G.C. Thornton, Legislative Drafting 99 (4th ed. 1996).

#### DEEMED TRANSFEROR

deemed transferor. Tax. A person who holds an interest in a generation-skipping trust on behalf of a beneficiary, and whose death will trigger the imposition of a generation-skipping transfer tax. • A deemed transferor is often a child of the settlor. For example, a grandfather could

establish a trust with income payable for life to his son (who, because he is only one generation away from his father, is also known as a nonskip person) with the remainder to his grandson, a beneficiary also known as the skip person. When the son dies, the trust will be included in his gross estate for determining the generation-skipping transfer tax. IRC (26 USCA) §§ 2601–2663. See GENERATION-SKIPPING TRANSFER; generation-skipping transfer tax under TAX; generation-skipping trust under TRUST; SKIP PERSON; NONSKIP PERSON.

#### DEEP ISSUE

deep issue. See ISSUE(1).

#### DEEP LINK

deep link. Intellectual property. A webpage hyperlink that, when clicked, opens a page on another website other than that site's home page. • Some plaintiffs have argued, with mixed success, that bypassing their home pages in this manner deprives them of advertising revenue. Deep-linking does not violate copyright if the portal provided does not copy any of the linked page's content. And if there is no confusion about the source of the information, deep-linking does not constitute unfair competition.

#### DEEP POCKET

deep pocket. 1. (pl.) Substantial wealth and resources <the plaintiff nonsuited the individuals and targeted the corporation with deep pockets>. 2. A person or entity with substantial wealth and resources against which a claim may be made or a judgment may be taken <that national insurance company is a favorite deep pocket among plaintiff's lawyers>.

#### DEEP ROCK DOCTRINE

Deep Rock doctrine. Bankruptcy. The principle by which unfair or inequitable claims presented by controlling shareholders of bankrupt corporations may be subordinated to claims of general or trade creditors. • The doctrine is named for a corporation that made fraudulent transfers to its parent corporation in *Taylor v. Standard Gas & Elec. Co.*, 306 U.S. 307, 59 S.Ct. 543 (1939). [Cases: Bankruptcy 2968. C.J.S. Bankruptcy § 264.]

#### DE ESCAETA

de escaeta (dee es-kee-t<<schwa>>), n. [Law Latin “of escheat”] Hist. A writ authorizing a lord to recover land when the lord's tenant died without an heir. See ESCHEAT.

#### DE ESCAMBIO MONETAE

de escambio monetae (dee es-kam-bee-oh m<<schwa>>-nee-tee), n. [Law Latin “of exchange of money”] Hist. A writ authorizing a merchant to prepare a bill of exchange.

#### DE ESSENDO QUIETUM DE THEOLONIO

de essendo quietum de theolonio (dee e-sen-doh kwI-ee-t<<schwa>>m dee thee-<<schwa>>-loh-nee-oh), n. [Law Latin “of being quit of toll”] Hist. A writ authorizing a person who

is exempt from paying a toll to enforce the exemption without harassment. — Also spelled *de essendo quietum de tolonio*.

#### DE ESSENTIA

*de essentia* (dee e-sen-shee-*<<schwa>>*). [Law Latin] Hist. Of the essence; essential.

#### DE ESSONIO DE MALO LECTI

*de essonio de malo lecti* (dee e-soh-nee-oh dee mal-oh lek-tI), n.[Law Latin “of essoyn of *malum lecti* (sickness of bed)"] Hist. A writ ordering a determination whether a person is truly sick after the person has issued an essoyn claiming sickness as an excuse for not appearing in court.

#### DE ESTOVERIIS HABENDIS

*de estoveriis habendis* (dee es-t*<<schwa>>*-veer-ee-is h*<<schwa>>*-ben-dis), n.[Law Latin “for having estovers”] Hist. A writ allowing a wife divorced a *mensa et thoro* (“from bed and board”) to recover alimony or estovers. — Often shortened to *estoveriis habendis*.

“In case of divorce a *mensa et thoro*, the law allows alimony to the wife which is that allowance, which is made to a woman for her support out of her husband's estate; being settled at the discretion of the ecclesiastical judge, on consideration of all the circumstances of the case. This is sometimes called her estovers for which, if he refuses payment, there is; (besides the ordinary process of excommunication) a writ at common law *de estoveriis habendis*, in order to recover it .... It is generally proportioned to the rank and quality of the parties. But in case of elopement, and living with an adulterer, the law allows her no alimony.” 1 William Blackstone, *Commentaries on the Laws of England* 429 (1765).

#### DE ESTREPAMENTO

*de estrepamento* (dee e-strep-*<<schwa>>*-men-toh), n.[Law Latin “of enstrepment”] Hist. A writ to prevent waste by a tenant while a suit to recover the land is pending against the tenant. • Because this writ was only auxiliary to a real action to recover land, and because equity afforded the same relief by injunction, the writ fell into disuse and was abolished by 3 & 4 Will. 4, ch. 27. — Also termed writ of estrepement. See ESTREPEMENT.

#### DE EU ET TRENE

*de eu et trene* (d*<<schwa>>* yoo ay trayn). [French] Hist. Of water and whip of three cords. • This term referred to a neife who, as a servant, could be corporally punished. See NEIFE.

#### DE EVE ET DE TREVE

*de eve et de treve* (d*<<schwa>>* ev ay d*<<schwa>>* trev). [Law French] Hist. From grandfather and great-grandfather's great-grandfather. • This phrase described the ancestral rights of lords to their villeins.

#### DE EXCOMMUNICATO CAPIENDO

de excommunicato capiendo (dee eks-k<<schwa>>-myoo-ni-kay-toh kap-ee-en-doh), n.[Law Latin “for taking an excommunicated person”] Hist. Eccles. law. A writ ordering a sheriff to imprison an excommunicated person until the person reconciled with the church. • It was replaced by the writ de contumace capiendo. See DE CONTUMACE CAPIENDO.

#### DE EXCOMMUNICATO DELIBERANDO

de excommunicato deliberando (dee eks-k<<schwa>>-myoo-ni-kay-toh di-lib-<<schwa>>-ran-doh), n.[Law Latin “for delivering an excommunicated person”] Hist. Eccles. law. A writ releasing an excommunicated person from prison upon a certification by the person's superior that the person has reconciled with the church.

#### DE EXCOMMUNICATO RECAPIENDO

de excommunicato recapiendo (dee eks-k<<schwa>>-myoo-ni-kay-toh ri-kap-ee-en-doh), n.[Law Latin “for retaking an excommunicated person”] Hist. Eccles. law. A writ ordering the rearrest of an excommunicated person who had been released but had not reconciled with the church or given security for a reconciliation.

#### DE EXCUSATIONIBUS

de excusationibus (dee ek-skyoo-zay-shee-oh-ni-b<<schwa>>s). [Latin “of excuses”] Roman law. The first title of the 27th book of the Digest, containing a person's legal excuses from serving as tutor or curator. • It is primarily drawn from the Greek work of Herennius Modestinus. See DIGEST(2).

#### DE EXECUTIONE FACIENDA IN WITHERNAMIIUM

de executione facienda in withernamium (dee ek-s<<schwa>>-kyoo-shee-oh-nee fay-shee-en-d<<schwa>> in with-<<schwa>>r-nay-mee-<<schwa>>m), n.[Law Latin “for making execution in withernam”] Hist. A writ of execution in withernam. • This is a type of capis in withernam directing the sheriff to take from the defendant goods equal in value to the goods that the defendant took from the plaintiff.

#### DE EXECUTIONE JUDICII

de executione judicii (dee ek-s<<schwa>>-kyoo-shee-oh-nee joo-dish-ee-I), n.[Law Latin “of execution of judgment”] Hist. A writ ordering a sheriff or bailiff to execute a judgment.

#### DE EXEMPLIFICATIONE

de exemplificatione (dee ig-zem-pi-fi-kay-shee-oh-nee), n.[Law Latin “of exemplification”] A writ ordering the transcription of an original record.

#### DE EXONERATIONE SECTAE

de exoneratione sectae (dee ig-zon-<<schwa>>-ray-shee-oh-nee sek-tee), n.[Law Latin “of exoneration of suit”] Hist. A writ exempting the king's ward from being sued in any court lower than the Court of Common Pleas (such as a county court, hundred court, leet, or court baron)

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during the time of the wardship.

DE EXPENSIS CIVIUM ET BURGENSIIUM

de expensis civium et burgensium (dee ek-spen-sis siv-ee-*<<schwa>>*m et b*<<schwa>>*r-jen-see-*<<schwa>>*m), n.[Law Latin “for levying the expenses of burgesses”] Hist. A writ ordering the sheriff to levy the expenses of each citizen and burgess of Parliament.

DE EXPENSIS MILITUM LEVANDIS

de expensis militum levandis (dee ek-spen-sis mil-*<<schwa>>*-t*<<schwa>>*m l*<<schwa>>*-van-dis), n.[Law Latin “for levying the expenses of knights”] Hist. A writ ordering the sheriff to levy an allowance for knights of the shire in Parliament.

DEFACE

deface (di-fays), vb.1. To mar or destroy (a written instrument, signature, or inscription) by obliteration, erasure, or superinscription. 2. To detract from the value of (a coin) by punching, clipping, cutting, or shaving. 3. To mar or injure (a building, monument, or other structure). — defacement, n.

DEFACERE

defacere. See DIFFACERE.

DE FACTO

de facto (di fak-toh also dee or day), adj.[Law Latin “in point of fact”] 1. Actual; existing in fact; having effect even though not formally or legally recognized <a de facto contract> 2. Illegitimate but in effect <a de facto government>. Cf. DE JURE.

DE FACTO ADOPTION

de facto adoption. See ADOPTION.

DE FACTO BLOCKADE

de facto blockade. See BLOCKADE.

DE FACTO CONTRACT OF SALE

de facto contract of sale. See CONTRACT.

DE FACTO CORPORATION

de facto corporation. See CORPORATION.

DE FACTO COURT

de facto court. See COURT.

DE FACTO DISSOLUTION



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de facto dissolution. See DISSOLUTION.

DE FACTO FATHER

de facto father. See de facto parent under PARENT.

DE FACTO GOVERNMENT

de facto government. See GOVERNMENT.

DE FACTO JUDGE

de facto judge. See JUDGE.

DE FACTO MARRIAGE

de facto marriage. See MARRIAGE(1).

DE FACTO MERGER

de facto merger. See MERGER.

DE FACTO MOTHER

de facto mother. See de facto parent under PARENT.

DE FACTO OFFICER

de facto officer. See officer de facto under OFFICER(1).

DE FACTO PARENT

de facto parent. See PARENT.

DE FACTO SEGREGATION

de facto segregation. See SEGREGATION.

DE FACTO STEPPARENT ADOPTION

de facto stepparent adoption. See second-parent adoption under ADOPTION.

DE FACTO TAKING

de facto taking. See TAKING(2).

DEFALCATION

defalcation (dee-fal-kay-sh<<schwa>>n), n. 1. EMBEZZLEMENT. 2. Loosely, the failure to meet an obligation; a nonfraudulent default. 3. Archaic. A deduction; a setoff. — defalcate (di-fal-kayt or dee-), vb. — defalcator, n.

DEFALK

defalk (di-fawlk), vb. Archaic. To deduct (a debt); to set off (a claim).

## DE FALSO JUDICIO

de falso juicio (dee fal-soh orfawl-soh joo-dish-ee-oh), n.[Law Latin “of false judgment”] Hist. A writ of false judgment; a writ to reverse an inferior court's ruling.

## DE FALSO MONETA

de falso moneta (dee fal-soh orfawl-soh mah-nee-t<<schwa>>), n.[Law Latin “of false money”] Hist. The statute of Edward I providing that persons importing certain coins (called “pollards” and “crokards”) would forfeit both their goods and their lives.

## DEFAMACAST

defamacast (di-fam-<<schwa>>-kast). Defamation by television or radio broadcast. • The word was first used in *American Broadcasting-Paramount Theatres, Inc. v. Simpson*, 126 S.E.2d 873, 879 (Ga. Ct. App. 1962). Although Prosser called it “a barbarous word” (William Prosser, *The Law of Torts* 753 [4th ed. 1971]), another authority has said that “[t]he word seems to be quite apt” (Laurence H. Eldredge, *The Law of Defamation* § 12, at 77 [1978]). See DEFAMATION.

## DEFAMATION

defamation,n.1. The act of harming the reputation of another by making a false statement to a third person. • If the alleged defamation involves a matter of public concern, the plaintiff is constitutionally required to prove both the statement's falsity and the defendant's fault. 2. A false written or oral statement that damages another's reputation. See LIBEL; SLANDER. Cf. DISPARAGEMENT. [Cases: Libel and Slander 6–14. C.J.S. Libel and Slander, Injurious Falsehood §§ 2, 5–6, 10–12, 17–42, 47, 104.] — defame,vb.

“Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society generally; or which tends to make them shun or avoid that person.” P.H. Winfield, *A Textbook of the Law of Tort* § 72, at 242 (5th ed. 1950).

“The wrong of defamation consists in the publication of a false and defamatory statement concerning another person without lawful justification. That person must be in being. Hence not only does an action of defamation not survive for or against the estate of a deceased person, but a statement about a deceased or unborn person is not actionable at the suit of his relatives, however great their pain and distress, unless the statement is in some way defamatory of them.” R.F.V. Heuston, *Salmond on the Law of Torts* 138 (17th ed. 1977).

“For entirely too long a period of time, English and American law have recognized two distinct kinds of defamation based solely on the form in which it is published. Oral defamation is slander; written defamation is libel. Libel is a crime and a tort which subjects the defamer to tort liability without proof of special damages. Slander is not a common law crime and, with certain exceptions, does not subject the defamer to liability unless there is proof of special damages. Under this distinction in form alone the defamatory letter read only by its addressee and burned to ashes after being read is a more serious defamation than a defamatory statement spoken to an audience of 3,000 community leaders and molders of public opinion. This is utterly absurd and

completely indefensible ....” Laurence H. Eldredge, *The Law of Defamation* § 12, at 77 (1978).

“Defamation ... is involved in two related harms, libel and slander. A familiar statement is that libel is written whereas slander is oral. This covers the idea in a general way but tends to mislead because defamation may be published without the use of words and hence be neither written nor oral. Thus libel may be perpetrated by hanging a person in effigy and slander, by sign or gesture.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 489 (3d ed. 1982).

defamation per quod. Defamation that either (1) is not apparent but is proved by extrinsic evidence showing its injurious meaning or (2) is apparent but is not a statement that is actionable per se. [Cases: Libel and Slander 33. C.J.S. Libel and Slander, Injurious Falsehood § 198.]

defamation per se. A statement that is defamatory in and of itself and is not capable of an innocent meaning. [Cases: Libel and Slander 33. C.J.S. Libel and Slander, Injurious Falsehood § 198.]

trade defamation. The damaging of a business by a false statement that tends to diminish the reputation of that business. • Trade defamation may be trade libel if it is recorded, or trade slander if it is not. — Also termed commercial defamation. Cf. TRADE DISPARAGEMENT; TRADE LIBEL.

#### DEFAMATORY

defamatory, adj. (Of a statement or communication) tending to harm a person's reputation, usu. by subjecting the person to public contempt, disgrace, or ridicule, or by adversely affecting the person's business. [Cases: Libel and Slander 6–14. C.J.S. Libel and Slander; Injurious Falsehood §§ 2, 5, 10–12, 17–42, 104.]

“A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.” Restatement of Torts § 559 (1938).

“No exhaustive definition of ‘defamatory’ emerges from the cases for, as Lord Reid once said, it is not for the judges to ‘frame definitions or to lay down hard and fast rules. It is their function to enunciate principles and much that they say is intended to be illustrative or explanatory and not to be definitive’ [Cassell & Co. Ltd. v. Broome (1972) AC 1027, 1085]. One can nevertheless achieve a working description by combining two statements, namely: a defamatory statement is one which injures the reputation of another by exposing him to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right-thinking members of society.” R.W.M. Dias & B.S. Markesinis, *Tort Law* 423–24 (2d ed. 1989).

#### DEFAMATORY COMMUNICATION

defamatory communication. See DEFAMATORY STATEMENT.

#### DEFAMATORY LIBEL

defamatory libel. See LIBEL(1).

## DEFAMATORY PROPAGANDA

defamatory propaganda. See PROPAGANDA.

## DEFAMATORY STATEMENT

defamatory statement. A statement that tends to injure the reputation of a person referred to in it. • The statement is likely to lower that person in the estimation of reasonable people and in particular to cause that person to be regarded with feelings of hatred, contempt, ridicule, fear, or dislike. — Also termed defamatory communication. [Cases: Libel and Slander 6–14. C.J.S. Libel and Slander; Injurious Falsehood §§ 2, 5, 10–12, 17–42, 104.]

## DEFAMES

defames (di-fay-meez or di-fahm), adj. [Law French] Infamous.

## DEFAULT

default (di-fawltalsodee-fawlt), n. The omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due. [Cases: Contracts 312, 315. C.J.S. Contracts § 561.]

default (di-fawlt), vb. 1. To be neglectful; esp., to fail to perform a contractual obligation. 2. To fail to appear or answer. 3. To enter a default judgment against (a litigant).

## DEFAULTANT

defaultant (di-fawl-t<<schwa>>nt), adj. In default; having defaulted. See DEFAULTER.

## DEFAULTER

defaulter. 1. A person who is in default. 2. A person who misappropriates or fails to account for money held in the person's official or fiduciary capacity. — Also termed defaultant.

## DEFAULT JUDGMENT

default judgment. 1. A judgment entered against a defendant who has failed to plead or otherwise defend against the plaintiff's claim. [Cases: Federal Civil Procedure 2411; Judgment 92. C.J.S. Judgments §§ 195–196, 208, 235.] 2. A judgment entered as a penalty against a party who does not comply with an order, esp. an order to comply with a discovery request. See Fed. R. Civ. P. 55(b). — Also termed judgment by default. See JUDGMENT. [Cases: Federal Civil Procedure 1278, 2820.]

nil dicit default judgment (nil dI-sit). [Latin “he says nothing”] A judgment for the plaintiff entered after the defendant fails to file a timely answer, often after the defendant appeared in the case by filing a preliminary motion. — Also termed nihil dicit default judgment; judgment by nil dicit. — Often shortened to nihil dicit. [Cases: Judgment 106. C.J.S. Judgments § 212.]

no-answer default judgment. A judgment for the plaintiff entered after the defendant fails to timely answer or otherwise appear. [Cases: Judgment 106. C.J.S. Judgments § 212.]

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post-answer default judgment. A judgment for the plaintiff entered after the defendant files an answer, but fails to appear at trial or otherwise provide a defense on the merits. [Cases: Judgment 109. C.J.S. Judgments § 211.]

#### DEFAULT JURISDICTION

default jurisdiction. See JURISDICTION.

#### DEFAULT OF ISSUE

default of issue. See FAILURE OF ISSUE.

#### DEFAULT RULE

default rule. See RULE(1).

#### DEFEASANCE

defeasance (di-fee-z-<<schwa>>nts), n. 1. An annulment or abrogation; VOIDANCE. 2. The fact or an instance of bringing an estate or status to an end, esp. by conditional limitation. 3. A condition upon the fulfillment of which a deed or other instrument is defeated or made void; a contractual provision containing such a condition. — Also termed defeasance clause. 4. Hist. A collateral deed made simultaneously with a conveyance and containing a condition by which the main deed might be defeated or made void. — Also spelled defeazance. — defease, vb.

“A defeazance is a collateral deed, made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be defeated or totally undone.” 2 William Blackstone, Commentaries on the Laws of England 327 (1766).

#### DEFEASANCE CLAUSE

defeasance clause. A mortgage provision stating that the conveyance to the mortgagee will be ineffective if the mortgagor pays the debt on time. See DEFEASANCE(3). [Cases: Mortgages 33. C.J.S. Mortgages §§ 22, 27, 30–34.]

#### DEFEASIBLE

defeasible, adj. (Of an act, right, agreement, or position) capable of being annulled or avoided <defeasible deed>. See fee simple defeasible under FEE SIMPLE . — defeasibility, n.

#### DEFEASIBLE DEED

defeasible deed. See DEED.

#### DEFEASIBLE ESTATE

defeasible estate. See ESTATE(1).

#### DEFEASIBLE FEE SIMPLE

defeasible fee simple. See fee simple defeasible under FEE SIMPLE.

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**DEFEASIBLE INTEREST**

defeasible interest. See INTEREST(2).

**DEFEASIBLE REMAINDER**

defeasible remainder. See REMAINDER.

**DEFEASIBLE TITLE**

defeasible title. See TITLE(2).

**DEFEASIVE**

defeasive, adj. Rare. Capable of defeating <a counterclaim defeasive of the plaintiff's right to recovery>.

**DEFEAT**

defeat, vb. 1. To deprive (someone) of something expected, usu. by an antagonistic act <to defeat the opponent in an election>. 2. To annul or render (something) void <to defeat title>. 3. To vanquish; to conquer (someone or something) <to defeat the armies>. 4. To frustrate (someone or something) <the expenditures defeat the bill's purpose>.

**DEFECT**

defect, n. An imperfection or shortcoming, esp. in a part that is essential to the operation or safety of a product. — defective, adj. [Cases: Products Liability 8. C.J.S. Products Liability §§ 11–15.]

apparent defect. See patent defect.

design defect. An imperfection occurring when the seller or distributor could have reduced or avoided a foreseeable risk of harm by adopting a reasonable alternative design, and when, as a result of not using the alternative, the product or property is not reasonably safe. [Cases: Products Liability 11. C.J.S. Products Liability §§ 19–21.]

fatal defect. A serious defect capable of nullifying a contract.

hidden defect. A product imperfection that is not discoverable by reasonable inspection and for which a seller or lessor is generally liable if the flaw causes harm. • Upon discovering a hidden defect, a purchaser may revoke a prior acceptance. UCC § 2-608(1)(b). — Also termed latent defect; inherent defect. [Cases: Sales 119. C.J.S. Sales §§ 194, 199–202.]

latent defect. See hidden defect.

manufacturing defect. An imperfection in a product that departs from its intended design even though all possible care was exercised in its assembly and marketing. [Cases: Products Liability 8. C.J.S. Products Liability §§ 11–15.]

marketing defect. 1. The failure to adequately warn of a potential risk of harm that is known

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or should have been known about a product or its foreseeable use. 2. The failure to adequately instruct the user about how to use a product safely. [Cases: Products Liability 14. C.J.S. Products Liability §§ 25–29.]

patent defect.A defect that is apparent to a normally observant person, esp. a buyer on a reasonable inspection. — Also termed apparent defect.

product defect.An imperfection in a product that has a manufacturing defect or design defect, or is faulty because of inadequate instructions or warnings. [Cases: Products Liability 8, 11, 14. C.J.S. Products Liability §§ 11–15, 19–21, 25–29.]

#### DEFECTIVE

defective,adj.1. (Of a position, right, act, or process) lacking in legal sufficiency <defective execution of documents> <defective service of process>.2. (Of a product) containing an imperfection or shortcoming in a part essential to the product's safe operation <defective wiring caused the accident>. [Cases: Products Liability 8. C.J.S. Products Liability §§ 11–15.]

#### DEFECTIVE CONDITION

defective condition.An unreasonably dangerous state that might well cause physical harm beyond that contemplated by the ordinary user or consumer who purchases the product. See PRODUCTS LIABILITY. [Cases: Products Liability 8. C.J.S. Products Liability §§ 11–15.]

#### DEFECTIVE PERFORMANCE

defective performance.See PERFORMANCE.

#### DEFECTIVE PLEADING

defective pleading.See PLEADING(1).

#### DEFECTIVE PROCESS

defective process.See PROCESS.

#### DEFECTIVE PRODUCT

defective product.See PRODUCT.

#### DEFECTIVE RECORD

defective record.See RECORD.

#### DEFECTIVE TITLE

defective title.See TITLE(2).

#### DEFECTIVE TRUST

defective trust.See TRUST.

#### DEFECTIVE VERDICT

defective verdict. See VERDICT.

#### DEFECT OF FORM

defect of form. An imperfection in the style, manner, arrangement, or nonessential parts of a legal document, as distinguished from a substantive defect. Cf. DEFECT OF SUBSTANCE.

#### DEFECT OF PARTIES

defect of parties. A failure to include all indispensable parties in a lawsuit. [Cases: Federal Civil Procedure 384; Parties 77, 81. C.J.S. Parties §§ 197, 205.]

#### DEFECT OF REASON

defect of reason. Archaic. 1. Mental illness. 2. Mental retardation.

#### DEFECT OF SUBSTANCE

defect of substance. An imperfection in the substantive part of a legal document, as by omitting an essential term. Cf. DEFECT OF FORM.

#### DEFECTUS

defectus (di-fek-t<<schwa>>s), n. [fr. Latin deficere “to be deficient”] Hist. A defect; a deficiency.

#### DEFECTUS SANGUINIS

defectus sanguinis (di-fek-t<<schwa>>s sang-gwi-nis). [Latin “defect of blood”] Hist. A failure of issue, often resulting in an escheat. See ESCHEAT.

#### DEFENCE

defence. See DEFENSE.

#### DEFEND

defend, vb. 1. To deny, contest, or oppose (an allegation or claim) <the corporation vigorously defended against the shareholder's lawsuit>. 2. To represent (someone) as an attorney <the accused retained a well-known lawyer to defend him>.

#### DEFENDANT

defendant (di-fen-d<<schwa>>nt). A person sued in a civil proceeding or accused in a criminal proceeding. — Abbr. D. Cf. PLAINTIFF.

John Doe defendant. An anonymous defendant labeled “John Doe” because the plaintiff does not, at the time of filing suit, know the person's name. • John Doe defendants are common in several situations, such as police-brutality lawsuits in which the plaintiff does not know the names of the officers allegedly at fault. See JOHN DOE.

#### DEFENDANT IN ERROR



defendant in error. Archaic. In a case on appeal, the prevailing party in the court below. See APPELLEE; RESPONDENT(1).

#### DEFENDANT SCORE

defendant score. A number taken from an established scale, indicating the relative seriousness of the defendant's criminal history. Cf. CRIME SCORE.

#### DEFENDANT'S GAIN

defendant's gain. The amount of money or the value of property that a criminal defendant has obtained by committing a crime. • Some states, such as New York, consider the defendant's gain when assessing a criminal fine or ordering restitution.

#### DEFENDEMUS

defendemus (di-fen-d<<schwa>>-m<<schwa>>s). [fr. Latin defendere] We will defend. • This term was used in conveyancing to require the donor and the donor's heirs to defend the donee against any attempted encumbrance not specifically agreed to. Although defendeus was not a warranty, it became part of the warranty clause “shall and will warrant and forever defend.”

#### DEFENDER

defender. 1. One who defends, such as the defendant in a lawsuit, a person using self-defense, or defense counsel. 2. PUBLIC DEFENDER.

#### DEFENDERE

defendere (di-fen-d<<schwa>>-ree), vb. [Law Latin] To deny; to defend.

#### DEFENDERE SE PER CORPUS SUUM

defendere se per corpus suum (di-fen-d<<schwa>>-ree see p<<schwa>>r kor-p<<schwa>>s s[y]oo-<<schwa>>m), vb. [Law Latin “to defend himself by his own body”] Hist. To agree to a trial by judicial combat; to agree to a duel.

#### DEFENDERE UNICA MANU

defendere unica manu (di-fen-d<<schwa>>-ree yoo-n<<schwa>>-k<<schwa>> man-yoo), n. [Law Latin “to defend with one hand”] Hist. A denial of an accusation under oath.

#### DEFENDER OF THE FAITH

Defender of the Faith. See DEFENSOR FIDEI.

#### DEFENDOUR

defendour (day-fon-duur), n. [Law French] Hist. A defendant; the party accused in an appeal.

#### DEFENERATION

defeneration (dee-fen-<<schwa>>-ray-sh<<schwa>>n), n. [fr. Latin de “of” + foenero “to

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lend upon usury”] Hist. The act of lending money at a usurious interest rate.

#### DEFENESTRATION

defenestration (dee-fen-*<<schwa>>-stray-sh<<schwa>>n*). The act of throwing someone or something out a window. — defenestrate,vb.

#### DEFENSE

defense (di-fen[t]s).1. A defendant's stated reason why the plaintiff or prosecutor has no valid case; esp., a defendant's answer, denial, or plea < her defense was that she was 25 miles from the building at the time of the robbery>. [Cases: Criminal Law 31. C.J.S. Criminal Law §§ 15, 46–49, 88, 93–94.]

“Defence is defined to be that which is alleged by a party proceeded against in an action or suit, as a reason why the plaintiff should not recover or establish that which he seeks by his complaint or petition.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 240 (2d ed. 1899).

affirmative defense.A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true. • The defendant bears the burden of proving an affirmative defense. Examples of affirmative defenses are duress (in a civil case) and insanity and self-defense (in a criminal case). — Also termed plea in avoidance; plea in justification. Cf. negative defense. [Cases: Criminal Law 31; Federal Civil Procedure 751; Pleading 78. C.J.S. Criminal Law §§ 15, 46–49, 88, 93–94; Pleading §§ 160–161.]

capacity defense.A defense based on the defendant's inability to be held accountable for an illegal act or the plaintiff's inability to prosecute a lawsuit (as when the plaintiff was a corporation, but has lost its corporate charter). See CAPACITY.

choice-of-evils defense.See lesser-evils defense.

collateral defense (k*<<schwa>>-lat<<schwa>>-r<<schwa>>l*).Criminal law. A defense of justification or excuse not involving a rebuttal of the allegation and therefore collateral to the elements that the prosecutor must prove. See EXCUSE(2); JUSTIFICATION(2). [Cases: Criminal Law 38. C.J.S. Criminal Law §§ 49–53.]

defense of habitation.The defense that conduct constituting a criminal offense is justified if an aggressor unjustifiably threatens the defendant's place of abode or premises and the defendant engages in conduct that is (1) harmful to the aggressor, (2) sufficient to protect that place of abode or premises, and (3) reasonable in relation to the harm threatened. — Also termed defense of premises. See CASTLE DOCTRINE.

defense of inequitable conduct.Patents. A defense to an action for patent infringement, made by charging the plaintiff with breaching the duty of candor and good faith. • To succeed, the defendant must show that, in the patent prosecution, the plaintiff intentionally withheld material information from or misled the examiner. Inequitable conduct is a combination of two former

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defenses: unclean hands and fraud on the Patent Office. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

derivative defense. A defense that rebuts the criminal elements that a prosecutor must establish to justify the submission of a criminal case to a jury.

designer defense. A novel defense based on diminished capacity attributed to stress or impairment. • The phrase derives from the fact that the defense is tailored to the defendant and the circumstances of the crime. Examples include extraordinary reactions to snack food (the Twinkie defense), unconsciousness or sleepwalking, and postpartum psychosis. See AUTOMATISM.

dilatory defense (dil-*<<schwa>>-tor-ee*). A defense that temporarily obstructs or delays a lawsuit but does not address the merits. • Examples of dilatory defenses include misjoinder, nonjoinder, res judicata, misnomer, lack of capacity to sue, another action pending, statute of limitations, prematurity, unripeness, release, and settlement.

dwelling defense. See CASTLE DOCTRINE.

eleemosynary defense. See charitable immunity under IMMUNITY(2).

equitable defense. A defense formerly available only in a court of equity but now maintainable in a court of law. • Examples include mistake, fraud, illegality, failure of consideration, forum non conveniens, laches, estoppel, and unclean hands.

frivolous defense. A defense that has no basis in fact or law.

full defense. A technical common-law defensive plea, stated at length and without abbreviation. • The plea is obsolete because of the pleading requirements in federal and state rules of civil procedure.

general-justification defense. See lesser-evils defense.

imperfect defense. A defense that fails to meet all legal requirements and usu. results only in a reduction in grade or sentence rather than an acquittal, as when a defendant is charged with manslaughter rather than murder because the defendant, while defending another, used unreasonable force to repel the attack. See imperfect self-defense under SELF-DEFENSE. Cf. perfect defense.

inconsistent defense. A defense so contrary to another defense that the acceptance of one requires abandonment of the other. • A person accused of murder, for example, cannot claim both self-defense and the alibi of having been in a different city when the murder took place. [Cases: Criminal Law 43.5. C.J.S. Criminal Law § 54.]

innocent-owner defense. A forfeiture-action defense in which the owner of property (such as real estate or money) asserts that another person committed the wrongful act or omission while using the property without the owner's knowledge or consent. See 18 USCA § 981(a)(2); 21 USCA § 881. See civil forfeiture under FORFEITURE.

insanity defense. See INSANITY DEFENSE.

issuable defense. Common-law pleading. A plea on the merits setting forth a legal defense. Cf. issuable plea under PLEA(3).

justification defense. See JUSTIFICATION DEFENSE.

legal defense. A complete and adequate defense in a court of law.

lesser-evils defense. The defense that, while the defendant may have caused the harm or evil that would ordinarily constitute a criminal offense, in the present case the defendant has not caused a net harm or evil because of justifying circumstances and therefore should be exculpated. — Also termed choice-of-evils defense; necessity; general-justification defense.

meritorious defense (mer-*tor-ee*). 1. A defense that addresses the substance or essentials of a case rather than dilatory or technical objections. [Cases: Judgment 145, 379, 447. C.J.S. Judgments §§ 341, 404, 445.] 2. A defense that appears likely to succeed or has already succeeded.

necessity defense. See JUSTIFICATION(2).

negative defense. A defendant's outright denial of the plaintiff's allegations without additional facts pleaded by way of avoidance. Cf. affirmative defense.

ostrich defense. A criminal defendant's claim not to have known of the criminal activities of an associate.

partial defense. A defense going either to part of the action or toward mitigation of damages.

pass-on defense. An antitrust defense that a member of the distributive chain who was overcharged or undercharged passed on the price adjustment to reflect the charge and thereby suffered no damage. — Also termed passing on.

peremptory defense (*per-emp-tor-ee*). A defense that questions the plaintiff's legal right to sue or contends that the right to sue has been extinguished.

perfect defense. A defense that meets all legal requirements and results in the defendant's acquittal. See perfect self-defense under SELF-DEFENSE. Cf. imperfect defense.

pretermitted defense (*pre-tor-mit-id*). A defense available to a party that must be pleaded at the right time or be waived.

sham defense. A fictitious, untrue defense, made in bad faith.

sleepwalking defense. See AUTOMATISM.

SODDI defense. See SODDI DEFENSE.

true defense. A defense admitting that a defendant committed the charged offense, but seeking to avoid punishment based on a legal excuse (such as insanity) or justification (such as self-defense).

unconsciousness defense. See AUTOMATISM.

xyy-chromosome defense. See **XYY-CHROMOSOME DEFENSE**.

2. A defendant's method and strategy in opposing the plaintiff or the prosecution; a doctrine giving rise to such a method or strategy <the lawyer advised her client to adopt a passive defense and to avoid taking the witness stand>.

empty-chair defense. See **EMPTY-CHAIR DEFENSE**.

Stalingrad defense. The strategy of wearing down the plaintiff by tenaciously fighting by whatever means anything the plaintiff presents and appealing every ruling favorable to the plaintiff, rather than presenting a meritorious case. • The tactic is named for the Russian city besieged by the Germans in World War II. The defenders refused to surrender and used every available tactic and tool to hold the attackers at bay until winter cut the enemy's supply lines, leaving the attackers with inadequate resources with which to continue the siege.

3. One or more defendants in a trial, as well as their counsel <the defense rests>. 4. Commercial law. A basis for avoiding liability on a negotiable instrument <the drawer asserted a real defense against the holder in due course>.

absolute defense. See real defense.

personal defense. An ordinary defense in a contract action — such as failure of consideration or nonperformance of a condition — that the maker or drawer of a negotiable instrument is precluded from raising against a person who has the rights of a holder in due course. • A personal defense can be asserted only against a transferee who is not a holder in due course. — Also termed limited defense.

real defense. A type of defense that is good against any possible claimant, so that the maker or drawer of a negotiable instrument can raise it even against a holder in due course. • The ten real defenses are (1) fraud in the factum, (2) forgery of a necessary signature, (3) adjudicated insanity that, under state law, renders the contract void from its inception, (4) material alteration of the instrument, (5) infancy, which renders the contract voidable under state law, (6) illegality that renders the underlying contract void, (7) duress, (8) discharge in bankruptcy, or any discharge known to the holder in due course, (9) a suretyship defense (for example, if the holder knew that one indorser was signing as a surety or accommodation party), and (10) a statute of limitations (generally three years after dishonor or acceptance on a draft and six years after demand or other due date on a note). — Also termed absolute defense; universal defense. [Cases: Bills and Notes 364. C.J.S. Bills and Notes; Letters of Credit § 191.]

5. Measures taken by a country or individual to protect against an attack. See **SELF-DEFENSE**; **NATIONAL DEFENSE**(1).

self-defense. See **SELF-DEFENSE**.

6. A country's military establishment. See **NATIONAL DEFENSE**(2). — Also spelled (in all senses esp. in BrE) defence. 7. **TAKEOVER DEFENSE**.

**DEFENSE ADVANCED RESEARCH PROJECTS AGENCY**

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Defense Advanced Research Projects Agency. An agency in the U.S. Department of Defense responsible for military research and development. — Abbr. DARPA.

**DEFENSE ATTORNEY**

defense attorney. A lawyer who represents a defendant in a civil or criminal case. — Also termed defense counsel; defense lawyer.

**DEFENSE AU FOND EN DROIT**

defense au fond en droit (di-fen[t]s oh fohn ondrwah). Civil law. Demurrer.

**DEFENSE COMMISSARY AGENCY**

Defense Commissary Agency. An agency in the U.S. Department of Defense responsible for providing goods and services to members of the armed forces at reduced prices. — Abbr. DeCA.

**DEFENSE CONTINGENT FEE**

defense contingent fee. See reverse contingent fee under CONTINGENT FEE.

**DEFENSE CONTRACT AUDIT AGENCY**

Defense Contract Audit Agency. An agency in the U.S. Department of Defense responsible for conducting contract audits and for providing accounting and financial advice to all Department components responsible for procurement and contract administration. — Abbr. DCAA.

**DEFENSE CONTRACT MANAGEMENT AGENCY**

Defense Contract Management Agency. A unit in the U.S. Department of Defense responsible for managing contracts to ensure that supplies and services are delivered on time and within cost and that they meet performance requirements. — Abbr. DCMA.

**DEFENSE COUNSEL**

defense counsel. See DEFENSE ATTORNEY.

**DEFENSE DEPARTMENT**

Defense Department. An executive department of the federal government, responsible for coordinating and overseeing military affairs and the agencies responsible for national security. • The Department was established as the National Military Establishment in 1947, by combining the War and the Navy Departments. Its name was changed to Department of Defense in 1949. The Department's components include the Army, the Air Force, the Navy, the Marine Corps, and the Joint Chiefs of Staff. It is headed by the Secretary of Defense, who is answerable to the President as Commander-in-Chief. — Also termed Department of Defense (abbr. DOD).

**DEFENSE FINANCE AND ACCOUNTING SERVICE**

Defense Finance and Accounting Service. A unit in the U.S. Department of Defense responsible for providing professional finance and accounting services and for overseeing the

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Department's day-to-day finance and accounting activities. — Abbr. DFAS.

#### DEFENSE INFORMATION SYSTEMS AGENCY

Defense Information Systems Agency. An agency in the U.S. Department of Defense responsible for developing and operating information systems to provide combat support for the armed forces. — Abbr. DISA.

#### DEFENSE INTELLIGENCE AGENCY

Defense Intelligence Agency. A combat-support unit in the U.S. Department of Defense responsible for developing and managing foreign military intelligence in support of military planning and operations and of weapons-systems acquisition. — Abbr. DIA.

#### DEFENSE INVESTIGATIVE SERVICE

Defense Investigative Service. See DEFENSE SECURITY SERVICE.

#### DEFENSE LAWYER

defense lawyer. See DEFENSE ATTORNEY.

#### DEFENSE LEGAL SERVICES AGENCY

Defense Legal Services Agency. An agency in the U.S. Department of Defense responsible for providing legal services to all agencies in the Department. • The General Counsel of the Department directs its operations. — Abbr. DLSA.

#### DEFENSE LOGISTICS AGENCY

Defense Logistics Agency. A unit in the U.S. Department of Defense responsible for providing worldwide logistics support for military missions both in peace and in war. • The Agency also supports nonmilitary agencies overseas. — Abbr. DLA.

#### DEFENSE-MONTH

defense-month. See FENCE-MONTH.

#### DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Defense Nuclear Facilities Safety Board. An independent federal board that sets standards for the design, construction, operation, and decommissioning of defense nuclear facilities of the U.S. Department of Energy. • It was established in 1988. 42 USCA §§ 2286–2286i.

#### DEFENSE OF HABITATION

defense of habitation. See DEFENSE(1).

#### DEFENSE OF MARRIAGE ACT

Defense of Marriage Act. A federal statute that (1) provides that no state can be required to recognize or give effect to same-sex marriages, (2) defines the term “marriage” for purposes of

federal law as the union of a man and a woman as husband and wife, and (3) defines “spouse” for purposes of federal law as being only a person of the opposite sex. 28 USCA § 1738C. • The Defense of Marriage Act was enacted in response to the fear that if one state sanctioned same-sex marriages, other states might then have to give full faith and credit to those marriages. — Abbr. DOMA.

#### DEFENSE OF OTHERS

defense of others.A justification defense available if one harms or threatens another when defending a third person. See JUSTIFICATION(2). [Cases: Assault and Battery 68; Homicide 757. C.J.S. Assault and Battery § 93.]

#### DEFENSE OF PREMISES

defense of premises.See defense of habitation under DEFENSE(1).

#### DEFENSE OF PROPERTY

defense of property.A justification defense available if one harms or threatens another when defending one's property. See JUSTIFICATION(2). [Cases: Assault and Battery 69; Homicide 758. C.J.S. Assault and Battery §§ 94–95.]

#### DEFENSE OF SELF

defense of self.See SELF-DEFENSE.

#### DEFENSE SECURITY COOPERATION AGENCY

Defense Security Cooperation Agency.A unit in the U.S. Department of Defense responsible for fostering and overseeing security-cooperation arrangements and for promoting security relationships with U.S. friends and allies. — Abbr. DSCA.

#### DEFENSE SECURITY SERVICE

Defense Security Service.A unit in the U.S. Department of Defense responsible for conducting personnel investigations and providing industrial-security products and services to the Department and other agencies. • The agency was formerly known as the Defense Investigative Service. — Abbr. DSS.

#### DEFENSE THREAT REDUCTION AGENCY

Defense Threat Reduction Agency.A unit in the U.S. Department of Defense responsible for reducing the risk of and defending against attacks that involve nuclear, chemical, biological, or other weapons of mass destruction. • The Agency was created in 1998. — Abbr. DTRA.

#### DEFENSIVA

defensiva (dee-fen-sI-v<<schwa>>), n.[Latin “a protector”] Hist. A warden of the Marches, being one of many lords appointed by the Crown to defend England's borders.

#### DEFENSIVE ALLEGATION



defensive allegation. See ALLEGATION.

#### DEFENSIVE COLLATERAL ESTOPPEL

defensive collateral estoppel. See COLLATERAL ESTOPPEL.

#### DEFENSIVE DISCLOSURE

defensive disclosure. Patents. The deliberate publication of details about an invention in order to render it prior art and preclude others from getting a patent on the same invention. • This can be done formally, by filing for public disclosure through the Statutory Invention Registration and publishing the abstract in the Official Gazette of the U.S. Patent and Trademark Office, or privately, by publishing it in an independent journal that will probably be consulted by a patent examiner. Once published, the information becomes prior art and precludes issuance of a patent on that invention. — Also termed defensive publication. See STATUTORY INVENTION REGISTRATION. [Cases: Patents 115. C.J.S. Patents § 210.]

#### DEFENSIVE-FORCE JUSTIFICATION

defensive-force justification. See JUSTIFICATION.

#### DEFENSIVE LOCKOUT

defensive lockout. See LOCKOUT.

#### DEFENSIVE PUBLICATION

defensive publication. See DEFENSIVE DISCLOSURE.

#### DEFENSIVE TREATY

defensive treaty. See TREATY(1).

#### DEFENSOR

defensor (di-fen-s<<schwa>>r or -sor), n. [fr. Latin defendere “to forbid”] 1. Roman law. A defender of another's interests in court; an advocate, esp. for a corporation. Cf. PROCURATOR LITIS. 2. Roman law. DEFENSOR CIVITATIS. 3. Hist. Eccles. law. An advocate or patron of a church; a church warden. 4. Hist. A guardian; a protector; a defender.

#### DEFENSOR CIVITATIS

defensor civitatis (di-fen-s<<schwa>>r siv-i-tay-tis). [Latin “defender of the city”] Roman law. An officer conducting public business, including protecting people, esp. the poor, from legal injustices, adjudicating certain minor offenses and pecuniary matters, and acting as a notary in the execution of a will or other transfer. — Often shortened to defensor.

#### DEFENSOR FIDEI

defensor fidei (di-fen-s<<schwa>>r fi-dee-I), n. [Latin “defender of the faith”] Hist. A unique title of the sovereign of England, first granted by Pope Leo X to Henry VIII for writing against

Martin Luther. • The Pope later withdrew the title because of Henry's harsh regulation of the church, but the title was again bestowed on the King by Parliament. The term is similar to the application of "Catholic" to the Spanish sovereign and "Most Christian" to the French sovereign. — Also termed Defender of the Faith.

## DEFENSUM

defensum (di-fen-s<<schwa>>m), n.[Law Latin "an inclosure"] Hist. 1.A portion of an open field allotted for corn or hay but not for feeding. 2. A wood partially enclosed to prevent the cattle from damaging the undergrowth. 3. A prohibition.

## DEFER

defer,vb.1. To postpone; to delay <to defer taxes to another year>.2. To show deference to (another); to yield to the opinion of <because it was a political question, the courts deferred to the legislature>.

## DEFERMENT

deferment,n.1. The act of delaying; postponement <deferment of a judicial decision>.2.Military law. A delay in serving in the military. [Cases: Armed Services 20.6. C.J.S. Armed Services §§ 52–59.] 3.Military law. A delay in serving confinement that results from a court-martial until the sentence has been approved and its execution has been ordered. • The convening authority may grant a deferment. [Cases: Armed Services 48; Military Justice 1399. C.J.S. Armed Services § 181; Military Justice §§ 384, 434, 451–452.] — defer,vb.

## DEFERRAL OF TAXES

deferral of taxes.The postponement of paying a tax from one year to another, as by contributing money to an IRA, for which earnings and contributions will be taxed only when the money is withdrawn.

## DEFERRAL STATE

deferral state.Under the Age Discrimination in Employment Act (ADEA), a state that has its own anti-discrimination legislation and enforcement mechanism, so that the time to file a federal lawsuit under the ADEA is postponed until state remedies have been exhausted. [Cases: Civil Rights 1507.C.J.S. Civil Rights §§ 159, 165.]

## DEFERRED ADJUDICATION

deferred adjudication.See deferred judgment under JUDGMENT.

## DEFERRED-ADJUDICATION PROBATION

deferred-adjudication probation.See deferred judgment under JUDGMENT.

## DEFERRED ANNUITY

deferred annuity.See ANNUITY.

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DEFERRED CHARGE

deferred charge. An expense not currently recognized on an income statement but carried forward on the balance sheet as an asset to be written off in the future <insurance premiums are a deferred charge>.

DEFERRED CLAIM

deferred claim. A claim postponed to a future accounting period.

DEFERRED COMPENSATION

deferred compensation. See COMPENSATION.

DEFERRED CREDIT

deferred credit. A credit (such as a premium on an issued bond) that is required to be spread over later accounting periods.

DEFERRED DIVIDEND

deferred dividend. See DIVIDEND.

DEFERRED-DIVIDEND INSURANCE POLICY

deferred-dividend insurance policy. See INSURANCE POLICY.

DEFERRED EXPENSE

deferred expense. See EXPENSE.

DEFERRED INCOME

deferred income. See INCOME.

DEFERRED-INTEREST BOND

deferred-interest bond. See BOND(3).

DEFERRED JUDGMENT

deferred judgment. See JUDGMENT.

DEFERRED LIEN

deferred lien. See LIEN.

DEFERRED PAYMENT

deferred payment. A principal-and-interest payment that is postponed; an installment payment.

DEFERRED-PAYMENT ANNUITY

deferred-payment annuity. See deferred annuity under ANNUITY.

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DEFERRED PROSECUTION

deferred prosecution. See deferred judgment under JUDGMENT.

DEFERRED REVENUE

deferred revenue. See prepaid income under INCOME.

DEFERRED SENTENCE

deferred sentence. See SENTENCE.

DEFERRED STOCK

deferred stock. See STOCK.

DEFICIENCY

deficiency, n. 1. A lack, shortage, or insufficiency. 2. A shortfall in paying taxes; the amount by which the tax properly due exceeds the sum of the amount of tax shown on a taxpayer's return. — Also termed tax deficiency; income-tax deficiency; deficiency in tax. 3. The amount still owed when the property secured by a mortgage is sold at a foreclosure sale for less than the outstanding debt; esp., the shortfall between the proceeds from a foreclosure sale and an amount consisting of the principal debt plus interest plus the foreclosure costs. See deficiency judgment under JUDGMENT. [Cases: Mortgages 375, 555–562. C.J.S. Mortgages §§ 387, 391, 416–417, 674–676, 931–946, 948–959.]

DEFICIENCY ASSESSMENT

deficiency assessment. See ASSESSMENT.

DEFICIENCY BILL

deficiency bill. See BILL(3).

DEFICIENCY DECREE

DEFICIENCY DIVIDEND

deficiency dividend. See DIVIDEND.

DEFICIENCY IN TAX

deficiency in tax. See DEFICIENCY(2).

DEFICIENCY JUDGMENT

deficiency judgment. See JUDGMENT.

DEFICIENCY LETTER

deficiency letter. 1. An IRS letter to a taxpayer, detailing the ways in which a tax return seems to be deficient. 2. An SEC letter to a registrant of a securities offering, detailing the ways in

which the registration statement seems not to conform to federal disclosure requirements. — Also termed letter of comment; letter of comments.

#### DEFICIENCY NOTICE

deficiency notice. See NINETY-DAY LETTER.

#### DEFICIENCY SUIT

deficiency suit. An action to recover the difference between a mortgage debt and the amount realized on foreclosure. See deficiency judgment under JUDGMENT. [Cases: Mortgages 561. C.J.S. Mortgages § 949.]

#### DEFICIT

deficit. 1. A deficiency or disadvantage; a deficiency in the amount or quality of something.

trade deficit. In economics, the excess of merchandise imports over merchandise exports during a specific period. — Also termed trade gap. Cf. trade surplus under SURPLUS.

2. An excess of expenditures or liabilities over revenues or assets.

#### DEFICIT SPENDING

deficit spending. The practice of making expenditures in excess of income, usu. from borrowed funds rather than actual revenues or surplus.

#### DE FIDE INSTRUMENTORUM

de fide instrumentorum (dee fi-dee in-str<<schwa>>-men-tor-<<schwa>>m). [Latin] Roman & Scots law. On the reliance to be placed on written documents. • The phrase appeared in reference to actions of rescission based on forgery.

#### DE FIDELI ADMINISTRATIONE OFFICII

de fideli administratione officii (dee fi-dee-II ad-min-<<schwa>>-stray-shee-oh-nee <<schwa>>-fish-ee-I). [Law Latin “of faithful administration of office”] Scots law. An oath to faithfully execute the duties of one's public office or duty. — Often shortened to de fideli administratione.

#### DEFILE

defile (di-fil), vb. 1. To make dirty; to physically soil. 2. To figuratively tarnish; to dishonor. 3. To make ceremonially unclean; to desecrate. 4. To morally corrupt (someone). 5. Archaic. To debauch (a person); to deprive (a person) of chastity.

#### DEFILEMENT

defilement (di-fil-m<<schwa>>nt), n. 1. An act of defiling. 2. A condition of being defiled.

#### DEFINE

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define,vb.1. To state or explain explicitly. 2. To fix or establish (boundaries or limits).3. To set forth the meaning of (a word or phrase).

**DEFINED-BENEFIT PLAN**

defined-benefit plan.See EMPLOYEE BENEFIT PLAN.

**DEFINED-CONTRIBUTION PLAN**

defined-contribution plan.See EMPLOYEE BENEFIT PLAN.

**DEFINED PENSION PLAN**

defined pension plan.See PENSION PLAN.

**DEFINED TERM**

defined term.In legal drafting, a word or phrase given a specific meaning for purposes of the document in which it appears; a definiendum.

**DE FINE FORCE**

de fine force (dee fi-nee fors). [Law French] Of pure necessity.

**DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO**

de fine non capiendo pro pulchre placitando (dee fi-nee non kap-ee-en-doh proh p<<schwa>>l-kree plas-<<schwa>>-tan-doh), n.[Law Latin “of not taking a fine for amending a bad pleading”] Hist. A writ prohibiting the imposition of a fine for bad pleading. See BEAUPLEADER.

**DE FINE PRO REDISSEISINA CAPIENDO**

de fine pro redisseisina capiendo (dee fi-nee proh ree-dis-see-zin-<<schwa>>kap-ee-en-doh), n.[Law Latin “of a fine paid for one imprisoned for redisseisin”] Hist. A writ releasing a person who paid a reasonable fine after being imprisoned for a redisseisin.

**DE FINIBUS LEVATIS**

de finibus levatis (dee fi-n<<schwa>>-b<<schwa>>s l<<schwa>>-vay-tis), n.[Law Latin “concerning fines levied”] Hist. The statute requiring any levied fines to be read solemnly in open court. 27 Edw.

**DEFINITE FAILURE OF ISSUE**

definite failure of issue.See FAILURE OF ISSUE.

**DEFINITE SENTENCE**

definite sentence.See determinate sentence under SENTENCE.

**DEFINITIO**

definitio (def-*<<schwa>>-nish-ee-oh*), n.[fr. Latin *definire* “definition”] Civil law. 1. A definition; an explanation of something. 2. The establishment of a general rule. 3. A boundary. Pl. *definitiones*.

#### DEFINITION

definition. The meaning of a term as explicitly stated in a drafted document such as a contract, a corporate bylaw, an ordinance, or a statute; a *definiens*.

lexical definition. A dictionary-style definition of a word, purporting to give the full meaning of a term.

stipulative definition. A definition that, for purposes of the document in which it appears, arbitrarily clarifies a term with uncertain boundaries or that includes or excludes specified items from the ambit of the term.

#### DEFINITIVE JUDGMENT

definitive judgment. See final judgment under JUDGMENT.

#### DEFINITIVE PARTITION

definitive partition. See PARTITION.

#### DEFINITIVE SENTENCE

definitive sentence. See determinate sentence under SENTENCE.

#### DEFLATION

deflation, n. A general decline in the price of goods and services. Cf. INFLATION; DISINFLATION. — deflate, vb. — deflationary, adj.

#### DEFORCE

deforce, vb. 1. To keep (lands) from the true owner by means of force. 2. To oust another from possession by means of force. 3. To detain (a creditor's money) unjustly and forcibly. — deforciant, n.

“The character of the action of debt is well illustrated by the form of the writ as given by Glanville. It directs the sheriff to order the debtor to render a stated sum which he owes to the plaintiff, ‘and whereof the plaintiff complains that the defendant unjustly deforces him,’ and, if he will not obey, he is to be summoned before the King's Court. The plaintiff is ‘deforced’ of money just as in a writ of right he is ‘deforced’ of land. It is true that the term ‘deforces’ disappeared from the writ shortly after Glanville's time, the word *debet* taking its place; but this seems to have been a matter of form, not of substance. The plaintiff sought to recover the money due as his property.” William F. Walsh, *Outlines of the History of English and American Law* 411 (1924).

#### DEFORCEMENT

deforcement. 1. An act of keeping lands from the true owner by force. 2. An act of ousting

another from possession by means of force. 3. An act of detaining a creditor's money unjustly and forcibly.

## DEFORCIANT

deforciant (di-for-sh<<schwa>>nt), n.[fr. Law Latin deforcians "a deforcer"] 1. A person who prevents another from taking possession of property. 2. The defendant in an action of fine. See FINE(1).

## DEFORCIARE

deforciare (di-for-shee-air-ee), vb.[fr. Law Latin defortiare "to deforce"] Hist. To withhold property (such as land and tenements) from the true owner.

## DEFORCIATIO

deforcio (di-for-shee-ay-shee-oh), n.[Law Latin "a distress"] Hist. A seizure of goods to satisfy a debt.

## DE FORISFACTURA MARITAGII

de forisfactura maritagii (dee for-is-fak-tyoor-<<schwa>> mar-<<schwa>>-tay-jee-I), n.[Law Latin "of forfeiture of marriage"] Hist. A writ forfeiting a marriage.

## DEFOSSION

defoession (di-fosh-in), n.[fr. Latin de "down" + fodere "dig"] The punishment of being buried alive.

## DE FRANGENTIBUS PRISONAM

de frangentibus prisonam (dee fran-jen-ti-b<<schwa>>s priz-<<schwa>>-n<<schwa>>m), n.[Latin "of those who break prison"] Hist. The statute providing that an escaped prisoner will not be put to death or forfeit a limb simply for escaping from prison unless the original crime required that penalty upon conviction. 1 Edw. 2.

## DEFRAUD

defraud,vb. To cause injury or loss to (a person) by deceit. See FRAUD.

## DEFRAUDATION

defraudation. An act of privation by fraud.

## DEFRAUDER

defrauder. See FRAUDFEASOR.

## DEFUNCT

defunct,adj. Dead; extinct <defunct corporation>.

## DEFUNCT MARRIAGE



defunct marriage. See MARRIAGE(1).

#### DEFUNCTUS

defunctus (di-f<<schwa>>ngk-t<<schwa>>s), adj. [Latin] Dead, as in defunctus sine prole (“dead without (leaving) issue”).

#### DE FURTO

de furto (dee f<<schwa>>r-toh), n. [Latin “of theft”] Hist. In England, a type of criminal appeal.

#### DE FUTURO

de futuro (dee fyuu-t[y]uur-oh). [Latin] Hist. Regarding the future; at a future time. • The phrase usu. appeared in reference to a marriage promise, which was not binding if it mentioned marriage at a future date. Cf. DE PRAESENTI .

#### DEGASTER

degaster (day-gas-tay), vb. [fr. Old French *dégaster* “to spoil”] To waste.

#### DE GESTU ET FAMA

de gestu et fama (dee jes-t[y]oo et fay-m<<schwa>>), n. [Law Latin “of behavior and reputation”] Hist. A writ available to a person whose character and reputation had been impeached.

#### DEGRADATION

degradation (deg-r<<schwa>>-day-sh<<schwa>>n). 1. A reduction in rank, degree, or dignity; specif., censure of a clergy member by divestiture of holy orders, either by word or by a solemn divestiture of robes and other insignia. Cf. DEPOSITION(4); DEPRIVATION(4). 2. A moral or intellectual decadence or degeneration; a lessening of a person's or thing's character or quality <degradation of resources>. 3. A wearing down of something, as by erosion.

#### DE GRATIA

de gratia (dee gray-shee-<<schwa>>). [Latin] Of favor; by grace, as in *de speciali gratia* (“of special grace or favor”).

#### DEGREE

degree. 1. Generally, a classification or specification <degrees of proof>. 2. An incremental measure of guilt or negligence; a level based on the seriousness of an offense <murder in the first degree>. See DEGREE OF CRIME. 3. A stage in a process; a step in a series of steps toward an end <the statute went through several degrees of development>. 4. A stage in intensity <a high degree of legal skill is required>. 5. In the line of descent, a measure of removal determining the proximity of a blood or marital relationship <the council member did not participate in the vote because he was related to one of the bidders within the first degree of consanguinity>. • In the

civil law, and in the degree-of-relationship system used by many American jurisdictions, an intestate estate passes to the closest of kin, counting degrees of kinship. To calculate the degree of relationship of the decedent to the claimant, one counts the steps (one for each generation) up from the decedent to the nearest common ancestor of the decedent and the claimant, and on down to the claimant from the common ancestor. The total number of steps is the degree of relationship. For example, a decedent's cousin stands in the fourth degree of relationship. Degrees of relationship are used not only to determine who is the closest heir but also to establish the incest prohibition in marriage requirements. — Also termed degree of kin; degree of relationship; degree of descent. See AFFINITY(2); CONSANGUINITY. [Cases: Descent and Distribution 22. C.J.S. Descent and Distribution § 26.]

equal degree.A relationship between two or more relatives who are the same number of steps away from a common ancestor. [Cases: Descent and Distribution 22. C.J.S. Descent and Distribution § 26.]

prohibited degree.A degree of relationship so close (as between brother and sister) that marriage between the persons is forbidden by law. • Generally, with slight variations from jurisdiction to jurisdiction, the law forbids marriages between all persons lineally related and within the third civil-law degree of relationship. That is, aunt–nephew and uncle–niece relations are prohibited. Prohibited degrees are also known as Levitical degrees, since the incest prohibition is pronounced in the Bible in Leviticus 18:6–18. — Also termed forbidden degree. [Cases: Marriage 10. C.J.S. Marriage § 17.]

6. A title conferred on a graduate of a school, college, or university, either after the completion of required studies or in honor of special achievements <she began studying for the bar exam the day after receiving her law degree>. Cf. DIPLOMA(3).

#### DEGREE OF CARE

degree of care.A standard of care to be exercised in a given situation. See CARE. [Cases: Negligence 230. C.J.S. Negligence §§ 34, 59, 114, 116–117.]

#### DEGREE OF CRIME

degree of crime. 1. A division or classification of a single crime into several grades of guilt, according to the circumstances surrounding the crime's commission, such as aggravating factors present or the type of injury suffered. [Cases: Criminal Law 28. C.J.S. Criminal Law §§ 9, 13.] 2. A division of crimes generally, such as felonies or misdemeanors. [Cases: Criminal Law 27. C.J.S. Criminal Law §§ 9–12.]

#### DEGREE OF DESCENT

degree of descent.See DEGREE(5).

#### DEGREE OF KIN

degree of kin.See DEGREE(5).

## DEGREE OF NEGLIGENCE

degree of negligence. One of the varying levels of negligence typically designated as slight negligence, ordinary negligence, and gross negligence. See NEGLIGENCE. [Cases: Negligence 272–276. C.J.S. Negligence §§ 88–113.]

“Although the common law concept of degrees of negligence has been criticized or repudiated in many jurisdictions, the usefulness of the view at common law that degrees of negligence exist is still recognized in a number of jurisdictions, particularly in regard to the distinction between ordinary and gross negligence. Furthermore, legislators have not been dissuaded from using the degrees of negligence concept when it is helpful to achieve a legislative purpose.” 57A Am. Jur. 2d Negligence § 233, at 274 (1989).

## DEGREE OF PROOF

degree of proof. 1. BURDEN OF PROOF. 2. BURDEN OF PRODUCTION.

## DEGREE OF RELATIONSHIP

degree of relationship. See DEGREE(5).

## DE HAEREDE DELIBERANDO ILLI QUI HABET CUSTODIAM TERRAE

de haerede deliberando illi qui habet custodiam terrae (dee hi-ree-dee di-lib-<<schwa>>-ran-doh il-I kwIhay-b<<schwa>>t k<<schwa>>-stoh-dee-<<schwa>>m ter-ee), n. [Law Latin “for delivering an heir to him who has wardship of the land”] Hist. A writ ordering the sheriff to deliver an heir to a person who had wardship.

## DE HAEREDE RAPTO ET ABDUCTO

de haerede rapto et abducto (dee hi-ree-dee rap-toh et ab-d<<schwa>>k-toh), n. [Law Latin “of an heir ravished and carried away”] Hist. A writ allowing a lord to recover a ward who had been taken by another person.

## DE HAERETICO COMBURENDO

de haeretico comburendo (dee hi-ret-i-koh kom-by<<schwa>>-ren-doh), n. [Law Latin “of burning a heretic”] Hist. 1. A writ ordering the execution by burning of a convicted heretic who refused to recant, or was convicted of heresy again after recanting. — Also termed writ de haeretico comburendo.

“[W]e find among our ancient precedents a writ de haeretico comburendo, which is thought by some to be as ancient as the common law itself. However, it appears from thence, that the conviction of heresy by the common law was not in any petty ecclesiastical court, but before the archbishop himself in a provincial synod; and that the delinquent was delivered over to the king to do as he should please with him: so that the crown had a control over the spiritual power, and might pardon the convict by issuing no process against him; the writ de haeretico comburendo being not a writ of course, but issuing only by the special direction of the king in council.” 4 William Blackstone, Commentaries on the Laws of England 46–47 (1769).

“But the case of Sawtre (1400) is a clear case in which the rule of the canon law was applied. He was convicted of heresy before the Bishop of Norwich and recanted his heresy. He fell again into heresy, and was condemned by the archbishop and his provincial Council, as a relapsed heretic. On this conviction the king issued a writ de haeretico comburendo. This case clearly shows that the common law recognized the rule of the canon law ....” 1 William Holdsworth, *A History of English Law* 617 (7th ed. 1956).

2. The first English penal law against heresy, enacted in 1401 (2 Hen. 4, ch. 15). • The law authorized the burning of defendants who relapsed or refused to abandon their heretical opinions. “The first English statute that denounced the penalty of death against heretics was passed in the year 1401. Whether before that statute the law that was in force in our land demanded or suffered that such persons should be burnt is a question that has been eagerly debated; on it in the days of Elizabeth and James I depended the lives of Anabaptists and Arians; it has not yet lost its interest; but it is a question that buzzes in a vacuum, for until Lollardy became troublesome there was too little heresy in England to beget a settled course of procedure.” 2 Frederick Pollock & Frederic Maitland, *The History of English Law Before the Time of Edward I* 544 (1899).

#### DEHERISON

deherison (dee-her-i-z<<schwa>>n). See DISINHERITANCE.

#### DE HOMAGIO RESPECTUANDO

de homagio respectuando (dee h<<schwa>>-may-jee-oh ri-spek-tyoo-an-doh), n.[Law Latin “for respiting or postponing homage”] Hist. A writ to postpone an homage. See HOMAGE.

#### DE HOMINE CAPTO IN WITHERNAMIIUM

de homine capto in withernamium (dee hom-<<schwa>>-nee kap-toh in with-<<schwa>>r-nay-mee-<<schwa>>m), n.[Law Latin “for taking a man in withernam”] Hist. A writ to seize and jail a person who took a bondman out of the county to keep the bondman from being replevied. • The defendant was jailed without bail until the bondman was returned. See WITHERNAM.

#### DE HOMINE REPLEGIANDO

de homine replegiando (dee hom-<<schwa>>-nee ri-plee-jee-an-doh), n.[Law Latin “for replevying a man”] A writ to replevy a person out of jail or out of the custody of another person after giving security that the replevied person will answer any charge.

“The writ de homine replegiando lies to replevy a man out of prison, or out of the custody of any private person, (in the same manner that chattels taken in distress may be replevied ...) upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. And, if the person be conveyed out of the sheriff's jurisdiction, the sheriff may return that he is eloigned ... upon which a process issues ... to imprison the defendant himself, without bail ... till he produces the party. But this writ is guarded with so many exceptions, that it is not an effectual remedy in numerous instances, especially where the crown is concerned.” 3 William Blackstone,

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Commentaries on the Laws of England 129 (1768).

#### DEHORS

dehors (d<<schwa>>-horor d<<schwa>>-horz). [Law French] Outside; beyond the scope of <the court cannot consider the document because it is dehors the record>.

#### DE IDENTITATE NOMINIS

de identitate nominis (dee I-den-t<<schwa>>-tay-tee nom-<<schwa>>-nis), n.[Law Latin “of identity of name”] Hist. A writ to free a person mistaken for someone else with the same name and then falsely arrested and imprisoned. — Also termed de idemptitate nominis.

#### DE IDIOTA INQUIRENDO

de idiota inquirendo (dee id-ee-oh-t<<schwa>> in-kwI-ren-doh or in-kw<<schwa>>-ren-doh). [Latin “of inquiring concerning an idiot”] Hist. A writ directing the sheriff to open an inquiry before a jury of 12 into whether a person is an idiot, that is, mentally incapable of managing personal affairs.

#### DEI GRATIA

Dei gratia (dee-Igray-shee-<<schwa>>). [Latin] By the grace of God. • This phrase was often used in rulers' titles to show that their authority was by divine right. It was also formerly used in titles of magistrates and other officers.

#### DE IIS QUI PONENDI SUNT IN ASSISIS

de iis qui ponendi sunt in assisis (dee I-<<schwa>>s kwI p<<schwa>>-nen-dI s<<schwa>>nt in <<schwa>>-sI-z<<schwa>>z), n.[Law Latin “of those who are to be put on assizes”] Hist. The statute establishing juror qualifications. 21 Edw.

#### DEI JUDICIUM

dei iudicium (dee-I joo-dish-ee-<<schwa>>m). [Latin “God's judgment”] A trial by ordeal. See ORDEAL.

#### DE INCREMENTO

de incremento (dee in-kr<<schwa>>-men-toh). [Law Latin “of increase”] Hist. Additional. • Costs de incremento are costs awarded by a court in addition to costs awarded by the jury.

#### DE INDUSTRIA

de industria (dee in-d<<schwa>>s-tree-<<schwa>>). [Latin] Hist. Designedly; on purpose.

#### DE INGRESSU

de ingressu (dee in-gres-[y]oo), n.[Law Latin “of entry”] Hist. A writ allowing entry into lands or tenements.

#### DE INJURIA

de injuria (dee in-joor-ee-*<<schwa>>*). [Law Latin “of injury”] Hist. Of injury. • A traverse de injuria, contained in a replication in a trespass action, denies the defendant's excuse for the wrong done. See TRAVERSE.

## DE INOFFICIOSO TESTAMENTO

de inofficioso testamento (dee in-*<<schwa>>*-fish-ee-oh-soh tes-t*<<schwa>>*-men-toh). [Latin] Roman law. Concerning an inofficious or undutiful will. See INOFFICIOSUS; QUERELA INOFFICIOSI TESTAMENTI.

## DE INTEGRO

de integro (dee in-t*<<schwa>>*-groh), n.[Latin] Again; a second time.

## DE INTRUSIONE

de intrusione (dee in-troo-zhee-oh-nee), n.[Law Latin “of intrusion”] Hist. A writ available to a reversioner when the tenant dies and a stranger occupies the land.

## DEJERATION

dejeration (dej-*<<schwa>>*-ray-sh*<<schwa>>*n). The act of taking a solemn oath.

## DE JURE

de jure (di juur-ee also dee or day), adj.[Law Latin “as a matter of law”] Existing by right or according to law <de jure segregation during the pre-Brown era>. Cf. DE FACTO; DE GRATIA.

## DE JURE CORPORATION

de jure corporation.See CORPORATION.

## DE JURE GOVERNMENT

de jure government.See GOVERNMENT.

## DE JURE OFFICER

de jure officer.See officer de jure under OFFICER(1).

## DE JURE SEGREGATION

de jure segregation.See SEGREGATION.

## DE LANA CAPRINA (RIXARI)

de lana caprina (rixari) (dee lay-n*<<schwa>>* k*<<schwa>>*-prl-n*<<schwa>>* rik-sair-I). [Latin] Hist. To contend about a goat's hair; to dispute about nothing.

## DELANTAL

delantal (di-lan-t*<<schwa>>*l). [Old English] Hist. See UTLAND.

## DE LA PLUS BELLE

de la plus belle (d<<schwa>> lah plooh bel), adj.[Law French] Hist. Of the most fair. • This term described a form of dower assigned out of the husband's best tenements. The term was used in military tenures but was abolished by St. 12 Car. 2, ch. 24. — Also termed de la plus beale.

#### DELATE

delate (di-layt), vb. To accuse, to inform against, to denounce in court, esp. a Scottish ecclesiastical court. — delation,n. — delator,n.

#### DE LATERE

de latere (dee lat-<<schwa>>r-ee). [Latin] Of collaterals; from the side.

#### DELATIO

delatio (di-lay-shee-oh), n.[fr. Latin deferre “to denounce”] Roman & civil law. 1. An accusation. 2. Information.

#### DELATOR

delator (di-lay-t<<schwa>>r), n. [Latin] Roman law. 1. An informer. 2. An accuser; esp., a person who made a practice of informing on and prosecuting others, esp. for fiscal offenses. • This was at first encouraged, but later the informer became subject to the death penalty. Pl. delatores.

#### DELATURA

delatura (del-<<schwa>>-tyoor-<<schwa>>), n.[fr. Latin deferre “to denounce”] Hist. A reward given to an informer.

#### DELAY

delay,n.1. The act of postponing or slowing <the continuance was sought for no purpose other than delay>. Cf. VEXATIOUS DELAY. 2. An instance at which something is postponed or slowed <the delay in starting the trial made it difficult for all the witnesses to attend>.3. The period during which something is postponed or slowed <during the delay, the case settled>.4.Civil law. The period within which a party to a suit must take some action, such as perfecting an appeal or responding to a written-discovery request <the delay for responding to written interrogatories is 15 days after the date they are served on the responding party>.

#### DELAYED APPEAL

delayed appeal.See APPEAL.

#### DELAYED-COMPLIANCE ORDER

delayed-compliance order.Environmental law. An order issued by the Environmental Protection Agency or by a state agency to an existing source of pollutants, whereby the deadline for complying with an implementation plan is postponed. See IMPLEMENTATION PLAN. [Cases: Environmental Law 19.]

#### DELAYED FUNDS AVAILABILITY

delayed funds availability. A hold that a bank places on uncollected funds that are represented by a deposited check. — Abbr. DFA.

#### DELAYED SENTENCE

delayed sentence. See SENTENCE.

#### DELAY RENTAL

delay rental. Oil & gas. A payment from the lessee to the lessor made to maintain the mineral lease from period to period during the primary term without an obligation to drill. See DRILLING-DELAY RENTAL CLAUSE; “or” lease, “unless” lease under LEASE; PAID-UP LEASE.

#### DEL BIEN ESTRE

del bien estre (del been es-t<<schwa>>r). [Law French] Hist. Of well-being. See DE BENE ESSE.

#### DEL CREDERE

del credere (del kred-<<schwa>>-ray or kray-d<<schwa>>-ray), adj. [Italian] Of belief or trust.

“ ‘Del credere’ agents for the sale of goods, in consideration of a higher payment than usual, become responsible for the solvency of the person to whom they sell them.” Thomas E. Holland, *The Elements of Jurisprudence* 304 (13th ed. 1924).

#### DEL CREDERE AGENT

del credere agent. See AGENT(2).

#### DEL CREDERE BAILIFF

del credere bailiff. See FACTOR.

#### DEL CREDERE COMMISSION

del credere commission. A factor's commission that is increased because the factor guarantees the payment to the principal of all debts that become due through the agency relationship. [Cases: Factors 29.]

#### DEL CREDERE FACTOR

del credere factor. See del credere agent under AGENT.

#### DELECTUS PERSONAE

delectus personae (di-lek-t<<schwa>>s p<<schwa>>r-soh-nee). [Latin “choice of the person”] The rule that when personal relations are important, a person cannot be compelled to associate with another person. • Based on this principle, a partner has the right to accept or reject a candidate proposed as a new partner.



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**DELEGABLE DUTY**

delegable duty. See DUTY(1).

**DELEGATE**

delegate (del-*<<schwa>>-git*), n. 1. One who represents or acts for another person or a group. 2. Parliamentary law. A voting member of a convention, whether entitled to vote as an elected or appointed delegate (sense 1), as an upgraded alternate, or ex officio. See CONVENTION(4); ALTERNATE; EX OFFICIO.

instructed delegate. A delegate bound to vote according to a constituency's expressed wishes. Cf. uninstructed delegate; UNIT RULE(2).

uninstructed delegate. A delegate who is not instructed and may therefore vote according to his or her conscience. Cf. instructed delegate.

**DELEGATE ASSEMBLY**

delegate assembly. See CONVENTION(4).

**DELEGATED LEGISLATION**

delegated legislation. See REGULATION(3).

**DELEGATED POWER**

delegated power. See POWER(3).

**DELEGATEE**

delegatee (del-*<<schwa>>-g<<schwa>>-tee*). An agent or representative to whom a matter is delegated.

**DELEGATION**

delegation, n. 1. The act of entrusting another with authority or empowering another to act as an agent or representative <delegation of contractual duties>. 2. A group of representatives <a large delegation from Texas>. — delegate (del-*<<schwa>>-gayt*) (for sense 1), vb. — delegable (del-*<<schwa>>-g<<schwa>>-b<<schwa>>-l*) (for sense 1), adj.

**DELEGATION DOCTRINE**

delegation doctrine. Constitutional law. The principle (based on the separation-of-powers concept) limiting Congress's ability to transfer its legislative power to another governmental branch, esp. the executive branch. • Delegation is permitted only if Congress prescribes an intelligible principle to guide an executive agency in making policy. — Also termed nondelegation doctrine. [Cases: Constitutional Law 59. C.J.S. Constitutional Law §§ 137, 139.]

**DELEGATION OF DUTIES**

delegation of duties. Contracts. A transaction by which a party to a contract arranges to have a

third party perform the party's contractual duties.

#### DELEGATION OF POWERS

delegation of powers. A transfer of authority by one branch of government to another branch or to an administrative agency. See DELEGATION DOCTRINE. [Cases: Constitutional Law 59, 75. C.J.S. Constitutional Law §§ 137, 139, 175.]

#### DE LEGATIS ET FIDEI COMMISSIS

de legatis et fidei commissis (dee li-gay-tis et fi-dee-I k<<schwa>>-mis-is). [Latin] Of legacies and trusts. • This is a title in the Pandects.

#### DELEGATOR

delegator (del-i-gay-t<<schwa>>r or -tor). One who delegates (a responsibility, etc.) to another.

#### DE LEGE FERENDA

de lege ferenda (dee lee-jee f<<schwa>>-ren-d<<schwa>>). [Latin “from law to be passed”] Int'l law. A proposed principle that might be applied to a given situation instead or in the absence of a legal principle that is in force. Cf. DE LEGE LATA.

#### DE LEGE LATA

de lege lata (dee lee-jee lay-t<<schwa>>). [Latin “from law passed”] Int'l law. 1. Existing law. 2. The principle that a court should decide based on actual law and not on how it thinks the law ought to be. Cf. DE LEGE FERENDA.

#### DELETERIOUS

deleterious (del-<<schwa>>-teer-ee-<<schwa>>s), adj. 1. Poisonous <deleterious toxins>. 2. Unwholesome; psychologically or physically harmful <deleterious influence>.

#### DE LIBERA FALDA

de libera falda (dee lib-<<schwa>>r-<<schwa>> fal-d<<schwa>> or fawl-d<<schwa>>), n. [Law Latin “of free fold”] Hist. A writ allowing a free feeding, esp. of sheep on land. • This was a form of quod permittat.

#### DE LIBERA PISCARIA

de libera piscaria (dee lib-<<schwa>>r-<<schwa>> pi-skair-ee-<<schwa>>), n. [Law Latin “of free fishery”] Hist. A writ allowing an exclusive right to fish on public navigable water. • This was a form of quod permittat.

#### DELIBERATE

deliberate (di-lib-[<<schwa>>-]rit), adj. 1. Intentional; premeditated; fully considered. 2. Unimpulsive; slow in deciding.

deliberate (di-lib-*<<schwa>>*-rate), vb. (Of a court, jury, etc.) to weigh and analyze all the evidence after closing arguments <the jury deliberated for 12 hours before reaching a verdict>.

#### DELIBERATE ELICITATION

deliberate elicitation.Criminal procedure. The purposeful yet covert drawing forth of an incriminating response (usu. not during a formal interrogation) from a suspect whose Sixth Amendment right to counsel has attached but who has not waived that right. • Deliberate elicitation may occur, for example, when a police officer engages an arrested suspect in conversation on the way to the police station. Deliberate elicitation violates the Sixth Amendment.Massiah v. United States, 377 U.S. 201, 84 S.Ct. 1199 (1964). See MASSIAH RULE .

#### DELIBERATE INDIFFERENCE

deliberate indifference.See INDIFFERENCE.

#### DELIBERATE-INDIFFERENCE INSTRUCTION

deliberate-indifference instruction.See JEWELL INSTRUCTION.

#### DELIBERATE SPEED, WITH ALL

deliberate speed, with all.As quickly as the maintenance of law and order and the welfare of the people will allow, esp. with respect to the desegregation of public schools. Brown v. Board of Educ., 347 U.S. 483, 74 S.Ct. 686 (1954). [Cases: Schools 13(9). C.J.S. Civil Rights § 117.]

#### DELIBERATION

deliberation,n. The act of carefully considering issues and options before making a decision or taking some action; esp., the process by which a jury reaches a verdict, as by analyzing, discussing, and weighing the evidence. See CONSIDERATION(3). [Cases: Criminal Law 857(1); Federal Civil Procedure 1974; Trial 306. C.J.S. Criminal Law § 1372; Trial §§ 790–796, 799.] — deliberate (di-lib-*<<schwa>>*-rayt), vb.

#### DELIBERATIVE ASSEMBLY

deliberative assembly.See ASSEMBLY.

#### DELIBERATIVE-PROCESS PRIVILEGE

deliberative-process privilege.See PRIVILEGE(1).

#### DE LIBERO HOMINE EXHIBENDO

de libero homine exhibendo (dee lib-*<<schwa>>*r-oh hom-*<<schwa>>*-nee ek-si-ben-doh). [Latin “for the production of a free man”] Roman law. An interdict requiring a free person to be produced before a magistrate.

#### DE LIBERO PASSAGIO

de libero passagio (dee lib-*<<schwa>>*r-oh p*<<schwa>>*-say-jee-oh), n.[Law Latin “of free passage”] Hist. A writ allowing free passage over water. • This was a form of quod permittat.

#### DE LIBERTATE PROBANDA

de libertate probanda (dee lib-*<<schwa>>*r-tay-tee proh-ban-d*<<schwa>>*), n.[Law Latin “for proving liberty”] Hist. A writ directing a sheriff to take security from a person accused of being a villein and to protect that person from harassment until the person's status was determined by the justices of assize.

#### DE LIBERTATIBUS ALLOCANDIS

de libertatibus allocandis (dee lib-*<<schwa>>*r-tay-t*<<schwa>>*-b*<<schwa>>*s al-*<<schwa>>*-kan-dis), n.[Law Latin “for allowing liberties”] Hist. A writ allowing a person entitled to certain liberties to obtain them.

#### DE LICENTIA TRANSFRETANDI

de licentia transfretandi (dee li-sen-shee-*<<schwa>>* trans-fr*<<schwa>>*-tan-di), n.[Law Latin “of permission to cross the sea”] Hist. A writ ordering wardens of seaports, on certain conditions, to permit any person named in the writ to cross the sea.

#### DELICT

delict (di-lik), n.[Latin delictum “an offense”] Roman & civil law. A violation of the law; esp., a wrongful act or omission giving rise to a claim for compensation; TORT. — Also termed (in Roman law) delictum; (in French law) délit. [Cases: Torts 1. C.J.S. Torts §§ 2–7.]

“A delict is a civil wrong. It is an infringement of another's interests that is wrongful irrespective of any prior contractual undertaking to refrain from it — though there may also be one. It entitles the injured party to claim compensation in civil proceedings — though criminal proceedings aimed at punishing the wrongdoer may also ensue.” 1 P.Q.R. Boberg, *The Law of Delict* 1 (1984).

private delict.A wrong regarded primarily as a matter of compensation between individuals.

public delict.A wrong for which the community as a whole takes steps to punish the offender. Cf. public tort under TORT.

quasi-delict. 1.Roman law. A residuary category of private wrongs, characterized by either vicarious or strict liability.

“QUASI-DELICT.... Justinian enumerates four cases of obligations said to arise quasi ex delicto. The implication seems to be that in all of them the law creates a liability though the defendant may not in fact be to blame. The cases are the following: — (1) The judge who ‘makes the case his own’ ... incurs a penalty fixed by the magistrate at discretion .... (2) If anything was thrown, or poured, from an upper room ... the occupier was liable for double the damage .... (3) If a thing was kept placed or suspended over a way used by the public ... there was a penalty ... which might be recovered from the occupier .... (4) Ship-owners, innkeepers and stable-keepers

were liable for damage or theft committed by slaves or free persons in their employ ...." R.W. Lee, *The Elements of Roman Law* 401–02 (4th ed. 1956).

2. See quasi-offense under OFFENSE(2).3.Scots law. Tortious conduct that is negligent, as opposed to intentional.

#### DELICTAL

delictal. See DELICTUAL.

#### DELICITION

delicition (di-lik-sh<<schwa>>n). The loss of land by gradual, natural changes, such as erosion resulting from a change in the course of a river or stream. Cf. ACCRETION(1); ALLUVION; AVULSION(2); EROSION. [Cases: Navigable Waters 44; Waters and Water Courses 93. C.J.S. Navigable Waters § 94; Waters §§ 177–182, 184–185.]

#### DELICTUAL

delictual (di-lik-ch<<schwa>>-w<<schwa>>l), adj. Of, relating to, or involving a delict; TORTIOUS. — Also termed delictal.

#### DELICTUAL FAULT

delictual fault. See FAULT.

#### DELICTUM

delictum. See DELICT.

#### DELIMINATION

delimitation. The act of marking a boundary or fixing a limit.

#### DELIMIT

delimit (di-lim-it), vb. To mark (a boundary); to fix (a limit).

#### DELIMITATION

delimitation. A fixing of limits or boundaries.

#### DELINEATIONAL GERRYMANDERING

delineational gerrymandering. See GERRYMANDERING.

#### DELINQUENCY

delinquency, n. 1. A failure or omission; a violation of a law or duty. See JUVENILE DELINQUENCY. 2. A debt that is overdue in payment.

#### DELINQUENCY CHARGE

delinquency charge. See CHARGE.

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**DELINQUENCY JURISDICTION**

delinquency jurisdiction. See JURISDICTION.

**DELINQUENT**

delinquent, adj. 1. (Of a person) failing to perform an obligation. 2. (Of a person) guilty of serious antisocial or criminal conduct. 3. (Of an obligation) past due or unperformed.

delinquent, n. 1. A person who fails to perform an obligation. 2. A person guilty of serious antisocial or criminal conduct. 3. JUVENILE DELINQUENT.

**DELINQUENT CHILD**

delinquent child. See CHILD.

**DELINQUENT MINOR**

delinquent minor. See JUVENILE DELINQUENT.

**DELINQUENT TAX**

delinquent tax. See TAX.

**DE LIQUIDO IN LIQUIDUM**

de liquido in liquidum (dee lik-wi-doh in lik-wi-d<<schwa>>m). [Law Latin] Scots law. Of a liquid claim against a liquid claim. • The phrase appeared in reference to the extinguishment of a claim by setoff.

**DELIRIUM**

delirium. 1. A disordered mental state, often occurring during illness. 2. Exaggerated excitement. 3. A delusion; a hallucination.

**DELIRIUM TREMENS**

delirium tremens. An illness characterized by hallucinations and violent trembling, induced by excessive consumption of alcohol over a long period. — Abbr. d.t.'s. — Also termed mania a potu; settled insanity.

**DELISTING**

delisting, n. The suspension of the privilege of having a security listed on an exchange. • Delisting results from failing to meet the exchange's listing requirements, as by not complying with the minimum net-asset requirement. Cf. DEREGISTRATION. [Cases: Exchanges 13.10. C.J.S. Exchanges §§ 17–18.] — delist, vb.

**DÉLIT**

délit. See DELICT.

**DELIVERANCE**

deliverance. 1. A jury's verdict. 2. A judicial opinion or judgment. 3. A court's order directing that a person in custody be released; esp., such an order by an ecclesiastical court. — Also termed writ of deliverance. 4. Archaic. In a replevin action, a writ ordering the redelivery to the owner of goods.

second deliverance. Hist. A second replevin remedy after the plaintiff has been nonsuited and the distrained property has been returned to the defendant. — Also termed writ of second deliverance.

“And at the common law, the plaintiff might have brought another replevin, and so in infinitum, to the intolerable vexation of the defendant. Wherefore the statute of Westm. 2, c. 2 restrains the plaintiff, when nonsuited, from suing any fresh replevin, but allows him a judicial writ issuing out of the original record, and called a writ of second deliverance, in order to have the same distress again delivered to him, on giving the like security as before. And, if the plaintiff be a second time nonsuit, or if the defendant has judgment upon verdict ... he shall have a writ or return irreplevisable; after which no writ of second deliverance shall be allowed.” 3 William Blackstone, Commentaries on the Laws of England 150 (1767).

5. Such a release (as in sense 3) or redelivery (as in sense 4).

#### DELIVERED AT FRONTIER

delivered at frontier. 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 and pay for transportation, and (3) deliver the goods to a specified place on the importing nation's border. • The seller's delivery is complete (and the risk of loss passes to the buyer) when the goods arrive at the designated point and are placed at the disposal of the buyer. This term is generally used when the delivery place is on land, but it places no explicit restrictions on the mode of carriage. If the delivery place is a border port and delivery is complete either onboard or alongside the vessel, the term delivered ex ship or delivered ex quay is preferred. — Abbr. DAF. Cf. DELIVERED EX SHIP; DELIVERED EX QUAY.

#### DELIVERED DUTY PAID

delivered duty paid. 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) bear the costs of carriage, (3) pay the buyer's import duties, and (4) make the goods available to the buyer onboard the carrier at the destination. • The seller's delivery is complete (and the risk of loss passes to the buyer) when the seller's carrier arrives at the agreed destination. This term is generally used when the delivery place is on land, but it places no explicit restrictions on the mode of carriage. If the delivery point is a port and delivery is complete either onboard or alongside the vessel, the term delivered ex ship or delivered ex quay is preferred. — Abbr. DDP. Cf. DELIVERED DUTY UNPAID; DELIVERED EX SHIP; DELIVERED EX QUAY.

#### DELIVERED DUTY UNPAID

delivered duty unpaid. 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) bear the costs of carriage (apart from unloading charges and import duties), and (3) make the goods available to the buyer onboard the carrier at the destination. • The seller's delivery is complete (and the risk of loss passes to the buyer) when the seller's carrier arrives at the agreed destination. The buyer is responsible for all import duties. This term is generally used when the delivery place is on land, but it places no explicit restrictions on the mode of carriage. If the delivery point is a port and delivery is complete either onboard or alongside the vessel, the term delivered ex ship or delivered ex quay is preferred. — Abbr. DDU. Cf. DELIVERED DUTY PAID ; DELIVERED EX SHIP; DELIVERED EX QUAY.

#### DELIVERED EX QUAY

delivered ex quay. 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) bear the costs of transportation to the port named by the importing buyer, and (3) place the goods alongside the ship in the port of destination. • The seller's delivery is complete (and the risk of loss passes to the buyer) when the goods are unloaded in the destination port. This term is used only when goods are transported by sea or inland waterway. — Abbr. DEQ. Cf. DELIVERED EX SHIP ; FREE ALONGSIDE SHIP.

#### DELIVERED EX SHIP

delivered ex ship. 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 clear the goods for export and bear the costs of transportation (apart from unloading charges and import duties) to the importing nation's port of destination. • The seller's delivery is complete (and the risk of loss passes to the buyer) when the seller's carrier arrives at the destination port. This term is used only when goods are transported by sea or inland waterway. — Abbr. DES. Cf. DELIVERED EX QUAY; FREE ON BOARD.

#### DELIVERY

delivery, n. 1. The formal act of transferring something, such as a deed; the giving or yielding possession or control of something to another. 2. The thing so transferred or conveyed. Cf. LIVERY. — deliver, vb.

absolute delivery. A delivery that is complete upon the actual transfer of the instrument from the grantor's possession. • Such a delivery does not usu. depend on recordation.

actual delivery. The act of giving real and immediate possession to the buyer or the buyer's agent.

conditional delivery. A delivery that passes possession subject to the happening of a specified event. • Possession passes immediately; title remains conditional.

constructive delivery. An act that amounts to a transfer of title by operation of law when



actual transfer is impractical or impossible. • For example, the delivery of a deposit-box key by someone who is ill and immobile may amount to a constructive delivery of the box's contents even though the box may be miles away. For the three traditional types of constructive delivery, see ATTORNMENT; CONSTITUTUM POSSESSORIUM; TRADITIO BREVI MANU.

good delivery.Securities. The basic conditions for delivery of a security, including that (1) the certificate is in good condition, (2) the certificate belongs to the person transferring it, (3) the certificate is properly indorsed, and (4) any legal documents necessary for negotiability must accompany the certificate.

jail delivery.See JAIL DELIVERY.

second delivery.A legal delivery by the depository of a deed placed in escrow. [Cases: Deeds 58. C.J.S. Deeds §§ 93–97.]

symbolic delivery.The constructive delivery of the subject matter of a sale or gift by the actual delivery of an article that represents the item, that renders access to it possible, or that provides evidence of the title to it, such as the key to a warehouse or a bill of lading for goods on shipboard. [Cases: Sales 162. C.J.S. Sales §§ 172–173.]

unconditional delivery.A delivery that immediately passes both possession and title and that takes effect immediately.

#### DELIVERY BOND

delivery bond.See forthcoming bond under BOND(2).

#### DELIVERY IN ESCROW

delivery in escrow.The physical transfer of something to an escrow agent to be held until some condition is met, at which time the agent will release it. • An example of such a delivery is a stock buyer's transfer of cash to a bank that will give the seller the cash upon receiving the stock certificates. This type of delivery creates immediate conditional rights in the promisee. The device may be used to create an option contract in which the promisee has the option. See ESCROW. [Cases: Deposits and Escrows 14. C.J.S. Depositories §§ 10, 23; Escrows § 7.]

#### DELIVERY OF DEED

delivery of deed.The placing of a deed in the grantee's hands or within the grantee's control. • By this act, the grantor shows an intention that the deed operates immediately as a conveyance. A deed may also be held to be delivered when the grantor manifests the intention to complete the conveyance, regardless of actual delivery. [Cases: Deeds 54–67.C.J.S. Deeds §§ 74–97.]

#### DELIVERY ORDER

delivery order.A written order to deliver goods, directed to a warehouseman, carrier, or other person who ordinarily issues warehouse receipts or bills of lading. UCC § 7-102(a)(5).

#### DE LUCRANDA DOTE

de lucranda dote (dee loo-kran-d<<schwa>> doh-tee). [Latin “of being enriched by the dowry”] Hist. A spousal agreement giving a husband the right to retain his wife's dowry upon her death.

#### DE LUNATICO INQUIRENDO

de lunatico inquirendo (dee loo-nat-<<schwa>>-koh in-kw<<schwa>>-ren-doh), n.[Law Latin “for inquiring about a lunatic”] Hist. A writ or commission to determine whether a person is a lunatic. — Also termed commission of lunacy.

#### DEM

dem.abbr.DEMISE.

#### DE MAGNA ASSISA ELIGENDA

de magna assisa eligenda (dee mag-n<<schwa>> <<schwa>>-sI-z<<schwa>> el-i-jen-d<<schwa>>), n.[Law Latin “of choosing the grand assize”] Hist. A writ ordering a sheriff to summon 4 knights to give oaths before the justices of assize and then choose 12 more knights to form a grand assize to determine who had the right in a writ of right.

#### DE MALO

de malo (dee mal-oh). [Law Latin] Of illness. • This term defined certain legal excuses, such as de malo lecti (“of illness in bed”), de malo veniendi (“of illness or misfortune in coming where the court is”), and de malo villae (“of illness in town where the court is”).

#### DEMAND

demand,n.1. The assertion of a legal or procedural right.

contingent demand.A demand that cannot be fixed because it depends on the occurrence of a contingency.

cross-demand. A party's demand opposing an adverse party's demand. See COUNTERCLAIM; CROSS-CLAIM.

demand in reconvention.See reconventional demand.

incidental demand.Civil law. A plea by which a party other than the plaintiff asserts a claim that is related to the plaintiff's suit. • Examples include a cross-claim, a demand against a third party, an intervention, and a reconventional demand. La. Code Civ. Proc. art. 1031.

legal demand.A lawful demand made by an authorized person.

main demand.Civil law. A plaintiff's principal or primary claim against one or more defendants, contained in an original or validly amended pleading. — Also termed principal demand; principal action.

reconventional demand.Civil law. A plea by which a defendant asserts any claim that it has against the plaintiff, or any offset against the plaintiff's claim. • This plea is similar to the

common-law counterclaim.La. Code Civ. Proc. 1061 et seq. — Also termed demand in reconvention.

2.Parliamentary law. A request, usu. invoking a right, that must be granted on a single member's motion. See REQUEST. 3. A request for payment of a debt or an amount due. [Cases: Bills and Notes 393–399. C.J.S. Bills and Notes; Letters of Credit §§ 97–98, 202, 204–205, 212, 257.]

personal demand.An in-person demand for payment upon the drawer, maker, or acceptor of a bill or note.

4. In economics, the intensity of buyer pressure on the availability and cost of a commodity or service.

aggregate demand. 1. The total amount spent on goods and services in an economy during a specific period. 2. The total demand for a firm's products and services during a specific period.

derived demand.Product demand that is related to another product's demand.

demand,vb.1. To claim as one's due; to require; to seek relief. 2. To summon; to call into court.

#### DEMANDANT

demandant.Archaic. The plaintiff in a real action (the defendant being called a tenant). See real action under ACTION(4).

#### DEMAND CLAUSE

demand clause.A provision in a note allowing the holder to compel full payment if the maker fails to meet an installment. Cf. ACCELERATION CLAUSE. [Cases: Bills and Notes 129(3). C.J.S. Bills and Notes; Letters of Credit§ 90.]

#### DEMAND DEPOSIT

demand deposit.See DEPOSIT(2).

#### DEMAND DRAFT

demand draft.See sight draft under DRAFT.

#### DEMAND FOR DOCUMENT INSPECTION

demand for document inspection.See REQUEST FOR PRODUCTION.

#### DEMAND FOR RELIEF

demand for relief.See PRAYER FOR RELIEF.

#### DEMAND IN RECONVENTION

demand in reconvention.See reconventional demand under DEMAND.

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 DEMAND INSTRUMENT

demand instrument. An instrument payable on demand, at sight, or on presentation, as opposed to an instrument that is payable at a set future date. — Also termed demand note. [Cases: Bills and Notes 129(3). C.J.S. Bills and Notes; Letters of Credit § 90.]

## DEMAND LETTER

demand letter. A letter by which one party explains its legal position in a dispute and requests that the recipient take some action (such as paying money owed), or else risk being sued. • Under some statutes (esp. consumer-protection laws), a demand letter is a prerequisite for filing a lawsuit.

## DEMAND LOAN

demand loan. See call loan under LOAN.

## DEMAND NOTE

demand note. 1. NOTE(1). 2. DEMAND INSTRUMENT.

## DEMAND OF OYER

demand of oyer. Hist. The assertion of a party's right to hear, read, or inspect a deed of which profert is made by the opposing party in a pleading. See OYER(3).

## DEMAND OF VIEW

demand of view. Hist. In a real action, a request by a defendant (called a tenant) to see the thing at issue to ascertain its identity and the circumstances of the claim. • If a real action was brought against a tenant who did not know what land was at issue, the tenant might demand a view. See VIEW(4).

## DEMAND-PULL INFLATION

demand-pull inflation. See INFLATION.

## DEMANDRESS

demandress. Archaic. A female demandant. See DEMANDANT.

## DE MANUCAPTIONE

de manucaptione (dee man-y<<schwa>>-kap-shee-oh-nee), n. [Law Latin “of manucaption”] Hist. A writ ordering a sheriff to release on sufficient bail an accused felon whose initial offer of bail had been rejected.

## DE MANUTENENDO

de manutenendo (dee man-y<<schwa>>-t<<schwa>>-nen-doh), n. [Law Latin “of maintenance”] Hist. A writ against a person who has wrongfully meddled in a lawsuit by providing assistance to a party to continue the litigation. See MAINTENANCE(6).

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 DEMARCATION LINE

demarcation line. Int'l law. A provisional border having the function of separating territories under different jurisdictions, usu. established when the political situation does not admit a final boundary arrangement. — Also termed line of demarcation.

## DÉMARCHE

démarche (day-mahrsh). [French “gait; walk”] An oral or written diplomatic statement, esp. one containing a demand, offer, protest, threat, or the like. — Also spelled demarche. See AIDE-MÉMOIRE.

## DE MARITAGIO AMISSO PER DEFALTAM

de maritagio amisso per defaltam (dee mar-*<<schwa>>*-tay-jee-oh *<<schwa>>*-mis-oh p*<<schwa>>*r d*<<schwa>>*-fawl-t*<<schwa>>*m), n. [Law Latin] Hist. A writ available to a tenant of a frankmarriage to regain land lost by default.

## DEMATERIALIZED SECURITY

dematerialized security. See uncertificated security under SECURITY.

## DE ME

de me (dee mee). [Latin] Of me. • This phrase appeared in feudal grants to confirm that a superior lord's permission was not needed for the conveyance. This was distinguished from a conveyance a me de superiore meo (“from me of my superior”), in which the estate was to be held of the superior, and was invalid unless confirmed by the superior. Cf. A ME.

## DEMEANOR

demeanor. Outward appearance or behavior, such as facial expressions, tone of voice, gestures, and the hesitation or readiness to answer questions. • In evaluating credibility, the jury may consider the witness's demeanor. [Cases: Witnesses 315. C.J.S. Witnesses § 567.]

## DEMEANOR EVIDENCE

demeanor evidence. See EVIDENCE.

## DEMEASE

demease (di-meez), n. Hist. Death. See DEMISE(1).

## DE MEDIETATE LINGUAE

de medietate linguae (dee mee-dee-*<<schwa>>*-tay-tee ling-gwee). [Law Latin] Of half-tongue. • This term describes a jury made up of an equal number of natives and aliens. Edward III originally provided for such a jury in commercial cases when one party was an alien. It was later extended to criminal cases. If enough aliens could not be found, trial proceeded with the available number.

## DE MEDIO

de medio (dee mee-dee-oh), n.[Law Latin “of mesne”] Hist. A writ against a mesne (i.e., middle) lord to protect an undertenant from harassment by a paramount lord for rent actually due from the mesne lord. — Also termed writ of mesne.

## DE MELIORIBUS DAMNIS

de melioribus damnis (dee mee-lee-or-<<schwa>>-b<<schwa>>s dam-nis). [Law Latin] Of the better damages. • This term describes a plaintiff's election of the defendant against which to take judgment when the jury has mistakenly awarded separate damages against two or more defendants for a joint tort. Under these circumstances, the plaintiff could take a judgment against the defendant that had been assessed the greatest damages, and then enter a nolle prosequi against the others. [Cases: Judgment 240, 256(4, 5).C.J.S. Judgments §§ 39–41, 58–59.]

## DEMEMBRATION

demembration (dee-mem-bray-sh<<schwa>>n), n. The cutting off of a limb; dismemberment; mutilation.

## DEMENTED

demented,adj. Not of sound mind; insane.

## DEMENTENANT EN AVANT

dementenant en avant (d<<schwa>>-men-t<<schwa>>-nahnt on <<schwa>>-vahnt). [Law French] From this time forward.

## DE MERCATORIBUS

de mercatoribus (dee m<<schwa>>r-k<<schwa>>-tor-<<schwa>>-b<<schwa>>s), n.[Latin “of merchants”] Hist. The title of two statutes enacted in the 11th and 13th years of the reign of Edward I, providing that the land of a business debtor could be held by a creditor as security until the debt was paid.

“But by the statute de mercatoribus... the whole of a man's lands was liable to be pledged in a statute merchant, for a debt contracted in trade; though one-half of them was liable to be taken in execution for any other debt of the owner.” 1 William Blackstone, Commentaries on the Laws of England 161 (1765).

## DEMESNE

demesne (di-maynor di-meen), n.[French] 1. At common law, land held in one's own right, and not through a superior; esp., land attached to a manor and reserved for the court's own use. 2. Domain; realm. — Also spelled demain.

ancient demesne.Hist. A manor that was held by the Crown at the time of William the Conqueror and was recorded in the Domesday Book.

demesne as of fee.Hist. Complete ownership of something.

“But there is this distinction between the two species of hereditaments: that, of a corporeal inheritance a man shall be said to be seised in his demesne, as of fee; of an incorporeal one, he shall only be said to be seised as of fee, and not in his demesne. For, as incorporeal hereditaments are in their nature collateral to, and issue out of, lands and houses, their owner hath no property, dominicum, or demesne, in the thing itself, but hath only something derived out of it; resembling the servitudes, or services, of the civil law.” 2 William Blackstone, Commentaries on the Laws of England 106 (1766).

#### DEMESNE LAND

demesne land.See LAND.

#### DEMESNE LAND OF THE CROWN

demesne land of the Crown.See Crown land under LAND.

#### DEMESNIAL

demesnial (di-may-nee-*<<schwa>>*l or di-meen-ee-*<<schwa>>*l), adj. Of or relating to a demesne.

#### DEMI

demi (dem-ee), n.[French] Half; the half. • The term is most often a combining form, as in demi-sangue.

#### DEMIDIETAS

demidietas (dem-ee-d*<<schwa>>*-tas), n.[Law Latin] A half; a moiety.

#### DEMILITARIZATION

demilitarization.Int'l law. The process by which a country obligates itself not to station military forces — or to maintain military installations — in specified areas or zones within its territory.

#### DEMILITARIZED ZONE

demilitarized zone.Int'l law. A territorial area in a country or between countries in which no military forces or military installations are stationed or maintained.

#### DEMIMARK

demimark.Hist. Half a mark; money equal to six shillings and eight pence, required to be tendered in a writ of right to force the demandant to prove seisin. — Also termed half-mark.

#### DE MINIMIS

de minimis (d*<<schwa>>* min-*<<schwa>>*-mis), adj.[Latin “of the least”] 1. Trifling; minimal. 2. (Of a fact or thing) so insignificant that a court may overlook it in deciding an issue or

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case. 3.DE MINIMIS NON CURAT LEX.

#### DE MINIMIS NON CURAT LEX

de minimis non curat lex (d<<schwa>> min-<<schwa>>-mis non kyoor-at leks). [Latin] The law does not concern itself with trifles. — Often shortened to de minimis.

#### DE MINIMIS TEST

de minimis test.Copyright. A judicial test for determining whether a contributor to a joint work is an author for legal purposes, based on whether the joint effort itself is an original expression that qualifies for copyright protection. • This test has been rejected in favor of the copyrightability test by most courts that have addressed the issue. Cf. COPYRIGHTABILITY TEST. [Cases: Copyrights and Intellectual Property 41(3). C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 190.]

#### DE MINIS

de minis (dee min-is), n.[Latin “of threats”] Hist. A writ ordering a person to keep the peace when the person has threatened another person with bodily harm or property destruction.

#### DEMINUTIO

deminutio (dee-mi-n[y]oo-shee-oh), n.[fr. Latin deminuerē “taking away”] Roman law. A deprivation or loss. • The term appeared, for example, in the phrase capitis deminutio “the loss of civil status.” — Also spelled diminutio. Pl. deminutiones (dee-mi-n[y]oo-shee-oh-nee-z). See CAPITIS DEMINUTIO.

#### DEMI-SANGUE

demi-sangue (dem-ee-sang). [Law French] Hist. Half-blood; blood on either the father's or the mother's side. — Also termed demy-sangue.

#### DEMISE

demise (di-mIz), n.1. The conveyance of an estate, usu. for a term of years; a lease <the demise of the land for one year>.2. The instrument by which such a conveyance is accomplished <the demise set forth the terms of the transfer>.3. The passing of property by descent or bequest <a testator's demise of \$100,000 to charity>.4. The death of a person or (figuratively) of a thing <the corporation's untimely demise>. See DEATH. — Abbr. dem. — demise,vb.

demise of the Crown.The immediate, automatic transfer of a kingdom to a successor upon a sovereign's death or long absence from the throne.

“The king never dies. Henry, Edward, or George may die; but the king survives them all. For immediately upon the decease of the reigning prince in his natural capacity, his kingship or imperial dignity, by act of law, without any ... interval, is vested at once in his heir; who is, eo instanti, king to all intents and purposes. And so tender is the law of supposing even a possibility of his death, that his natural dissolution is generally called his demise... an expression which



signifies merely a transfer of property; for ... when we say the demise of the crown, we mean only that, in consequence of the disunion of the king's body natural from his body politic, the kingdom is transferred or demised to his successor; and so the royal dignity remains perpetual." 1 William Blackstone, Commentaries on the Laws of England 242 (1765).

**joint demise.**In an ejectment action, a demise made by two or more persons in one declaration. [Cases: Ejectment 65. C.J.S. Ejectment § 61.]

**separate demise.**In an ejectment action, a demise made solely by the lessor.

**several demise.**(often pl.) Hist. In an ejectment action, a list of demises by all people potentially owning the property at issue, used to ensure that the plaintiff had proved a lease from the person actually having title. See EJECTMENT.

**single demise.**In an ejectment action, a declaration containing one demise. See EJECTMENT. [Cases: Ejectment 65. C.J.S. Ejectment § 61.]

#### DEMISE CHARTER

demise charter.See bareboat charter under CHARTER(8).

#### DEMISE CHARTERER

demise charterer.See bareboat charter under CHARTER(8).

#### DEMISED PREMISES

demised premises.See PREMISES.

#### DEMISI

demisi (di-mI-zI). [fr. Latin demittere] I have demised. • This was the operative phrase in a lease.

#### DEMISSIO

demissio (di-mish-ee-oh), n.[fr. Latin demittere "to demise"] Hist. A lease or other transfer. • In an ejectment action, this term was used in the phrase ex demissione ("on the demise") to show that a nominal plaintiff (a fictitious person) held an estate on a demise from the real plaintiff.

#### DE MITTENDO TENOREM RECORDI

de mittendo tenorem recordi (dee mi-ten-doh t<<schwa>>-nor-<<schwa>>m ri-kor-d I), n.[Law Latin "of sending the tenor of a record"] Hist. A writ to certify a record under seal.

#### DEMOBILIZATION

demobilization. A dismissal of troops from active service.

#### DEMOCRACY

democracy,n. Government by the people, either directly or through representatives. Cf.

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REPUBLIC. — democratic,adj.

DE MODERATA MISERICORDIA CAPIENDA

de moderata misericordia capienda (dee mod-*<<schwa>>*-ray-t*<<schwa>>* miz-*<<schwa>>*-ri-kor-dee-*<<schwa>>* kap-ee-en-d*<<schwa>>*), n.[Law Latin “for taking a moderate amercement”] Hist. A writ ordering a bailiff to take a moderate penalty from a party who had been excessively penalized in a court not of record. • The writ was founded on Magna Carta.

DE MODO DECIMANDI

de modo decimandi (dee moh-doh des-*<<schwa>>*-man-dI), n.[Law Latin] Eccles. law. Of a mode of tithing. • This refers to any special kind of tithing by custom that is different from the general law that usu. required the tenth part of an annual increase. For example, it could mean a twelfth part of a quantity of hay rather than a tenth part or a couple of hens instead of a normal tithing of eggs. — Also termed *modus decimandi*; *modus*.

DE MOMENTO IN MOMENTUM

de momento in momentum (dee m*<<schwa>>*-men-toh in m*<<schwa>>*-men-t*<<schwa>>*m). [Latin] Scots law. From moment to moment. • The phrase appeared in reference to terms for counting. For example, a minor's age was counted *de momento in momentum* until the last moment of 21 years. The years of prescription were also thus computed.

DEMONETIZATION

demonetization. A disuse of a metal in coinage; a withdrawal of the value of a metal as money <the demonetization of gold in the United States>.

DEMONSTRATIO

demonstratio (dem-*<<schwa>>*n-stray-shee-oh), n. [fr. Latin *demonstrare* “to show”] Roman law. 1. A description, as in *falsa demonstratio* (a false description of something or someone in a will).2. Under the formulary procedure, the statement of facts in a formula, forming the basis of a claim. Pl. *demonstrationes* (dem-*<<schwa>>*n-stray-shee-oh-neeZ). See FORMULA(1).

DEMONSTRATIVE BEQUEST

demonstrative bequest.See BEQUEST.

DEMONSTRATIVE DEVISE

demonstrative devise.See DEVISE.

DEMONSTRATIVE EVIDENCE

demonstrative evidence.See EVIDENCE.

DEMONSTRATIVE LEGACY

demonstrative legacy. See LEGACY.

#### DE MORTE ANTECESSORIS

de morte antecessoris (dee mor-tee an-ti-ses-<<schwa>>r-is). [Law Latin] Scots law. Concerning the death of the ancestor. • The phrase occurs in the brieve of mortancestry, equivalent to the English mort d'ancestor.

#### DEMOTE

demote, vb. To lower (a person) in rank, position, or pay. See DEGRADATION(1).

#### DE MUNERE REGIO

de munere regio (dee myoo-n<<schwa>>r-<<schwa>> ree-jee-oh). [Law Latin] Scots law. By royal gift. • The phrase described land held under feudal tenure.

#### DEMUR

demur (di-m<<schwa>>r), vb. 1. To file a demurrer. See DEMURRER. 2. To object to the legal sufficiency of a claim alleged in a pleading without admitting or denying the truth of the facts stated. [Cases: Pleading 189.C.J.S. Pleading §§ 235–236, 239, 289–290, 292.] 3. To object to the legal sufficiency of a claim alleged in a pleading while admitting the truth of the facts stated.

#### DEMURRABLE

demurrable (di-m<<schwa>>r-<<schwa>>-b<<schwa>>l), adj. (Of a claim, pleading, etc.) subject to a demurrer <a demurrable pleading>. See DEMURRER.

#### DEMURRAGE

demurrage (di-m<<schwa>>r-ij). (usu. pl.) Maritime law. 1. Liquidated damages owed by a charterer to a shipowner for the charterer's failure to load or unload cargo by the agreed time. [Cases: Shipping 170. C.J.S. Shipping §§ 431–432.]

contract demurrage. A demurrage paid by a vessel's charterer if the time to load or unload the vessel at port takes longer than that agreed on in the charterer's contract with the shipowner. Cf. DISPATCH MONEY.

“The contract may also provide that if ... the loading time exceeds that fixed by the charter, the charterer will pay a liquidated compensation termed ‘contract demurrage.’ ” Frank L. Maraist, *Admiralty in a Nutshell* 56 (2d ed. 1988).

noncontract demurrage. Demurrage not provided by contract, but ordered by a court. — Also termed damages for detention.

“After the ... days on contract demurrage have expired, the charterer of course still remains liable for further delay, but the liability now is one for noncontract demurrage, which will be fixed by the court just as would any other unliquidated claim for damages. Non-contract demurrage may

also be referred to as 'damages for detention.' ” Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 4–8, at 212 (2d ed. 1975).

2. A charge due for the late return of ocean containers or other equipment.

#### DEMURRAGE LIEN

demurrage lien. See LIEN.

#### DEMURRANT

demurrant (di-m<<schwa>>r-<<schwa>>nt). A party who interposes a demurrer. See DEMURRER.

#### DEMURRER

demurrer (di-m<<schwa>>r-<<schwa>>r). [Law French demorer “to wait or stay”] A pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer. • In most jurisdictions, such a pleading is now termed a motion to dismiss, but the demurrer is still used in a few states, including California, Nebraska, and Pennsylvania. Cf. DENIAL(1). [Cases: Federal Civil Procedure 658; Pleading 189. C.J.S. Pleading §§ 235–236, 239, 289–290, 292.]

“The word ‘demurrer,’ derived from the Latin *demorari*, or the French *demorer*, meaning to ‘wait or stay,’ imports that the party demurring waits or stays in his proceedings in the action until the judgment of the court is given whether he is bound to answer to so insufficient a pleading. Each party may demur to what he deems an insufficient pleading of the other. The demurrer was general when it was to matter of substance; it was special when it was made to matter of form, and must specifically point out the defect.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 15 (2d ed. 1899).

demurrer ore tenus. An oral demurrer. See ORE TENUS.

“The codes either expressly or by implication require all pleadings to be in writing. To this proposition there is the apparent exception that objections to the jurisdiction of the court, or to the sufficiency of a pleading, that it does not state a cause of action or defence, may be raised on the trial by what is sometimes called a demurrer ore tenus (that is, orally, — by word of mouth).” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 179 (2d ed. 1899).

general demurrer. See general exception (1) under EXCEPTION(1).

parol demurrer. Hist. A suspension of proceedings during the minority of an infant.

speaking demurrer. A demurrer that cannot be sustained because it introduces new facts not contained in the original complaint. [Cases: Pleading 210. C.J.S. Pleading §§ 289–290.]

special demurrer. An objection that questions the form of the pleading and states specifically the nature of the objection, such as that the pleading violates the rules of pleading or practice. [Cases: Pleading 206. C.J.S. Pleading § 233.]

## DEMURRER BOOK

demurrer book. A record of the demurrer issue used by the court and counsel in argument.

## DEMURRER TO EVIDENCE

demurrer to evidence. A party's objection or exception that the evidence is legally insufficient to make a case. • Its effect, upon joinder in the demurrer by the opposite party, is that the jury is discharged and the demurrer is entered on record and decided by the court. A demurrer to evidence admits the truth of all the evidence and the legal deductions from that evidence. [Cases: Criminal Law 752; Trial 150. C.J.S. Trial §§ 384–386, 391.]

## DEMURRER TO INTERROGATORIES

demurrer to interrogatories. The objection or reason given by a witness for failing to answer an interrogatory.

## DEMUTUALIZATION

demutualization, n. The process of converting a mutual insurance company (which is owned by its policyholders) to a stock insurance company (which is owned by outside shareholders), usu. as a means of increasing the insurer's capital by allowing the insurer to issue shares. • About half the states have demutualization statutes authorizing such a conversion. [Cases: Insurance 1160. C.J.S. Insurance § 111.] — demutualize, vb.

## DEMY-SANGUE

demy-sangue. See DEMI-SANGUE.

## DEN AND STROND

den and strond (den an[d] strond). Hist. Permission for a ship to run aground or strand itself.

## DENARIUS

denarius (di-nair-ee-*<<schwa>>*s), n. [Law Latin “penny”] 1. Roman law. The principal silver coin used by the Romans. 2. Hist. An English penny; a pence. 3. (pl.) Slang. Money in general. Pl. denarii. — Also termed (in senses 1 & 3) denier.

## DENARIUS DEI

denarius Dei (di-nair-ee-*<<schwa>>*s dee-I), n. [Law Latin “God's penny”] Hist. Earnest money exchanged by contracting parties, so called because the money was originally given either to the church or to the poor. • The denarius Dei was not part of the consideration. — Also termed argentum Dei. See ARRA.

## DENATIONALIZATION

denationalization. 1. Int'l law. The unilateral act of a country in depriving a person of nationality, whether by administrative decision or by operation of law. • Strictly, the term does not cover a person's renunciation of citizenship. 2. The act of returning government ownership and

control of an industry or function to private ownership and control. — denationalize,vb.

#### DE NATIVO HABENDO

de nativo habendo (dee n<<schwa>>-tI-voh h<<schwa>>-ben-doh), n.[Law Latin “about a serf to be held”] Hist. A writ directing a sheriff to apprehend and return a runaway serf to the serf’s lord. • A trial on the writ would determine the lord’s ownership status.

#### DE NATURA BREVIUM

de natura brevium (dee n<<schwa>>-tyoor-<<schwa>> bree-vee-<<schwa>>m). [Latin] Concerning the nature of writs. • This was a common title of textbooks on English medieval law.

#### DENATURALIZATION

denaturalization. The process by which a government deprives a naturalized citizen of all rights, duties, and protections of citizenship. See 8 USCA § 1451. — denaturalize,vb.

#### DENELAGE

denelage. See DANELAW.

#### DENIAL

denial,n.1. A refusal or rejection; esp., a court’s refusal to grant a request presented in a motion or petition <denial of the motion for summary judgment>.2. A defendant’s response controverting the facts that a plaintiff has alleged in a complaint; a repudiation <the worker filed a denial alleging that physical contact never occurred>. Cf. DEMURRER. [Cases: Federal Civil Procedure 741; Pleading 112. C.J.S. Pleading § 183.]

conjunctive denial.A response that controverts all the material facts alleged in a complaint.

disjunctive denial.A response that controverts the truthfulness of two or more allegations of a complaint in the alternative.

general denial.A response that puts in issue all the material assertions of a complaint or petition. — Also termed general plea. [Cases: Federal Civil Procedure 742; Pleading 123. C.J.S. Pleading § 187.]

qualified general denial.A general denial of all the allegations except the allegations that the pleader expressly admits.

“The qualified general denial most frequently is used when a limited number of allegations in the complaint are to be admitted. This form of denial also is employed when defendant cannot expressly deny an averment in his opponent’s pleading and therefore cannot submit a general denial, although defendant wants to put plaintiff to his proof on that averment by interposing a denial of knowledge or information sufficient to form a belief or a denial on information and belief.” 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1266, at 405 (2d ed. 1990).

specific denial. A separate response applicable to one or more particular allegations in a complaint. [Cases: Federal Civil Procedure 742; Pleading 124. C.J.S. Pleading § 188.]

3. A refusal or rejection <denial of an employment application>. 4. A deprivation or withholding <denial of due process>. — deny, vb.

#### DENIAL OF JUSTICE

denial of justice. Int'l law. A defect in a country's organization of courts or administration of justice, resulting in the country's violating its international legal duties to protect aliens. • A denial of justice is a wrongful act under international law. — Also termed *justitia denegata*; *déni de justice*; *refus de justice*.

#### DENIAL-OF-SERVICE ATTACK

denial-of-service attack. A malicious strike against a computer, website, network, server, or database designed to render it inaccessible, usu. by overwhelming it with activity or by forcing it to malfunction. — Also termed *nuking*. — Abbr. DoS attack.

distributed denial-of-service attack. A denial-of-service attack carried out by distributing a virus that causes infected computers to try to access the target computer at the same time. — Abbr. DDoS attack.

#### DENIER

denier, n. 1. (d<<schwa>>-nyay) [French fr. Latin *denarius*] DENARIUS(1), (3). 2. (di-nI-<<schwa>>r) [Law French] Hist. Denial; refusal, as in refusal to pay rent when demanded.

#### DENIER À DIEU

Denier à Dieu (d<<schwa>>-nyay ah dyuuordyoo). [French “God's money”] French law. Earnest money exchanged by contracting parties. See DENARIUS DEI.

#### DENIZATION

denization (den-<<schwa>>-zay-sh<<schwa>>n). The act of making a person a denizen. — Also termed indenization. See DENIZEN.

#### DENIZE

denize (den-Iz or di-nIz), vb. To make (a person) a denizen. See DENIZEN.

#### DENIZEN

denizen (den-<<schwa>>-z<<schwa>>n). 1. A person given certain rights in a foreign nation or living habitually in a foreign nation. 2. English law. A person who holds a position midway between being an alien and a natural-born or naturalized subject.

#### DENMAN'S ACT

Denman's Act. Hist. 1. The (English) Evidence Act of 1843, providing that no person offered

as a witness can be excluded because of incapacity due to a past crime or an interest in the proceedings. — Also termed Lord Denman's Act. 2. The (English) Criminal Procedure Act of 1865 that allowed defense counsel to sum up evidence as allowed in a civil trial, to prove contradictory statements of an adverse witness, to prove a previous criminal conviction of an adverse witness, and to compare disputed handwriting. — Also termed Mr. Denman's Act.

#### DENOMINATION

denomination. 1. An act of naming. 2. A collective designation, esp. of a religious sect.

#### DE NON ALIENANDO

de non alienando (dee non ay-lee-<<schwa>>-nan-doh). [Law Latin] Scots law. For not alienating. • The phrase was used to restrict the transfer of property.

#### DE NON ALIENANDO SINE CONSENSU SUPERIORUM

de non alienando sine consensu superiorum (dee non ay-lee-<<schwa>>-nan-doh sI-nee k<<schwa>>n-sen-s[y]oo s[y]oo-peer-ee-or-<<schwa>>m). [Law Latin] Scots law. Concerning the nonalienation of the lands without the consent of the superior. • The phrase was frequently present in a charter to a vassal.

#### DE NON CONTRAHENDO DEBITO

de non contrahendo debito (dee non kon-tr<<schwa>>-hen-doh deb-i-toh). [Law Latin] Scots law. Against the contraction of debt. • The phrase was inserted in an entail to prevent the heir from incurring debt.

#### DE NON DECIMANDO

de non decimando (dee non des-<<schwa>>-man-doh), n.[Law Latin “of not paying tithes”] Eccles. law. A claim for release from paying a tithe. — Also termed *modus de non decimando*.

“A prescription *de non decimando* is a claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. Thus the king by his prerogative is discharged from all tithes. So a vicar shall pay no tithes to the rector, nor the rector to the vicar .... But these privileges are personal to both the king and the clergy; for their tenant or lessee shall pay tithes .... And from this original have sprung all the lands, which, being in lay hands, do at present claim to be tithe-free: for, if a man can show his lands to have been such abbey lands, and also immemorially discharged of tithes ... this is now a good prescription, *de non decimando*. But he must show both these requisites for abbey lands, without a special ground of discharge, are not discharged of course; neither will any prescription *de non decimando* avail in total discharge of tithes, unless it relates to such abbey lands.” 2 William Blackstone, *Commentaries on the Laws of England* 31–32 (1766).

#### DE NON PROCEDENDO AD ASSISAM

de non procedendo ad assisam (dee non proh-s<<schwa>>-den-doh ad <<schwa>>-sI-z<<schwa>>m), n.[Law Latin “of not proceeding to take an assize”] Hist. A writ ordering justices not to hold an assize in a particular case.



## DE NON RESIDENTIA CLERICI REGIS

de non residentia clerici regis (dee non rez-*<<schwa>>*-den-shee-*<<schwa>>*kler-*<<schwa>>*-sIree-jis), n.[Law Latin “of the nonresidence of a parson employed in royal service”] Hist. A writ to excuse a parson from nonresidence because the parson is busy serving the Crown. See NONRESIDENCE(1).

## DE NON SANE MEMORIE

de non sane memorie (dee non sayn mem-*<<schwa>>*-ree). [Law French] Of unsound memory; of unsound mind. See MIND AND MEMORY; NON COMPOS MENTIS.

## DENOTATIVE FACT

denotative fact. See FACT.

## DENOUNCE

denounce, vb. 1. To condemn openly, esp. publicly. 2. To declare (an act or thing) to be a crime and prescribe a punishment for it. 3. To accuse or inform against. 4. To give formal notice to a foreign country of the termination of (a treaty).

## DENOUNCEMENT

denouncement. 1. An act of accusation or condemnation <denouncement of a thief>. 2. A declaration of a threatened action <denouncement of war> <denouncement of a treaty>. 3. An application for a grant to work a mine that is either newly discovered or forfeited <the denouncement was granted>. 4. Archaic. A formal announcement; a declaration <a denouncement of a doctrine>. — Also termed denunciation. — denunciatory, denunciative, adj.

## DE NOVI OPERIS NUNTIATIONE

de novi operis nuntiatione. See NOVI OPERIS NUNTIATIO.

## DE NOVO

de novo (di noh-voh or dee), adj. Anew.

hearing de novo. See HEARING.

trial de novo. See TRIAL.

venire facias de novo (v*<<schwa>>*-nI-ree fay-shee-*<<schwa>>*s di noh-voh). See VENIRE FACIAS.

## DE NOVO DAMUS

de novo damus (di noh-voh day-m*<<schwa>>*s). [Law Latin “we give anew”] Scots law. The novodamus clause in a renewal of a gift or previous charter. See NOVODAMUS.

## DE NOVO JUDICIAL REVIEW

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de novo judicial review. See JUDICIAL REVIEW.

#### DE NOVO REVIEW

de novo review. 1. See appeal de novo under APPEAL. 2. See de novo judicial review under JUDICIAL REVIEW.

#### DENSITY ZONING

density zoning. See cluster zoning under ZONING.

#### DENUMERATION

denumeration. An act of making a present payment.

#### DENUNCIATION

denunciation. See DENOUNCEMENT.

#### DENUNTIATIO

denuntiatio (di-n<<schwa>>n-shee-ay-shee-oh), n. [Latin] 1. Roman & civil law. A declaration intended to protect or set in motion the enforcement of the declarer's right; esp., a report of a crime. 2. Hist. A summons; a public notice. 3. Scots law. The Crown's public denunciation of a debtor as a rebel and an outlaw when the debtor has disobeyed an order to pay. Pl. denuntiationes.

#### DENUNTIATIO BELLII

denuntiatio belli (di-n<<schwa>>n-shee-ay-shee-oh bel-I). [Latin "declaration of war"] A declaration of war. See declaration of war under DECLARATION(3).

#### DENY THE APPEAL

deny the appeal. See AFFIRM(1).

#### DEODAND

deodand (dee-<<schwa>>-dand). Hist. Something (such as an animal) that has done wrong and must therefore be forfeited to the Crown. • This practice was abolished in 1846.

“In the oldest records, we see no attempt to distinguish the cases in which the dead man was negligent from those in which no fault could be imputed to him, and the large number of deodands collected in every eyre suggests that many horses and boats bore the guilt which should have been ascribed to beer. A drunken carter is crushed beneath the wheels of his cart; the cart, the cask of wine that was in it and the oxen that were drawing it are all deodand. Bracton apparently thought it an abuse to condemn as deodand a thing that had not moved; he would distinguish between the horse which throws a man and the horse off which a man stupidly tumbles, between the tree that falls and the tree against which a man is thrown. We do not see these distinctions in the practice of the courts.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 474 n.4 (2d ed. 1899).

“[W]hen in 1716 the coroner's jury of Yarmouth declared a stack of timber which had fallen on a child to be forfeited as a deodand, it was ransomed for 30s., which was paid over to the child's father.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 7 (16th ed. 1952).

#### DE ODIO ET ATIA

de odio et atia (dee oh-dee-oh et ay-shee-<<schwa>>), n.[Law Latin “of hatred and malice”] Hist. A writ ordering a sheriff to summon a 12-member jury to inquire whether a prisoner jailed for murder was charged for a good reason or only because of ill-will and to determine whether bail should be set. • If the prisoner was accused out of spite or had committed the crime in self-defense, then another writ called tradas in ballim would have been issued ordering the sheriff to release the prisoner on bail if the sheriff could find 12 good citizens of the county to vouch for the prisoner. This writ, similar to habeas corpus, was first mentioned in Magna Carta. — Also termed breve de bono et malo.

#### DE ONERANDO PRO RATA PORTIONE

de onerando pro rata portione (dee on-<<schwa>>-ran-doh proh ray-t<<schwa>>por-shee-oh-nee), n.[Law Latin “of charging according to a ratable proportion”] Hist. A writ for a joint tenant or cotenant who is distrained for more rent than is proportionately required.

#### DEONTOLOGY

deontology. The philosophy of ethics, rights, and duties as a matter of natural law. • Moral rights in one's intellectual property are often considered deontological issues. — deontological,adj.

#### DE PACE ET LEGALITATE TENENDA

de pace et legalitate tenenda (dee pay-see et l<<schwa>>-gal-<<schwa>>-tay-tee t<<schwa>>-nen-d<<schwa>>). [Latin] Hist. A writ for keeping the peace and adherence to the laws (or good behavior). — Also termed de pace et legalitate tuenda.

#### DE PACE ET PLAGIS

de pace et plagis (dee pay-see et play-jis), n.[Law Latin “of breach of peace and wounds”] Hist. A type of criminal appeal used in cases of assault, wounding, and breach of the peace.

#### DE PACE ET ROBERIA

de pace et roberia (dee pay-see et roh-beer-ee-<<schwa>>), n.[Law Latin “of breach of peace and robbery”] Hist. A type of criminal appeal used in cases of robbery and breach of the peace.

#### DE PARCO FRACTO

de parco fracto (dee pahr-koh frak-toh), n.[Law Latin “of pound breach”] Hist. A writ against someone, esp. an owner, who breaks into a pound to rescue animals that have been legally distrained and impounded.

“And, being thus in the custody of the law, the taking them back by force is looked upon as

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an atrocious injury, and denominated a rescous, for which the distreinor has a remedy in damages, either by writ of rescous, in case they were going to the pound, or by writ de parco fracto, or pound-breach, in case they were actually impounded.” 3 William Blackstone, Commentaries on the Laws of England 146 (1768).

#### DE PARTITIONE FACIENDA

de partitione facienda (dee pah-r-tish-ee-oh-nee fay-shee-en-d<<schwa>>), n.[Law Latin] Hist. A writ to partition lands or tenements.

#### DEPARTMENT

department,n.1. A division of a greater whole; a subdivision <a legal department>.2. A country's division of territory, usu. for governmental and administrative purposes, as in the division of a state into counties <France has regional departments similar to states>.3. A principal branch or division of government <legislative department>; specif., a division of the executive branch of the U.S. government, headed by a secretary who is a member of the President's cabinet <Department of Labor>. [Cases: United States 30. C.J.S. United States § 49.] — departmental,adj.

#### DEPARTMENT OF AGRICULTURE

Department of Agriculture.The cabinet-level department of the federal government responsible for improving farm income, developing foreign markets for U.S. farm products, conducting agricultural research, and inspecting and grading food products. • Created in 1862, it is headed by the Secretary of Agriculture. — Abbr. USDA.

#### DEPARTMENT OF COMMERCE

Department of Commerce.The cabinet-level department of the federal government responsible for promoting the nation's international trade, economic growth, and technical advancement. • Designated as a department in 1913, it is headed by the Secretary of Commerce. — Abbr. DOC.

#### DEPARTMENT OF DEFENSE

Department of Defense.See DEFENSE DEPARTMENT.

#### DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS

Department of Defense Dependents Schools.A unit in the U.S. Department of Defense responsible for operating schools from kindergarten through grade 12 for the dependents of military and civilian personnel stationed overseas. — Abbr. DoDDS.

#### DEPARTMENT OF EDUCATION

Department of Education.The cabinet-level department of the federal government responsible for administering and coordinating most federal programs of assistance to education. • Headed by the Secretary of Education, the Department includes the Office of Bilingual Education and

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Minority Languages Affairs (OBEMLA), the Office of Educational Research and Improvement (OERI), the Office of Elementary and Secondary Education (OESE), the Office of Postsecondary Education (OPE), the Office of Special Education and Rehabilitative Services (OSERS), the Office of Student Financial (OSF), the Office of Vocational and Adult Education (OVAE), and ten regional offices. — Abbr. DOE.

#### DEPARTMENT OF ENERGY

Department of Energy. The cabinet-level department of the federal government responsible for advising the President on energy policies, plans, and programs, and for providing leadership in achieving efficient energy use, diversity in energy sources, and improved environmental quality. • Headed by the Secretary of Energy, it oversees a comprehensive national energy plan, including the research, development, and demonstration of energy technology; energy conservation; the nuclear-weapons program; and pricing and allocation. — Abbr. DOE.

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

Department of Health and Human Services. The cabinet-level department of the federal government responsible for matters of health, welfare, and income security. • It was originally established by Reorganization Plan No. 1 of 1953 under the title Department of Health, Education, and Welfare. The Department is headed by the Secretary of Health and Human Services. — Abbr. HHS. [Cases: Social Security and Public Welfare 5. C.J.S. Social Security and Public Welfare § 6–7.]

#### DEPARTMENT OF HOMELAND SECURITY

Department of Homeland Security. The cabinet-level department of the federal government responsible for ensuring security within the U.S. borders and in its territories and possessions. • The Department has five major divisions: Border and Transportation Security, Emergency Preparedness and Response, Science and Technology, Information Analysis and Infrastructure, and Management. It was established in 2002 and began operating in 2003. — Abbr. DHS.

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Department of Housing and Urban Development. The cabinet-level department of the federal government responsible for overseeing programs that are concerned with housing needs and fair-housing opportunities, and with improving and developing the nation's communities. • It was established in 1965 by the Department of Housing and Urban Development Act. 42 USCA §§ 3532–3537. It is headed by the Secretary of Housing and Urban Development. — Abbr. HUD. [Cases: United States 82(3). C.J.S. United States § 159.]

#### DEPARTMENT OF HUMAN SERVICES

department of human services. See DEPARTMENT OF PUBLIC WELFARE. — Abbr. DHS.

#### DEPARTMENT OF JUSTICE

Department of Justice. The federal executive division that is responsible for federal law

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enforcement and related programs and services. • The U.S. Attorney General heads this department, which has separate divisions for prosecuting cases under federal antitrust laws, tax laws, environmental laws, and criminal laws. The department also has a civil division that represents the U.S. government in cases involving tort claims and commercial litigation. — Abbr. DOJ. [Cases: Attorney General 2. C.J.S. Attorney General §§ 4–5.]

#### DEPARTMENT OF LABOR

Department of Labor. The cabinet-level department of the federal government responsible for promoting the welfare of wage earners and for improving working conditions and opportunities for profitable employment. • Headed by the Secretary of Labor, it was created in 1913. 29 USCA § 551. — Abbr. DOL.

#### DEPARTMENT OF PUBLIC WELFARE

department of public welfare. A state-government agency that administers public-assistance programs of all types, such as food stamps and housing vouchers. • In many communities, this department is now called the Department of Human Services or Department of Social Services. — Abbr. DPW.

#### DEPARTMENT OF SOCIAL SERVICES

Department of Social Services. See CHILD PROTECTIVE SERVICES. — Abbr. DSS.

#### DEPARTMENT OF STATE

Department of State. The cabinet-level department of the federal government responsible for advising the President in formulating and executing foreign policy. • Headed by the Secretary of State, the Department negotiates treaties and other agreements with foreign nations; speaks for the United States before the United Nations and other international organizations; and represents the United States at international conferences. It was established in 1789 as the Department of Foreign Affairs and was renamed the Department of State later the same year. 22 USCA §§ 2651–2728. Foreign affairs are handled through six bureaus: African Affairs, European Affairs, East Asian and Pacific Affairs, Near East Affairs, South Asian Affairs, and Western Hemisphere Affairs. — Also termed State Department. [Cases: United States 33. C.J.S. United States § 51.]

#### DEPARTMENT OF THE INTERIOR

Department of the Interior. The cabinet-level department of the federal government responsible for managing the nation's public lands and minerals, national parks, national wildlife refuges, and western water resources, and for upholding federal trust responsibilities to Indian tribes. • The Department also has responsibility for migratory-wildlife conservation; historical preservation; endangered species; surface-mined-lands preservation and restoration; mapping; and geological, hydrological, and biological science. It was created in 1849 and reorganized in 1950. Headed by the Secretary of the Interior, it administers several agencies, including the Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. — Also termed Interior Department. [Cases: Public Lands 94. C.J.S. Public

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Lands §§ 167–168.]

#### DEPARTMENT OF THE NAVY

Department of the Navy. See NAVY DEPARTMENT.

#### DEPARTMENT OF THE TREASURY

Department of the Treasury. The cabinet-level department of the federal government responsible for recommending tax and fiscal policies, collecting taxes, disbursing U.S. government funds, enforcing tax laws, and manufacturing coins and currency. • Created by Congress in 1789, it is headed by the Secretary of the Treasury. — Also termed Treasury Department. [Cases: United States 33. C.J.S. United States § 51.]

#### DEPARTMENT OF TRANSPORTATION

Department of Transportation. The federal executive division responsible for programs and policies concerning transportation. • Through a series of specialized agencies, this department oversees aviation, highways, railroads, mass transit, the U.S. merchant marine, and other programs. — Abbr. DOT.

#### DEPARTMENT OF VETERANS AFFAIRS

Department of Veterans Affairs. The cabinet-level department of the federal government responsible for operating programs that benefit veterans of military service and their families. • It is headed by the Secretary of Veterans Affairs. — Abbr. VA.

#### DEPARTURE

departure, n. 1. A deviation or divergence from a standard rule, regulation, measurement, or course of conduct <an impermissible departure from sentencing guidelines>.

downward departure. In the federal sentencing guidelines, a court's imposition of a sentence more lenient than the standard guidelines propose, as when the court concludes that a criminal's history is less serious than it appears. [Cases: Sentencing and Punishment 850. C.J.S. Criminal Law § 1479.]

forbidden departure. An impermissible deviation from the federal sentencing guidelines based on race, sex, national origin, creed, religion, or socioeconomic status.

lateral departure. In the federal sentencing guidelines, a sentence allowing a defendant to avoid incarceration through community or home confinement. — Also termed lateral sentencing. [Cases: Sentencing and Punishment 800–802. C.J.S. Criminal Law §§ 1479, 1483.]

upward departure. In the federal sentencing guidelines, a court's imposition of a sentence harsher than the standard guidelines propose, as when the court concludes that a criminal's history did not take into account additional offenses committed while the prisoner was out on bail. [Cases: Sentencing and Punishment 814. C.J.S. Criminal Law §§ 1479, 1526.]

2. A variance between a pleading and a later pleading or proof <the departure between the

plaintiff's pleadings and the actual evidence was significant>.3. A party's desertion of the ground (either legal or factual) taken in the immediately preceding pleading and resort to another ground <the defendant's departure from the asserted alibi necessitated a guilty plea>. — depart,vb.

#### DEPARTURE IN DESPITE OF COURT

departure in despite of court.Hist. A failure of a defendant (called a tenant) in a real action to appear on demand. • A tenant, having once appeared in a real action, was considered to be constructively present until again called. So if the tenant failed to appear when demanded, the tenant was said to have departed in despite (in contempt) of court.

#### DÉPEÇAGE

dépeçage (dep-<<schwa>>-sahzh). [French “dismemberment”] A court's application of different state laws to different issues in a legal dispute; choice of law on an issue-by-issue basis.

#### DEPECULATION

depeculation (dee-pek-y<<schwa>>-lay-sh<<schwa>>n).Hist. Embezzlement from the public treasury. Cf. PECULATION. — depeculate,vb.

#### DEPENDENCY

dependency. 1. A land or territory geographically distinct from the country governing it, but belonging to the country and governed by its laws. • The Philippines was formerly a dependency of the United States. Cf. COMMONWEALTH (2); TERRITORY(1).2. A relationship between two persons or things whereby one is sustained by the other or relies on the other for support or necessities.

#### DEPENDENCY COURT

dependency court.See COURT.

#### DEPENDENCY EXEMPTION

dependency exemption.See EXEMPTION.

#### DEPENDENCY HEARING

dependency hearing.See shelter hearing under HEARING.

#### DEPENDENT

dependent,n.1. One who relies on another for support; one not able to exist or sustain oneself without the power or aid of someone else.

lawful dependent. 1. One who receives an allowance or benefits from the public, such as social security. [Cases: Social Security and Public Welfare 4.10. C.J.S. Social Security and Public Welfare §§ 11, 18.] 2. One who qualifies to receive a benefit from private funds as determined within the terms of the laws governing the distribution.



legal dependent. A person who is dependent according to the law; a person who derives principal support from another and usu. may invoke laws to enforce that support.

partial dependent. Workers' compensation. A person whose partial reliance on an employee covered under workers'-compensation law for support entitles him or her to receive death benefits if the employee is killed on the job. [Cases: Workers' Compensation 414–415. C.J.S. Workmen's Compensation § 253.]

2.Tax. A relative, such as a child or parent, for whom a taxpayer may claim a personal exemption if the taxpayer provides more than half of the person's support during the taxable year. [Cases: Internal Revenue 3294; Taxation 1031.1. C.J.S. Internal Revenue §§ 330, 335; Taxation § 1738–1739.] — dependent,adj.

#### DEPENDENT CHILD

dependent child. See CHILD.

#### DEPENDENT CLAIM

dependent claim. See PATENT CLAIM.

#### DEPENDENT CONDITION

dependent condition. See CONDITION(2).

#### DEPENDENT CONTRACT

dependent contract. See CONTRACT.

#### DEPENDENT COVENANT

dependent covenant. See COVENANT(1).

#### DEPENDENT COVERAGE

dependent coverage. See COVERAGE.

#### DEPENDENT INTERVENING CAUSE

dependent intervening cause. A cause of an accident or injury that occurs between the defendant's behavior and the injurious result, but that does not change the defendant's liability. See intervening cause under CAUSE(1). [Cases: Criminal Law 31; Negligence 431. C.J.S. Criminal Law §§ 15, 46–49, 88, 93–94; Negligence §§ 202, 315.]

#### DEPENDENT PROMISE

dependent promise. See PROMISE.

#### DEPENDENT RELATIVE REVOCATION

dependent relative revocation. A common-law doctrine that operates to undo an otherwise sufficient revocation of a will when there is evidence that the testator's revocation was conditional

rather than absolute. • Typically, the doctrine applies when a testator has physically revoked the will and believes that a new will is valid, although this belief is mistaken. The doctrine undoes only the revocation; it does not always accomplish the testator's intent or validate an otherwise invalid will. — Also termed dependent-relative-revocation doctrine; conditional revocation; mistakenly induced revocation; ineffective revocation; doctrine of ineffective revocation. [Cases: Wills 167–195. C.J.S. Wills §§ 386–428, 1621, 2026, 2030, 2036, 2039–2046, 2057–2062.]

#### DEPENDENT STATE

dependent state. See nonsovereign state under STATE.

#### DE PERAMBULATIONE FACIENDA

de perambulatione facienda (dee p<<schwa>>-ram-by<<schwa>>-lay-shee-oh-nee fay-shee-en-d<<schwa>>), n. [Law Latin “for making perambulation”] Hist. A writ ordering the sheriff to go with 12 knights of the county to settle a boundary dispute by walking about to determine the proper boundary between adjacent towns or lordships.

#### DE PLACITO

de placito (dee plas-<<schwa>>-toh), n. [Law Latin] Of a plea. • These words were used in a declaration describing the particular action being brought, as in de placito debit (“of a plea of debt”).

#### DE PLAGIS ET MAHEMIO

de plagis et mahemio (dee play-jis et m<<schwa>>-hee-mee-oh), n. [Law Latin “of wounds and mayhem”] Hist. A type of criminal appeal used in cases of wounding and maiming.

#### DE PLANO

de plano (dee play-noh), adv. [Latin “from ground level”] 1. Roman law. Informally; in a summary manner. • The praetor would administer justice de plano when he stood on the same level with the parties instead of sitting on an elevated bench. 2. Hist. Clearly; manifestly, as in de bigamis. See DE BIGAMIS . 3. Hist. By collusion. 4. Scots law. Forthwith.

#### DE PLEGIIS ACQUIETANDIS

de plegiis acquietandis (dee plee-jee-is <<schwa>>-kwI-<<schwa>>-tan-dis), n. [Law Latin “for acquitting or releasing pledges”] Hist. A writ ordering repayment to a surety by a principal who had failed to make a required payment that the surety then had to cover.

#### DEPLETABLE ECONOMIC INTEREST

depletable economic interest. A mineral-land interest subject to depletion by the removal (by drilling or mining) of the mineral that is the subject of the interest.

#### DEPLETION

depletion, n. An emptying, exhausting, or wasting of an asset, esp. of a finite natural resource

such as oil. — deplete,vb. — depletive,adj.

#### DEPLETION ALLOWANCE

depletion allowance. See ALLOWANCE(3).

#### DEPLETION RESERVE

depletion reserve. Accounting. A charge to income reflecting the decrease in the value of a wasting asset, such as an oil reserve.

#### DEPONE

depone (di-pohn), vb. Scots law. To testify. See DEPOSE.

#### DE PONENDO SIGILLUM AD EXCEPTIONEM

de ponendo sigillum ad exceptionem (dee p<<schwa>>-nen-doh si-jil-<<schwa>>m ad ek-sep-shee-oh-n<<schwa>>m), n. [Law Latin “for putting a seal to an exception”] Hist. A writ directing justices of assize to preserve exceptions taken by a party in a case.

#### DEPONENT

deponent (di-poh-n<<schwa>>nt), n. 1. One who testifies by deposition. 2. A witness who gives written testimony for later use in court; AFFIANT. — depone,vb.

#### DEPOPULATIO AGRORUM

depopulatio agrorum (dee-pop-yoo-lay-shee-oh <<schwa>>-gror-<<schwa>>m), n. [Law Latin “depopulating the county”] Hist. The crime of destroying or ravaging a country. • A person could not claim the benefit of clergy for this crime.

#### DEPOPULATION

depopulation. 1. A reduction in population. 2. Hist. A species of waste by which the kingdom's population was diminished. See DEPOPULATIO AGRORUM.

#### DEPORTATIO

deportatio (dee-por-tay-shee-oh), n. [fr. Latin deportare “to carry away”] Roman law. Permanent exile of a condemned criminal involving loss of citizenship and, usu., forfeiture of all property. Cf. RELEGATIO.

“Deportatio. Perpetual banishment of a person condemned for a crime. It was the severest form of banishment since it included additional penalties, such as seizure of the whole property, loss of Roman citizenship, confinement to a definite place. Under the Principate it replaced the former interdicio aqua et igni. The emperor could grant the deportee full amnesty, which restored him to his former rights (postliminium). Places of deportatio were islands (in insulam) near the Italian shore or an oasis in the Libyan desert.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 432 (1953).

## DEPORTATION

deportation (dee-por-tay-sh<<schwa>>n), n. The act or an instance of removing a person to another country; esp., the expulsion or transfer of an alien from a country. [Cases: Aliens 52.] — deport,vb.

## DEPOSE

depose (di-pohz), vb.1. To examine (a witness) in a deposition <the defendant's attorney will depose the plaintiff on Tuesday>. [Cases: Federal Civil Procedure 1311–1456; Pretrial Procedure 91–227.C.J.S. Discovery §§ 2, 4, 6–7, 9–10, 12–32, 34–61, 69, 77, 125; Pretrial Procedure §§ 4–6, 10–17, 24, 33, 35–54, 63–66, 70–72, 74, 76–77, 109–129, 132–138.] 2. To testify; to bear witness <the affiant deposes and states that he is at least 18 years old>.3. To remove from office or from a position of power; dethrone <rebels sought to depose the dictator>.

## DEPOSIT

deposit,n.1. The act of giving money or other property to another who promises to preserve it or to use it and return it in kind; esp., the act of placing money in a bank for safety and convenience. [Cases: Banks and Banking 119–155. C.J.S. Banks and Banking §§ 193, 246, 248, 266–314, 316, 320–322, 326–381, 383–384, 393, 396–397, 399, 401–402, 404, 415–423, 425–444, 455.] 2. The money or property so given.

demand deposit.A bank deposit that the depositor may withdraw at any time without prior notice to the bank.

direct deposit.The payment of wages by transferring the payment directly into the employee's bank account, usu. by electronic transfer.

frozen deposit.A bank deposit that cannot be withdrawn, as when the financial institution is insolvent.

general deposit. 1. A bank deposit of money that is commingled with other depositors' money. 2. A bank deposit that is to the depositor's credit, thus giving the depositor a right to the money and creating a debtor–creditor relationship between the bank and the depositor. • A bank is not required to return the actual money deposited as a general deposit, as it must with a special deposit; the bank need return only an equivalent sum. [Cases: Banks and Banking 75–80, 119. C.J.S. Banks and Banking §§ 161, 172, 175–196, 246, 248, 269–271, 274, 276, 279, 284.]

special deposit.A bank deposit that is made for a specific purpose, that is kept separately, and that is to be returned to the depositor. • The bank serves as a bailee or trustee for a special deposit. — Also termed specific deposit. [Cases: Banks and Banking 153. C.J.S. Banks and Banking §§ 283–287, 290.]

time deposit.A bank deposit that is to remain for a specified period or on which notice must be given to the bank before withdrawal.

3. Money placed with a person as earnest money or security for the performance of a contract.

• The money will be forfeited if the depositor fails to perform. — Also termed security deposit.

4. Copyright. The placing of two copies of a published work with the Library of Congress within three months of publication. • This requirement is independent of copyright registration. [Cases: Copyrights and Intellectual Property 50.10. C.J.S. Copyrights and Intellectual Property §§ 38–39.]

5. Civil law. A contract by which a depositor delivers a thing to a depositary for safekeeping. La. Civ. Code arts. 2926, 2929. • A deposit may be either an onerous or a gratuitous contract. — Also termed depositum; naked deposit; gratuitous deposit. See gratuitous bailment under BAILMENT. [Cases: Bailment 2. C.J.S. Bailments §§ 5, 14, 16–18.]

involuntary deposit. A deposit made by accidentally leaving or placing personal property in another's possession. See involuntary bailment under BAILMENT.

necessary deposit. A bailment, usu. made by reason of emergency or other necessity, that prevents the depositor from freely choosing the depositary. • A necessary deposit occurs, for example, when a person entrusts goods to a stranger during a fire.

quasi-deposit. An involuntary deposit made when one party lawfully possesses property merely by finding it.

voluntary deposit. A deposit made by the mutual consent of the bailor and bailee.

6. Patents. The placing of a sample of microorganisms or cell lines with the U.S. Patent and Trademark Office to satisfy the enablement requirement. • The practice is not statutory but has been established by regulation and caselaw. 37 CFR §§ 1.801–1.809. — Also termed enablement by deposit. [Cases: Patents 100. C.J.S. Patents § 143.]

#### DEPOSIT ACCOUNT

deposit account. See ACCOUNT.

#### DEPOSITARY

depositary. 1. A person or institution that one leaves money or valuables with for safekeeping <a title-insurance officer is the depositary of the funds>. • When a depositary is a company, it is often termed a safe-deposit company. Cf. DEPOSITARY. [Cases: Deposits and Escrows 13. C.J.S. Depositaries §§ 15–17; Escrows §§ 8–10.]

2. A gratuitous bailee. See DEPOSIT(5). [Cases: Bailment 2. C.J.S. Bailments §§ 5, 14, 16–18.]

#### DEPOSITARY BANK

depositary bank. See BANK.

#### DEPOSIT BOX

deposit box. See SAFE-DEPOSIT BOX.

#### DEPOSIT COMPANY

deposit company. See COMPANY.

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**DEPOSIT CONTRACT**

deposit contract. See CONTRACT.

**DEPOSIT IN COURT**

deposit in court. The placing of money or other property that represents a person's potential liability in the court's temporary custody, pending the outcome of a lawsuit. — Also termed deposit into the registry of the court. [Cases: Deposits in Court 1. C.J.S. Deposits in Court §§ 1, 4–7.]

**DEPOSIT INSURANCE**

deposit insurance. See INSURANCE.

**DEPOSIT INTO THE REGISTRY OF THE COURT**

deposit into the registry of the court. See DEPOSIT IN COURT.

**DEPOSITION**

deposition (dep-*<<schwa>>-zish-*<<schwa>>n**). 1. A witness's out-of-court testimony that is reduced to writing (usu. by a court reporter) for later use in court or for discovery purposes. See Fed. R. Civ. P. 30; Fed. R. Crim. P. 15. — Also termed examination before trial. [Cases: Criminal Law 627.2; Federal Civil Procedure 1311–1456; Pretrial Procedure 91–206. C.J.S. Criminal Law § 468; Discovery §§ 2, 4, 6–7, 9–10, 12–32, 34–61, 69, 77, 125; Pretrial Procedure §§ 4–6, 10–17, 24, 33, 35–54, 63–66, 70–72, 74, 76–77, 109–129, 132–138.] 2. The session at which such testimony is recorded.

apex deposition. The deposition of a person whose position is at the highest level of a company's hierarchy. • Courts often preclude an apex deposition unless (1) the person to be deposed has particular knowledge regarding the claim, and (2) the requesting party cannot obtain the requested — and discoverable — information through less intrusive means. [Cases: Federal Civil Procedure 1325; Pretrial Procedure 101. C.J.S. Discovery § 17.]

deposition de bene esse (dee bee-nee es-ee also day ben-ay es-ay). A deposition taken from a witness who will likely be unable to attend a scheduled trial or hearing. • If the witness is not available to attend trial, the testimony is read at trial as if the witness were present in court. See testimony de bene esse under TESTIMONY. [Cases: Federal Civil Procedure 1291–1299, 1311–1456; Pretrial Procedure 61–65. C.J.S. Pretrial Procedure §§ 1, 3–20, 34–54.]

deposition on written questions. A deposition given in response to a prepared set of written questions, as opposed to a typical oral deposition. See Fed. R. Civ. P. 31. — Formerly also termed deposition on written interrogatories. [Cases: Federal Civil Procedure 1408; Pretrial Procedure 155. C.J.S. Discovery §§ 55–61.]

“The advantage of a deposition on written questions is that counsel for the parties need not go to some distant place to be present at the taking of the deposition. Instead they serve on each other questions and cross questions — and even redirect and recross questions — that they wish to have

put to the deponent. These are then sent to the officer who is to take the deposition. The officer puts the questions to the witness, records the answers, and transcribes and files the deposition as with an oral deposition. The officer is merely to record what the witness says in response to the various questions propounded to him or her." Charles Alan Wright, *The Law of Federal Courts* § 85, at 618–19 (5th ed. 1994).

oral deposition. A deposition given in response to oral questioning by a lawyer. [Cases: Federal Civil Procedure 1381; Pretrial Procedure 151. C.J.S. Discovery §§ 30, 51–53.]

30(b)(6) deposition. Under the Federal Rules of Civil Procedure, the deposition of an organization, through the organization's designated representative. • Under Rule 30(b)(6), a party may take the deposition of an organization, such as a corporation. The notice of deposition (or subpoena) may name the organization and may specify the matters to be covered in the deposition. The organization must then designate a person to testify about those matters on its behalf. Fed. R. Civ. P. 30(b)(6). Most states authorize a similar procedure under state-court procedural rules. [Cases: Federal Civil Procedure 1325.]

3. The written record of a witness's out-of-court testimony. 4. Eccles. law. The involuntary release of a clergyman from the exercise of his office. Cf. DEGRADATION(1); DEPRIVATION(4).

#### DEPOSITION ON WRITTEN INTERROGATORIES

deposition on written interrogatories. See deposition on written questions under DEPOSITION.

#### DEPOSITION SUBPOENA

deposition subpoena. See SUBPOENA.

#### DEPOSITION SUBPOENA DUCES TECUM

deposition subpoena duces tecum. See subpoena duces tecum under SUBPOENA.

#### DEPOSIT OF TITLE DEEDS

deposit of title deeds. A pledge of real property as security for a loan, by placing with the lender, as pledgee, the title-deed to the land.

#### DEPOSITOR

depositor, n. One who makes a deposit. See DEPOSIT.

#### DEPOSITORY

depository (di-poz-<<schwa>>-tor-ee), n. A place where one leaves money or valuables for safekeeping <the grade school's depository for used books>. Cf. DEPOSITARY.

#### DEPOSITORY BOND

depository bond. See BOND(2).

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**DEPOSITORY INSTITUTION**

depository institution. 1. An organization formed under state or federal law, authorized by law to receive deposits, and supervised and examined by a government agency for the protection of depositors. [Cases: Banks and Banking 1–62. C.J.S. Banks and Banking §§ 2–126, 480–481, 663–664, 697, 732–739, 746–748, 755, 758–783.] 2. A trust company or other institution authorized by law to exercise fiduciary powers similar to those of a national bank. • The term does not include an insurance company, a Morris Plan bank, an industrial loan company, or similar bank unless its deposits are insured by a federal agency.

**DEPOSITORY-TRANSFER CHECK**

depository-transfer check. See CHECK.

**DEPOSITORY TRUST CORPORATION**

Depository Trust Corporation. The principal central clearing agency for securities transactions on the public markets. — Abbr. DTC.

**DEPOSIT PREMIUM**

deposit premium. The initial premium paid by an insured pending the final premium adjustment.

**DEPOSIT RATIO**

deposit ratio. The ratio of total deposits to total capital.

**DEPOSIT SLIP**

deposit slip. A bank's acknowledgment of an amount received on a certain date by a depositor. [Cases: Banks and Banking 121. C.J.S. Banks and Banking §§ 273–275, 322.]

**DEPOSITUM**

depositum (di-poz-i-t<<schwa>>m), n. Roman law. The gratuitous deposit of goods for the benefit of the depositor. • The depositum was liable only for dolus. See DOLUS. Cf. gratuitous bailment under BAILMENT; DEPOSIT(5).

**DEPOSIT WARRANT**

deposit warrant. See WARRANT(2).

**DE POST DISSEISINA**

de post disseisina (dee pohst dis-see-zin-<<schwa>>), n. [Law Latin “of past disseisin”] Hist. A writ for recovery of land by a person who had previously recovered the land from a disseisor by a praecipe quod reddat or on a default or reddition, but who was again disseised by the same disseisor.

**DE PRAEROGATIVA REGIS**



de praerogativa regis (dee pri-rog-<<schwa>>-tĭ-v<<schwa>> ree-jis). See PRAEROGATIVA REGIS.

#### DE PRAESENTI

de praesenti (dee pri-zen-tĭ). [Law Latin] Hist. At present; of the present. • A consent to marriage de praesenti constitutes marriage in itself. — Also spelled de presenti. Cf. DE FUTURO.

#### DEPRAVED

depraved,adj.1. (Of a person or crime) corrupt; perverted. 2. (Of a crime) heinous; morally horrendous. — depravity,n.

#### DEPRAVED-HEART MURDER

depraved-heart murder.See MURDER.

#### DEPRECIABLE LIFE

depreciable life.See USEFUL LIFE.

#### DEPRECIATION

depreciation (di-pree-shee-ay-sh<<schwa>>n), n. A decline in an asset's value because of use, wear, or obsolescence. Cf. APPRECIATION; AMORTIZATION(2). — depreciate,vb. — depreciable,adj.

accumulated depreciation.The total depreciation currently recorded on an asset. • On the balance sheet, an asset's total cost less accumulated depreciation reflects the asset's book value. — Also termed accrued depreciation.

annual depreciation.The annual loss to property due to regular wear and tear.

functional depreciation.Depreciation that results from the replacement of equipment that is not yet worn out, but that is obsolete in light of a new invention or improved machinery allowing more efficient and satisfactory production.

#### DEPRECIATION METHOD

depreciation method.A set formula used in estimating an asset's use, wear, or obsolescence over the asset's useful life. • This method is useful in calculating the allowable annual tax deduction for depreciation. See USEFUL LIFE . [Cases: Internal Revenue 3470–3505; Taxation 1044.C.J.S. Internal Revenue §§ 223–249, 252, 259–265, 278, 489, 671, 673, 799; Taxation §§ 1741–1742.]

accelerated depreciation method.A depreciation method that yields larger deductions in the earlier years of an asset's life and smaller deductions in the later years.

annuity depreciation method.A depreciation method that allows for a return of imputed interest on the undepreciated balance of an asset's value. • The imputed interest is subtracted from the current depreciation amount before it is credited to the accumulated depreciation accounts.

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declining-balance depreciation method.A method of computing the annual depreciation allowance by multiplying the asset's undepreciated cost each year by a uniform rate that may not exceed double the straight-line rate or 150 percent.

double-declining depreciation method.A depreciation method that spreads over time the initial cost of a capital asset by deducting in each period twice the percentage recognized by the straight-line method and applying that double percentage to the undepreciated balance existing at the start of each period.

replacement-cost depreciation method.A depreciation method that fixes an asset's value by the price of its substitute.

sinking-fund depreciation method.A depreciation method that accounts for the time value of money by setting up a depreciation-reserve account that earns interest, resulting in a gradual yearly increase in the depreciation deduction.

straight-line depreciation method.A depreciation method that writes off the cost or other basis of the asset by deducting the expected salvage value from the initial cost of the capital asset, and dividing the difference by the asset's estimated useful life.

sum-of-the-years'-digits depreciation method.A method of calculating the annual depreciation allowance by multiplying the depreciable cost basis (cost minus salvage value) by a constantly decreasing fraction, which is represented by the remaining years of useful life at the beginning of each year divided by the total number of years of useful life at the time of acquisition. — Sometimes shortened to SYD method.

unit depreciation method.A depreciation method — directly related to the productivity of the asset — that divides the asset's value by the estimated total number of units to be produced, and then multiplies the unit cost by the number of units sold during the year, representing the depreciation expense for the year.

units-of-output depreciation method.A method by which the cost of a depreciable asset, minus salvage value, is allocated to the accounting periods benefited based on output (as miles, hours, number of times used, and the like).

#### DEPRECIATION RESERVE

depreciation reserve.An account, esp. of a public utility, built up to offset the depreciation of property because of time and use, so that at the end of the property's service, there is enough money to replace the property. [Cases: Public Utilities 127. C.J.S. Public Utilities § 28, 37.]

#### DEPREDACTION

depredation. The act of plundering; pillaging.

#### DE PRESENTI

de presenti.See DE PRAESENTI.

## DEPRESSION

depression. A period of economic stress that persists over an extended period, accompanied by poor business conditions and high unemployment. Cf. RECESSION.

## DEPRIVATION

deprivation. 1. An act of taking away <deprivation of property>.2. A withholding of something <deprivation of food>.3. The state of being without something; wanting <deprivation from lack of food>.4. A removal or degradation from office, esp. an ecclesiastical office <deprivation of the bishop>. Cf. DEPOSITION(4); DEGRADATION(1).

## DEPRIVED CHILD

deprived child. See CHILD.

## DEPRIZIO DOCTRINE

Deprizio doctrine. Bankruptcy. The rule that a debtor's payment to an outside creditor more than 90 days before a bankruptcy filing is voidable as a preferential transfer if it benefits an inside creditor. *Levit v. Ingersoll Rand Fin. Corp. (In re V.N. Deprizio Constr. Co.)*, 874 F.2d 1186 (7th Cir. 1989). [Cases: Bankruptcy 2608(2). C.J.S. Bankruptcy §§ 138–139.]

## DE PROCEDENDO AD JUDICIUM

de procedendo ad iudicium (dee proh-s<<schwa>>-den-doh ad joo-dish-ee-<<schwa>>m), n. [Law Latin “for proceeding in an assize”] Hist. A chancery writ ordering a lower court to proceed to judgment in a case that had been wrongfully stayed. • If the lower-court justices refused, they could be punished for contempt.

## DE PROPRIETATE PROBANDA

de proprietate probanda (dee pr<<schwa>>-prI-<<schwa>>-tay-tee pr<<schwa>>-ban-d<<schwa>>), n. [Law Latin “for proving property”] Hist. A writ ordering a sheriff to investigate the ownership of distrained goods claimed by a defendant in a replevin action.

“If therefore the distreinor claims any such property, the party replevying must sue out a writ de proprietate probanda, in which the sheriff is to try, by an inquest, in whom the property previous to the distress subsisted. And if it be found to be in the distreinor, the sheriff can proceed no farther; but must return the claim of property to the court of king's bench or common pleas, to be there farther prosecuted, if thought advisable, and there finally determined.” 3 William Blackstone, *Commentaries on the Laws of England* 148 (1768).

## DEPUBLISHED OPINION

depublished opinion. See OPINION(1).

## DEPUTE

depute, n. Scots law. A person appointed to act in an official capacity or as another official's representative.

## DEPUTY

deputy, n. A person appointed or delegated to act as a substitute for another, esp. for an official. [Cases: Officers and Public Employees 47.C.J.S. Officers and Public Employees §§ 350–351, 353.] — deputize, depute, vb.

courtroom deputy. The deputy clerk assigned to a particular courtroom or a particular judge.

general deputy. 1. A deputy appointed to act in another officer's place and execute all ordinary functions of the office. [Cases: Officers and Public Employees 47. C.J.S. Officers and Public Employees §§ 350–351, 353.] 2. See deputy sheriff under SHERIFF.

special deputy. A deputy specially appointed to serve a particular purpose, such as keeping the peace during a riot.

## DEPUTY SHERIFF

deputy sheriff. See SHERIFF.

## DEQ

DEQ. abbr. DELIVERED EX QUAY.

## DE QUARANTINA HABENDA

de quarantina habenda (dee kwahr-*n-tl-n* h*-ben-d* schwa>>), n. [Law Latin “of return of quarantine”] Hist. A writ ordering a sheriff to give a widow possession of part of her husband's estate, after she had been wrongfully ejected but before dower is assigned. See QUARANTINE(4).

## DE QUO

de quo (dee kwoh). [Latin] Of which. • These were formal words used in a writ of entry, as in a writ of entry “in the quo” or “in the quibus.” — Also termed de quibus.

## DE RAPTU VIRGINUM

de raptu virginum (dee rap-t[y]oo v*-r-j*-n*-m*), n. [Latin “of the ravishment of virgins”] Hist. A writ for taking an appeal in a rape case.

## DE RATIONABILIBUS DIVISIS

de rationabilibus divisio (dee rash-*n-bil-i-b*s di-v I-sis), n. [Law Latin “of the fixing of reasonable boundaries”] Hist. A writ to settle the boundaries between property owners of different towns when one owner claimed a trespass by the other.

## DE RATIONABILI PARTE BONORUM

de rationabili parte bonorum (dee rash-[ee]-*-nay-b*-l*-tee*)

b<<schwa>>-nor-<<schwa>>m), n.[Law Latin “of reasonable share of goods”] Hist. A writ allowing the wife and children of a dead man to recover a reasonable share of his goods from his executors after his debts were paid. • This writ was usu. founded on custom rather than the general law.

#### DE RECENTI

de recenti (dee ri-sen-tl). [Law Latin] Scots law. Recently. • The term adds weight to a statement that is made or an event (such as an arrest) that occurs soon after an incident. In a theft case, for example, the presumption of guilt was greater when the suspect was identified soon after the theft occurred.

#### DE RECORDO ET PROCESSU MITTENDIS

de recordo et processu mittendis (dee ri-kor-doh et proh-ses-[y]oo mi-ten-dis), n.[Law Latin “of the sending of the record and process of a cause to a superior court”] A type of writ of error.

#### DERECHO DE AUTOR

derecho de autor.See AUTHOR'S RIGHT.

#### DE RECTO

de recto (dee rek-toh), n.[Law Latin] A writ of right to recover both the seisin and the property. — Also termed breve de recto. See WRIT OF COURSE.

#### DE RECTO DE ADVOCATIONE

de recto de advocacione (dee rek-toh dee ad-v<<schwa>>-kay-shee-oh-nee), n.[Law Latin “of the right of advowson”] Hist. A writ restoring a person's right to present a clerk to a benefice when that right had been interfered with. • It was abolished by St. 3 & 4 Will. 4, ch. 27.

#### DE RECTO DE RATIONABILI PARTE

de recto de rationabili parte (dee rek-toh dee rash-[ee]-<<schwa>>-nay-b<<schwa>>-llpahr-tee), n.[Law Latin “of right of reasonable part”] Hist. A writ allowing one coparcener or blood relative owning land in fee simple to obtain a rightful share from the other. • It was abolished by St. 3 & 4 Will. 4, ch. 27.

#### DE RECTO PATENS

de recto patens (dee rek-toh pay-tenz), n.[Law Latin “of right patent”] Hist. The highest writ of right under the law given to an owner in fee simple to recover the possession and use of land from the freehold tenant. — Also termed breve magnum de recto.

#### DE REDISSEISINA

de redisseisina (dee ree-dis-see-zin-<<schwa>>), n.[Law Latin “of redisseisin”] Hist. A writ for recovery of land or rent by a person who had previously recovered the land or rent by an assize of novel disseisin, but who was again disseised by the same disseisor. • This writ is similar to de

post disseisina. See DE POST DISSEISINA; DISSEISIN.

#### DEREGISTRATION

deregistration,n. The point at which an issuer's registration under § 12 of the Securities Exchange Act of 1934 is no longer required because of a decline in the number of holders of the issuer's securities. 15 USCA § 78l. Cf. DELISTING. [Cases: Securities Regulation 35.22. C.J.S. Securities Regulation §§ 112–114.] — deregister,vb.

#### DEREGULATION

deregulation,n. The reduction or elimination of governmental control of business, esp. to permit free markets and competition. — deregulate,vb.

financial deregulation.The lessening of governmental oversight and intervention in the business of financial institutions. • Among other effects, regulation of financial contracts is relaxed and competition for depositors and borrowers increases.

#### DEREGULATION CLAUSE

deregulation clause.Oil & gas. A gas-contract provision specifying how the price of gas will be calculated and what the buyer's and seller's obligations will be if regulated natural gas becomes deregulated.

#### DE REI GESTAE VERITATE

de rei gestae veritate (dee ree-Ijes-tee ver-i-tay-tee). [Law Latin] Scots law. Of the truth of the thing done. • A witness to a deed that had been lost could testify to the deed's existence and to the truthfulness of the statements contained in it.

#### DERELICT

derelict (der-⟨schwa⟩-likt), adj.1. Forsaken; abandoned; cast away <derelict property>. See quasi-derelict under DERELICT. 2. Lacking a sense of duty; in breach of a legal or moral obligation <the managers were derelict in their duties>.

derelict,n.1. Personal property abandoned or thrown away by the owner with no intent to claim it any longer, such as a ship deserted at sea. [Cases: Salvage 4. C.J.S. Salvage §§ 19, 22.]

quasi-derelict. A ship that has been deserted or abandoned temporarily or involuntarily, as when the crew is dead or otherwise incapable of navigating the ship. [Cases: Salvage 4. C.J.S. Salvage §§ 19, 22.]

2. Land uncovered by water receding from its former bed. [Cases: Navigable Waters 44; Waters and Water Courses 93. C.J.S. Navigable Waters § 94; Waters §§ 177–182, 184–185.] 3. A street person or vagrant; a hobo.

#### DERELICTION

dereliction (der-⟨schwa⟩-lik-sh⟨schwa⟩n), n.1. Abandonment, esp. through neglect or

moral wrong.

dereliction in the performance of duties. Military law. Willful or negligent failure to perform assigned duties; culpable inefficiency in performing assigned duties. [Cases: Military Justice 687. C.J.S. Military Justice § 68.]

2. An increase of land caused by the receding of a sea, river, or stream from its usual watermark. See RELICTION. [Cases: Navigable Waters 44; Waters and Water Courses 93. C.J.S. Navigable Waters § 94; Waters §§ 177–182, 184–185.]

#### DERELICT-OFFICIAL ACT

derelict-official act. A statute that mandates forfeiture of office if the holder willfully neglects or fraudulently fails to perform official duties.

#### DE REPARATIONE FACIENDA

de reparatione facienda (dee rep-<<schwa>>-ray-shee-oh-nee fay-shee-en-d<<schwa>>). Hist. 1. An action brought by a joint tenant to compel a cotenant to contribute to the repair of jointly held property. 2. A writ issued in such an action. • The writ had to issue before repairs were undertaken. There was no remedy after repairs began.

#### DE REPLEGIORE DE AVERIIS

de replegiore de averiis. See DE AVERIIS REPLEGIANDIS.

#### DE RESCUSSU

de rescussu (dee ri-sk<<schwa>>-s-[y]oo), n. [Law Latin “of rescue”] Hist. A writ available when cattle were distrained or persons were arrested, and then rescued.

#### DE RETORNO HABENDO

de retorno habendo (dee ri-tor-noh h<<schwa>>-ben-doh). [Law Latin] For having a return. • This term applied to (1) a judgment for a defendant in a replevin action, (2) a writ of execution for a defendant awarded judgment in a replevin action, and (3) a surety provided by a plaintiff at the beginning of a replevin action.

#### D.E.R.I.C

d.e.r.i.c. abbr. DE EA RE ITA CENSUERE.

#### DE RIEN CULPABLE

de rien culpable (d<<schwa>> reen k<<schwa>>-l-p<<schwa>>-b<<schwa>>-l). [Law French] Guilty of nothing; not guilty.

#### DERIVATION CLAUSE

derivation clause. A deed-of-trust provision that provides information about the transfer of a property, esp. the source of the title, such as the name of the previous grantor and the recording

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date of the deed. See deed of trust under DEED.

#### DERIVATIVE

derivative,adj. Copyright. Of, relating to, or constituting a work that is taken from, translated from, adapted from, or in some way further developed from a previous work. • Copyright protection includes the exclusive right in derivative works, such as a screenplay adapted from a book, or a variant musical arrangement. See derivative work under WORK(2). [Cases: Copyrights and Intellectual Property 12(3).]

derivative,n.1. A financial instrument whose value depends on or is derived from the performance of a secondary source such as an underlying bond, currency, or commodity. — Also termed derivative instrument.

“Derivatives transactions may be based on the value of foreign currency, U.S. Treasury bonds, stock indexes, or interest rates. The values of these underlying financial instruments are determined by market forces, such as movements in interest rates. Within the broad panoply of derivatives transactions are numerous innovative financial instruments whose objectives may include a hedge against market risks, management of assets and liabilities, or lowering of funding costs; derivatives may also be used as speculation for profit.” Procter & Gamble Co. v. Bankers Trust Co., [1996–1997 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 99,229, at 95,238 (S.D. Ohio 1996).

2. See derivative work under WORK(2).

#### DERIVATIVE ACQUISITION

derivative acquisition.See ACQUISITION.

#### DERIVATIVE ACTION

derivative action. 1. A suit by a beneficiary of a fiduciary to enforce a right belonging to the fiduciary; esp., a suit asserted by a shareholder on the corporation's behalf against a third party (usu. a corporate officer) because of the corporation's failure to take some action against the third party. See Fed. R. Civ. P. 23.1. — Also termed derivative suit; shareholder derivative suit; stockholder derivative suit; representative action. Cf. DIRECT ACTION(3). [Cases: Corporations 207.5. C.J.S. Corporations § 413.] 2. A lawsuit arising from an injury to another person, such as a husband's action for loss of consortium arising from an injury to his wife caused by a third person.

#### DERIVATIVE CONTRABAND

derivative contraband.See CONTRABAND.

#### DERIVATIVE CONVEYANCE

derivative conveyance.See secondary conveyance under CONVEYANCE.

#### DERIVATIVE DEED

#### DERIVATIVE DEFENSE



derivative defense. See DEFENSE(1).

DERIVATIVE ENTRAPMENT

derivative entrapment. See ENTRAPMENT.

DERIVATIVE ESTATE

derivative estate. See ESTATE(1).

DERIVATIVE EVIDENCE

derivative evidence. See EVIDENCE.

DERIVATIVE INSTRUMENT

derivative instrument. See DERIVATIVE(1).

DERIVATIVE-JURISDICTION DOCTRINE

derivative-jurisdiction doctrine. The principle that a case is not properly removable unless it is within the subject-matter jurisdiction of the state court from which it is removed.

DERIVATIVE LEASE

derivative lease. See SUBLEASE.

DERIVATIVE LIABILITY

derivative liability. See LIABILITY.

DERIVATIVE MARKET

derivative market. See MARKET.

DERIVATIVE POSSESSION

derivative possession. See POSSESSION.

DERIVATIVE POWER

derivative power. See POWER(3).

DERIVATIVE SETTLEMENT

derivative settlement. See SETTLEMENT(2).

DERIVATIVE SUIT

derivative suit. See DERIVATIVE ACTION(1).

DERIVATIVE TITLE

derivative title. See TITLE(2).

DERIVATIVE-USE IMMUNITY

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derivative-use immunity. See use immunity under IMMUNITY(3).

#### DERIVATIVE WORK

derivative work. See WORK(2).

#### DERIVED DEMAND

derived demand. See DEMAND(4).

#### DEROGATION

derogation (der-⟨schwa⟩-gay-sh⟨schwa⟩n), n.1. The partial repeal or abrogation of a law by a later act that limits its scope or impairs its utility and force <statutes in derogation of the common law>. [Cases: Statutes 237, 239. C.J.S. Statutes §§ 380, 382.] 2. Disparagement; depreciation in value or estimation <some argue that the derogation of family values has caused an increase in crime>.3. Detraction, prejudice, or destruction (of a grant or right) <an attorney may be punished for derogation from professional integrity>. — derogate (der-⟨schwa⟩-gayt), vb.

#### DEROGATION CLAUSE

derogation clause. Int'l law. A reservation in a treaty allowing a signator to refuse to comply with certain provisions. • For example, a signator may be allowed to suspend some or all of its treaty obligations during a war or other national emergency. If a treaty lacks an express derogation clause, then general principles governing suspension or termination of treaties apply.

#### DEROGATION FROM GRANT

derogation from grant. A provision in an instrument of transfer (such as a deed) that diminishes, avoids, or otherwise operates against the grant itself.

#### DEROGATORY CLAUSE

derogatory clause. 1. A statutory or contractual provision proclaiming that the document in which it appears, or a part of the document, cannot be repealed or amended. • Such provisions are considered ineffective.

“The one thing a sovereign legislature cannot do is truncate its own sovereignty by restricting its successors. A parliament sovereign today must also be sovereign tomorrow. What is technically called a *clausula derogatoria* is therefore ineffective: *non impedit clausula derogatoria quo minus ab eadem potestate res dissolvantur a qua constituuntur* (a derogatory clause does not prevent things from being dissolved by the same power which created them).” F.A.R. Bennion, *Statutory Interpretation* § 140, at 313 (3d ed. 1997).

2. A clause that a testator inserts secretly in a will, containing a provision that any later will not having that precise clause is invalid. • A derogatory clause seeks to protect against a later will extorted by undue influence, duress, or violence. — Also termed *clausula derogativa*; *clausula derogatoria*.

#### DES

DES.abbr.DELIVERED EX SHIP.

DE SALVA GARDIA

de salva gardia (dee sal-v<<schwa>> gahr-dee-<<schwa>>), n.[Law Latin “of safeguard”] A writ issued to protect strangers from harm while pursuing their legal rights in England.

DE SALVO CONDUCTU

de salvo conductu (dee sal-voh k<<schwa>>n-d<<schwa>>k-t[y]oo). [Law Latin “of safe conduct”] A writ of safe conduct.

DE SA VIE

de sa vie (d<<schwa>> sa vee). [Law French] Of one's own life, as distinguished from *pur autre vie* (“for another's life”).

DESCEND

descend,vb. To pass (a decedent's property) by intestate succession.

DESCENDANT

descendant (di-sen-d<<schwa>>nt), n. One who follows in lineage, in direct (not collateral) descent from a person. • Examples are children and grandchildren. Cf. ASCENDANT. [Cases: Descent and Distribution 25. C.J.S. Descent and Distribution § 32.] — descendant,adj.

collateral descendant.Loosely, a blood relative who is not strictly a descendant, like a niece or nephew.

lineal descendant.A blood relative in the direct line of descent. • Children, grandchildren, and great-grandchildren are lineal descendants.

DESCENDIBILITY OF FUTURE INTERESTS

descendibility of future interests.The legal possibility that a future interest (such as a remainder or an executory interest) can legally pass by inheritance.

DESCENDIBLE

descendible,adj. (Of property) capable of passing by descent or being inherited. See HERITABLE.

DESCENT

descent,n.1. The acquisition of real property by law, as by inheritance; the passing of intestate real property to heirs. See SUCCESSION(2). Cf. DISTRIBUTION(1); PURCHASE. [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.] 2. The fact or process of originating from a common ancestor. Cf. ASCENT. — descend,vb.

collateral descent.Descent in a collateral or oblique line, from brother to brother or cousin to

cousin. • With collateral descent, the donor and donee are related through a common ancestor. Cf. collateral descendant under DESCENDANT. [Cases: Descent and Distribution 32–41. C.J.S. Descent and Distribution §§ 29, 38–49.]

direct-line descent. See lineal descent.

immediate descent. 1. A descent directly to an heir, as from a grandmother to granddaughter, brought about by the earlier death of the mother. [Cases: Descent and Distribution 25–36. C.J.S. Descent and Distribution §§ 29, 32–43.] 2. A direct descent without an intervening link in consanguinity, as from mother to daughter.

lineal descent. Descent in a direct or straight line, as from father or grandfather to son or grandson. — Also termed direct-line descent. [Cases: Descent and Distribution 25. C.J.S. Descent and Distribution § 32.]

maternal-line descent. Descent between two persons, traced through the mother of the younger.

mediate descent. 1. A descent not occurring immediately, as when a granddaughter receives land from her grandmother, which first passed to the mother. 2. A direct descent occurring through a link in consanguinity, as when a granddaughter receives land from her grandfather directly.

“The law categorizes descents as either lineal or collateral, and as mediate or immediate. The term mediate or immediate descent may denote either the passing of the estate, or the relationship between the intestate and the heir. The classification of descents as mediate or immediate describes the proximity of the descent, while the characterization as lineal or collateral refers to the direction of the descent.” 23 Am. Jur. 2d Descent and Distribution § 49, at 787–88 (1983).

paternal-line descent. Descent between two persons, traced through the father of the younger.

#### DESCENT AND DISTRIBUTION

descent and distribution. 1. See intestate succession under SUCCESSION(2). 2. Broadly, the rules by which a decedent's property is passed, whether by intestate succession or by will. See DISTRIBUTION(1).

#### DESCENT CAST

descent cast. Hist. The devolution of realty that has been acquired by disseisin, abatement, or intrusion, upon an heir whose ancestor died intestate. • This tolled the real owner's right of entry until the owner brought a legal action. — Also termed descent which tolls entry.

#### DESCRIPTION

description. 1. A delineation or explanation of something by an account setting forth the subject's characteristics or qualities <description of a patentable process>. 2. A representation by words or drawing of something seen or heard or otherwise experienced <description of the criminal> <description of the accident>. 3. An enumeration or specific identification of something < description of items in the estate>. 4. LEGAL DESCRIPTION. 5. Patents. In a U.S. patent

application, the section that (1) comprehensively characterizes the invention in language that is clear and complete enough to enable anyone skilled in the relevant art to make and use the invention; (2) explains the best mode for using the invention; and (3) usu. includes an explanation of drawings that are part of the application. • The detailed description typically makes up the largest portion of the application's specification. — Also termed (in sense 5) enabling disclosure; enabling requirement; written description. [Cases: Patents 99. C.J.S. Patents § 139.]

#### DESCRIPTIO PERSONAE

descriptio personae (di-skrip-shee-oh p<<schwa>>r-soh-nee). [Law Latin] Description of the person. • This phrase, typically used to identify or describe a person in a contract or deed, is not essential to a document's validity. Cf. DESIGNATIO PERSONAE.

#### DESCRIPTIVE COMPARATIVE LAW

descriptive comparative law. See COMPARATIVE LAW.

#### DESCRIPTIVE MARK

descriptive mark. See descriptive trademark under TRADEMARK.

#### DESCRIPTIVE TRADEMARK

descriptive trademark. See TRADEMARK.

#### DESCRIPTIVE WORD

descriptive word. Trademarks. A term that portrays a general characteristic or function of a product or service. • A descriptive word may not be registered as a trademark unless it has acquired secondary meaning in the minds of consumers so that it is directly associated with one brand. [Cases: Trade Regulation 164. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 162.]

“A trader cannot appropriate to his exclusive use words or symbols which (in the application he is to make of them) are public property. The right of all to use descriptive words in their ordinary and usual meaning must not be restricted. No sign or form of words may be appropriated as a trade-mark, for use in its primary meaning, which, from the nature of the fact conveyed by that primary meaning, others may employ with equal truth, and with equal right, for the same purpose.” Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 524 (1929).

#### DE SCUTAGIO HABENDO

de scutagio habendo (dee skyoo-tay-jee-oh h<<schwa>>-ben-doh), n. [Law Latin “for having scutage”] Hist. 1. A writ ordering a tenant-in-chief by knight's service to serve in a war, send a substitute, or pay a sum of money. 2. A writ authorizing a lord who had served in the war or paid the required fine to recover the scutage from his knight's fees. See SCUTAGE.

“Such a baron, having proved that he fulfilled his contract or paid his fine, will have a royal writ de scutagio habendo, whereby the sheriff will be ordered to cause him to have the scutage due

from his tenants. Still, before he can get his scutage, he has to obtain something that the king is apt to treat as a favour.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 270 (2d ed. 1898).

#### DESECRATE

desecrate, vb. To divest (a thing) of its sacred character; to defile or profane (a sacred thing).

#### DE SECTA AD MOLENDINUM

de secta ad molendinum (dee sek-t<<schwa>> ad m<<schwa>>-len-di-n<<schwa>>m), n.[Law Latin “of suit at mill”] Hist. A writ forcing a person to continue grinding corn at a particular mill, as was customary, or to give a good reason why the custom should not be continued.

“There are also other services, due by ancient custom and prescription only. Such is that of doing suit to another's mill: where the persons, resident in a particular place, by usage time out of mind have been accustomed to grind their corn at a certain mill; and afterwards any of them go to another mill, and withdraw their suit ... from the ancient mill. This is not only a damage, but an injury, to the owner .... And for this injury the owner shall have a writ de secta ad molendinum commanding the defendant to do his suit at that mill ... or show good cause to the contrary: in which action the validity of the prescription may be tried, and if it be found for the owner, he shall recover damages against the defendant.” 3 William Blackstone, *Commentaries on the Laws of England* 234–35 (1768).

#### DE SECTIS NON FACIENDIS

de sectis non faciendis (dee sek-tis non fay-shee-en-dis), n.[Law Latin “of not doing services”] Hist. A writ exempting a ward or dowress from performing certain services.

#### DESEGREGATION

desegregation, n.1. The abrogation of policies that separate people of different races into different institutions and facilities (such as public schools). [Cases: Schools 13. C.J.S. Civil Rights §§ 108, 111, 121.] 2. The state of having had such policies abrogated. Cf. INTEGRATION (4). — desegregate, vb.

#### DE SEISINA HABENDA

de seisina habenda (dee see-zin-<<schwa>> h<<schwa>>-ben-d<<schwa>>), n.[Law Latin “of holding seisin”] Hist. A writ ordering the sovereign to deliver seisin of lands and tenements to a lord, after holding them for the allowed year and a day because the lord's tenant committed a felony.

#### DESERTER

deserter. Int'l law. A soldier who leaves national military service with the intention of reneging on military obligations either permanently or for the duration of a military operation; a person who illegally abandons a military force, often by seeking refuge in a foreign territory or by joining

enemy forces. [Cases: Armed Services 38; Military Justice 661. C.J.S. Armed Services § 156; Military Justice § 55.]

#### DESERTION

desertion, n. The willful and unjustified abandonment of a person's duties or obligations, esp. to military service or to a spouse or family. • In family law, the five elements of spousal desertion are (1) a cessation of cohabitation, (2) the lapse of a statutory period, (3) an intention to abandon, (4) a lack of consent from the abandoned spouse, and (5) a lack of spousal misconduct that might justify the abandonment. — Also termed gross neglect of duty. Cf. ABANDONMENT. [Cases: Armed Services 38; Divorce 37; Military Justice 661. C.J.S. Armed Services § 156; Divorce §§ 20, 41; Military Justice § 55.] — desert, vb.

constructive desertion. One spouse's misconduct that forces the other spouse to leave the marital abode. • The actions of the offending spouse must be serious enough that the spouse who is forced from the home finds the continuation of the marriage to be unendurable or dangerous to his or her safety and well-being, and finds it necessary to seek safety outside the marital domicile. — Also termed constructive abandonment. [Cases: Divorce 37(22). C.J.S. Divorce §§ 41, 44, 78.]

criminal desertion. One spouse's willful failure without just cause to provide for the care, protection, or support of the other spouse who is in ill health or needy circumstances. [Cases: Husband and Wife 302, 304.]

obstinate desertion. Desertion by a spouse who persistently refuses to return to the marital home, so that the other spouse has grounds for divorce. • Before the advent of no-fault divorce, this term was commonly used in divorce statutes. The term was often part of the longer phrase willful, continued, and obstinate desertion. [Cases: Divorce 37(15). C.J.S. Divorce §§ 41, 78.]

willful, continued, and obstinate desertion. See obstinate desertion.

#### DESERTS

deserts. See JUST DESERTS.

#### DESIGN

design, n. 1. A plan or scheme. 2. Purpose or intention combined with a plan.

formed design. Criminal law. The deliberate and fixed intention to kill, though not necessarily a particular person. See PREMEDITATION. [Cases: Homicide 535.]

3. The pattern or configuration of elements in something, such as a work of art. 4. Patents. The drawing or the depiction of an original plan for a novel pattern, model, shape, or configuration that is chiefly decorative or ornamental. • If it meets other criteria, a design may also be protectable as a trademark. — design, vb.

#### DESIGN AROUND

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design around,vb. Patents. To make something that performs the same function or has the same physical properties as (a patented product or process) but in a way different enough from the original that it does not infringe the patent. See DOCTRINE OF EQUIVALENTS.

**DESIGNATE**

designate,n. See DESIGNEE.

**DESIGNATED PUBLIC FORUM**

designated public forum.See PUBLIC FORUM.

**DESIGNATING PETITION**

designating petition.A document used to designate a candidate for a party nomination at a primary election or for election to a party position. [Cases: Elections 126(1). C.J.S. Elections §§ 112–113, 115(1).]

**DESIGNATIO PERSONAE**

designatio personae (dez-*<<schwa>>*g-nay-shee-oh p*<<schwa>>*r-soh-nee). [Law Latin] Designation of the person by class or category rather than by name, as “the children of A.” • This phrase was used to specifically identify a person in a contract or deed, often as a word of limitation (e.g., “to my eldest son”). Cf. DESCRIPTIO PERSONAE.

**DESIGN CLAIM**

design claim.See PATENT CLAIM.

**DESIGN DEFECT**

design defect.See DEFECT.

**DESIGN-DEFECT EXCLUSION**

design-defect exclusion.See EXCLUSION(3).

**DESIGNEDLY**

designedly,adv. Willfully; intentionally.

**DESIGNEE**

designee. A person who has been designated to perform some duty or carry out some specific role. — Also termed designate (dez-ig-n*<<schwa>>*t), n.

**DESIGNER DEFENSE**

designer defense.See DEFENSE(1).

**DESIGNER DRUG**

designer drug.See DRUG.



## DESIGN PATENT

design patent. See PATENT(3).

## DESIGN REVIEW

design review. A process by which a building permit is not issued until the proposed building meets the architectural standards established by land-use regulations. — Also termed architectural review. [Cases: Zoning and Planning 431–446. C.J.S. Zoning and Land Planning §§ 198, 204–211, 213–216.]

## DESIGN SPECIFICATION

design specification. See STATEMENT OF WORK.

## DESIGN-SPECIFICATION CONTRACT

design-specification contract. See build-to-print contract under CONTRACT.

## DESIST

desist. To stop or leave off. See CEASE-AND-DESIST ORDER.

## DESK AUDIT

desk audit. See AUDIT.

## DE SOLEMNITATE

de solemnitate (dee s<<schwa>>-lem-ni-tay-tee). [Law Latin] Scots law. As a solemnity. • The phrase appeared in reference to certain deed requirements essential to the deed's validity. Cf. EX SOLEMNITATE.

## DE SON TORT

de son tort (d<<schwa>> sawn [or son] tor[t]). [Law French “by his own wrongdoing”] Wrongful.

executor de son tort. See EXECUTOR.

trustee de son tort. See TRUSTEE.

## DE SON TORT DEMESNE

de son tort demesne (d<<schwa>> sawn tor[t] di-mayn). [Law French] Of a person's own wrong. • This is the law French equivalent of the Latin phrase de injuria. See DE INJURIA.

## DESPERATE DEBT

desperate debt. See DEBT.

## DESPITUS

despitus (di-spI-t<<schwa>>s ordes-pi-t<<schwa>>s). [Law Latin] 1. Contempt. 2. A

contemptible person.

#### DESPOIL

despoil (di-spoil), vb. To deprive (a person) of possessions illegally by violence or by clandestine means; to rob. — despoliation (di-spoh-lee-ay-sh<<schwa>>n), despoilment, n.

#### DESPONSATION

desponsation (dee-spon-say-sh<<schwa>>n). Archaic. The act of betrothal; the act of contracting for marriage.

#### DESPOT

despot (des-p<<schwa>>t), n. 1. A ruler with absolute power and authority. 2. A tyrant. — despotism (di-spot-ik), adj.

#### DESPOTISM

despotism (des-p<<schwa>>-tiz-<<schwa>>m). 1. A government by a ruler with absolute, unchecked power. 2. Total power or controlling influence.

#### DE STATU DEFUNCTORUM

de statu defunctorum (dee stay-t[y]oo dee-f<<schwa>>ngk-tor-<<schwa>>m). [Law Latin] Scots law. Concerning the status of the decedent. • The phrase was often used to refer to questions about the decedent's legitimacy.

#### DE STATUTO MERCATORIO

de statuto mercatorio (dee st<<schwa>>-tyoo-toh m<<schwa>>r-k<<schwa>>-tor-ee-oh), n. [Law Latin “of statute merchant”] Hist. A writ ordering the imprisonment of someone who forfeits a statute-merchant bond until the debt has been paid. See STATUTE MERCHANT.

#### DE STATUTO STAPULAE

de statuto stapulae (dee st<<schwa>>-tyoo-toh stay-py<<schwa>>-lee), n. [Law Latin “of statute staple”] Hist. A writ to seize the property of and imprison a person who forfeits a statute-staple bond. See STATUTE STAPLE.

#### DESTINATION

destination. 1. The predetermined end of a course, as of a voyage or package shipment. 2. The act of appointment, esp. in a will; a designation. 3. Scots law. The nomination of heirs — esp. in a certain order — by law or under a will.

“The series of heirs called to the succession of heritable or moveable property, either by the provision of the law or by the will of the proprietor, is, generally speaking, termed a destination; but the term is usually applied, in a more limited sense, to a nomination of successors in a certain order, regulated by the will of the proprietor.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 320 (George Watson ed., 7th ed. 1890).

4.Scots law. The line of successors so appointed.

#### DESTINATION BILL OF LADING

destination bill of lading.See BILL OF LADING.

#### DESTINATION CONTRACT

destination contract.See CONTRACT.

#### DESTINATION DU PÈRE DE FAMILLE

destination du père de famille (des-tee-nah-syawm doo pair d<<schwa>> fa-mee). [French “destination of the father of the family”] 1.Civil law. The legal standing of the owner of two estates that would be subject to a servitude if they were not owned by the same person. • When the two estates cease to be owned by the same owner, a servitude comes into existence if (1) the servitude is apparent from external signs, such as a roadway or a pipeline, or (2) the common owner recorded a declaration establishing the destination. La. Civ. Code art. 741. 2.Hist. A property use that the owner has intentionally established on one part of the property in favor of another part.

#### DESTINATIONE

destinatione (des-ti-nay-shee-oh-nee). [Law Latin] Hist. By destination or appointment of an heir. • The phrase appeared in reference to the process, made possible through a destination clause, by which an heir was appointed to a succession in a certain order. See DESTINATION(2),(3).

#### DESTITUTE

destitute (des-ti-t[y]oot), adj.1. Deprived; bereft. 2. Not possessing the necessities of life; lacking possessions and resources; indigent.

#### DESTITUTIVE FACT

destitutive fact.See divestitive fact under FACT.

#### DESTRUCTIBILITY

destructibility,n. The capability of being destroyed by some action, turn of events, or operation of law. — destructible,adj.

#### DESTRUCTIBILITY OF CONTINGENT REMAINDERS

destructibility of contingent remainders.Property. The common-law doctrine requiring a future interest to vest by the time it is to become possessory or else suffer total destruction (the interest then reverting to the grantor). The doctrine could be avoided by the use of trustees to preserve contingent remainders. • This doctrine has been abolished in all but a few American jurisdictions; the abolishing statutes are commonly termed anti-destructibility statutes. — Also termed destructibility rule. [Cases: Remainders 10. C.J.S. Estates §§ 88–89, 91–92.]

“The destructibility rule still exists in its old common-law form in Florida. Various authors

have suggested that it also exists unchanged in Arkansas, North Carolina, Oregon, Pennsylvania, South Carolina, and Tennessee; but there are no statutes or recent decisions to clarify the rule's status in these states.” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 79 n.46 (2d ed. 1984).

#### DESTRUCTIBLE TRUST

destructible trust. See TRUST.

#### DESTRUCTION

destruction. 1. The act of destroying or demolishing; the ruining of something. 2. Harm that substantially detracts from the value of property, esp. personal property. 3. The state of having been destroyed.

#### DESUETUDE

desuetude (des-w<<schwa>>-t[y]ood). 1. Lack of use; obsolescence through disuse. 2. The doctrine holding that if a statute or treaty is left unenforced long enough, the courts will no longer regard it as having any legal effect even though it has not been repealed. [Cases: Statutes 173. C.J.S. Statutes § 292.]

“[T]he doctrine of desuetude has had in all legal systems a very limited and cautious application. For the anachronistic statute a better remedy may be found through reinterpretation in the light of new conditions; as Gray remarks with some irony. ‘It is not as speedy or as simple a process to interpret a statute out of existence as to repeal it, but with time and patient skill it can often be done.’ ” Lon L. Fuller, *Anatomy of the Law* 38 (1968) (quoting John Chipman Gray, *The Nature and Sources of Law* 192 (1921)).

“There is no doctrine of desuetude in English law, so a statute never ceases to be in force merely because it is obsolete. Normally there must be an express repeal, but the whole or part of an enactment may be impliedly repealed by a later statute.” Rupert Cross, *Statutory Interpretation* 3 (1976).

#### DE SUPERONERATIONE PASTURAE

de superoneratione pasturae (dee soo-p<<schwa>>-roh-n<<schwa>>-ray-shee-oh-nee pas-ty<<schwa>>-ree), n. [Law Latin “of surcharge of pasture”] Hist. A judicial writ against a person who was initially brought into county court for putting too many cattle on pasture, and later was impleaded in the same court on the same charge, and the cause was removed to the superior court at Westminster.

#### DE TABULIS EXHIBENDIS

de tabulis exhibendis (dee tab-y<<schwa>>-lis ek-si-ben-dis). [Latin] Roman law. Of producing the tablets of a will. • This was a subject covered under Roman exhibitory interdicts governing the production of documents. A will of a deceased person had to be produced and opened to determine whether the applicant had rights under it.

## DETACHIARE

detachiare (di-tak-ee-air-ee or di-tash-ee-air-ee), vb.[Law Latin] Hist. To seize a person or property by a writ of attachment or other legal remedy.

## DETAINDER

detainer. 1. The action of detaining, withholding, or keeping something in one's custody.

forcible detainer.See FORCIBLE DETAINDER.

unlawful detainer.The unjustifiable retention of the possession of real property by one whose original entry was lawful, as when a tenant holds over after lease termination despite the landlord's demand for possession. [Cases: Forcible Entry and Detainer 5.]

2. The confinement of a person in custody. 3. A writ authorizing a prison official to continue holding a prisoner in custody. [Cases: Extradition and Detainers 52.] 4. A person who detains someone or something.

## DE TALLAGIO NON CONCEDENDO

de tallagio non concedendo (dee t<<schwa>>-lay-jee-oh non kon-s<<schwa>>-den-doh), n.[Law Latin “of not granting tallage”] Hist. The title of a statute declaring that no taxes will be imposed by the king or his heirs without the consent of the archbishops, bishops, earls, barons, knights, and other freemen of the realm. • The statute has been used to support the constitutional doctrine disallowing taxation except by Parliament. 34 Edw., st. 4.

## DETECTION

detection. The act of discovering or revealing something that was hidden, esp. to solve a crime.

“There is a clear distinction between inducing a person to do an unlawful act and setting a trap to catch him in the execution of a criminal plan of his own conception. There is also a distinction between the terms ‘detection’ and ‘entrapment,’ as applied to the activities of law enforcement officers. Legitimate detection of crime occurs when officers test a suspected person by offering him an opportunity to transgress the law in such manner as is usual in the activity alleged to be unlawful. On the other hand, entrapment occurs when officers induce a person to violate the law when he would not otherwise do so.” 21 Am. Jur. 2d Criminal Law § 202 (1981).

## DE TEMPORE CUJUS CONTRARIUM MEMORIA HOMINUM NON EXISTIT

de tempore cujus contrarium memoria hominum non existit (dee tem-p<<schwa>>-ree k[y]oo-j<<schwa>>s k<<schwa>>n-trair-ee-<<schwa>>m m<<schwa>>-mor-ee-<< schwa>> hom-<<schwa>>-n<<schwa>>m non eg-zis-tit). [Latin] From time whereof the memory of man does not exist to the contrary. See LEGAL MEMORY.

## DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA

de tempore in tempus et ad omnia tempora (dee tem-p<<schwa>>-ree in tem-p<< schwa>>s

et ad om-nee-<<schwa>> tem-p<<schwa>>-r<<schwa>>). [Latin] From time to time, and at all times.

#### DE TEMPS DONT MEMORIE NE COURT

de temps dont memorie ne court (d<<schwa>> tahn dawnmem-<<schwa>>-ree n<< schwa>> koor). [Law French] From time whereof memory does not run; time out of human memory. • This Law French phrasing was a forerunner of Blackstone's classic formulation: "time whereof the memory of man does not run to the contrary." 1 William Blackstone, Commentaries on the Laws of England 460–61 (1765). See LEGAL MEMORY.

#### DÉTENTE

détente (day-tahnt). [French] 1. The relaxation of tensions between two or more parties, esp. nations. 2. A policy promoting such a relaxation of tensions. 3. A period during which such tensions are relaxed. Cf. ENTENTE; ALLIANCE.

#### DETENTIO

detentio (di-ten-shee-oh), n.[Latin] 1.Roman law. See possessio naturalis under POSSESSIO. 2.Hist. Detention; detainment, as opposed to captio ("taking").

#### DETENTION

detention,n.1. The act or fact of holding a person in custody; confinement or compulsory delay. — detain,vb.

investigative detention.The holding of a suspect without formal arrest during the investigation of the suspect's participation in a crime. • Detention of this kind is constitutional only if probable cause exists.

pretrial detention. 1. The holding of a defendant before trial on criminal charges either because the established bail could not be posted or because release was denied. 2. In a juvenile-delinquency case, the court's authority to hold in custody, from the initial hearing until the probable-cause hearing, any juvenile charged with an act that, if committed by an adult, would be a crime. • If the court finds that releasing the juvenile would create a serious risk that before the return date the juvenile might commit a criminal act, it may order the juvenile detained pending a probable-cause hearing. Juveniles do not have a constitutional right to bail. The Supreme Court upheld the constitutionality of such statutes in *Schall v. Martin*, 467 U.S. 253, 104 S.Ct. 2403 (1984). — Also termed temporary detention.

preventive detention.Confinement imposed usu. on a criminal defendant who has threatened to escape, poses a risk of harm, or has otherwise violated the law while awaiting trial, or on a mentally ill person who may cause harm.

2. Custody of property; esp., an employee's custody of the employer's property without being considered as having legal possession of it.

#### DETENTION HEARING

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detention hearing. See HEARING.

#### DETENTION IN A REFORMATORY

detention in a reformatory. A juvenile offender's sentence of being sent to a reformatory school for some period. [Cases: Infants 223.1.]

#### DETERMINABLE

determinable, adj. 1. Liable to end upon the happening of a contingency; terminable <fee simple determinable>. 2. Able to be determined or ascertained <the delivery date is determinable because she kept the written invoice>.

#### DETERMINABLE EASEMENT

determinable easement. See EASEMENT.

#### DETERMINABLE ESTATE

determinable estate. See ESTATE(1).

#### DETERMINABLE FEE

determinable fee. 1. See fee simple determinable under FEE SIMPLE. 2. See base fee under FEE(2).

#### DETERMINABLE FREEHOLD

determinable freehold. See determinable estate under ESTATE(1).

#### DETERMINATE HOSPITALIZATION

determinate hospitalization. A fixed period of hospitalization, usu. by civil commitment.

#### DETERMINATE OBLIGATION

determinate obligation. See OBLIGATION.

#### DETERMINATE SENTENCE

determinate sentence. See SENTENCE.

#### DETERMINATION

determination, n. 1. A final decision by a court or administrative agency <the court's determination of the issue>. [Cases: Administrative Law and Procedure 489; Federal Civil Procedure 928. C.J.S. Public Administrative Law and Procedure §§ 147–148.]

initial determination. The first determination made by the Social Security Administration of a person's eligibility for benefits. [Cases: Social Security and Public Welfare 8.5, 142.15, 175.25. C.J.S. Social Security and Public Welfare §§ 13, 75.]

2. The ending or expiration of an estate or interest in property, or of a right, power, or

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authority <the easement's determination after four years>. — determine,vb.

#### DETERMINATION LETTER

determination letter.A letter issued by the Internal Revenue Service in response to a taxpayer's request, giving an opinion about the tax significance of a transaction, such as whether a nonprofit corporation is entitled to tax-exempt status. — Also termed ruling letter. [Cases: Internal Revenue 3049.]

#### DETERMINATIVE JUDGMENT

determinative judgment.See final judgment under JUDGMENT.

#### DETERMINISM

determinism. (sometimes cap.) A philosophy that human behavior is governed primarily by preexisting conditions, such as family or environmental factors, and is not influenced by will. — deterministic,adj.

#### DE TERMINO MOTO

de termino moto (dee t<<schwa>>r-m<<schwa>>-noh moh-toh). [Law Latin] Hist. The common-law offense of moving or defacing landmarks. • This was considered a serious crime because of the importance that agrarian laws attached to landmarks.

#### DETERRENCE

deterrence,n. The act or process of discouraging certain behavior, particularly by fear; esp., as a goal of criminal law, the prevention of criminal behavior by fear of punishment. Cf. REHABILITATION(1); RETRIBUTION (1). [Cases: Sentencing and Punishment 41.] — deter,vb. — deterrent,adj.

general deterrence.A goal of criminal law generally, or of a specific conviction and sentence, to discourage people from committing crimes.

special deterrence.A goal of a specific conviction and sentence to dissuade the offender from committing crimes in the future.

#### DETERRENT

deterrent,n. Something that impedes; something that prevents <a deterrent to crime>.

#### DETERRENT DANGER

deterrent danger.See DANGER.

#### DETERRENT PUNISHMENT

deterrent punishment.See PUNISHMENT.

#### DE THEOLONIO



de theolonio (dee thee-<<schwa>>-loh-nee-oh), n.[Law Latin "of toll"] Hist. A writ of trespass available to a person prevented from taking toll. See TOLL.

#### DE TIGNO JUNCTO

de tigno juncto (dee tig-noh j<<schwa>>gnk-toh). See actio de tigno juncto under ACTIO.

#### DETINET

detinet (det-i-net). [Latin] He detains. • An action in debt may be in detinet when the plaintiff alleges that the defendant wrongfully kept goods, as distinguished from wrongfully taking them. An action in debt may also be in detinet when it is brought by or against someone other than an original party to the debt, such as an executor. An action of replevin is in detinet when the defendant retains possession of the property until after the judgment. Cf. DEBET ET DETINET.

#### DETINUE

detinue (det-i-nyoo or -noo). A common-law action to recover personal property wrongfully taken by another. Cf. REPLEVIN; TROVER. [Cases: Detinue 1.C.J.S. Detinue § 1.]

“A claim in detinue lies at the suit of a person who has an immediate right to the possession of the goods against a person who is in actual possession of them, and who, upon proper demand, fails or refuses to deliver them up without lawful excuse. Detinue at the present day has two main uses. In the first place, the plaintiff may desire the specific restitution of his chattels and not damages for their conversion. He will then sue in detinue, not in trover. In the second place, the plaintiff will have to sue in detinue if the defendant sets up no claim of ownership and has not been guilty of trespass; for the original acquisition in detinue sur bailment was lawful.” R.F.V. Heuston, *Salmond on the Law of Torts* 111 (17th ed. 1977).

detinue of goods in frankmarriage.Hist. A writ allowing a divorced wife to obtain the goods given to her during the marriage.

detinue sur bailment (det-i-nyoo s<<schwa>>r bayl-m<<schwa>>nt). [Law French] Hist. An action to recover property that the defendant acquired by bailment but refuses to return.

#### DETINUIT

detinuit (di-tin-yoo-it). [Latin] He has detained. • An action is said to be in the detinuit when the plaintiff finally recovers possession of the property claimed under a writ of replevin.

#### DETOUR

detour,n. Torts. An employee's minor deviation from the employer's business for personal reasons. • Because a detour falls within the scope of employment, the employer is still vicariously liable for the employee's actions. Cf. FROLIC. [Cases: Master and Servant 302(6); Workers' Compensation 666. C.J.S. Employer–Employee Relationship §§ 221–222; Workmen's Compensation § 399.]

#### DETOURNEMENT

detournement (di-tuurn-m<<schwa>>nt), n. An employee's misappropriation of the employer's funds.

#### DETRACTION

detractio,n. The removal of personal property from one state to another after transfer of title by a will or inheritance.

#### DE TRANSGRESSIONE

de transgressione (dee trans-gresh-ee-oh-nee), n.[Law Latin "of trespass"] The general name of various writs of trespass. See TRESPASS.

#### DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM

de transgressione, ad audiendum et terminandum (dee trans-gresh-ee-oh-nee, ad aw-dee-en-d<<schwa>>m et t<<schwa>>r-mi-nan-d<<schwa>>m), n.[Law Latin "of trespass, for determining and hearing a misdemeanor"] Hist. A commission for hearing and determining an outrage or misdemeanor.

#### DETRIMENT

detriment. 1. Any loss or harm suffered by a person or property. 2.Contracts. The relinquishment of some legal right that a promisee would have otherwise been entitled to exercise. — Also termed legal detriment. Cf. BENEFIT(2).

"A promise or an act may be a detriment although on balance the promisor is making a good bargain. Thus a promise to pay £10,000 for a Rolls Royce worth £12,000, is none the less a detriment, and a good consideration for a promise to deliver the car." P.S. Atiyah, *An Introduction to the Law of Contract* 101 (3d ed. 1981).

detriment to a promisee.Contracts. Consideration offered by a promisee to a promisor, esp. in a unilateral contract. [Cases: Contracts 52. C.J.S. Contracts § 90.]

#### DETRIMENTAL RELIANCE

detrimental reliance.See RELIANCE.

#### DETUNICARI

detunicari (di-tyoo-ni-kair-I), vb.[Latin "to be revealed"] To discover; to lay open.

#### DE UNA PARTE

de una parte (dee yoo-n<<schwa>> pahr-tee), adj.[Latin] Of one party. • A deed is de una parte when only one party grants something to another, as distinguished from a deed inter partes. See INTER PARTES.

#### DEUTEROGAMY

deuterogamy (d[y]oo-t<<schwa>>r-og-<<schwa>>-mee), n.[fr. Greek deuterogamia "second

marriage”] A second marriage after the death of or divorce from the first spouse, or after an annulment of a first marriage. — Also termed digama; digamy.

#### DE UXORE RAPTA ET ABDUCTA

de uxore rapta et abducta (dee <<schwa>>k-sor-ee rap-t<<schwa>> et ab-d<<schwa>>k-t<<schwa>>), n.[Law Latin “of seizing and carrying away a man's wife”] Hist. A writ of trespass for a man whose wife had been raped and carried away.

#### DEVADIATUS

devadiatus (di-vad-ee-ay-t<<schwa>>s), n.[Law Latin] Hist. A defendant without a surety. — Also termed divadiatus.

#### DEVALUATION

devaluation, n. The reduction in the value of one currency in relation to another currency. Cf. REVALUATION. — devalue, vb.

#### DEVASTATION

devastation. 1. An executor's squandering or mismanagement of the deceased's estate. 2. An act of destruction. 3. WASTE(1).

#### DEVASTAVERUNT

devastaverunt (di-vas-t<<schwa>>-veer-<<schwa>>nt). [Latin pl. of devastavit “he (or she) has wasted”] They have wasted. • This word usu. referred to both an executor's waste of a decedent's property and the action against the executor for that waste.

#### DEVASTAVIT

devastavit (dev-<<schwa>>-stay-vit), n.[Latin “he (or she) has wasted”] A personal representative's failure to administer a decedent's estate promptly and properly, esp. by spending extravagantly or misapplying assets. • A personal representative who commits waste in this way becomes personally liable to those having claims on the assets, such as creditors and beneficiaries.

#### DE VASTO

de vasto (dee vas-toh), n.[Law Latin “of waste”] A writ allowing a reversioner or remainderman to compel a tenant for life or for years to appear and answer for the waste and resulting damage to the plaintiff's inheritance. See WASTE (1).

#### DEVELOPED WATER

developed water. See WATER.

#### DEVELOPING COUNTRY

developing country. Int'l law. A country that is not as economically or politically advanced as the main industrial powers. • Developing countries are located mostly in Africa, Asia, Eastern

Europe, the Middle East, and Latin and South America. — Also termed developing state; underdeveloped country; less-developed country; Third World country.

“Pertinent terminology has undergone extensive changes in the past 40 years. At the very start, before the category found its way into official texts, economic and political writings referred mainly to ‘poor’ or ‘backward’ countries. In the late 1940s, the term ‘underdeveloped countries’ came into common usage in economic literature and in the jargon of international organizations. It was replaced in the 1950s by the term ‘less developed countries,’ for which the current ‘developing countries’ was eventually substituted. These terms are essentially interchangeable as they refer to the same group and kind of countries. However, variations in the use of the term reflect significant changes in the perception of the central issue, namely, economic development, as well as responses to justified sensitivities on the part of the countries principally concerned.” A.A. Fatouros, “Developing States,” in 1 *Encyclopedia of Public International Law* 1017 (1992).

#### DEVELOPMENT

development. 1. A human-created change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavating, and drilling. 2. An activity, action, or alteration that changes undeveloped property into developed property.

#### DEVELOPMENTAL DISABILITY

developmental disability. See DISABILITY(2).

#### DEVELOPMENTAL NEGLECT

developmental neglect. See NEGLECT.

#### DEVELOPMENT-STAGE COMPANY

development-stage company. See COMPANY.

#### DE VENTRE INSPICIENDO

de ventre inspiciendo (dee ven-tree in-spish-ee-en-doh), n. [Law Latin “of (or for) inspecting the belly”] 1. A writ allowing a presumptive heir to summon a jury of matrons to verify the pregnancy of a widow suspected of feigning the pregnancy to produce a supposed heir. — Also termed *ad ventrem inspiciendum*. See *venire facias tot matronas* under VENIRE FACIAS.

“And this gives occasion to a proceeding at common law, where a widow is suspected to feign herself with child, in order to produce a supposititious heir to the estate: an attempt which the rigor of the Gothic constitutions esteemed equivalent to the most atrocious theft, and therefore punished with death. In this case with us the heir presumptive may have a writ de ventre inspiciendo to examine whether she be with child, or not ... and, if the widow be upon due examination found not pregnant, any issue she may afterwards produce, though within nine months, will be bastard.” 1 William Blackstone, *Commentaries on the Laws of England* 444 (1765).

2. A writ providing a temporary stay of execution if a jury of matrons determines that a

woman scheduled for execution and claiming pregnancy is “quick with child.” • The execution would be postponed until after the birth, but if the woman became pregnant a second time before execution, she had no remedy. — Sometimes shortened to *ventre inspiciendo*. — Also spelled *de ventre in spiciendo*.

#### DE VERBO IN VERBUM

*de verbo in verbum* (dee v<<schwa>>r-boh in v<<schwa>>r-b<<schwa>>m). [Law Latin]  
Word for word.

#### DEVEST

*devest* (di-vest), vb. 1. Hist. To deprive (a person) of possession, title, or property. 2. To take; to draw away. — Also spelled *divest*.

#### DEVIANCE

*deviance*, n. The quality or state of departing from established norms, esp. in social customs. — *deviate* (dee-vee-ayt), vb. — *deviant*, adj. & n. — *deviate* (dee-vee-<<schwa>>t), n.

#### DEVIATION

*deviation*. 1. Generally, a change from a customary or agreed-on course of action. 2. Employment law. A departure from one's course of employment to tend to a personal matter. • A deviation from the course of employment may be an issue in disputes about workers' compensation or about the employer's tort liability to third parties based on the employee's actions. See *COURSE OF EMPLOYMENT*. Cf. *FROLIC*. 3. Insurance. A departure by an insured party from a routine course of action, resulting in increased risk of some loss that the insured is indemnified against. [Cases: Insurance 3059. C.J.S. Insurance § 768.] 4. Maritime law. A departure from the terms expressed in a bill of lading or other transportation contract.

“For both geographic deviations and quasi-deviations, the contractual voyage is the benchmark against which the carrier's performance is to be measured. If the parties agreed to an indirect route, the carrier commits no deviation in following it; if the parties agreed to deck carriage, the carrier may stow the cargo on deck. All deviations ‘have one common, indispensable element — a violation of the terms of the bill of lading.’ ” Michael F. Sturley, “Deviation Defined,” in 2A *Benedict on Admiralty* 122 (7th rev. ed. 2002) (quoting *Rockwell Int'l Corp. v. M/V Incotrans Spirit*, 707 F.Supp. 272, 273 (S.D. Tex. 1989), *aff'd*, 998 F.2d 316 (5th Cir. 1993)).

*quasi-deviation*. A deviation from an agreed-on shipping term other than a deviation in course or destination (e.g., an unreasonable delay or the unauthorized carriage of cargo on deck).

*reasonable deviation*. A deviation that is justified by circumstances. • If a deviation is reasonable, the carrier does not lose its usual limitations and exemptions under the Carriage of Goods by Sea Act.

*unreasonable deviation*. A deviation that is not justified by circumstances. • An unreasonable deviation causes the carrier to lose the benefit of its usual limitations and exemptions under the

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 Carriage of Goods by Sea Act.

## DEVIATION DOCTRINE

deviation doctrine. 1. A principle allowing variation from a term of a will or trust to avoid defeating the document's purpose. 2. A principle allowing an agent's activity to vary slightly from the scope of the principal's permission. 3. Maritime law. The rule that a carrier loses the benefit of its limitations and exemptions under the Carriage of Goods by Sea Act if a deviation from the terms of the bill of lading is unreasonable, but does not if it is reasonable. [Cases: Insurance 3059. C.J.S. Insurance § 768.]

## DEVIATION-WELL SURVEY

deviation-well survey. An examination to determine whether a well is bottomed under another person's land.

## DEVICE

device. 1. Patents. A mechanical invention, as differentiated in patent law from a chemical discovery. • A device may be an apparatus or an article of manufacture. — Also termed machine. [Cases: Patents 11. C.J.S. Patents §§ 20, 25.] 2. A scheme to trick or deceive; a stratagem or artifice, as in the law relating to fraud. [Cases: Fraud 3.]

## DE VICINETO

de vicineto (dee vi-sin-*<<schwa>>*-toh or -sI-n*<<schwa>>*-toh). [Law Latin] From a vicinage; from a neighborhood. • This term was generally used in reference to a jury pool. See DE CORPORE COMITATUS.

## DE VI LAICA AMOVENDA

de vi laica amovenda (dee vI lay-*<<schwa>>*-k*<<schwa>>* ay-moh-ven-d*<<schwa>>*), n. [Law Latin “of removing a lay force”] Hist. A writ allowing a parson claiming rights to a church to order a sheriff to remove a group of laymen who, with another parson, had taken control of the church and prevented the new parson from entering.

## DEVILING

deviling (dev-*<<schwa>>*-ling). 1. The act of a barrister's handing a brief over to another to handle a case. 2. The practice of a junior barrister (known as a “devil”) who drafts pleadings or other documents for a senior barrister who approves them, signs them, and is ultimately responsible for the work. — Also spelled devilling.

## DEVIL ON THE NECK

devil on the neck. Hist. A torture device made of irons that fastened to a person's neck and legs and then wrenched together to either gradually or quickly break the person's back. • It was often used to coerce confessions.

## DEVISABLE

devisable,adj.1. Capable of being bequeathed by a will. 2. Capable of being invented. 3. Feigned.

#### DEVISAVIT VEL NON

devisavit vel non (dev-*<<schwa>>*-say-vit [or -zay-vit] vel non), n. [Law Latin “he (or she) devises or not”] Hist. An issue directed from a chancery court to a court of law to determine the validity of a will that has been contested, as by an allegation of fraud or testamentary incapacity. See VEL NON .

#### DEVISE

devise (di-vIz), n. 1. The act of giving property by will. • Although this term traditionally referred to gifts of real property — and in British usage the term is still confined to real property — in American usage the term has been considerably broadened. In both the Restatement of Property and the Uniform Probate Code, a disposition of any property by will is a devise. In the United States today, it is pedantry to insist that the noun devise be restricted to real property. [Cases: Wills 1. C.J.S. Wills §§ 1, 3, 174.] 2. The provision in a will containing such a gift. 3. Property disposed of in a will. 4. A will disposing of property. Cf. TESTAMENT(1). Cf. BEQUEST; LEGACY. — devise,vb.

alternative devise.A devise that, under the terms of the will, is designed to displace another devise if one or more specified events occur. — Also termed secondary devise. See younger-generation devise.

conditional devise.A devise that depends on the occurrence of some uncertain event. [Cases: Wills 639–668. C.J.S. Wills §§ 1380–1424.]

demonstrative devise.A devise, usu. of a specific amount of money or quantity of property, that is primarily payable from a designated source, but that may be payable from the estate's general assets if the designated property is insufficient. See Restatement (Third) of Property: Wills and Other Donative Transfers § 5.1 (1999). Cf. pecuniary devise.

executory devise.An interest in land, created by will, that takes effect in the future and depends on a future contingency; a limitation, by will, of a future estate or interest in land when the limitation cannot, consistently with legal rules, take effect as a remainder. • An executory devise, which is a type of conditional limitation, differs from a remainder in three ways: (1) it needs no particular estate to support it, (2) with it a fee simple or lesser estate can be limited after a fee simple, and (3) with it a remainder can be limited in a chattel interest after a particular estate for life is created in that interest. See conditional limitation under LIMITATION. [Cases: Wills 7. C.J.S. Wills §§ 58, 63–64, 68.]

“The reason of the institution of the executory devise was to support the will of the testator; for when it was evident that he intended a contingent remainder, and when it could not operate as such by the rules of law, the limitation was then, out of indulgence to wills, held to be good as an executory devise. They are not mere possibilities, but certain and substantial interests and estates, and are put under such restraints only as have been deemed requisite to prevent the mischiefs of

perpetuities, or the existence of estates that were unalienable.” 4 James Kent, Commentaries on American Law \*264 (George Comstock ed., 11th ed. 1866).

failed devise. See lapsed devise.

general devise. 1. A devise, usu. of a specific amount of money or quantity of property, that is payable from the estate's general assets. See Restatement (Third) of Property: Wills and Other Donative Transfers § 5.1 (1999). 2. A devise that passes the testator's lands without specifically enumerating or describing them. [Cases: Wills 583. C.J.S. Wills §§ 1090, 1105.]

lapsed devise. A devise that fails because the devisor outlives the named recipient. — Also termed failed devise; failed gift.

pecuniary devise. A demonstrative devise consisting of money. Cf. demonstrative devise.

primary devise. A devise to the first person named as taker. • For example, a devise of “Blackacre to A, but if A does not survive me then to B” names A as the recipient of the primary devise and B as the recipient of the secondary or alternative devise.

residuary devise. A devise of the remainder of the testator's property left after other specific devises are taken. [Cases: Wills 586. C.J.S. Wills §§ 1176–1179, 1184.]

secondary devise. See alternative devise.

specific devise. A devise that passes a particular piece of property. [Cases: Wills 751. C.J.S. Wills §§ 1662, 1667–1677, 1679–1683.]

younger-generation devise. An alternative devise to a descendant of the recipient of a primary devise. Unif. Probate Code § 2–603. • A devise of “Blackacre to A, but if A does not survive me then to A's child B” creates a younger-generation devise in A's descendant, B. See alternative devise.

devise, vb. To give (property) by will.

“The modern convention which sets apart ‘devise’ for ‘realty’ and ‘bequeath’ for ‘personalty’ is modern; in the middle ages, the English word ... is the equivalent of the French word.” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 338 (2d ed. 1899).

## DEVISEE

devisee (dev-<<schwa>>-zee or di-vI-zee). A recipient of property by will. Cf. LEGATEE.

first devisee. The first devisee designated to receive an estate under a will.

next devisee. The devisee who receives the remainder of an estate in tail, as distinguished from the first devisee. See FEE TAIL. [Cases: Wills 604. C.J.S. Wills § 1258.]

residuary devisee. The person named in a will who takes the testator's property that remains after the other devises.



## DEVISER

deviser. One who invents or contrives <the deviser of these patents>.

## DEVISOR

devisor. One who disposes of property (usu. real property) in a will. [Cases: Wills 1. C.J.S. Wills §§ 1, 3, 174.]

## DEVOIR

devoir (d<<schwa>>-vwahrordev-wahr).Hist. A duty; a tax. — Also spelled devoire.

“Devoire is as much as to say a duty. It is used in the statute of 2 R. 2, cap. 3, where it is provided, that all the western merchants, being of the king's amity, shall pay all manner of customs and subsidies, and other devoire of Calais.” Termes de la Ley 168 (1st Am. ed. 1812).

## DEVOLUTION

devolution (dev-<<schwa>>-loo-sh<<schwa>>n), n. The act or an instance of transferring one's rights, duties, or powers to another; the passing of such rights, duties, or powers by transfer or succession <the federal government's devolution of police power to the states>. — devolutionary,adj. — devolutionist,n.

## DEVOLUTIVE APPEAL

devolutive appeal.See APPEAL.

## DEVOLVE

devolve (di-vahlv), vb.1. To transfer (rights, duties, or powers) to another. 2. To pass (rights, duties, or powers) by transmission or succession. See DEVOLUTION.

## DEVY

devy (d<<schwa>>-vI), vb.[Law French] To die.

## DE WARRANTIA CHARTAE

de warrantia chartae (dee w<<schwa>>-ran-shee-<<schwa>> kahr-tee), n. [Law Latin “of a warranty of charter”] Hist. A writ allowing a tenant enfeoffed with a warranty, who was impleaded in an assize or other action in which the tenant could not call upon the warranty, to compel the feoffor to assist the tenant with a plea or defense, or else to pay damages and the value of the land, if it is recovered against the tenant.

“This we still make use of in the form of common recoveries, which are grounded on a writ of entry; a species of action that we may remember relies chiefly on the weakness of the tenant's title, who therefore vouches another person to warrant it .... In assises indeed, where the principal question is whether the demandant or his ancestors were or were not in possession till the ouster happened, and the title of the tenant is little (if at all) discussed, there no voucher is allowed; but the tenant may bring a writ of warrantia chartae against the warrantor, to compel him to assist him

with a good plea or defence, or else to render damages and the value of the land, if recovered against the tenant." 3 William Blackstone, Commentaries on the Laws of England 299 (1768).

## DE WARRANTIA DIEI

de warrantia diei (dee w<<schwa>>-ran-shee-<<schwa>> dI-ee-I), n. [Law Latin "of warranty of day"] Hist. A writ ordering a judge not to default a party for nonappearance because the Crown warranted that the party was busy in its service.

## DEXTRARIUS

dextrarius (dek-strair-ee-<<schwa>>s).Hist. One at the right hand of another.

## DEXTRAS DARE

dextras dare (dek-str<<schwa>>s dair-ee), vb.[Latin "to give right hands"] 1. To shake hands to show friendship. 2. To give oneself up to the power of another.

## DFA

DFA.abbr.DELAYED FUNDS AVAILABILITY.

## DFAS

DFAS.abbr.DEFENSE FINANCE AND ACCOUNTING SERVICE.

## DHS

DHS.abbr.1.DEPARTMENT OF HOMELAND SECURITY. 2. Department of Human Services. See DEPARTMENT OF PUBLIC WELFARE.

## DIA

DIA.abbr.DEFENSE INTELLIGENCE AGENCY.

## DIACONATE

diaconate (dI-ak-<<schwa>>-nit), n.[Law Latin] A deacon's office.

## DIACONUS

diaconus (dI-ak-<<schwa>>-n<<schwa>>s), n.[Law Latin] A deacon. See DEACON.

## DIAGNOSIS

diagnosis (dI-<<schwa>>g-noh-sis).1. The determination of a medical condition (such as a disease) by physical examination or by study of its symptoms. 2. The result of such an examination or study. Cf. PROGNOSIS.

clinical diagnosis.A diagnosis from a study of symptoms only.

physical diagnosis.A diagnosis from physical examination only.

## DIAGNOSTIC COMMITMENT

diagnostic commitment. See COMMITMENT.

### DIALECTIC

dialectic (dī-*lek-tik*), n.1. A school of logic that teaches critical examination of the truth of an opinion, esp. by discussion or debate. • The method was applied by ancient philosophers, such as Plato and Socrates, primarily in the context of conversational discussions involving questions and answers, and also by more modern philosophers, such as Immanuel Kant, who viewed it as a theory of fallacies, and G.W.F. Hegel, who applied the term to his philosophy proceeding from thesis, to antithesis, to synthesis. 2. An argument made by critically examining logical consequences. 3. A logical debate. 4. A disputant; a debater. Pl. dialectics.

### DIALLAGA

diallage (dī-*al-jee*), n.[fr. Greek diallag “interchange”] A rhetorical figure of speech in which arguments are placed in several points of view, and then brought to bear on one point.

### DIALOGUS DE SCACCARIO

Dialogus de Scaccario (dī-*al-g-s dee sk-kair-ee-oh*), n.[Law Latin “a dialogue of or about the Exchequer”] Hist. A treatise, written during the reign of Henry II, on the Court of Exchequer, set up in imaginary dialogue form between a master and a disciple. • Although some originally attributed the work to Gervase of Tilbury, it was probably written by Richard Fitz Nigel, the bishop of London under Richard I, and the former Treasurer of the Exchequer.

“The Dialogus de Scaccario is an anonymous book, but there can be little doubt that we are right in ascribing it to Richard Fitz Neal: that is to say, to Richard the son of that Nigel, bishop of Ely .... The book stands out as an unique book in the history of medieval England, perhaps in the history of medieval Europe. A high officer of state, the trusted counsellor of a powerful king, undertakes to explain to all whom it may concern the machinery of government. He will not deal in generalities, he will condescend to minute details. Perhaps the book was not meant for the general public so much as for the numerous clerks who were learning their business in the exchequer, but still that such a book should be written, is one of the wonderful things of Henry's wonderful reign.” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I 161–62* (2d ed. 1898).

### DIANATIC

dianatic (dī-*nat-ik*). See DIANOETIC.

### DIANOETIC

dianoetic (dī-*noh-et-ik*), n.[Greek dianoetikos, fr. dia- “through” + noein “to revolve in the mind”] Archaic. A form of logical reasoning that proceeds from one subject to another. — Also termed (erroneously) dianatic.

## DIARCHY

diarchy. [fr. Greek *dy* “two” + *archein* “rule”] A government jointly ruled by two people, such as William and Mary of England. — Also termed *duarchy*; *dyarchy*.

“Dyarchy. A term applied by Mommsen to the Roman principate ... a period in which he held that sovereignty was shared between the princes and the senate. The term has also been given to a system of government, promoted as a constitutional reform in India by Montagu and Chelmsford and introduced by the Government of India Act, 1919. It marked the introduction of democracy into the executive of the British administration of India by dividing the provincial executives into authoritarian and popularly responsible sections composed respectively of councillors appointed by the Crown and ministers appointed by the governor and responsible to the provincial legislative councils .... The system ended when full provincial autonomy was granted in 1935.” David M. Walker, *The Oxford Companion to Law* 386 (1980).

## DIARIUM

diarium (dI-air-ee-<<schwa>>m), n.[fr. Latin *dies* “day”] Roman law. An allowance (usu. of food) needed for a day; a daily allowance of food or pay. Pl. *diaria* (dI-air-ee-<<schwa>>).

## DIATIM

diatim (dI-ay-t<<schwa>>m). [fr. Latin *dies* “day”] Every day; daily.

## DICA

dica (dI-k<<schwa>>), n.[Law Latin] An account tally. See TALLY(1).

## DICAST

dicast (dI-kast ordik-ast), n.[Greek *dikastes*] Hist. An ancient Greek officer sitting as both judge and juror. • Each dicast was generally a free citizen over the age of 30. The dicasts sat together in groups of 100 to 500, according to each case's importance, and decided cases by a majority.

## DICIS CAUSA

dicis causa (dI-sis kaw-z<<schwa>>). [Latin] Roman law. For form's sake; on the surface. • The phrase appeared in reference to transactions completed in a certain form to conceal their true purpose.

## DICTATE

dictate, vb. 1. To pronounce orally for transcription. 2. To order; to command authoritatively.

## DICTATION

dictation. 1. The act of speaking words to be transcribed. 2. The words so transcribed.

## DICTATOR

dictator. 1. Roman law. An absolute ruler appointed in an emergency for a term of six months and subject to reappointment.

“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 reappointed. This was, in effect, a temporary reversion to monarchy.” R.W. Lee, *The Elements of Roman Law* 14 (4th ed. 1956).

2. A person, esp. a ruler, with absolute authority.

#### DICTUM

dictum (dik-t<<schwa>>m), n.1. A statement of opinion or belief considered authoritative because of the dignity of the person making it. 2. A familiar rule; a maxim. 3. OBITER DICTUM. Pl. dicta. [Cases: Courts 92.C.J.S. Courts §§ 142–143.]

“As a dictum is by definition no part of the doctrine of the decision, and as the citing of it as a part of the doctrine is almost certain to bring upon a brief maker adverse comment, lawyers are accustomed to speak of a dictum rather slightly, and sometimes they go so far as to intimate a belief that the pronouncing of a dictum is the doing of a wrong. Yet it must not be forgotten that dicta are frequently, and indeed usually, correct, and that to give an occasional illustration, or to say that the doctrine of the case would not apply to some case of an hypothetical nature, or to trace the history of a doctrine, even though it be conceded, as it must, that such passages are not essential to the deciding of the very case, is often extremely useful to the profession.” William M. Lile et al., *Brief Making and the Use of Law Books* 307 (3d ed. 1914).

dictum proprium (dik-t<<schwa>>m proh-pree-<<schwa>>m). A personal or individual dictum that is given by the judge who delivers an opinion but that is not necessarily concurred in by the whole court and is not essential to the disposition. — Also termed (loosely) dictum propria.

gratis dictum (gray-tis dik-t<<schwa>>m). 1. A voluntary statement; an assertion that a person makes without being obligated to do so. 2. A court's stating of a legal principle more broadly than is necessary to decide the case. 3. A court's discussion of points or questions not raised by the record or its suggestion of rules not applicable in the case at bar.

judicial dictum. An opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision. Cf. OBITER DICTUM.

obiter dictum. See OBITER DICTUM.

simplex dictum (sim-pleks dik-t<<schwa>>m). An unproved or dogmatic statement. See IPSE DIXIT.

#### DICTUM DE KENILWORTH

dictum de Kenilworth (dik-t<<schwa>>m dee ken-<<schwa>>l-w<<schwa>>rth), n. [Law Latin “edict of Kenilworth”] Hist. A declaration of an agreement between Edward I and the barons

who had opposed him under the leadership of Simon de Montfort. • The agreement, which concerned rent on the lands forfeited in the rebellion, was so called because it was made at Kenilworth castle in Warwickshire in A.D. 1266. It was published in the Statutes of the Realm and 52 Hen. 3.

#### DICTION PAGE

dictum page. See pinpoint citation under CITATION(3).

#### DICTION PROPRIA

dictum propria. See dictum proprium under DICTUM.

#### DIEBUS FERIATIS

diebus feriatis (dI-*<<schwa>>*-b*<<schwa>>*s feer-ee-ay-tis). [Latin] Hist. On holidays.

#### DIEI DICTIO

diei dictio (dI-ee-Idik-shee-oh). [Latin “appointing a day”] Roman law. 1. A magistrate's notice summoning the accused to appear on a fixed day for trial. 2. The service of a summons. — Also written diei dictio; diem dicere.

#### DIEM CLAUSIT EXTREMUM

diem clausit extremum (dI-*<<schwa>>*m klaw-zit ek-stree-m*<<schwa>>*m), n. [Law Latin “he closed his last day”] Hist. 1. A chancery writ, founded on the statute of Marlbury, ordering the county escheator, after the death of a chief tenant of the Crown, to summon a jury to determine the amount and value of land owned by the chief tenant, to determine the next heir, and to reclaim the property for the Crown. • It was a type of inquisition post mortem.

“Diem clausit extremum is a writ that lies where the king's tenant that holds in chief, dies; then this writ shall be directed to the excheator, to inquire of what estate he was seised, who is next heir, and his age, and of the certainty and value of the land, and of whom it is holden; and the inquisition shall be returned into the chancery, which is commonly called the office after the death of that person.” *Termes de la Ley* 169 (1st Am. ed. 1812).

2. An Exchequer writ ordering a sheriff to summon a jury to investigate a Crown debtor's place of death and amount of property owned, and to levy the property of the deceased's heirs and executors. • It was repealed by the Crown Proceedings Act of 1947. “And there is another writ of diem clausit extremum awarded out of the exchequer, after the death of an accomptant or debtor of his majesty, to levy the debt of his heir, executor, administrator's lands or goods.” *Termes de la Ley* 169 (1st Am. ed. 1812).

#### DIES

dies (dI-eez), n. [Latin] A day; days. Pl. dies.

dies ad quem (dI-eez ad kwem), n. [Latin “the day to which”] Civil law. An ending date for a transaction; the ending date for computing time, such as the day on which interest no longer

accrues.

*dies amoris* (dI-eez <<schwa>>-mor-is), n.[Law Latin] Hist. A day of favor; esp., a day set by the court for the defendant to make an appearance. • This was usu. the fourth day of the term, which was the first day the court normally sat for business. In addition, the defendant usu. had three days of grace from the summons to appear, but an appearance on the fourth day *quarto die post* (“on the fourth day thereafter”) was usu. sufficient.

*dies a quo* (dI-eez ay kwoh), n.[Latin “the day from which”] Civil law. A transaction's commencement date; the date from which to compute time, such as a day when interest begins to accrue. La. Civ. Code art. 1784.

*dies cedit* (dI-eez see-dit). [Latin “the time begins to run”] Roman & Scots law. The day on which an interest, esp. a legacy, vests; the day on which a conditional obligation becomes due. • An interest usu., but not always, vested on the day of the testator's death. — Also termed *dies cedens*. Cf. *dies venit*.

“A legacy was due, or became a valid right, either at the death of the testator or the occurrence of a condition precedent. This vesting of the property or the accruing of an obligation determined the content and nature of the interests involved. What the legatary got was discovered by examining what the legacy actually carried with it on the day when it became vested. To express the fact that the legacy had become vested, the technical expression *dies cedit* was used.” Max Radin, *Handbook of Roman Law* 434–35 (1927).

*dies comitiales* (dI-eez k<<schwa>>-mish-ee-ay-leez). [Latin] Roman law. The 190 days in the year when an election could be held or the people could assemble as a legislative body. • The praetors could not hold court while a legislative assembly was in session.

*dies communes in banco* (dI-eez k<<schwa>>-myoo-nee in bang-koh), n.[Law Latin “common days before the bench”] 1. Regular appearance dates in court. — Also termed common-return days. 2. An enactment printed under the Statutes of Henry III, regulating continuances and writ return dates.

*dies datus* (dI-eez day-t<<schwa>>s), n.[Law Latin “a given day”] A continuance, esp. for a defendant before a declaration is filed; a time of respite in a case. • A continuance granted after the filing of the declaration is called an *imparlance*. See *IMPARLANCE*.

*dies datus in banco* (dI-eez day-t<<schwa>>s in bang-koh), n.[Law Latin] A day given before the bench, as distinguished from a day *at nisi prius*.

*dies datus partibus* (dI-eez day-t<<schwa>>s pahr-t<<schwa>>-b<<schwa>>s), n.[Law Latin “a day given to the parties”] A continuance; an adjournment.

*dies datus prece partium* (dI-eez day-t<<schwa>>s pree-see pahr-shee-<<schwa>>m), n.[Law Latin “a day given at the prayer of the parties”] A day given at the parties' request.

*dies Dominicus* (dI-eez d<<schwa>>-min-i-k<<schwa>>s), n.[Latin] The Lord's day; Sunday.

*dies excrescens* (dI-eez ek-skree-s<<schwa>>nz), n.[Law Latin “the increasing day”] The additional day in a leap year.

*dies fasti* (dI-eez fas-tI). [Latin] Roman law. A day when justice could be administered; a day when the praetor could officially pronounce the three words “do,” “dico,” and “addico.” — Also called triverbial days. Cf. NEFASTUS.

*dies feriati* (dI-eez fer-ee-ay-tI), n.[Latin] Roman & civil law. A holiday; holidays.

*dies gratiae* (dI-eez gray-shee-ee), n.[fr. Law French jour de grace] Hist. A day of grace, usu. granted to the plaintiff.

*dies in banco*. See DAYS IN BANK.

*dies intercesi* (dI-eez in-t<<schwa>>r-sI-zI). [Latin “divided days”] Roman law. A day when the courts were open for only part of the day.

*dies iudicis* (dI-eez juu-rid-i-k<<schwa>>s), n.[Latin] A day when justice can be administered. • This term was derived from the civil-law term *dies fasti*. See *dies fasti*.

*dies legitimus* (dI-eez l<<schwa>>-jit-i-m<<schwa>>s). [Latin] Roman law. A lawful day; a law day.

*dies marchiae* (dI-eez mahr-kee-ee), n.[Law Latin “a day of the march”] Hist. In the reign of Richard II, the annual day set aside for the wardens of the English and Scottish borders to hold peace talks and resolve differences.

*dies nefasti* (dI-eez nee-fas-tI), n. See NEFASTUS; *dies non iudicis*.

*dies non* (dI-eez non). See *dies non iudicis*.

*dies non iudicis* (dI-eez non juu-rid-i-k<<schwa>>s), n.[Law Latin “a day not juridical”] A day exempt from court proceedings, such as a holiday or a Sunday. — Often shortened to *dies non*.

*dies pacis* (dI-eez pay-sis), n.[Law Latin “day of peace”] Hist. A day of peace. • The days were originally divided into two categories: *dies pacis ecclesiae* (“a day of the peace of the church”) and *dies pacis regis* (“a day of the Crown's peace”).

*dies religiosi* (dI-eez ri-lij-ee-oh-sI). [Latin] Roman law. Religious days on which it was unlawful to transact legal or political business.

*dies solaris* (dI-eez s<<schwa>>-lair-is), n.[Law Latin “a solar day”] See solar day under DAY.

*dies solis* (dI-eez soh-lis). [Latin “day of the sun”] Roman law. Sunday.

*dies utiles* (dI-eez yoo-t<<schwa>>-leez). [Latin “available days”] Roman law. A day when something can be legally done, such as an application to the praetor to claim an inheritance.

*dies venit* (dI-eez vee-nit). [Latin “the day has come”] Roman & Scots law. The date when an



interest is both vested and actionable. • It is usu. the day when the heir accepts the inheritance and a legatee can claim payment of a legacy. — Also termed *dies veniens*. Cf. *dies cedit*.

“But the legacy, though vested, is not yet so completely the property of the legatary that he may bring an action for it. To express the fact that such a right of action accrues, the term *dies venit* was used. In general, it may be said that *dies veniens* occurred when, and not until, the heres has actually entered upon the inheritance. But, of course, if the legacy was conditional, the heres may enter before the condition happens. In that case, *dies veniens* will occur simultaneously with *dies cedens*; i.e., the legacy will vest and the bequest become actionable at the same moment.” Max Radin, *Handbook of Roman Law* 435 (1927).

*dies votorum* (dI-eez voh-tor-*<<schwa>>*m), n.[Latin “a day of vows”] A wedding day.

#### DIET

diet. 1. A regimen, esp. of food. 2. A governing body's meeting day for legislative, political, or religious purposes; specif., a national assembly of various European countries, such as the diet of the German empire, which was summoned by the emperor regularly to perform various functions, including levying taxes, enacting laws, and declaring war. 3.Scots law. A day to perform a duty, such as a court sitting day, an appearance day, and a criminal pleading or trial day. — Also spelled *dyet*.

“In procedure on indictment there are two diets, the pleading diet, when the accused is called to plead, and the trial diet when, if he has pled not guilty, he is tried.” David M. Walker, *The Oxford Companion to Law* 357 (1980).

#### DIETA

*dieta* (dI-ee-t*<<schwa>>*), n.[fr. Latin *dies* “day”] Hist. 1.A day's journey. 2. A day's work. 3. A day's expenses.

#### DIETARY LAW

dietary law.Any of the body of laws observed by members of various faiths regulating what foods may be eaten, how the foods must be prepared and served, and what combinations and contacts (e.g., between meat and milk) are prohibited.

#### DI. ET FI.

di. et fi.(dI et fI).abbr.DILECTO ET FIDELI.

#### DIEU ET MON DROIT

Dieu et mon droit (dyuu ay mawndrwah). [French “God and my right”] The motto of the royal arms of England. • It was first used by Richard I and, with the exception of Elizabeth I, was continually used from Edward III to William III, who used the motto *je maintiendrey*. Queen Anne used Elizabeth I's motto, *semper eadem*, but Dieu et mon droit has been used since her death.

#### DIEU SON ACTE

Dieu son acte (dyuu sawnakt), n.[Law Latin “an act of God”] Hist. An act of God, beyond human control.

#### DIFFACERE

diffacere (di-fay-s<<schwa>>-ree), vb.[fr. Old French deffacer] Hist. To deface; to mutilate. — Also termed disfacere; defacere.

#### DIFFERENT-DEPARTMENT RULE

different-department rule. A doctrine holding that people who work for the same employer are not fellow servants if they do not do the same work or do not work in the same department. • This rule, which creates an exception to the fellow-servant doctrine, has been rejected by many jurisdictions. See FELLOW-SERVANT DOCTRINE E; fellow servant under SERVANT.

#### DIFFERENTIAL PRICING

differential pricing. The setting of the price of a product or service differently for different customers. See PRICE DISCRIMINATION.

#### DIFFORCIARE

difforciare (di-for-shee-air-ee), vb.[Law Latin “to deny”] Hist. To keep (something) from someone; to deny (something) to someone.

#### DIFFUSED SURFACE WATER

diffused surface water. See WATER.

#### DIF SYSTEM

DIF system. See DISCRIMINANT FUNCTION.

#### DIGAMA

digama (dig-<<schwa>>-m<<schwa>>). See DEUTEROGAMY.

#### DIGAMY

digamy (dig-<<schwa>>-mee). See DEUTEROGAMY.

#### DIGEST

digest, n. 1. An index of legal propositions showing which cases support each proposition; a collection of summaries of reported cases, arranged by subject and subdivided by jurisdiction and court. • The chief purpose of a digest is to make the contents of reports available and to separate, from the great mass of caselaw, those cases bearing on some specific point. The American Digest System covers the decisions of all American courts of last resort, state and federal, from 1658 to present. — Abbr. D.; Dig.

“An important and numerous class of books included in the general division designated as books of secondary authority is the group known by the generic name of ‘Digests.’ A Digest is

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essentially an index to Cases. But it is much more than an ordinary index, for it indicates the holdings and (in some, though not all, publications) the facts of each case. Any particular digest is a summary of the case law coming within its scope, and its units are summaries of particular points of particular cases. What the syllabi of a reported case are to that case, a digest is to many cases. Were a digest simply a collection of citations to cases, arranged logically according to the contents of such cases, it would be a search book; but, being a summary of the case law, it is a book of secondary authority.” William M. Lile et al., *Brief Making and the Use of Law Books* 68 (3d ed. 1914).

2.Civil law. (cap.) A compilation and systematic statement of the various areas of law; chiefly, the Pandects of Justinian in 50 books, known as the Digest. — Also termed *digesta*; *digests*. See PANDECT(2).

#### DIGITAL AGENDA

digital agenda.Copyright. A series of ten proposed changes to copyright law announced by WIPO in 1999 and designed to protect intellectual-property rights on the Internet while promoting e-commerce. — Also termed WIPO digital agenda.

#### DIGITAL CASH

digital cash.See e-money under MONEY.

#### DIGITAL CERTIFICATE

digital certificate.A publicly available computer-based record that identifies the certifying authority and the subscriber who was issued a digital signature for electronically transmitted documents and that also provides the person's public key for decrypting the digital signature. • Subscribers register with certification authorities to obtain digital signatures. Certificates may include additional information, including issuance and expiration dates, and recommended reliance limits for transactions relying on the certificate. The certificate also serves as an electronic notarization when attached to an electronic document by the sender.

#### DIGITAL FINGERPRINTING

digital fingerprinting.See STEGANOGRAPHY.

#### DIGITAL MILLENNIUM COPYRIGHT ACT

Digital Millennium Copyright Act.A 1998 federal law harmonizing United States copyright protection with international law, limiting copyright liability for Internet service providers, and expanding software owners' ability to copy programs. • Among many other provisions, the statute extends copyright protection to computer programs, movies, and other audiovisual works worldwide; attempts to regulate cyberspace; forbids devices whose purpose is to evade digital antipiracy tools; and bars the production or distribution of falsified copyright-management information. 17 USCA §§ 1301–1332. — Abbr. DMCA.

#### DIGITAL SAMPLING

digital sampling. See SAMPLING.

#### DIGITAL SIGNATURE

digital signature. See SIGNATURE.

#### DIGITAL WATERMARKING

digital watermarking. See STEGANOGRAPHY.

#### DIGNITARY

dignitary, adj. Of or relating to one's interest in personal dignity, as contrasted with one's interest in freedom from physical injury and property damage. • Tort actions that compensate a plaintiff for a dignitary insult rather than physical injury or property damage include false-light privacy and negligent infliction of emotional distress.

dignitary, n. 1. A person who holds a high rank or honor. 2. Eccles. law. A person who, by virtue of holding a superior office, stands above ordinary priests and canons.

#### DIGNITARY TORT

dignitary tort. See TORT.

#### DIGNITY

dignity, n. 1. The state of being noble; the state of being dignified. 2. An elevated title or position. 3. A person holding an elevated title; a dignitary. 4. A right to hold a title of nobility, which may be hereditary or for life.

“Dignities may be hereditary, such as peerages ..., or for life, such as life peerages and knighthoods. The dignities of peerages and baronetcies are created by writ or letters patent, that of knighthood by dubbing as knight. A dignity of inheritance may also exist by prescription. Dignities of inheritance are incorporeal hereditaments having been originally annexed to the possession of certain lands or created by a grant of those lands and are generally limited to the grantee and his heirs or his heirs of the body. If heirs are not mentioned, the grantee holds for life only. The heirs are determined by the rules which governed the descent of land prior to 1926.” David M. Walker, *The Oxford Companion to Law* 358 (1980).

#### DIJUDICATION

dijudication (dī-joo-d<<schwa>>-kay-sh<<schwa>>n). Archaic. A judicial determination.

#### DILAPIDATION

dilapidation. (often pl.) Damage to a building resulting from acts of either commission or omission. • A dilapidation may give rise to liability if it constitutes an act of waste, a breach of contract, or a statutory violation.

#### DILAPIDATIONS, ACTION FOR

dilapidations, action for (d<<schwa>>-lap-<<schwa>>-day-sh<<schwa>>nz).Hist. An action brought by a new incumbent of a benefice for damages rising from the disrepair of the houses or buildings on the benefice. • The incumbent — whether of a rectory, a vicarage, or a chapel — sued the executors or administrators of the incumbent's deceased predecessor (who was not liable for the disrepairs while living). The incumbent of a benefice was bound to maintain the parsonage, farm buildings, and chancel in good and substantial repair, restoring and rebuilding when necessary, according to the original plan. But the incumbent did not have to supply or maintain anything in the nature of ornament.

#### DILATORY

dilatory (dil-<<schwa>>-tor-ee), adj. Tending to cause delay <the judge's opinion criticized the lawyer's persistent dilatory tactics>.

#### DILATORY DEFENSE

dilatory defense.See DEFENSE(1).

#### DILATORY EXCEPTION

dilatory exception.See EXCEPTION(1).

#### DILATORY FIDUCIARY

dilatory fiduciary.See FIDUCIARY.

#### DILATORY MOTION

dilatory motion.See MOTION(2).

#### DILATORY PLEA

dilatory plea.See PLEA(3).

#### DILECTO ET FIDELI

dilecto et fideli (di-lek-toh et fi-dee-II). [Law Latin] To his beloved and faithful. • This phrase was used in various writs. — Abbr. di. et fi.

#### DILIGENCE

diligence. 1. A continual effort to accomplish something. 2. Care; caution; the attention and care required from a person in a given situation. • The Roman-law equivalent is *diligentia*. See *DILIGENTIA*.

“Care, or the absence of *negligentia*, is *diligentia*. The use of the word diligence in this sense is obsolete in modern English, though it is still retained as an archaism of legal diction. In ordinary usage, diligence is opposed to idleness, not to carelessness.” John Salmond, *Jurisprudence* 393 n. (i) (Glanville L. Williams ed., 10th ed. 1947).

common diligence. 1. See due diligence (1).2. See ordinary diligence.

due diligence. 1. The diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. — Also termed reasonable diligence; common diligence. 2. Corporations & securities. A prospective buyer's or broker's investigation and analysis of a target company, a piece of property, or a newly issued security. • A failure to exercise due diligence may sometimes result in liability, as when a broker recommends a security without first investigating it adequately. [Cases: Securities Regulation 25.21(4), 25.62(2). C.J.S. Securities Regulation §§ 87, 95.]

extraordinary diligence. Extreme care that a person of unusual prudence exercises to secure rights or property.

great diligence. The diligence that a very prudent person exercises in handling his or her own property like that at issue. — Also termed high diligence.

low diligence. See slight diligence.

necessary diligence. The diligence that a person is required to exercise to be legally protected.

ordinary diligence. The diligence that a person of average prudence would exercise in handling his or her own property like that at issue. — Also termed common diligence.

reasonable diligence. 1. A fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue. 2. See due diligence (1).

slight diligence. The diligence that a person of less than common prudence takes with his or her own concerns. — Also termed low diligence.

special diligence. The diligence expected from a person practicing in a particular field of specialty under circumstances like those at issue.

3. Patents. Speed and perseverance in perfecting an invention. • Diligence is one factor in deciding which of two or more independent inventors will be granted a patent: if the first inventor cannot prove reasonable diligence in reducing the invention to practice, a later inventor may take priority. [Cases: Patents 90(3). C.J.S. Patents § 125.] 4. Scots law. A court-issued warrant to compel something, such as the attendance of a witness or the enforcement of an unpaid judgment debt. 5. Scots law. Any legal process available to a creditor to seize a debtor's property to compel the debtor to answer an action for debt, to preserve the property as security for a judgment that the creditor may obtain, or to liquidate the property in satisfaction of a judgment already obtained. • Forms of diligence include adjudication, arrestment, inhibition, poiding, and sequestration for rent. Until the mid-20th century, a debtor could also be imprisoned. The term diligence is also sometimes used to denote a warrant that may be granted to compel a witness's attendance or to compel production of documents. See EXECUTION(3).

#### DILIGENCE AGAINST THE HERITAGE

diligence against the heritage. Scots law. A writ of execution allowing a creditor to proceed against a debtor's real property.

**DILIGENT**

diligent,adj. Careful; attentive; persistent in doing something.

**DILIGENTIA**

diligentia (dil-⟨schwa⟩-jen-shee-⟨schwa⟩), n.[Latin] Roman law. Carefulness; diligence. • The failure to exercise diligentia might make a person liable if contractually obliged to look after another's interests, or it might result in tort liability. See DILIGENCE. Cf. NEGLIGENTIA.

“The texts distinguish two standards of diligence, a higher and a lower. The higher is the diligence which the good father of a family habitually exhibits in his own affairs (*diligentia exacta* or *exactissima* — *diligentia boni patrisfamilias*). The lower is the diligence which the person in question exhibits in his own affairs (*diligentia quam suis rebus*). This may, in fact, reach a high degree of diligence or it may not. But, at least, where this standard is applied nothing extraordinary is expected. It is a concrete standard. It is enough that the person in question pursues his normal course. According to a traditional terminology, where the first standard is applied, there is said to be liability for *culpa levis in abstracto* — slight negligence in the abstract; in the second case there is liability for *culpa levis in concreto* — slight negligence in the concrete.” R.W. Lee, *The Elements of Roman Law* 288 (4th ed. 1956).

*diligentia exactissima* (dil-⟨schwa⟩-jen-shee-⟨schwa⟩ eks-ak-tis-⟨schwa⟩-m⟨schwa⟩). [Latin] Extraordinary diligence that a head of a family habitually exercises in business. — Also termed *diligentia exacta*; *diligentia boni patrisfamilias*. See extraordinary diligence under DILIGENCE.

*diligentia media* (dil-i-jen-shee-⟨schwa⟩ mee-dee-⟨schwa⟩). [Law Latin] Scots law. Middle level of diligence; the level of diligence that a person of ordinary prudence exercises in his or her own affairs. — Also termed *diligentia quam suis rebus* (dil-⟨schwa⟩-jen-shee-⟨schwa⟩ kwam s[y]oo-is ree-b⟨schwa⟩s). See ordinary diligence under DILIGENCE.

*diligentia quam suis rebus*. See *diligentia media*.

*exacta diligentia* (eg-zak-t⟨schwa⟩ dil-⟨schwa⟩-jen-shee-⟨schwa⟩). [Latin] Roman law. Great care.

**DILIGENT INQUIRY**

diligent inquiry. A careful and good-faith probing to ascertain the truth of something.

**DILIGIATUS**

*diligiatus* (d⟨schwa⟩-lij-ee-ay-t⟨schwa⟩s), n.[fr. Latin *dis-* “apart” + *ligius* “under legal protection”] A person cast out of the law's protection; an outlaw.

**DILLON'S RULE**

Dillon's rule. The doctrine that a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant, and the powers that are indispensable to the existence of the unit of local government. • For the origins of this rule, see 1 John F. Dillon, *The Law of Municipal Corporations* § 89, at 115 (3d ed. 1881). [Cases: *Municipal Corporations* 57. C.J.S. *Municipal Corporations* §§ 104, 106, 108, 110–115, 117–118, 122, 137–138, 143, 145–146.]

#### DILUTION

dilution. 1. The act or an instance of diminishing a thing's strength or lessening its value. 2. Corporations. The reduction in the monetary value or voting power of stock by increasing the total number of outstanding shares. 3. Constitutional law. The limitation of the effectiveness of a particular group's vote by legislative reapportionment or political gerrymandering. • Such dilution violates the Equal Protection Clause. — Also termed vote dilution. [Cases: *Constitutional Law* 225.3(2). C.J.S. *Constitutional Law* § 818.] 4. Trademarks. The impairment of a famous trademark's strength, effectiveness, or distinctiveness through the use of the mark on an unrelated product, usu. blurring the trademark's distinctive character or tarnishing it with an unsavory association. • Trademark dilution may occur even when the use is not competitive and when it creates no likelihood of confusion. The elements of trademark dilution are (1) ownership of a famous mark and (2) actual dilution. But a plaintiff does not have to prove actual loss of sales or profits. *Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418, 123 S.Ct. 1115 (2003). See *BLURRING*; *TARNISHMENT*. [Cases: *Trade Regulation* 366. C.J.S. *Trade-Marks, Trade-Names, and Unfair Competition* § 79.]

#### DILUTION ACT

Dilution Act. See *FEDERAL TRADEMARK DILUTION ACT*.

#### DILUTION DOCTRINE

dilution doctrine. Trademarks. The rule protecting a trademark from a deterioration in strength, as when a person seeks to use the mark for an unrelated product.

#### DIMIDIETAS

dimidietas (dim-*<<schwa>>*-dī-*<<schwa>>*-tas), n. [Law Latin] Hist. Half of something; a moiety.

#### DIMIDIUM

dimidium (di-mid-ee-*<<schwa>>*m), n. [Latin “half”] Hist. 1. Half; a half — as in *dimidium unius libratae* (“half a pound”). 2. An undivided half of something.

#### DIMIDIUS

dimidius (di-mid-ee-*<<schwa>>*s), adj. [Latin “half”] Hist. 1. Half; doubled. 2. Loosely, incomplete.

#### DIMINISHED CAPACITY



diminished capacity. See CAPACITY(3).

#### DIMINISHED RESPONSIBILITY

diminished responsibility. See diminished capacity under CAPACITY(3).

#### DIMINUTIO

diminutio. See DEMINUTIO.

#### DIMINUTION

diminution (dim-⟨⟨schwa⟩⟩-n[y]oo-sh⟨⟨schwa⟩⟩n), n. 1. The act or process of decreasing, lessening, or taking away. 2. An incompleteness or lack of certification in a court record sent from a lower court to a higher one for review. 3. Trademarks. BLURRING. — diminish (for sense 1), vb.

#### DIMINUTION-IN-VALUE METHOD

diminution-in-value method. A way of calculating damages for breach of contract based on a reduction in market value that is caused by the breach. [Cases: Damages 123. C.J.S. Damages § 112.]

#### DIMISSIONARIE LITTERAE

dimissoriae litterae (dim-⟨⟨schwa⟩⟩-sor-ee-ee lit-⟨⟨schwa⟩⟩r-ee), n. [Latin “dimissory letters”] Eccles. law. See DIMISSORY LETTERS.

#### DIMISSIONARY LETTERS

dimissory letters (dim-⟨⟨schwa⟩⟩-sor-ee). 1. Hist. Eccles. law. Documents allowing a clergy member to leave one diocese for another. 2. Eccles. law. Documents provided by one bishop to enable another bishop to ordain a candidate already ordained in the former bishop's diocese.

#### DIMPLED CHAD

dimpled chad. See CHAD.

#### DIOCESAN

diocesan (dI-os-⟨⟨schwa⟩⟩-s⟨⟨schwa⟩⟩n), adj. Of or belonging to a diocese; of or relating to the relationship between a bishop and the clergy within the diocese.

#### DIOCESAN COURT

diocesan court. See COURT.

#### DIOCESAN MISSION

diocesan mission. A mission performing its work in a single diocese.

#### DIOCESAN SYNOD

diocesan synod. See SYNOD.

## DIOCESE

diocese (dI-*<<schwa>>*-sees or -sis). 1. Roman law. A division of the later Roman Empire into groups of provinces. 2. Eccles. law. A territorial unit of the church, governed by a bishop, and further divided into parishes. 3. Eccles. law. A bishop's jurisdiction. • Several dioceses together are governed by an archbishop.

## DIOICHA

dioichia (dI-oy-kee-*<<schwa>>*), n. [fr. Latin diocesis "a diocese"] A district over which a bishop exercises his spiritual functions.

## DIP

DIP.abbr.DEBTOR-IN-POSSESSION.

## DIPLOMA

diploma. 1. Roman law. A letter giving permission to use the imperial post. 2. Hist. A royal charter; letters patent. 3. A document that evidences or memorializes graduation from a school or society. Cf. DEGREE(6). [Cases: Schools 178. C.J.S. Schools and School Districts §§ 803–806.] 4. A document that evidences a license or privilege to practice a profession, such as medicine.

## DIPLOMACY

diplomacy, n. Int'l law. 1. The art and practice of conducting negotiations between national governments.

open diplomacy. Diplomacy carried on with free access to interested observers and members of the press.

parliamentary diplomacy. The negotiations and discussions carried out in international organizations according to their rules of procedure.

secret diplomacy. Diplomacy carried on behind closed doors. — Also termed quiet diplomacy.

shuttle diplomacy. Diplomatic negotiations assisted by emissaries, who travel back and forth between negotiating countries. • In legal contexts, the term usu. refers to a similar approach used by a mediator in negotiating the settlement of a lawsuit. The mediator travels back and forth between different rooms, one of which is assigned to each side's decision-makers and counsel. The mediator relays offers and demands between the rooms and, by conferring with the parties about their positions and about the uncertainty of litigation, seeks to reach an agreed resolution of the case. The mediator does not bring the parties together in the same room.

2. Loosely, foreign policy. 3. The collective functions performed by a diplomat. — diplomatic, adj. — diplomat, n.

## DIPLOMATIC

diplomatic, n. See DIPLOMATICS.

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**DIPLOMATIC AGENT**

diplomatic agent. See AGENT(2).

**DIPLOMATIC BAG**

diplomatic bag. See DIPLOMATIC POUCH.

**DIPLOMATIC CORPS**

diplomatic corps. Int'l law. The ambassador and other diplomatic personnel assigned by their government to a foreign capital.

**DIPLOMATIC IMMUNITY**

diplomatic immunity. See IMMUNITY(1).

**DIPLOMATIC POUCH**

diplomatic pouch. 1. A bag containing official correspondence, documents, or articles intended exclusively for official communications of a nation with its missions, consular posts, or delegations. 2. The contents of the bag. — Also termed diplomatic bag; valise diplomatique.

**DIPLOMATIC PROTECTION**

diplomatic protection. Protection given by one country's representatives to a person, usu. its citizen, against another country's alleged violation of international law.

“The term diplomatic protection is not altogether precise. First, not only diplomatic agents and missions and other foreign offices may and do exercise diplomatic protection, but also, at a different level, consuls, and, although very rarely, military forces. Secondly, the term diplomatic protection does not clearly denote the boundary line to other diplomatic activities for the benefit of individuals, such as mere promotion of interests in one's own nationals in a foreign State, or friendly intercessions with foreign authorities. Thus, diplomatic or consular actions to obtain concessions or other government contracts for nationals from the receiving State, or the arrangement of legal defense for a justly imprisoned national are not diplomatic protection in our sense; they are usually neither directed against the other State nor based on a real or alleged violation of international law. All these last-mentioned activities may be called diplomatic protection only if the term is taken in a very broad sense.” William Karl Geck, “Diplomatic Protection,” in 1 Encyclopedia of Public International Law 1046 (1992).

**DIPLOMATIC RELATIONS**

diplomatic relations. Int'l law. The customary form of permanent contact and communication between sovereign countries. [Cases: Ambassadors and Consuls 3; International Law 10–10.2. C.J.S. Ambassadors and Consuls §§ 15–23; International Law §§ 9–12.]

**DIPLOMATIC REPRESENTATION**

diplomatic representation. See REPRESENTATION(5).

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 DIPLOMATICS
 

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diplomatics. The science of deciphering and authenticating ancient writings. • The principles were largely developed by the Benedictine Dom Mabillon in his 1681 work entitled *De re diplomatica*. — Also termed diplomatic (n.).

“Diplomatics, the science derived from the study of ancient diplomas, so called from being written on two leaves, or on double tablets. The Romans used the term more specially for the letters of license to use the public conveyances provided at the different stations, and generally for public grants. Subsequently it attained a more extended signification, and in more modern times has been used as a general term for ancient imperial and ecclesiastical acts and grants, public treaties, deeds of conveyance, letters, wills, and similar instruments, drawn up in forms and marked with peculiarities varying with their dates and countries. With the revival of literature, the importance of such documents in verifying facts and establishing public and private rights led to their being brought together from the historical works and the monastic registers in which they had been copied, or, in rarer instances, from public and ecclesiastical archives where the originals were still preserved. Then arose questions of authenticity, and doubts of the so-called originals; disputants defended or condemned them; and, in order to establish principles for distinguishing the genuine from the forged, treatises were written on the whole subject of these diplomas.” 7 *Encyclopaedia Britannica* 220 (9th ed. 1907).

## DIPLOMATIC SECURITY SERVICE

Diplomatic Security Service. A bureau of the U.S. Department of State having responsibility for protecting the Secretary of State and domestic and foreign dignitaries, as well as for investigating criminal activities such as identity-document fraud involving U.S. passports and visas. • The Service now employs some 800 special agents (members of the U.S. Foreign Service), who are located throughout the United States and in scores of embassies worldwide.

## DIPTYCH

diptych (dip-tik), n. [fr. Greek *diptycha* “two-leaved”] 1. Roman law. Two tablets usu. made of wood or metal and tied with string through holes at the edges so that they could fold over (like a book with two leaves). • Diptychs were often used to send letters, and the text was sometimes written using a stylus, once on the inside waxed leaves and again on the outside, so that it could be read without opening the tablets. 2. Hist. Eccles. law. Tablets used by the church, esp. to register names of those making supplication, and to record births, marriages, and deaths. 3. Hist. Eccles. law. The registry of those names.

“The recitation of the name of any prelate or civil ruler in the diptychs was a recognition of his orthodoxy; its omission, the reverse. The mention of a person after death recognized him as having died in the communion of the church, and the introduction of his name into the list of saints or martyrs constituted canonization. In liturgics the diptychs are distinguished as the diptychs of the living and the diptychs of the dead, the latter including also the commemoration of the saints .... In the Western Church the use of the diptychs died out between the ninth and the twelfth century; in the Eastern Church it still continues.” 2 *The Century Dictionary and*

Cyclopedia (1895).

“Diptychs were used in the time of the Roman empire for sending letters .... The consula and quaestors used, on assuming office, to send diptychs containing their names and portraits to their friends .... The early Christians used tablets thus made in the celebration of divine worship .... They were placed on ... the pulpits, or reading desks, which may still be seen in ancient basilicas at the west end of the choir or presbytery; and from them were read to the congregation of the faithful the names of the celebrating priests, of those who occupied the superior positions in the Christian hierarchy, of the saints, martyrs, and confessors, and, in process of time, also of those who had died in the faith... The inscription on the diptychs of deaths and baptisms, naturally led to the insertion of dates, and the diptychs seem thus to have grown into calendars, and to have been the germ from which necrologies, lists of saints, and almanacs have been developed.” 7 Encyclopaedia Britannica 223–24 (9th ed. 1907).

#### DIRATIONARE

dirationare (di-ray-shee-<<schwa>>-nair-ee), vb.[fr. Latin dis “thoroughly” + ratiocinari “to reason”] Hist. 1.To prove; to establish one's right. 2. To disprove; to refute (an allegation).

#### DIRECT

direct (di-rekt), adj.1. (Of a thing) straight; undeviating <a direct line>.2. (Of a thing or a person) straightforward <a direct manner> <direct instructions>.3. Free from extraneous influence; immediate <direct injury>.4. Of or relating to passing in a straight line of descent, as distinguished from a collateral line <a direct descendant> <a direct ancestor>.5. (Of a political action) effected by the public immediately, not through representatives <direct resolution> <direct nomination>.

direct,n. See DIRECT EXAMINATION.

direct,vb.1. To aim (something or someone).2. To cause (something or someone) to move on a particular course. 3. To guide (something or someone); to govern. 4. To instruct (someone) with authority. 5. To address (something or someone).

#### DIRECT ACTION

direct action. 1. A lawsuit by an insured against his or her own insurance company rather than against the tortfeasor and the tortfeasor's insurer. 2. A lawsuit by a person claiming against an insured but suing the insurer directly instead of pursuing compensation indirectly through the insured. [Cases: Insurance 3542. C.J.S. Insurance §§ 1407–1413, 1523, 1642.] 3. A lawsuit to enforce a shareholder's rights against a corporation. Cf. DERIVATIVE ACTION(1). [Cases: Corporations 202.C.J.S. Corporations §§ 397–398, 401, 411.]

#### DIRECT-ACTION STATUTE

direct-action statute.A statute that grants an injured party direct standing to sue an insurer instead of the insured tortfeasor. • Under Rhode Island's direct-action statute, for example, an injured party may bring a direct action against an insurer when good-faith efforts to serve process on the insured are unsuccessful. These statutes exist in several states, including Alabama,

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Arkansas, Louisiana, Minnesota, New York, Pennsylvania, and Wisconsin. [Cases: Insurance 3542. C.J.S. Insurance §§ 1407–1413, 1523, 1642.]

**DIRECT ADOPTION**

direct adoption. See private adoption under ADOPTION.

**DIRECT AFFINITY**

direct affinity. See AFFINITY.

**DIRECT AGGRESSION**

direct aggression. See AGGRESSION.

**DIRECT AND PROXIMATE CAUSE**

direct and proximate cause. See proximate cause under CAUSE(1).

**DIRECT APPEAL**

direct appeal. See APPEAL.

**DIRECT ATTACK**

direct attack. 1. An attack on a judgment made in the same proceeding as the one in which the judgment was entered; specif., the taking of proceedings in the action in which a judgment has been rendered to have the judgment vacated or reversed or modified by appropriate proceedings in either the trial court or an appellate court. • Examples of direct attacks are motions for new trial and appeals. Cf. COLLATERAL ATTACK. 2. The taking of independent proceedings in equity to prevent the enforcement of a judgment.

**DIRECT BENEFICIARY**

direct beneficiary. See intended beneficiary under BENEFICIARY.

**DIRECT CAUSE**

direct cause. See proximate cause under CAUSE(1).

**DIRECT CHARGE-OFF ACCOUNTING METHOD**

direct charge-off accounting method. See ACCOUNTING METHOD.

**DIRECT CONFESSION**

direct confession. See CONFESSION.

**DIRECT CONFUSION**

direct confusion. See CONFUSION.

**DIRECT CONTEMPT**

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direct contempt.See CONTEMPT.

**DIRECT CONVERSION**

direct conversion.See CONVERSION(2).

**DIRECT COST**

direct cost.See COST(1).

**DIRECT DAMAGES**

direct damages.See general damages under DAMAGES.

**DIRECT DEPOSIT**

direct deposit.See DEPOSIT(2).

**DIRECT ECONOMIC LOSS**

direct economic loss.See ECONOMIC LOSS.

**DIRECTED VERDICT**

directed verdict.See VERDICT.

**DIRECT ESTOPPEL**

direct estoppel.See COLLATERAL ESTOPPEL.

**DIRECT EVIDENCE**

direct evidence.See EVIDENCE.

**DIRECT EXAMINATION**

direct examination.The first questioning of a witness in a trial or other proceeding, conducted by the party who called the witness to testify. — Often shortened to direct. — Also termed examination-in-chief. Cf. CROSS-EXAMINATION N; REDIRECT EXAMINATION. [Cases: Witnesses 224–245.C.J.S. Witnesses §§ 390–394, 396–401, 403–423, 436.]

**DIRECT INFRINGEMENT**

direct infringement.See INFRINGEMENT.

**DIRECT INJURY**

direct injury.See INJURY.

**DIRECT INTEREST**

direct interest.See INTEREST(2).

**DIRECTION**

direction (di-rek-sh<<schwa>>n).1. The course taken in relation to the point toward which something or someone is moving; a point to or from which a person or thing moves <the storm moved in a northerly direction>.2. The course on which something is aimed <the direction of the trial>.3. An act of guidance <under the chair's direction>.4. An order; an instruction on how to proceed <the judge's direction to the jury>. See JURY INSTRUCTION. 5. The address to the court contained on a bill of equity <the direction on the bill>. [Cases: Equity 131.] 6. A board of directors; a board of managers <the direction met on Wednesday>.

#### DIRECTIVE

directive. See ADVANCE DIRECTIVE.

#### DIRECTIVE HARMONIZING THE TERM OF COPYRIGHT AND CERTAIN RELATED RIGHTS

Directive Harmonizing the Term of Copyright and Certain Related Rights.Copyright. A 1993 European Commission initiative setting the term of most copyright protection at the life of the author plus 70 years. • The directive extended coverage in most member countries to match that of Germany, whose term was the longest on the Continent. — Also termed Duration Directive.

#### DIRECTIVE ON CERTAIN ASPECTS OF ELECTRONIC COMMERCE IN THE INTERNAL MARKET

Directive on Certain Aspects of Electronic Commerce in the Internal Market.Copyright. A 2000 European Commission initiative that harmonizes members' laws governing commercial use of the Internet, including electronic contracts, the liability of service providers, unsolicited commercial e-mail, and related issues. — Also termed Electronic Commerce Directive; E-Commerce Directive.

#### DIRECTIVE ON RENTAL, LENDING AND CERTAIN NEIGHBOURING RIGHTS

Directive on Rental, Lending and Certain Neighbouring Rights.Copyright. A 1992 European Commission initiative setting rules for reimbursing copyright owners for home rental and public lending of videotapes and other copies of works, and establishing the rights of performers, producers, broadcasters, and cable distributors. — Also termed Rental and Related Rights Directive; Rental Directive.

#### DIRECTIVE ON THE COORDINATION OF CERTAIN RULES CONCERNING COPYRIGHT AND NEIGHBOURING RIGHTS APPLICABLE TO SATELLITE BROADCASTING AND CABLE RETRANSMISSION

Directive on the Coordination of Certain Rules Concerning Copyright and Neighbouring Rights Applicable to Satellite Broadcasting and Cable Retransmission.Copyright. A 1993 European Commission initiative requiring members, among other things, to (1) recognize the right of a copyright owner to decide whether the work may be relayed by either cable or satellite, and (2) define the “place” of a satellite broadcast as the location where the signal originates. — Also termed Cable and Satellite Directive.



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**DIRECTIVE ON THE LEGAL PROTECTION OF COMPUTER PROGRAMS**

Directive on the Legal Protection of Computer Programs.Copyright. A 1991 European Commission initiative requiring members to protect computer software by copyright rather than by patent or some sui generis set of legal rights. • The purpose of the Directive was to harmonize copyright laws among the members of the European Commission. It standardized the degree of originality required for software to qualify for copyright protections. — Also termed Computer Programs Directive; Software Directive.

**DIRECTIVE ON THE LEGAL PROTECTION OF DATABASES**

Directive on the Legal Protection of Databases.Copyright. A 1996 European Commission initiative that sets uniform copyright protection among members for databases of original content and requires a sui generis system of protection for databases that do not qualify for copyright protection because their content is not original. — Also termed Database Directive.

**DIRECTIVE TO PHYSICIANS**

directive to physicians.See LIVING WILL.

**DIRECT LINE**

direct line.See LINE.

**DIRECT-LINE DESCENT**

direct-line descent.See lineal descent under DESCENT.

**DIRECT LOSS**

direct loss.See LOSS.

**DIRECTLY**

directly,adv.1. In a straightforward manner. 2. In a straight line or course. 3. Immediately.

**DIRECT NOTICE**

direct notice.See NOTICE.

**DIRECTOR**

director (di-rek-t<<schwa>>r).1. One who manages, guides, or orders; a chief administrator. 2. A person appointed or elected to sit on a board that manages the affairs of a corporation or other organization by electing and exercising control over its officers. — Also termed trustee. See BOARD OF DIRECTORS . Cf. OFFICER(1).

affiliated director.See outside director.

class director. 1. A director whose term on a corporate board is staggered with those of the other directors to make a hostile takeover more difficult. 2. A director elected or appointed to a corporate board to represent a special-interest group, e.g., the preferred stockholders.

**dummy director.** A board member who is a mere figurehead and exercises no real control over the corporation's business. — Also termed accommodation director; nominal director.

**inside director.** A director who is also an employee, officer, or major shareholder of the corporation. [Cases: Corporations 310(1). C.J.S. Corporations §§ 475, 477–484, 487–489.]

**interlocking director.** A director who simultaneously serves on the boards of two or more corporations that deal with each other or have allied interests.

**outside director.** A nonemployee director with little or no direct interest in the corporation. — Also termed affiliated director. [Cases: Corporations 310(1). C.J.S. Corporations §§ 475, 477–484, 487–489.]

**provisional director.** A director appointed by a court to serve on a close corporation's deadlocked board of directors.

**public director.** A director elected from outside a corporation's shareholders or an organization's membership to represent the public interest.

#### DIRECT ORDER OF ALIENATION

**direct order of alienation.** Real estate. The principle that a grantee who assumes the debt on a mortgaged property is required to pay the mortgage debt if the original mortgagor defaults. [Cases: Mortgages 279. C.J.S. Mortgages § 395.]

#### DIRECTOR OF PUBLIC PROSECUTIONS

**Director of Public Prosecutions.** An officer (usu. a barrister or solicitor of ten years' standing) who advises the police and prosecutes criminal cases in England and Wales under the supervision of the Attorney General.

#### DIRECTOR OF THE MINT

**Director of the Mint.** An officer appointed by the President, with the advice and consent of the Senate, to control and manage the U.S. Mint and its branches. [Cases: United States 34. C.J.S. United States §§ 162–163.]

#### DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Director of the United States Patent and Trademark Office.** The presidential appointee in charge of the U.S. Patent and Trademark Office. • Until a 2000 reorganization, the PTO chief was the Commissioner of Patents and Trademarks. The Director is also the Under Secretary of Commerce for Intellectual Property. — Formerly termed Commissioner of Patents and Trademarks.

#### DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

**directors' and officers' liability insurance.** See INSURANCE.

#### DIRECTORY

directory,n.1. A book containing an alphabetical list of names, addresses, and telephone numbers, esp. those of a city's or area's residents and businesses. [Cases: Telecommunications 269. C.J.S. Telegraphs, Telephones, Radio, and Television § 120.] 2. Any organization's publication containing information on its members or business, such as a legal directory. 3.Eccles. law. A church's book of directions for conducting worship. • One of the primary directories is the Directory for the Public Worship of God, prepared by the Assembly of Divines in England in 1644 to take the place of the Book of Common Prayer, which had been abolished by Parliament (and was later reinstated). The Directory was ratified by Parliament in 1645 and adopted by the Scottish Parliament and General Assembly of the Church of Scotland that same year. A directory in the Roman Catholic Church contains instructions for saying the mass and offices each day of the year. 4. A small governing body; specif., the five-member executive body that governed France from 1795 to 1799 during the French Revolution until it was overthrown by Napoleon and succeeded by the consulate.

#### DIRECTORY CALL

directory call.Property. In a land description, a general description of the areas in which landmarks or other calls are found. See CALL(5); LOCATIVE CALLS .

#### DIRECTORY PROVISION

directory provision.A statutory or contractual sentence or paragraph in which a directory requirement appears. [Cases: Statutes 227. C.J.S. Statutes §§ 362–369.]

#### DIRECTORY REQUIREMENT

directory requirement.A statutory or contractual instruction to act in a way that is advisable, but not absolutely essential — in contrast to a mandatory requirement. • A directory requirement is frequently introduced by the word should or, less frequently, shall (which is more typically a mandatory word). [Cases: Statutes 227. C.J.S. Statutes §§ 362–369.]

#### DIRECTORY STATUTE

directory statute.See STATUTE.

#### DIRECTORY TRUST

directory trust.See TRUST.

#### DIRECT-PARTICIPATION PROGRAM

direct-participation program.An investment vehicle that is financed through the sale of securities not traded on an exchange or quoted on NASDAQ and that provides flow-through tax consequences to the investors.

#### DIRECT PAYMENT

direct payment.See PAYMENT.

#### DIRECT PLACEMENT

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direct placement. 1. The sale by a company, such as an industrial or utility company, of an entire issue of securities directly to a lender (such as an insurance company or group of investors), instead of through an underwriter. • This type of offering is exempt from SEC filing requirements. 2.PRIVATE PLACEMENT(1).

**DIRECT-PLACEMENT ADOPTION**

direct-placement adoption.See private adoption under ADOPTION.

**DIRECT POSSESSION**

direct possession.See immediate possession under POSSESSION.

**DIRECT QUESTION**

direct question.See QUESTION(1).

**DIRECT-REDUCTION MORTGAGE**

direct-reduction mortgage.See MORTGAGE.

**DIRECT SELLING**

direct selling. 1. Selling to a customer without going through a dealer. 2. Selling to a retailer without going through a wholesaler.

**DIRECT SKIP**

direct skip.Tax. A generation-skipping transfer of assets, either directly or through a trust. • A direct skip may be subject to a generation-skipping transfer tax — either a gift tax or an estate tax. IRC (26 USCA) §§ 2601–2602. See GENERATION-SKIPPING TRANSFER; generation-skipping transfer tax under TAX; SKIP PERSON. [Cases: Internal Revenue 4224.]

**DIRECT TAX**

direct tax.See TAX.

**DIRECT TAX CLAUSES**

Direct Tax Clauses.The provisions in the U.S. Constitution requiring direct taxes to be apportioned among the states according to their respective numbers (U.S. Const. art. I, § 2, cl. 3) and prohibiting capitation or other direct taxes except in proportion to the census (U.S. Const. art. I, § 9, cl. 4). • An additional provision of Article I, § 2 concerning computation of taxes is affected by § 2 of the Fourteenth Amendment, and both clauses are affected by the Sixteenth Amendment concerning income taxes.

**DIRECT TRUST**

direct trust.See express trust under TRUST.

**DIRIBITORES**

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diribitores (di-rib-<<schwa>>-tor-eez), n. pl.[Latin “sorters of votes”] Roman law. Officers who distributed voting ballots to the citizens in a comitia. See COMITIA.

**DIRIMENT IMPEDIMENT**

diriment impediment.See IMPEDIMENT.

**DIRITTO CONNESSI**

diritto connessi.[Italian] NEIGHBORING RIGHT.

**DIRITTO D' AUTORE**

diritto d' autore.[Italian] AUTHOR'S RIGHT.

**DIRT-FOR-DEBT TRANSFER**

dirt-for-debt transfer.A transaction in which a bankrupt debtor satisfies all or part of a secured debt by transferring the collateral to the creditor. [Cases: Bankruptcy 3564. C.J.S. Bankruptcy § 397.]

**DISA**

DISA.abbr.DEFENSE INFORMATION SYSTEMS AGENCY.

**DISABILITY**

disability. 1. The inability to perform some function; esp., the inability of one person to alter a given relation with another person. 2. An objectively measurable condition of impairment, physical or mental <his disability entitled him to workers'-compensation benefits>. — Also termed incapacity. [Cases: Civil Rights 1019, 1218; Workers' Compensation 802.C.J.S. Civil Rights §§ 2, 6–7, 9–10, 19, 21, 61.]

“The Supreme Court has cautioned that [the Americans with Disabilities Act] requires that disabilities be evaluated ‘with respect to an individual’ and must be determined based on whether an impairment substantially limits the ‘major life activities of such individual.’ The Court conceded that ‘some impairments may invariably cause a substantial limitation of a major life activity,’ but ‘[t]he determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual.’ As a result, courts are reluctant to characterize any particular impairment as a per se disability under ADA. And the fact that an impairment is considered to be a disability under a different set of criteria for some purpose other than the ADA has no bearing on the determination of whether an individual is disabled within the meaning of ADA.” Harold S. Lewis Jr. & Elizabeth J. Norman, *Employment Discrimination Law and Practice* 485–86 (2001).

developmental disability.An impairment of general intellectual functioning or adaptive behavior.

partial disability.A worker's inability to perform all the duties that he or she could do before

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an accident or illness, even though the worker can still engage in some gainful activity on the job. [Cases: Workers' Compensation 856–859. C.J.S. Workmen's Compensation §§ 562–564, 566.]

permanent disability.A disability that will indefinitely prevent a worker from performing some or all of the duties that he or she could do before an accident or illness. [Cases: Workers' Compensation 863–864. C.J.S. Workmen's Compensation §§ 567–574.]

physical disability.An incapacity caused by a physical defect or infirmity, or by bodily imperfection or mental weakness.

temporary disability.A disability that exists until an injured worker is as far restored as the nature of the injury will permit. [Cases: Workers' Compensation 863–864. C.J.S. Workmen's Compensation §§ 567–574.]

temporary total disability.Total disability that is not permanent.

total disability.A worker's inability to perform employment-related duties because of a physical or mental impairment. [Cases: Workers' Compensation 846–852. C.J.S. Workmen's Compensation §§ 556–561.]

3. Incapacity in the eyes of the law <most of a minor's disabilities are removed when he or she turns 18>. — Also termed incapacity.

canonical disability.A canonical impediment (usu. impotence). See canonical impediment under IMPEDIMENT.

civil disability.The condition of a person who has had a legal right or privilege revoked as a result of a criminal conviction, as when a person's driver's license is revoked after a DWI conviction. Cf. civil death (2) under DEATH.

#### DISABILITY BENEFITS

disability benefits.See DISABILITY COMPENSATION.

#### DISABILITY CLAUSE

disability clause.Insurance. A life-insurance-policy provision providing for a waiver of premiums during the policyholder's period of disability, and sometimes providing for monthly payments equal to a percentage of the policy's face value. [Cases: Insurance 2035. C.J.S. Insurance §§ 452–453, 556, 732–733, 773, 817, 832–833.]

#### DISABILITY COMPENSATION

disability compensation.Payments from public or private funds to a disabled person who cannot work, such as social-security or workers'-compensation benefits. — Also termed disability benefits. [Cases: Social Security and Public Welfare 140.5–140.40; Workers' Compensation 836–902.C.J.S. Social Security and Public Welfare §§ 48–55, 58–59, 61; Workmen's Compensation §§ 545–591.]

#### DISABILITY INSURANCE

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disability insurance. See INSURANCE.

#### DISABILITY RETIREMENT PLAN

disability retirement plan. See EMPLOYEE BENEFIT PLAN.

#### DISABLE

disable, vb. 1. To deprive (someone or something) of the ability to function; to weaken the capability of (someone or something). 2. To impair; to diminish. 3. To legally disqualify (someone); to render (someone) legally incapable.

#### DISABLED PERSON

disabled person. See PERSON(1).

#### DISABLEMENT

disablement, n. 1. The act of incapacitating or immobilizing. 2. The imposition of a legal disability.

#### DISABLING RESTRAINTS

disabling restraints. Limits on the alienation of property. • These restraints are sometimes void as being against public policy. [Cases: Perpetuities 6(1). C.J.S. Perpetuities §§ 52, 55–68, 72–75.]

#### DISABLING STATUTE

disabling statute. See STATUTE.

#### DISADVOCARE

disadvocare (dis-ad-v<<schwa>>-kair-ee), vb. [Law Latin] To deny; to disavow.

#### DISAFFIRM

disaffirm (dis-<<schwa>>-f<<schwa>>rm), vb. 1. To repudiate; to revoke consent; to disclaim the intent to be bound by an earlier transaction. 2. To declare (a voidable contract) to be void.

#### DISAFFIRMANCE

disaffirmance (dis-<<schwa>>-f<<schwa>>rm-<<schwa>>nts). 1. An act of denial; a repudiation, as of an earlier transaction. [Cases: Contracts 272. C.J.S. Contracts §§ 471, 484.] 2. A declaration that a voidable contract (such as one entered into by a minor) is void. — Also termed disaffirmation. [Cases: Infants 58(1). C.J.S. Infants §§ 166, 172–174.]

“Disaffirmance is an operative act whereby the legal relations created by an infant's contract are terminated and discharged and other legal relations substituted. Inasmuch as the infant's executory promise does not operate to create any legal duty in him (the infant being at all times at liberty or privileged not to perform), his disaffirmance is not the discharge of such a duty. A return

promise by an adult, however, creates a legal duty and the infant has a correlative right in personam. A disaffirmance terminates these.” William R. Anson, *Principles of the Law of Contract* 181 (Arthur L. Corbin ed., 3d Am. ed. 1919).

#### DISAFFOREST

disafforest (dis-*<<schwa>>*-for-*<<schwa>>*st or -fahr-*<<schwa>>*st), vb.[fr. French *desaforester*] Hist. To free lands from the restrictions of the forest laws and return them to the status of ordinary lands. — Also termed *deafforest*.

#### DISAGREEMENT

disagreement. 1. A difference of opinion; a lack of agreement. 2. A quarrel. 3. An annulment; a refusal to accept something, such as an interest in an estate.

#### DISALLOW

disallow, vb. 1. To refuse to allow (something). 2. To reject (something).

#### DISALT

disalt (dis-awlt), vb. Hist. To disable (a person).

#### DISAPPEARED PERSON

disappeared person. A person who has been absent from home for a specified number of continuous years (often five or seven) and who, during that period, has not communicated with the person most likely to know his or her whereabouts. See *SEVEN-YEARS'-ABSENCE RULE*; *MISSING PERSON*. [Cases: Absentees 2. C.J.S. Absentees § 2.]

#### DISAPPEARING QUORUM

disappearing quorum. See *QUORUM*.

#### DISAPPROPRIATION

disappropriation. 1. Eccles. law. The alienation of church property from its original use; the severance of property from church ownership or possession. 2. The release of property from individual ownership or possession.

#### DISAPPROVE

disapprove, vb. 1. To pass unfavorable judgment on (something). 2. To decline to sanction (something).

#### DISARMAMENT

disarmament. Int'l law. The negotiated or voluntary reduction of military arms, esp. nuclear weapons, to a greatly reduced level or to nil. Cf. *ARMS CONTROL*.

#### DISASTER



disaster. A calamity; a catastrophic emergency.

#### DISASTER AREA

disaster area. A region officially declared to have suffered a catastrophic emergency, such as a flood or hurricane, and therefore eligible for government aid. [Cases: United States 82(5). C.J.S. United States § 160.]

#### DISASTER LOSS

disaster loss. See LOSS.

#### DISASTER RELIEF ACT

Disaster Relief Act. A federal statute that provides a means by which the federal government can help state and local governments to relieve suffering and damage resulting from disasters such as hurricanes, tornadoes, floods, earthquakes, volcanic eruptions, landslides, mudslides, drought, fire, and explosions. • A 1974 amendment established a process for the President to declare affected communities disaster areas.

#### DISAVOW

disavow (dis-*<<schwa>>-vow*), vb. To disown; to disclaim knowledge of; to repudiate <the company disavowed the acts of its agent>. — disavowal, n.

#### DISBARMENT

disbarment, n. The action of expelling a lawyer from the bar or from the practice of law, usu. because of some disciplinary violation. • One who has passed the bar, been called to the bar, or been admitted to the bar is privileged to stand inside the wooden barrier that separates the gallery from the actual courtroom, particularly the judge's bench, and conduct business with the court. So this term literally describes the loss of the privilege. Although disbarment is typically a permanent removal from the practice of law, in some jurisdictions a disbarred attorney may (after a certain period) petition for readmission. In England and Wales, only a barrister is disbarred; a solicitor is struck off the roll, so the expulsion of a solicitor is termed striking off the roll. See STRUCK OFF. [Cases: Attorney and Client 58. C.J.S. Attorney and Client §§ 116–118.] — disbar, vb.

#### DISBOCATIO

disbocatio (dis-b*<<schwa>>-kay-shee-oh*), n. [fr. Law Latin dis- + boscus “wood”] Hist. The conversion of forest to pasture.

#### DISBURSEMENT

disbursement (dis-b*<<schwa>>-rs-m<<schwa>>-nt*), n. The act of paying out money, commonly from a fund or in settlement of a debt or account payable <dividend disbursement>. — disburse, vb.

#### DISC

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DISC.abbr.DOMESTIC INTERNATIONAL SALES CORPORATION.

DISCARCARE

discarcare (dis-kahr-kair-ee), vb.[fr. Latin dis- + carcare “to charge”] Hist. To unload (cargo), usu. from a ship. — Also termed discargare.

DISCEPTATIO CAUSAE

disceptatio causae (di-sep-tay-shee-oh kaw-zee). [Latin “debate about a case”] Roman law. The argument by the advocates of both sides of a dispute.

DISCHARGE

discharge (dis-chahrj), n.1. Any method by which a legal duty is extinguished; esp., the payment of a debt or satisfaction of some other obligation. 2.Bankruptcy. The release of a debtor from monetary obligations upon adjudication of bankruptcy; DISCHARGE IN BANKRUPTCY. Cf. RELEASE(1). [Cases: Bankruptcy 3251. C.J.S. Bankruptcy §§ 288–290.] 3. The dismissal of a case. 4. The canceling or vacating of a court order. 5. The release of a prisoner from confinement.

unconditional discharge. 1. A release from an obligation without any conditions attached. 2. A release from confinement without any parole requirements to fulfill.

6. The relieving of a witness, juror, or jury from further responsibilities in a case. 7. The firing of an employee.

constructive discharge.A termination of employment brought about by making the employee's working conditions so intolerable that the employee feels compelled to leave. [Cases: Civil Rights 1123; Master and Servant 31(2). C.J.S. Civil Rights § 28; Employer–Employee Relationship § 53.]

“Most constructive discharges fall into one of two basic fact patterns. First, the employer can cause a constructive discharge by breaching the employee's contract of employment in some manner short of termination. Second, the employer can make working conditions so intolerable that the employee feels compelled to quit.” Mark A. Rothstein et al., *Employment Law* § 9.7, at 539 (1994).

retaliatory discharge.A discharge that is made in retaliation for the employee's conduct (such as reporting unlawful activity by the employer to the government) and that clearly violates public policy. • Federal and state statutes may entitle an employee who is dismissed by retaliatory discharge to recover damages. [Cases: Civil Rights 1247, 1249(2); Master and Servant 30(6.5). C.J.S. Civil Rights § 66; Employer–Employee Relationship §§ 68, 70, 72, 79.]

wrongful discharge.A discharge for reasons that are illegal or that violate public policy. [Cases: Civil Rights 1122; Master and Servant 30. C.J.S. Civil Rights § 28; Employer–Employee Relationship §§ 35, 38–40, 42–43, 56, 60.]

8. The dismissal of a member of the armed services from military service <the sergeant was

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honorably discharged>. [Cases: Armed Services 11, 22.C.J.S. Armed Services §§ 37, 80–81, 83–103.]

administrative discharge.A military-service discharge given by administrative means and not by court-martial.

bad-conduct discharge.A punitive discharge that a court-martial can give a member of the military, usu. as punishment for repeated minor offenses. —Abbr. BCD.

dishonorable discharge.The most severe punitive discharge that a court-martial can give to a member of the military. • A dishonorable discharge may result from conviction for an offense recognized in civilian law as a felony or of a military offense requiring severe punishment. Only a general court-martial can give a dishonorable discharge.

general discharge.One of the administrative discharges given to a member of the military who does not qualify for an honorable discharge.

honorable discharge.A formal final judgment passed by the government on a soldier's entire military record, and an authoritative declaration that he or she has left the service in a status of honor. • Full veterans' benefits are given only to a person honorably discharged.

undesirable discharge.One of the administrative discharges given to a member of the military who does not qualify for an honorable discharge.

9.Parliamentary law. A motion by which a deliberative assembly, having referred a matter to a committee, takes the matter's further consideration out of the committee and back into its own hands. — Also termed discharge a committee; withdrawal. — discharge (dis-chahrj), vb.

#### DISCHARGEABILITY PROCEEDING

dischargeability proceeding.Bankruptcy. A hearing to determine whether a debt is dischargeable or is subject to an exception to discharge. 11 USCA § 523. [Cases: Bankruptcy 3381. C.J.S. Bankruptcy §§ 18, 337, 340.]

#### DISCHARGEABLE CLAIM

dischargeable claim.Bankruptcy. A claim that can be discharged in bankruptcy. [Cases: Bankruptcy 3341–3362. C.J.S. Bankruptcy §§ 316–336, 344, 348.]

#### DISCHARGED CONTRACT

discharged contract.See void contract under CONTRACT.

#### DISCHARGE HEARING

discharge hearing.Bankruptcy. A hearing at which the court informs the debtor either that a discharge has been granted or the reasons why a discharge has not been granted. See REAFFIRMATION HEARING. [Cases: Bankruptcy 3318.1.]

#### DISCHARGE IN BANKRUPTCY

discharge in bankruptcy. 1. The release of a debtor from personal liability for prebankruptcy debts; specif., discharge under the United States Bankruptcy Code. [Cases: Bankruptcy 3251. C.J.S. Bankruptcy §§ 288–290.] 2. A bankruptcy court's decree releasing a debtor from that liability.

#### DISCHARGING BOND

discharging bond. See BOND(2).

#### DISCIPLINARY PROCEEDING

disciplinary proceeding. An action brought to reprimand, suspend, or expel a licensed professional or other person from a profession or other group because of unprofessional, unethical, improper, or illegal conduct. • A disciplinary proceeding against a lawyer may result in the lawyer's being suspended or disbarred from practice. [Cases: Licenses 38. C.J.S. Agriculture § 4.5; Architects § 10; Licenses §§ 48, 50–63.]

#### DISCIPLINARY RULE

disciplinary rule. (often cap.) A mandatory regulation stating the minimum level of professional conduct that a professional must sustain to avoid being subject to disciplinary action. • For lawyers, the disciplinary rules are found chiefly in the Model Code of Professional Responsibility. — Abbr. DR. Cf. ETHICAL CONSIDERATION. [Cases: Licenses 25. C.J.S. Agriculture § 4.5; Licenses §§ 41, 45–46.]

#### DISCIPLINE

discipline, n. 1. Punishment intended to correct or instruct; esp., a sanction or penalty imposed after an official finding of misconduct. [Cases: Licenses 38. C.J.S. Agriculture § 4.5; Architects § 10; Licenses §§ 48, 50–63.] 2. The punishment or penalties (often termed “sanctions”) imposed by a disciplining agency on an attorney who has breached a rule of professional ethics. • Three types of discipline are common: disbarment, suspension, and reprimand (public or private). 3. Control gained by enforcing compliance or order. 4. Military law. A state of mind inducing instant obedience to a lawful order, no matter how unpleasant or dangerous such compliance might be. — discipline, vb. — disciplinary, adj.

#### DISCLAIMER

disclaimer, n. 1. A renunciation of one's legal right or claim; esp., a renunciation of a patent claim, usu. to save the remainder of the application from being rejected. 2. A repudiation of another's legal right or claim. 3. A writing that contains such a renunciation or repudiation. 4. RENUNCIATION (2). — disclaim, vb.

disclaimer of warranty. An oral or written statement intended to limit a seller's liability for defects in the goods sold. • In some circumstances, printed words must be specific and conspicuous to be effective. [Cases: Sales 267. C.J.S. Sales §§ 238, 263–270.]

patent disclaimer. See statutory disclaimer.

qualified disclaimer. 1. A disclaimer with a restriction or condition attached. • In this sense it is qualified because it carries the restriction or condition. 2. A person's refusal to accept an interest in property so that he or she can avoid having to pay estate or gift taxes. • To be effective under federal tax law, the refusal must be in writing and must be executed no later than nine months from the time when the interest was created. In this sense, it is qualified in the sense of being within the lawful exemption. IRC (26 USCA) § 2518. [Cases: Internal Revenue 4177.20, 4205.10; Taxation 866. C.J.S. Internal Revenue § 500; Taxation §§ 1791, 1797–1799, 1824, 1859–1865.]

statutory disclaimer. Patents. A patent applicant's amendment of a specification to relinquish one or more claims to the invention. 35 USCA § 253. • Before the statute was enacted, a single invalid claim was grounds for denying a patent. — Also termed patent disclaimer. See SPECIFICATION(3). [Cases: Patents 149, 154. C.J.S. Patents §§ 261–263.]

terminal disclaimer. Patents. A patent applicant's statement shortening the term of the patent. • To revive an abandoned application for a design application or for a utility or plant application filed before June 8, 1995, the applicant must disclaim a period equal to the duration of abandonment. A terminal disclaimer may also be required in an application for an obvious variation on an existing patent: to avoid a double-patenting rejection, the inventor agrees that both patents will expire on the same day. [Cases: Patents 131. C.J.S. Patents § 236.]

#### DISCLOSED PRINCIPAL

disclosed principal. See PRINCIPAL(1).

#### DISCLOSURE

disclosure, n. 1. The act or process of making known something that was previously unknown; a revelation of facts <a lawyer's disclosure of a conflict of interest>. See DISCOVERY.

defensive disclosure. See DEFENSIVE DISCLOSURE.

full disclosure. A complete revelation of all material facts.

public disclosure of private facts. The public revelation of some aspect of a person's private life without a legitimate public purpose. • The disclosure is actionable in tort if the disclosure would be highly objectionable to a reasonable person. See INVASION OF PRIVACY. [Cases: Torts 8.5(5.1). C.J.S. Right of Privacy and Publicity §§ 17, 20–21, 23–27, 31, 33, 40–41.]

voluntary disclosure of offense. A person's uncoerced admission to an undiscovered crime. • Under the federal sentencing guidelines, a lighter sentence may be allowed. See USSG 5K2.16.

2. The mandatory divulging of information to a litigation opponent according to procedural rules. — Also termed compulsory disclosure; automatic disclosure. See DISCOVERY(2). [Cases: Federal Civil Procedure 1261; Pretrial Procedure 11. C.J.S. Discovery §§ 2–4, 6–7; Pretrial Procedure §§ 2–6.] — disclose, vb. — disclosural, adj. “Rule 26(a) [of the Federal Rules of Civil Procedure] reflects a shift away from the traditional method of obtaining discovery through the service of written demands toward requiring automatic disclosure by the parties of information

that would invariably be requested. The goal of automatic disclosure is the creation of a more efficient and expeditious discovery process.... Rule 26(a)(1) provides for the initial disclosure of specified information relating to witnesses, documents, and insurance agreements. Rule 26(a)(2) provides for the disclosure of information regarding experts who may be used at trial. Rule 26(a)(3) provides for specified pretrial disclosures regarding witnesses, evidence, and objections.” Jay E. Grenig & Jeffrey S. Kinsler, *Handbook of Federal Civil Discovery and Disclosure* § 1.15, at 65–66 (2d ed. 2002).

accelerated disclosure. See accelerated discovery under DISCOVERY.

initial disclosure. Civil procedure. In federal practice, the requirement that parties make available to each other the following information without first receiving a discovery request: (1) the names, addresses, and telephone numbers of persons likely to have relevant, discoverable information, (2) a copy or description of all relevant documents, data compilations, and tangible items in the party's possession, custody, or control, (3) a damages computation, and (4) any relevant insurance agreements. Fed. R. Civ. P. 26(a)(1)(A)–(D). [Cases: Federal Civil Procedure 1261, 1272.]

3. Patents. A document explaining how an invention works in sufficient detail for one skilled in the art to be able to understand and duplicate the invention; everything revealed about an invention in the patent application, including drawings, descriptions, specifications, references to prior art, and claims. • An invention disclosure statement is sometimes attested by a knowledgeable witness, who signs and dates the disclosure document to establish the inventor's identity and the date of the invention before the patent application is prepared. An inventor can file a disclosure document with the U.S. Patent and Trademark Office before submitting a patent application, but the document's date has no relationship to the later application's effective filing date. See ENABLEMENT REQUIREMENT. Cf. ENABLING SOURCE; DEFENSIVE DISCLOSURE. [Cases: Patents 99. C.J.S. Patents § 139.] 4. Patents. PUBLICATION(2).

#### DISCLOSURE DOCUMENT PROGRAM

Disclosure Document Program. Patents. A U.S. Patent and Trademark Office program allowing an inventor to file a preliminary description of an invention and establish its date of conception before applying for a patent. • The document can help establish a date of inventive effort for use in a later interference. — Abbr. DDP. Cf. provisional application under PATENT APPLICATION. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

#### DISCOMMON

discommon (dis-kom-*<<schwa>>n*), vb. 1. To deprive of the right of common (e.g., the right to pasture). 2. To deprive (something, esp. land) of commonable character. • A person could discommon land by separating or enclosing it. 3. To deprive (someone) of the privileges of a place, such as the right to use common land or to enjoy a church fellowship.

#### DISCONFORMITY

disconformity. See NEW MATTER.

## DISCONTINUANCE

discontinuance (dis-k<<schwa>>n-tin-yoo-<<schwa>>nts), n.1. The termination of a lawsuit by the plaintiff; a voluntary dismissal or nonsuit. See DISMISSAL; NONSUIT(1); judgment of discontinuance under JUDGMENT. [Cases: Federal Civil Procedure 1691; Pretrial Procedure 501. C.J.S. Dismissal and Nonsuit §§ 2–7, 9–10, 12, 14–16, 24.] 2. The termination of an estate-tail by a tenant in tail who conveys a larger estate in the land than is legally allowed. [Cases: Estates in Property 12.C.J.S. Estates §§ 22–27.]

“Such is ... the injury of discontinuance; which happens when he who hath an estate-tail, maketh a larger estate of the land than by law he is entitled to do: in which case the estate is good, so far as his power extends who made it, but no farther. As if tenant in tail makes a feoffment in fee-simple, or for the life of the feoffee, or in tail; all which are beyond his power to make, for that by the common law extends no farther than to make a lease for his own life: the entry of the feoffee is lawful during the life of the feoffer; but if he retains the possession after the death of the feoffer, it is an injury, which is termed a discontinuance; the ancient legal estate, which ought to have survived to the heir in tail, being gone, or at least suspended, and for a while discontinued.” 3 William Blackstone, Commentaries on the Laws of England 171–72 (1768).

## DISCONTINUEE

discontinuee,n. A person whose acquisition of an entailed estate causes a discontinuance of the fee tail heirs' right to the estate. Cf. DISCONTINUOR.

## DISCONTINUING EASEMENT

discontinuing easement.See discontinuous easement under EASEMENT.

## DISCONTINUOR

discontinuor,n. A tenant in tail whose conveyance of the entailed estate causes a discontinuance. Cf. DISCONTINUEE.

## DISCONTINUOUS EASEMENT

discontinuous easement.See EASEMENT.

## DISCONTINUOUS SERVITUDE

discontinuous servitude.See discontinuous easement under EASEMENT.

## DISCONVENABLE

disconvenable (dis-k<<schwa>>n-vee-n<<schwa>>-b<<schwa>>l), adj.[Law French] Archaic. Unfit; improper.

## DISCOUNT

discount,n.1. A reduction from the full amount or value of something, esp. a price. 2. An advance deduction of interest when a person lends money on a note, bill of exchange, or other

commercial paper, resulting in its present value. See PRESENT VALUE. 3. The amount by which a security's market value is below its face value. — Also termed bond discount. Cf. PREMIUM(3). — discount, vb.

bulk discount. See volume discount.

cash discount. 1. A seller's price reduction in exchange for an immediate cash payment. 2. A reduction from the stated price if the bill is paid on or before a specified date.

functional discount. 1. A supplier's price discount given to a purchaser based on the purchaser's role (such as warehousing or advertising) in the supplier's distributive system. • This type of discount typically reflects the value of services performed by the purchaser for the supplier. If a functional discount constitutes a reasonable reimbursement for the purchaser's actual marketing functions, it does not constitute unlawful price discrimination and does not violate antitrust laws. 2. A supplier's price discount based on the purchaser's relative distance from the supplier in the chain of distribution. • For example, a wholesaler or distributor usu. receives a greater discount than a retailer.

quantity discount. See volume discount.

trade discount. 1. A discount from list price offered to all customers of a given type — for example, a discount offered by a lumber dealer to building contractors. 2. The difference between a seller's list price and the price at which the dealer actually sells goods to the trade.

volume discount. A price decrease based on a large-quantity purchase. — Also termed bulk discount; quantity discount.

#### DISCOUNT BOND

discount bond. See BOND(3).

#### DISCOUNT BROKER

discount broker. See BROKER.

#### DISCOUNTED CASH FLOW

discounted cash flow. See CASH FLOW.

#### DISCOUNTED-CASH-FLOW METHOD

discounted-cash-flow method. See discounted cash flow under CASH FLOW.

#### DISCOUNT INTEREST

discount interest. See INTEREST(3).

#### DISCOUNT LOAN

discount loan. See LOAN.

#### DISCOUNT MARKET



discount market. See MARKET.

#### DISCOUNT RATE

discount rate. See INTEREST RATE.

#### DISCOUNT SHARE

discount share. See discount stock under STOCK.

#### DISCOUNT STOCK

discount stock. See STOCK.

#### DISCOUNT YIELD

discount yield. See YIELD.

#### DISCOVERABLE

discoverable, adj. Subject to pretrial discovery <the defendant's attorney argued that the defendant's income-tax returns were not discoverable during the liability phase of the trial>. [Cases: Federal Civil Procedure 1272; Pretrial Procedure 27.]

#### DISCOVERED-PERIL DOCTRINE

discovered-peril doctrine. See LAST-CLEAR-CHANCE DOCTRINE.

#### DISCOVERT

discovert (dis-k<<schwa>>v-<<schwa>>rt), adj. 1. Archaic. Uncovered; exposed. 2. Not married, esp. a widow or a woman who has never married.

#### DISCOVERY

discovery, n. 1. The act or process of finding or learning something that was previously unknown <after making the discovery, the inventor immediately applied for a patent>. 2. Compulsory disclosure, at a party's request, of information that relates to the litigation <the plaintiff filed a motion to compel discovery>. See Fed. R. Civ. P. 26–37; Fed. R. Crim. P. 16. • The primary discovery devices are interrogatories, depositions, requests for admissions, and requests for production. Although discovery typically comes from parties, courts also allow limited discovery from nonparties. [Cases: Federal Civil Procedure 1261–1686; Pretrial Procedure 11–44. C.J.S. Discovery §§ 2–12, 14–22, 24–29, 31–47, 51–53, 56, 58–59, 69; Pretrial Procedure §§ 2–6.] 3. The facts or documents disclosed <the new associate spent all her time reviewing discovery>. 4. The pretrial phase of a lawsuit during which depositions, interrogatories, and other forms of discovery are conducted. — discover, vb. — discoverable, adj.

“Discovery has broad scope. According to Federal Rule 26, which is the model in modern procedural codes, inquiry may be made into ‘any matter, not privileged, that is relevant to the subject matter of the action.’ Thus, discovery may be had of facts incidentally relevant to the issues in the pleadings even if the facts do not directly prove or disprove the facts in question.”

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Geoffrey C. Hazard Jr. & Michele Taruffo, *American Civil Procedure: An Introduction* 115 (1993).

accelerated discovery. A party's production of relevant evidence to an opponent at a time earlier than would otherwise be required by rule or standing order of the court. • The accelerated discovery is usu. carried out in compliance with a specific court order or the parties' agreement. — Also termed accelerated disclosure.

postjudgment discovery. Discovery conducted after judgment has been rendered, usu. to determine the nature of the judgment debtor's assets or to obtain testimony for use in future proceedings. — Also termed posttrial discovery. [Cases: Execution 373–400; Federal Civil Procedure 2707. C.J.S. Executions §§ 356, 359–389, 412.]

pretrial discovery. Discovery conducted before trial to reveal facts and develop evidence. • Modern procedural rules have broadened the scope of pretrial discovery to prevent the parties from surprising each other with evidence at trial. [Cases: Federal Civil Procedure 1261; Pretrial Procedure 14, 25. C.J.S. Discovery §§ 2, 6, 10, 32, 36, 58.]

reciprocal discovery. See reverse Jencks material under JENCKS MATERIAL.

reverse discovery. See reverse Jencks material under JENCKS MATERIAL.

#### DISCOVERY ABUSE

discovery abuse. 1. The misuse of the discovery process, esp. by making overbroad requests for information that is unnecessary or beyond the scope of permissible disclosure or by conducting discovery for an improper purpose. [Cases: Federal Civil Procedure 1261, 1278; Pretrial Procedure 28. C.J.S. Discovery §§ 2, 6–7, 21.]

“The term ‘discovery abuse’ has been used as if it were a single concept, but it includes several different things. Thus, it is useful to subdivide ‘abuse’ into ‘misuse’ and ‘overuse.’ What is referred to as ‘misuse’ would include not only direct violation of the rules, as by failing to respond to a discovery request within the stated time limit, but also more subtle attempts to harass or obstruct an opponent, as by giving obviously inadequate answers or by requesting information that clearly is outside the scope of discovery. By ‘overuse’ is meant asking for more discovery than is necessary or appropriate to the particular case. ‘Overuse,’ in turn, can be subdivided into problems of ‘depth’ and of ‘breadth,’ with ‘depth’ referring to discovery that may be relevant but is simply excessive and ‘breadth’ referring to discovery requests that go into matters too far removed from the case.” Charles Alan Wright, *The Law of Federal Courts* § 81, at 580 (5th ed. 1994).

2. The failure to respond adequately to proper discovery requests. — Also termed abuse of discovery. [Cases: Federal Civil Procedure 1278; Pretrial Procedure 44.1.]

#### DISCOVERY IMMUNITY

discovery immunity. A (usu. statutory) prohibition that excludes certain documents or information from discovery.

#### DISCOVERY POLICY

discovery policy. See claims-made policy under INSURANCE POLICY.

#### DISCOVERY RULE

discovery rule. Civil procedure. The rule that a limitations period does not begin to run until the plaintiff discovers (or reasonably should have discovered) the injury giving rise to the claim. • The discovery rule usu. applies to injuries that are inherently difficult to detect, such as those resulting from medical malpractice. See STATUTE OF LIMITATIONS. Cf. OCCURRENCE RULE. [Cases: Limitation of Actions 95, 100. C.J.S. Employer–Employee Relationship § 87; Limitations of Actions §§ 87, 131, 138, 142, 164–165, 167–168, 170–173, 175–176, 183, 192, 198–205; Physicians, Surgeons, and Other Health-Care Providers § 108; RICO (Racketeer Influenced and Corrupt Organizations) § 16.]

#### DISCOVERY VEIN

discovery vein. See VEIN.

#### DISCREDIT

discredit, vb. To destroy or impair the credibility of (a witness, a piece of evidence, or a theory); to lessen the degree of trust to be accorded to (a witness or document). [Cases: Witnesses 330. C.J.S. Witnesses § 579.] — discredit, n.

#### DISCREET

discreet (di-skreet), adj. Exercising discretion; prudent; judicious; discerning.

#### DISCRETE

discrete (di-skreet), adj. Individual; separate; distinct.

#### DISCRETION

discretion (di-skresh-<<schwa>>n). 1. Wise conduct and management; cautious discernment; prudence. 2. Individual judgment; the power of free decision-making.

sole discretion. An individual's power to make decisions without anyone else's advice or consent.

3. Criminal & tort law. The capacity to distinguish between right and wrong, sufficient to make a person responsible for his or her own actions. [Cases: Criminal Law 46. C.J.S. Criminal Law §§ 96–98, 113.] 4. A public official's power or right to act in certain circumstances according to personal judgment and conscience, often in an official or representative capacity. — Also termed discretionary power.

administrative discretion. A public official's or agency's power to exercise judgment in the discharge of its duties. [Cases: Administrative Law and Procedure 324, 754. C.J.S. Public Administrative Law and Procedure §§ 60, 206, 223.]

judicial discretion. The exercise of judgment by a judge or court based on what is fair under

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the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. — Also termed legal discretion. [Cases: Courts 26. C.J.S. Courts §§ 3, 64–65, 67.]

prosecutorial discretion.A prosecutor's power to choose from the options available in a criminal case, such as filing charges, prosecuting, not prosecuting, plea-bargaining, and recommending a sentence to the court. [Cases: Criminal Law 29(3); District and Prosecuting Attorneys 8. C.J.S. District and Prosecuting Attorneys §§ 20–21, 29–30.]

#### DISCRETION, ABUSE OF

discretion, abuse of.See ABUSE OF DISCRETION.

#### DISCRETIONARY

discretionary (di-skresh-<<schwa>>-ner-ee), adj. (Of an act or duty) involving an exercise of judgment and choice, not an implementation of a hard-and-fast rule. • Such an act by a court may be overturned only after a showing of abuse of discretion.

#### DISCRETIONARY ACCOUNT

discretionary account.An account that allows a broker access to a customer's funds to purchase and sell securities or commodities for the customer based on the broker's judgment and without first having to obtain the customer's consent to the purchase or sale. [Cases: Brokers 19. C.J.S. Brokers §§ 5, 25–26, 50, 56–57, 59.]

#### DISCRETIONARY ACT

discretionary act.A deed involving an exercise of personal judgment and conscience. — Also termed discretionary function. See DISCRETION; ABUSE OF DISCRETION .

#### DISCRETIONARY COMMITMENT

discretionary commitment.See COMMITMENT.

#### DISCRETIONARY DAMAGES

discretionary damages.See DAMAGES.

#### DISCRETIONARY DUTY

discretionary duty.See DUTY(2).

#### DISCRETIONARY FUNCTION

discretionary function.See DISCRETIONARY ACT.

#### DISCRETIONARY IMMUNITY

discretionary immunity.See IMMUNITY(1).

#### DISCRETIONARY ORDER

discretionary order. See ORDER(8).

#### DISCRETIONARY POWER

discretionary power. 1. POWER(3). 2. DISCRETION(4).

#### DISCRETIONARY REVIEW

discretionary review. See REVIEW.

#### DISCRETIONARY-TRANSFER STATUTE

discretionary-transfer statute. See TRANSFER STATUTE.

#### DISCRETIONARY TRUST

discretionary trust. See TRUST.

#### DISCRIMINANT FUNCTION

discriminant function (di-skrim-*n*). An IRS method of selecting tax returns to be audited. • The method consists of (1) using a computer program to identify returns with a high probability of error (such as those showing a disproportionate amount of deductible expenses), and (2) having examiners manually review the selected returns to determine which ones should be audited. — Also termed DIF system. [Cases: Internal Revenue 4443. C.J.S. Internal Revenue §§ 616, 618.]

#### DISCRIMINATEE

discriminatee (di-skrim-*n*-tee). A person unlawfully discriminated against. [Cases: Civil Rights 1007. C.J.S. Civil Rights §§ 2–5, 7–9, 11–13, 18, 44.]

#### DISCRIMINATION

discrimination, *n.* 1. The effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or handicap. • Federal law, including Title VII of the Civil Rights Act, prohibits employment discrimination based on any one of those characteristics. Other federal statutes, supplemented by court decisions, prohibit discrimination in voting rights, housing, credit extension, public education, and access to public facilities. State laws provide further protections against discrimination. [Cases: Civil Rights 1001–1263. C.J.S. Civil Rights §§ 2–37, 39–67, 85–86, 88, 102–104, 107, 122, 144, 219–221.] 2. Differential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored. [Cases: Civil Rights 1033, 1138. C.J.S. Civil Rights §§ 18, 20, 23–24, 34, 39–40.]

“The dictionary sense of ‘discrimination’ is neutral while the current political use of the term is frequently non-neutral, pejorative. With both a neutral and a non-neutral use of the word having currency, the opportunity for confusion in arguments about racial discrimination is enormously multiplied. For some, it may be enough that a practice is called discriminatory for them to judge it wrong. Others may be mystified that the first group condemns the practice without further

argument or inquiry. Many may be led to the false sense that they have actually made a moral argument by showing that the practice discriminates (distinguishes in favor of or against). The temptation is to move from 'X distinguishes in favor of or against' to 'X discriminates' to 'X is wrong' without being aware of the equivocation involved." Robert K. Fullinwider, *The Reverse Discrimination Controversy* 11–12 (1980).

age discrimination. Discrimination based on age. • Federal law prohibits discrimination in employment against people who are age 40 or older. [Cases: Civil Rights 1014, 1199. C.J.S. Civil Rights §§ 2, 6–7, 9–10, 19, 21, 56–58.]

content-based discrimination. A state-imposed restriction on the content of speech, esp. when the speech concerns something of slight social value and is vastly outweighed by the public interest in morality and order. • Types of speech subject to content-based discrimination include obscenity, fighting words, and defamation. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 383–84, 112 S.Ct. 2538, 2543 (1992).

gender discrimination. See sex discrimination.

invidious discrimination (in-vid-ee-<<schwa>>s). Discrimination that is offensive or objectionable, esp. because it involves prejudice or stereotyping.

racial discrimination. Discrimination based on race. [Cases: Civil Rights 1009, 1107. C.J.S. Civil Rights §§ 2–5, 7–9, 11–13, 18, 22, 26–27, 30–31, 33–34, 37, 41–42, 44, 67.]

reverse discrimination. Preferential treatment of minorities, usu. through affirmative-action programs, in a way that adversely affects members of a majority group. See AFFIRMATIVE ACTION. [Cases: Civil Rights 1033(3), 1232. C.J.S. Civil Rights §§ 18, 20, 23–24, 64–65.]

sex discrimination. Discrimination based on gender, esp. against women. • The Supreme Court has established an intermediate-scrutiny standard of review for gender-based classifications, which must serve an important governmental interest and be substantially related to the achievement of that objective. *Craig v. Boren*, 429 U.S. 190, 97 S.Ct. 451 (1976). — Also termed gender discrimination. [Cases: Civil Rights 1011, 1164, 1236. C.J.S. Civil Rights §§ 2, 6–7, 9–10, 19, 21, 35, 64–65, 88.]

viewpoint discrimination. Content-based discrimination in which the government targets not a particular subject, but instead certain views that speakers might express on the subject; discrimination based on the content of a communication. • If restrictions on the content of speech are reasonable and not calculated to suppress a particular set of views or ideas, a governmental body may limit speech in a nonpublic forum to expressions that serve a specific purpose. For example, an agency holding a workshop to inform state employees of laws related to the agency's functions may reasonably prohibit the expression of opinions regarding the motives of the legislators. But if speech favorable to the legislators' intent is allowed and opponents are denied the opportunity to respond, the restriction would constitute viewpoint discrimination. — Also termed viewpoint-based discrimination. [Cases: Constitutional Law 90(3), 90.1(1).]

3. The effect of state laws that favor local interests over out-of-state interests. • Such a

discriminatory state law may still be upheld if it is narrowly tailored to achieve an important state interest. Cf. FAVORITISM. [Cases: Commerce 54.1. C.J.S. Commerce § 51.] — discriminate,vb. — discriminatory,adj.

#### DISCRIMINATORY TARIFF

discriminatory tariff.See TARIFF(2).

#### DISCUSSION

discussion. 1. The act of exchanging views on something; a debate. 2.Civil law. A creditor's act of exhausting all remedies against the principal debtor before proceeding against the guarantor. See BENEFIT OF DISCUSSION. [Cases: Guaranty 42, 77; Principal and Surety 138, 168. C.J.S. Principal and Surety §§ 120, 218.]

#### DISEASE

disease. 1. A deviation from the healthy and normal functioning of the body < the drug could not be linked to his disease>.2. (pl.) Special classes of pathological conditions with similar traits, such as having similar causes and affecting similar organs <respiratory diseases> <occupational diseases>.3. Any disorder; any depraved condition.

functional disease.A disease that prevents, obstructs, or interferes with an organ's special function, without anatomical defect or abnormality in the organ itself.

industrial disease.See OCCUPATIONAL DISEASE.

occupational disease.See OCCUPATIONAL DISEASE.

organic disease.A disease that is caused by an injury to, or lesion or malfunction in, an organ.

#### DISEMBARRASS

disembarrass,vb. To free from embarrassment; to extricate or disentangle one thing from another.

#### DISEMBODIED TECHNOLOGY

disembodied technology.Intellectual property. Know-how or knowledge that is in the form of information only. • Disembodied technology includes proprietary technology and information in the public domain. Cf. EMBODIED TECHNOLOGY.

#### DISENFRANCHISE

disenfranchise (dis-⟨⟨schwa⟩⟩n-fran-chIz), vb. To deprive (a person) of the right to exercise a franchise or privilege, esp. to vote. — Also termed disfranchise.

#### DISENFRANCHISEMENT

disenfranchisement (dis-⟨⟨schwa⟩⟩n-fran-chiz-m⟨⟨schwa⟩⟩nt or -fran-chIz-m⟨⟨schwa⟩⟩nt).1. The act of depriving a member of a corporation or other organization of a right, as

by expulsion. 2. The act of taking away the right to vote in public elections from a citizen or class of citizens. — Also termed disfranchisement. [Cases: Elections 87. C.J.S. Elections § 32.]

#### DISENTAILING ASSURANCE

disentailing assurance. See DISENTAILMENT.

#### DISENTAILING DEED

disentailing deed. See DEED.

#### DISENTAILING STATUTE

disentailing statute (dis-*<<schwa>>n-tayl-ing*). A statute regulating or prohibiting disentailing deeds. See disentailing deed under DEED. [Cases: Deeds 127. C.J.S. Deeds § 247.]

#### DISENTAILMENT

disentailment (dis-*<<schwa>>n-tayl-m<<schwa>>nt*), n. The act or process by which a tenant in tail bars the entail on an estate and converts it into a fee simple, thereby nullifying the rights of any later claimant to the fee tail. See BARRING OF ENTAIL. — Also termed disentailing assurance. [Cases: Estates in Property 12. C.J.S. Estates §§ 22–27.] —disentail,vb.

#### DISENTITLE

disentitle (dis-*<<schwa>>n-tlt-<<schwa>>l*), vb. To deprive (someone) of a title or claim <the plaintiffs' actions disentitled them to recover damages>.

#### DISFACERE

disfacere. See DIFFACERE.

#### DISFIGUREMENT

disfigurement (dis-fig-*y<<schwa>>r-m<<schwa>>nt*). An impairment or injury to the appearance of a person or thing.

#### DISFRANCHISE

disfranchise. See DISENFRANCHISE.

#### DISFRANCHISEMENT

disfranchisement. See DISENFRANCHISEMENT.

#### DISGAVEL

disgavel (dis-gav-*<<schwa>>l*), vb. Hist. To convert (gavelkind land) into ordinary freehold land. See GAVELKIND.

#### DISGORGEMENT

disgorgement,n. The act of giving up something (such as profits illegally obtained) on



demand or by legal compulsion. [Cases: Securities Regulation 150. C.J.S. Securities Regulation §§ 274–276, 279.] — disgorge,vb.

#### DISGRADING

disgrading.Hist. 1. The act of degrading. 2. The depriving of an order; the depriving of a dignity.

“Disgrading, or degrading, is when a man having taken upon him a dignity temporal or spiritual, is afterwards thereof deprived, be he knight, clerk or other. Whereof if a clerk be delivered to his ordinary, and cannot clear himself of the offence whereof he is convicted by the jury, he shall be disgraded for it; which is nothing else but the deprivation of him from those orders he hath taken upon him, as priesthood, deaconship, or otherwise.... In like manner there is disgrading of a knight .... And it is worthy the observation, that by the canon law there are two kinds of disgradings; the one summary, by word only, and the other solemn, by devesting the party disgraded from those ornaments and rites which are the ensigns of his order or degree.” *Termes de la Ley* 175–76 (1st Am. ed. 1812).

#### DISGUISED DIVIDEND

disguised dividend.See informal dividend under DIVIDEND.

#### DISGUISED INSTALLMENT SALE

disguised installment sale.See INSTALLMENT SALE.

#### DISHERISON

disherison (dis-her-<<schwa>>-z<<schwa>>n). See DISINHERITANCE.

#### DISHERITOR

disheritor (dis-her-<<schwa>>-t<<schwa>>r or -tor).Archaic. A person who deprives someone of an inheritance.

#### DISHONEST ACT

dishonest act.See FRAUDULENT ACT.

#### DISHONOR

dishonor,vb.1. To refuse to accept or pay (a negotiable instrument) when presented. See NOTICE OF DISHONOR; WRONGFUL DISHONOR. [Cases: Bills and Notes 385–424. C.J.S. Bills and Notes; Letters of Credit §§ 4, 97–98, 202, 204–230, 257, 294, 299.] 2. To deface or defile (something, such as a flag). — dishonor,n.

#### DISHONORABLE DISCHARGE

dishonorable discharge.See DISCHARGE(8).

#### DISIMPRISONMENT

disimprisonment. The release of a prisoner; the removal of a prisoner from confinement. — Also termed disincarceration; decarceration. Cf. INCARCERATION.

## DISINCARCERATE

disincarcerate, vb. To release (a person) from jail; to set free. — Also termed disimprison.

## DISINCARCERATION

disincarceration. See DISIMPRISONMENT.

## DISINCENTIVE

disincentive, n. A deterrent (to a particular type of conduct), often created, intentionally or unintentionally, through legislation <federal tax law creates a disincentive to marriage> <sales taxes provide a disincentive to excessive consumer spending>.

## DISINFLATION

disinflation. A period or process of slowing down the rate of inflation. Cf. DEFLATION.

## DISINHERISON

disinherison (dis-in-her-*<<schwa>>-z<<schwa>>n*), n. See DISINHERITANCE.

## DISINHERITANCE

disinheritance, n. 1. The act by which an owner of an estate deprives a would-be heir of the expectancy to inherit the estate. • A testator may expressly exclude or limit the right of a person or a class to inherit property that the person or class would have inherited through intestate succession, but only if the testator devises all the property to another. [Cases: Descent and Distribution 47(2). C.J.S. Descent and Distribution § 53.] 2. The state of being disinherited. See forced heir under HEIR. — Also termed disherison; disinherison; deherison. — disinherit, vb.

negative disinheritance. The act by which a testator attempts to exclude a person from inheritance without disposing of the property to another. • Negative disinheritance is ineffective at common law, although today it may be permitted by statute.

## DISINTER

disinter (dis-in-t*<<schwa>>r*), vb. 1. To exhume (a corpse). 2. To remove (something) from obscurity. [Cases: Dead Bodies 5. C.J.S. Dead Bodies §§ 7–11, 22–26.] — disinterment (dis-in-t*<<schwa>>r-m<<schwa>>nt*), n.

## DISINTERESTED

disinterested, adj. Free from bias, prejudice, or partiality; not having a pecuniary interest <a disinterested witness>. — disinterest, disinterestedness, n.

## DISINTERESTED WITNESS

disinterested witness. See WITNESS.

## DISINTERMEDIATION

disintermediation. The process of bank depositors' withdrawing their funds from accounts with low interest rates to put them into investments that pay higher returns.

## DISINVESTMENT

disinvestment, n. 1. The consumption of capital. 2. The withdrawal of investments, esp. on political grounds. — Also termed (in sense 2) divestment. — disinvest, vb.

## DISJOINDER

disjoinder (dis-joyn-d<<schwa>>r). The undoing of the joinder of parties or claims. See JOINDER. Cf. MISJOINDER(1); NONJOINDER(1).

## DISJUNCTA

disjuncta (dis-j<<schwa>>ngk-t<<schwa>>), n. pl.[Latin] Roman & civil law. Things (usu. words or phrases) that are separated or opposed. — Also spelled disiuncta. Cf. CONJUNCTA.

## DISJUNCTIM

disjunctim (dis-j<<schwa>>ngk-t<<schwa>>m), adv.[Latin] Roman law. Separately; severally. • A condition imposed disjunctim, for example, would bind the persons severally, rather than jointly. — Also spelled disiunctim. Cf. CONJUNCTIM.

## DISJUNCTIVE ALLEGATION

disjunctive allegation. See ALLEGATION.

## DISJUNCTIVE CONDITION

disjunctive condition. See CONDITION(2).

## DISJUNCTIVE DENIAL

disjunctive denial. See DENIAL.

## DISJUNCTIVE OBLIGATION

disjunctive obligation. See alternative obligation under OBLIGATION.

## DISME

disme (dIm), n.[Law French] A tithe; a tenth part, as in a tithe due the clergy equal to the tenth of all spiritual livings as required by the statute 25 Edw. 3, st. 7. • This is the Law French equivalent to the Latin decimae. It was once the spelling of the American 10-cent piece, the dime. Pl. dismes. See DECIMAE.

## DISMEMBERMENT

dismemberment. 1. The cutting off of a limb or body part. 2. Int'l law. The disappearance of a country as a result of a treaty or an annexation, whereby it becomes part of one or more other

countries. 3.Int'l law. The reduction of a country's territory by annexation or cession, or the secession of one part. 4.Int'l law. The extinguishment of a country and the creation of two or more new countries from the former country's territory.

#### DISMEMBERMENTS OF OWNERSHIP

dismemberments of ownership.Civil law. The three elements composing the right of ownership, namely, the *usus*, the *fructus*, and the *abusus*. • The right of ownership may be dismembered and its components conveyed in the form of independent real rights, such as the right of use, the right of usufruct, and the right of security. See *ABUSUS*; *FRUCTUS*; *USUS*.

#### DISMISS

dismiss,vb.1. To send (something) away; specif., to terminate (an action or claim) without further hearing, esp. before the trial of the issues involved. 2. To release or discharge (a person) from employment. See *DISMISSAL*.

#### DISMISSAL

dismissal,n.1. Termination of an action or claim without further hearing, esp. before the trial of the issues involved. [Cases: Federal Civil Procedure 1691–1842; Pretrial Procedure 501–629. C.J.S. Dismissal and Nonsuit §§ 2–47, 49–73.]

dismissal agreed.A court's dismissal of a lawsuit with the acquiescence of all parties. • Among other possibilities, the parties may have settled out of court or chosen to have their dispute arbitrated or mediated. — Also termed agreed dismissal.

dismissal for failure to prosecute.See dismissal for want of prosecution.

dismissal for lack of prosecution.See dismissal for want of prosecution.

dismissal for want of equity.A court's dismissal of a lawsuit on substantive, rather than procedural, grounds, usu. because the plaintiff's allegations are found to be untrue or because the plaintiff's pleading does not state an adequate claim. [Cases: Pretrial Procedure 552, 622. C.J.S. Dismissal and Nonsuit § 50.]

dismissal for want of prosecution.A court's dismissal of a lawsuit because the plaintiff has failed to pursue the case diligently toward completion. — Abbr. *DWOP*. — Also termed dismissal for failure to prosecute; dismissal for lack of prosecution. [Cases: Criminal Law 303.30(1); Federal Civil Procedure 1758; Pretrial Procedure 581–602. C.J.S. Dismissal and Nonsuit §§ 43, 51, 67–73.]

dismissal without prejudice.A dismissal that does not bar the plaintiff from refileing the lawsuit within the applicable limitations period. [Cases: Federal Civil Procedure 1713, 1837.1; Pretrial Procedure 690. C.J.S. Dismissal and Nonsuit § 80.]

dismissal with prejudice.A dismissal, usu. after an adjudication on the merits, barring the plaintiff from prosecuting any later lawsuit on the same claim. • If, after a dismissal with prejudice, the plaintiff files a later suit on the same claim, the defendant in the later suit can assert the

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defense of res judicata (claim preclusion). See RES JUDICATA. [Cases: Federal Civil Procedure 1713, 1837.1; Pretrial Procedure 690. C.J.S. Dismissal and Nonsuit § 80.]

involuntary dismissal.A court's dismissal of a lawsuit because the plaintiff failed to prosecute or failed to comply with a procedural rule or court order. Fed. R. Civ. P. 41(b). [Cases: Federal Civil Procedure 1721–1842; Pretrial Procedure 551–602. C.J.S. Dismissal and Nonsuit §§ 43, 49–73.]

voluntary dismissal.A plaintiff's dismissal of a lawsuit at the plaintiff's own request or by stipulation of all the parties. Fed. R. Civ. P. 41(a). [Cases: Federal Civil Procedure 1691–1715; Pretrial Procedure 501–520. C.J.S. Dismissal and Nonsuit §§ 2–41, 47.]

2. A release or discharge from employment. See DISCHARGE(7). [Cases: Master and Servant 31. C.J.S. Employer–Employee Relationship § 52.]

dismissal for cause.A dismissal of a contract employee for a reason that the law or public policy has recognized as sufficient to warrant the employee's removal. [Cases: Master and Servant 30(1.5). C.J.S. Employer–Employee Relationship §§ 35, 38–40, 42–43, 56, 60.]

3.Military law. A court-martial punishment for an officer, commissioned warrant officer, cadet, or midshipman, consisting of separation from the armed services with dishonor. • A dismissal can be given only by a general court-martial and is considered the equivalent of a dishonorable discharge. [Cases: Armed Services 48; Military Justice 1322.1. C.J.S. Armed Services § 181; Military Justice §§ 384, 434.] — dismiss,vb.

#### DISMISSAL COMPENSATION

dismissal compensation.See SEVERANCE PAY.

#### DISMISSED FOR WANT OF EQUITY

dismissed for want of equity.(Of a case) removed from the court's docket for substantive reasons, usu. because the plaintiff's allegations are found to be untrue or because the plaintiff's pleading does not state an adequate claim. See dismissal for want of equity under DISMISSAL(1). [Cases: Pretrial Procedure 552, 622. C.J.S. Dismissal and Nonsuit § 50.]

#### DISMISSED FOR WANT OF PROSECUTION

dismissed for want of prosecution.(Of a case) removed from the court's docket because the plaintiff has failed to pursue the case diligently toward completion. See dismissal for want of prosecution under DISMISSAL(1). [Cases: Federal Civil Procedure 1758; Pretrial Procedure 581–602. C.J.S. Dismissal and Nonsuit §§ 43, 51, 67–73.]

#### DISMISSED WITHOUT PREJUDICE

dismissed without prejudice.(Of a case) removed from the court's docket in such a way that the plaintiff may refile the same suit on the same claim. See dismissal without prejudice under DISMISSAL(1); WITHOUT PREJUDICE. [Cases: Federal Civil Procedure 1713, 1837.1; Pretrial Procedure 690. C.J.S. Dismissal and Nonsuit § 80.]

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**DISMISSED WITH PREJUDICE**

dismissed with prejudice.(Of a case) removed from the court's docket in such a way that the plaintiff is foreclosed from filing a suit again on the same claim or claims. See dismissal with prejudice under DISMISSAL(1); WITH PREJUDICE . [Cases: Federal Civil Procedure 1713, 1837.1; Pretrial Procedure 690. C.J.S. Dismissal and Nonsuit § 80.]

**DISMISSION**

dismissal.Archaic. 1. An act of dismissing <dismissal of the jury>.2. A removal, esp. from office or position <dismissal of the employee>.3. A decision that a suit cannot be maintained <dismissal of the case>.

**DISMORTGAGE**

dismortgage. See REDEMPTION(4).

**DISNEYLAND PARENT**

Disneyland parent.See PARENT.

**DISOBEDIENT CHILD**

disobedient child.See incorrigible child under CHILD.

**DISORDER**

disorder. 1. A lack of proper arrangement <disorder of the files>.2. An irregularity <a disorder in the proceedings>.3. A public disturbance; a riot <civil disorder>.4. A disturbance in mental or physical health <an emotional disorder> <a liver disorder>.

**DISORDERLY CONDUCT**

disorderly conduct.See CONDUCT.

**DISORDERLY HOUSE**

disorderly house. 1. A dwelling where people carry on activities that are a nuisance to the neighborhood. [Cases: Disorderly House 1. C.J.S. Disorderly Houses § 2.] 2. A dwelling where people conduct criminal or immoral activities. • Examples are brothels and drug houses. — Also termed (more narrowly) bawdy house; house of prostitution; house of ill fame; lewd house; assignation house; house of assignation.

“The keeping of one type of disorderly house — the bawdy house — is punished because it violates the social interest in maintaining proper standards of morality and decency.... As included here a house may be disorderly for other reasons. Any house in which disorderly persons are permitted to congregate, and to disturb the tranquillity of the neighborhood by fighting, quarreling, swearing or any other type of disorder, is a disorderly house; and the keeping thereof is a misdemeanor at common law.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 487 (3d ed.

1982).

#### DISORDERLY PERSON

disorderly person. 1. A person guilty of disorderly conduct. [Cases: Disorderly Conduct 3. C.J.S. Disorderly Conduct § 7.] 2. A person who breaches the peace, order, decency, or safety of the public, as defined by statute.

“Ordinarily, a person who is guilty of disorderly conduct is a ‘disorderly person,’ but where statutes define ‘a disorderly person’ and distinguish acts which may constitute the offense of disorderly conduct, the distinction is to be preserved and the different provisions relative to the different offenses particularly followed.” 27 C.J.S. Disorderly Conduct § 1(1), at 509 (1959).

#### DISPARAGARE

disparagare (di-spar-*<<schwa>>*-gair-ee), vb.[Law Latin fr. Law French *disparager* “to disparage”] Hist. 1.To disparage. 2. To bring together unequal persons, as in a marriage between persons of unequal lineage. Cf. PARAGE.

#### DISPARAGATIO

disparagatio (di-spar-*<<schwa>>*-gay-shee-oh), n.[Law Latin] Hist. Disparagement in marriage.

#### DISPARAGATION

disparagation (di-spar-*<<schwa>>*-gay-sh*<<schwa>>*n), n.[Law French] Hist. 1.Disparagement. 2. A marriage below one's station.

#### DISPARAGEMENT

disparagement (di-spair-ij-m*<<schwa>>*nt), n. 1. A derogatory comparison of one thing with another <the disparagement consisted in comparing the acknowledged liar to a murderer>.2. The act or an instance of castigating or detracting from the reputation of, esp. unfairly or untruthfully <when she told the press the details of her husband's philandering, her statements amounted to disparagement>.3. A false and injurious statement that discredits or detracts from the reputation of another's property, product, or business. • To recover in tort for disparagement, the plaintiff must prove that the statement caused a third party to take some action resulting in specific pecuniary loss to the plaintiff. — Also termed injurious falsehood. — More narrowly termed slander of title; trade libel; slander of goods. See TRADE DISPARAGEMENT. Cf. commercial defamation under DEFAMATION. [Cases: Libel and Slander 130, 133. C.J.S. Libel and Slander; Injurious Falsehood §§ 204–206, 209.] 4. Reproach, disgrace, or indignity <self-importance is a disparagement of greatness>.5.Hist. The act or an instance of pairing an heir in marriage with someone of an inferior social rank <the guardian's arranging for the heir's marriage to a chimney sweep amounted to disparagement>. — *disparage*,vb.

#### DISPARAGING INSTRUCTION

disparaging instruction.See JURY INSTRUCTION.

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**DISPARAGING MARK**

disparaging mark. See disparaging trademark under TRADEMARK.

**DISPARAGING TRADEMARK**

disparaging trademark. See TRADEMARK.

**DISPARATE IMPACT**

disparate impact (dis-p<<schwa>>-rit). The adverse effect of a facially neutral practice (esp. an employment practice) that nonetheless discriminates against persons because of their race, sex, national origin, age, or disability and that is not justified by business necessity. • Discriminatory intent is irrelevant in a disparate-impact claim. — Also termed adverse impact. [Cases: Civil Rights 1033, 1140. C.J.S. Civil Rights §§ 18, 20, 23–24, 29, 144.]

**DISPARATE TREATMENT**

disparate treatment. The practice, esp. in employment, of intentionally dealing with persons differently because of their race, sex, national origin, age, or disability. • To succeed on a disparate-treatment claim, the plaintiff must prove that the defendant acted with discriminatory intent or motive. [Cases: Civil Rights 1033, 1138. C.J.S. Civil Rights §§ 18, 20, 23–24, 34, 39–40.]

“Claims brought on behalf of a group of employees come in two varieties: claims of intentional discrimination (or disparate treatment) and claims of discriminatory impact (or disparate impact). The difference between these types of claims is significant, so much so that constitutional law only recognizes claims of disparate treatment, not disparate impact. Yet these two kinds of claims resemble one another, especially in the statistical evidence that the plaintiff must present in order to establish liability... [C]lass claims of disparate treatment emphasize the historical perspective and its negative conception of equality as colorblindness, while class claims of disparate impact emphasize the remedial perspective and its goal of eliminating the effects of past discrimination.” George Rutherglen, *Employment Discrimination Law* 56 (2001).

**DISPARITY**

disparity (di-spar-<<schwa>>-tee). Inequality; a difference in quantity or quality between two or more things.

**DISPATCH**

dispatch (di-spachalsodis-pach), n.1. A prompt sending off of something <a dispatch of the letter agreement>.2. A prompt completion of something <dispatch of a business transaction>.3. Something quickly sent <the dispatch was mailed>.4. Maritime law. The required diligence in discharging cargo <dispatch is required on all charters>. [Cases: Shipping 49(6). C.J.S. Shipping § 108.]

customary dispatch. Dispatch that follows the rules, customs, and usages of the port where cargo is discharged. [Cases: Shipping 49(6). C.J.S. Shipping § 108.]



quick dispatch. A speedy dispatch that does not strictly follow the customs of the port, esp. to avoid delays resulting from a crowded wharf. [Cases: Shipping 49(6). C.J.S. Shipping § 108.]

5. Maritime law. DISPATCH MONEY.

#### DISPATCH MONEY

dispatch money. Maritime law. An amount paid by a shipowner to a vessel's charterer if the vessel's cargo is unloaded at the port sooner than provided for in the agreement between the charterer and the shipowner. — Also termed dispatch. Cf. contract demurrage under DEMURRAGE. [Cases: Shipping 49(6). C.J.S. Shipping § 108.]

“Some charters contain a provision for ‘dispatch money,’ which is in the nature of a reward to the charterer for loading or unloading more rapidly than provided for — i.e., in less time than the stipulated ‘lay days.’ Dispatch, where payable, is usually stated, just as is demurrage, in terms of a rate per day and pro rata part thereof.” Grant Gilmore & Charles L. Black Jr., *The Law of Admiralty* § 4–8, at 212 (2d ed. 1975).

#### DISPATCH RULE

dispatch rule. See MAILBOX RULE.

#### DISPAUPER

dispauper (dis-paw-p<<schwa>>r), vb. To disqualify from being a pauper; to deprive (a person) of the ability to sue in forma pauperis. See IN FORMA PAUPERIS .

#### DISPENSARY

dispensary (di-spen-s<<schwa>>r-ee), n. 1. A place where drugs are prepared or distributed. 2. An institution, usu. for the poor, where medical advice and medicines are distributed for free or at a discounted rate.

#### DISPENSATION

dispensation (dis-pen-say-sh<<schwa>>n). An exemption from a law, duty, or penalty; permission to do something that is ordinarily forbidden.

#### DISPENSE WITH THE READING OF THE MINUTES

dispense with the reading of the minutes. Parliamentary law. To forgo reciting the secretary's proposed minutes at the regular time. • The reading is not forgone altogether, but simply postponed. If the proposed minutes have been printed and circulated, then their correction and approval is in order without reading them aloud, and a motion to dispense with reading them is superfluous.

#### DISPERSONARE

dispersonare (dis-p<<schwa>>r-s<<schwa>>-nair-ee), vb. [Latin] Hist. To scandalize, disparage, or slander.

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**DISPLACEMENT**

displacement. 1. Removal from a proper place or position <displacement of a file> <displacement of an officer>.2. A replacement; a substitution < displacement of the lawyer with another>.3. A forced removal of a person from the person's home or country, esp. because of war <displacement of refugees>.4. A shifting of emotional emphasis from one thing to another, esp. to avoid unpleasant or unacceptable thoughts or tendencies <emotional displacement>.

**DISPLAY RIGHT**

display right.Copyright. A copyright owner's exclusive right to show or exhibit a copy of the protected work publicly, whether directly or by technological means. • For example, this right makes it illegal to transmit a copyrighted work over the Internet without permission. [Cases: Copyrights and Intellectual Property 36. C.J.S. Copyrights and Intellectual Property §§ 10, 40–41, 97.]

**DISPONE**

dispone (dis-pohn), vb.[fr. Middle English disponen fr. Old French disponer “dispose”]  
1.Archaic. To dispose; to arrange. 2.Scots law. To convey, transfer, or otherwise alienate (property).

**DISPONEE**

disponee. See ALIENEE.

**DISPONO**

dispono (dis-poh-noh), vb.[Latin] Scots law. I grant or convey (land, etc.). • This is traditionally the main verb in a grant.

**DISPONOR**

disponor. See ALIENOR.

**DISPOSABLE EARNINGS**

disposable earnings.See disposable income under INCOME.

**DISPOSABLE INCOME**

disposable income.See INCOME.

**DISPOSABLE PORTION**

disposable portion.The portion of property that can be willed to anyone the testator chooses. [Cases: Wills 11. C.J.S. Wills §§ 76–87, 381.]

**DISPOSAL**

disposal.Patents. A patent application's termination by withdrawal, rejection, or grant. • In some countries, the meaning is limited to rejection. [Cases: Patents 108. C.J.S. Patents §§ 144,

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148–151.]

**DISPOSING CAPACITY**

disposing capacity. See testamentary capacity under CAPACITY(3).

**DISPOSING CLAUSE**

Disposing Clause. The clause of the U.S. Constitution giving Congress the power to dispose of property belonging to the federal government. U.S. Const. art. IV, § 3, cl. 2. [Cases: United States 58. C.J.S. United States §§ 101–106.]

**DISPOSING MIND**

disposing mind. See testamentary capacity under CAPACITY(3).

**DISPOSITION**

disposition (dis-p<<schwa>>-zish-<<schwa>>n), n.1. The act of transferring something to another's care or possession, esp. by deed or will; the relinquishing of property <a testamentary disposition of all the assets>.

testamentary disposition. A disposition to take effect upon the death of the person making it, who retains substantially entire control of the property until death.

2. A final settlement or determination <the court's disposition of the case>.

ambulatory disposition. 1. A judgment or sentence that is subject to amendment or revocation. 2. A testamentary provision that is subject to change because the testator is still alive and capable of making a new will. • Sense 2 corresponds to the first sense of disposition above. See AMBULATORY.

informal disposition. The termination of a case by means other than trial; any action that leads to disposition without conviction and without a judicial determination of guilt, such as guilty pleas and decisions not to prosecute.

3. Temperament or character; personal makeup <a surly disposition>. — dispose, vb. — dispositive, adj.

**DISPOSITIONAL HEARING**

dispositional hearing. See disposition hearing and permanency hearing under HEARING.

**DISPOSITION HEARING**

disposition hearing. See HEARING.

**DISPOSITION WITHOUT A TRIAL**

disposition without a trial. The final determination of a criminal case without a trial on the merits, as when a defendant pleads guilty or admits sufficient facts to support a guilty finding without a trial.

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**DISPOSITIVE**

dispositive (dis-poz-*<<schwa>>-tiv*), adj.1. Being a deciding factor; (of a fact or factor) bringing about a final determination. 2. Of, relating to, or effecting the disposition of property by will or deed.

**DISPOSITIVE CLAUSE**

dispositive clause.Scots law. In a deed, the clause of conveyance by which the grantor describes the property conveyed, its conditions or burdens, the name of the grantee, and the destination to heirs. See **DESTINATION**(3).

**DISPOSITIVE FACT**

dispositive fact.See **FACT**.

**DISPOSITIVE TREATY**

dispositive treaty.See **TREATY**(1).

**DISPOSSESS**

dispossess (dis-p*<<schwa>>-zes*), vb. To oust or evict (someone) from property. See **DISPOSSESSION**.

**DISPOSSESSION**

dispossession (dis-p*<<schwa>>-zesh-<<schwa>>n*), n. Deprivation of, or eviction from, rightful possession of property; the wrongful taking or withholding of possession of land from the person lawfully entitled to it; **OUSTER**(1). [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

**DISPOSSESSOR**

dispossessor. A person who dispossesses.

**DISPOSSESS PROCEEDING**

dispossess proceeding.A summary procedure initiated by a landlord to oust a defaulting tenant and regain possession of the premises. See **FORCIBLE ENTRY AND DETAINER** . [Cases: Landlord and Tenant 293.]

**DISPROVE**

disprove,vb. To refute (an assertion); to prove (an allegation) false.

**DISPUNISHABLE**

dispunishable,adj. Hist. (Of an offense) not punishable; not answerable.

**DISPUTABLE PRESUMPTION**

disputable presumption.See rebuttable presumption under **PRESUMPTION**.

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**DISPUTATIO FORI**

disputatio fori (dis-pyoo-tay-shee-oh for-I). [Latin] Roman law. Argument before a court; the practice of legal advocacy.

**DISPUTE**

dispute,n. A conflict or controversy, esp. one that has given rise to a particular lawsuit. — dispute,vb.

major dispute.Labor law. Under the Railway Labor Act, a disagreement about basic working conditions, often resulting in a new collective-bargaining agreement or a change in the existing agreement. • Under the Act, two classes of disputes — major and minor — are subject to mandatory arbitration. 45 USCA § 155. — Also termed new-contract dispute. [Cases: Labor Relations 414. C.J.S. Labor Relations §§ 405, 408–412.]

minor dispute.Labor law. Under the Railway Labor Act, a disagreement about the interpretation or application of a collective-bargaining agreement, as opposed to a disagreement over the formation of a new agreement. 45 USCA § 155. [Cases: Labor Relations 414. C.J.S. Labor Relations §§ 405, 408–412.]

**DISPUTE RESOLUTION**

dispute resolution.See ALTERNATIVE DISPUTE RESOLUTION.

**DISPUTE-RESOLUTION PROCEDURE**

dispute-resolution procedure.Intellectual property. A mechanism for resolving international grievances over intellectual-property protection, conducted by the World Trade Organization under the TRIPs Agreement. • The procedure begins with a complaint by one nation against another, followed by consultations between the nations, a WTO panel report on the issue, and (potentially) trade sanctions against one of the nations.

**DISQUALIFICATION**

disqualification,n.1. Something that makes one ineligible; esp., a bias or conflict of interest that prevents a judge or juror from impartially hearing a case, or that prevents a lawyer from representing a party. [Cases: Judges 39; Jury 97. C.J.S. Judges §§ 62, 98, 100–102, 107; Juries §§ 225, 248, 370–373, 378–379, 398–399, 415, 417–418, 420.]

vicarious disqualification.Disqualification of all the lawyers in a firm or in an office because one of the lawyers is ethically disqualified from representing the client at issue. — Also termed imputed disqualification. [Cases: Attorney and Client 21.15. C.J.S. Attorney and Client § 164.]

“In general, disqualification of a lawyer from representation, at least in multiple client-conflict scenarios, means disqualification of that lawyer's entire firm from the same representation. When a lawyer has been exclusively or chiefly responsible for the representation of a client and that lawyer changes jobs, there is little question but that the imputed-disqualification rule will apply to disqualify the new firm from representing the opponent of the first client. But

because lawyers often work for large organizations, ... a question may arise about the application of the imputation rule when a lawyer has left employment .... If the lawyer had little or no responsibility in the first organization for the representation or if the lawyer can be effectively shielded from the representation in the new organization, or both, there may be no useful purpose served by imputing the lawyer's disqualification to the new organization ....” James E. Moliterno & John M. Levy, *Ethics of the Lawyer's Work* 151 (1993).

2. The act of making ineligible; the fact or condition of being ineligible. Cf. RECUSAL. — disqualify,vb.

#### DISRATE

disrate,vb. To reduce to a lower rank; esp., to reduce a ship or petty officer's rank.

#### DISRATIONARE

disrationare (dis-ray-shee-<<schwa>>-nair-ee), n.[Law Latin fr. Law French desreigner “to deraign”] Hist. To prove; to establish a title.

#### DISREGARD

disregard,n.1. The action of ignoring or treating without proper respect or consideration. 2. The state of being ignored or treated without proper respect or consideration. — disregard,vb.

reckless disregard. 1. Conscious indifference to the consequences of an act. [Cases: Automobiles 175(1); Negligence 274. C.J.S. Motor Vehicles §§ 756–766; Negligence §§ 104–105, 109.] 2.Defamation. Serious indifference to truth or accuracy of a publication. • “Reckless disregard for the truth” is the standard in proving the defendant's actual malice toward the plaintiff in a libel action. [Cases: Libel and Slander 51. C.J.S. Libel and Slander; Injurious Falsehood §§ 66, 105.] 3. The intentional commission of a harmful act or failure to do a required act when the actor knows or has reason to know of facts that would lead a reasonable person to realize that the actor's conduct both creates an unreasonable risk of harm to someone and involves a high degree of probability that substantial harm will result.

#### DISREGARDING THE CORPORATE ENTITY

disregarding the corporate entity.See PIERCING THE CORPORATE VEIL.

#### DISREPAIR

disrepair. A state of being in need of restoration after deterioration or injury.

#### DISREPUTE

disrepute. A loss of reputation; dishonor.

#### DISRUPTIVE CONDUCT

disruptive conduct.See CONDUCT.

#### DISSEISE

disseise (dis-seez), vb. To wrongfully deprive (a person) of the freehold possession of property. — Also spelled disseize.

## DISSEISEE

disseisee (dis-see-zee). A person who is wrongfully deprived of the freehold possession of property. — Also spelled disseizee. — Also termed disseisitus.

## DISSEISIN

disseisin (dis-see-zin), n. The act of wrongfully depriving someone of the freehold possession of property; DISPOSSESSION. — Also spelled disseizin. [Cases: Property 10. C.J.S. Property §§ 27–31, 33.]

disseisin by election. A legal fiction by which a property owner is allowed to claim that he or she has been disseised, regardless of whether this is actually true, in order to have a remedy against an adverse claimant.

equitable disseisin. The wrongful deprivation of the equitable ownership, possession, or the fruits of ownership or possession.

fresh disseisin. The right at common law of a person disseised of land to forcefully eject the disseisor from the land without resort to law, as long as the ejection occurred soon after the disseisin.

## DISSEISITRIX

disseisitrix. See DISSEISORESS.

## DISSEISITUS

disseisitus. See DISSEISEE.

## DISSEISOR

disseisor (dis-see-z<<schwa>>r or -zor). A person who wrongfully deprives another of the freehold possession of property. — Also spelled disseizor.

## DISSEISORESS

disseisoress (dis-see-z<<schwa>>r-is). Hist. A female disseisor. — Also termed disseisitrix.

## DISSEMBLE

dissemble (di-sem-b<<schwa>>l), vb. 1. Archaic. To physically disguise <to dissemble by wearing a mask>. 2. To give a false impression about (something); to cover up (something) by deception <to dissemble the facts>.

## DISSEMINATION

dissemination (di-sem-i-nay-sh<<schwa>>n), n. 1. The act of spreading, diffusing, or dispersing; esp., the circulation of defamatory matter. 2. The extension of the influence or

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establishment of a thing, such as an idea, book, or document.

#### DISSENSUS

dissensus (di-sen-s<<schwa>>s), n.[Latin “disagreement”] Roman law. 1. A lack of agreement. 2. A mutually agreed annulment of a contractual obligation; an undoing of the consensus that created the obligation.

#### DISSENT

dissent (di-sent), n.1. A disagreement with a majority opinion, esp. among judges. 2. See dissenting opinion under OPINION(1).3. A withholding of assent or approval. 4. The act of a surviving spouse who, as statutorily authorized in many states, refuses a devise and elects instead a statutory share. See ELECTIVE SHARE. — dissent (di-sent), vb.

#### DISSENT AND APPRAISAL, RIGHT OF

dissent and appraisal, right of.See APPRAISAL REMEDY.

#### DISSENTERS' RIGHT

dissenters' right.See APPRAISAL REMEDY.

#### DISSENTIENTE

dissentiente (di-sen-shee-en-tee), adj.. [Latin] Dissenting. • When used with a judge's name, it indicates a dissenting opinion.

#### DISSENTING OPINION

dissenting opinion.See OPINION(1).

#### DISSIGNARE

dissignare (di-sig-nair-ee), vb.[Law Latin] To break open a seal.

#### DISSIPATION

dissipation,n. The use of an asset for an illegal or inequitable purpose, such as a spouse's use of community property for personal benefit when a divorce is imminent. [Cases: Divorce 252.3(1). C.J.S. Divorce §§ 514–519, 527, 529, 553, 555, 560–561, 563, 565, 567–568, 570–571.] — dissipate,vb.

#### DISSOCIATIVE AMNESIA

dissociative amnesia.See REPRESSED-MEMORY SYNDROME.

#### DISSOLUTE

dissolute,adj. (Of a person or thing) loosed from restraint; wanton; devoted to pleasure <dissolute person> <a dissolute lifestyle>.

#### DISSOLUTION



dissolution (dis-*<<schwa>>*-loo-sh*<<schwa>>*n), n.1. The act of bringing to an end; termination. 2. The cancellation or abrogation of a contract, with the effect of annulling the contract's binding force and restoring the parties to their original positions. See RESCISSION. 3. The termination of a corporation's legal existence by expiration of its charter, by legislative act, by bankruptcy, or by other means; the event immediately preceding the liquidation or winding-up process. [Cases: Corporations 592. C.J.S. Corporations §§ 811, 813–816, 818, 821, 824, 830–831.]

de facto dissolution.The termination and liquidation of a corporation's business, esp. because of an inability to pay its debts.

involuntary dissolution.The termination of a corporation administratively (for failure to file reports or pay taxes), judicially (for abuse of corporate authority, management deadlock, or failure to pay creditors), or through involuntary bankruptcy. [Cases: Corporations 612. C.J.S. Corporations §§ 835–836, 842.]

voluntary dissolution.A corporation's termination initiated by the board of directors and approved by the shareholders. [Cases: Corporations 610(1). C.J.S. Corporations §§ 835–837.]

4. The termination of a previously existing partnership upon the occurrence of an event specified in the partnership agreement, such as a partner's withdrawal from the partnership, or as specified by law. Cf. WINDING UP. [Cases: Partnership 263. C.J.S. Partnership §§ 303, 307, 309.] 5.Patents. The dismissal of an interference contest before a final judgment and an express award of priority. • The effect of dissolving an interference is that junior parties fail to meet their burden of proof, so the senior party retains priority. [Cases: Patents 106(5). C.J.S. Patents § 166.] 6.Parliamentary law. An adjournment sine die without any provision for reconvening the same deliberative assembly, even if another assembly of the same kind (such as a legislative body or a convention) will eventually convene. — dissolve,vb.

#### DISSOLUTION BOND

dissolution bond.See discharging bond under BOND(2).

#### DISSOLUTION OF MARRIAGE

dissolution of marriage. 1.DIVORCE. 2.Archaic. A divorce-like remedy available when both spouses have signed a separation agreement that deals with (1) the issue of alimony (providing either some or none), and (2) if there are children, the issues of support, custody, and visitation. • Under a dissolution of marriage in this sense, the court is bound by the separation agreement and cannot later modify alimony payments. Courts in jurisdictions where the term has been used in this specific sense traditionally distinguish it from divorce, which was formerly available only on certain grounds and which allowed the court to modify alimony payments.

#### DISSOLVED CORPORATION

dissolved corporation.See CORPORATION.

#### DISSOLVING CONDITION

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dissolving condition. See resolutive condition under CONDITION(2).

**DISSUADE**

dissuade, vb. To persuade (someone) not to do something <to dissuade the expert from testifying>.

**DISTAFF RIGHT**

distaff right. Hist. A woman's legal right.

**DISTILLATE**

distillate. Oil & gas. 1. The "wet" element of natural gas that may be removed as a liquid. — Also termed condensate; natural gas. 2. Any product of the process of distillation.

**DISTINCTE ET APERTE**

distincte et aperte (dis-tingk-tee et <<schwa>>-p<<schwa>>r-tee). [Law Latin] Distinctly; openly. • This phrase was formerly used in writs of error to refer to the return required to be made.

**DISTINCT INVENTION**

distinct invention. See INVENTION.

**DISTINCTIVE MARK**

distinctive mark. See distinctive trademark under TRADEMARK.

**DISTINCTIVE NAME**

distinctive name. See NAME.

**DISTINCTIVENESS**

distinctiveness, n. Trademarks. The quality of a trademarked word, symbol, or device that identifies the goods of a particular merchant and distinguishes them from the goods of others. — Also termed acquired distinctiveness. [Cases: Trade Regulation 10. C.J.S. Names §§ 15, 17; Trade-Marks, Trade-Names, and Unfair Competition §§ 41–42.] — distinctive, adj.

**DISTINCTIVE TRADEMARK**

distinctive trademark. See TRADEMARK.

**DISTINGUISH**

distinguish, vb. 1. To note a significant factual, procedural, or legal difference in (an earlier case), usu. to minimize the case's precedential effect or to show that it is inapplicable <the lawyer distinguished the cited case from the case at bar>.

“In practice, courts do not concede to their predecessors the power of laying down very wide rules; they reserve to themselves the power to narrow such rules by introducing into them particular facts of the precedent case that were treated by the earlier court as irrelevant. This

process is known as 'distinguishing.' ” John Salmond, *Jurisprudence* 192 (Glanville L. Williams ed., 10th ed. 1947).

2. To make a distinction <the court distinguished between willful and reckless conduct>. — distinction,n.

#### DISTINGUISHABLE

distinguishable,adj. (Of a case or law) different from, and thereby not controlling or applicable in, a given case or situation.

#### DISTINGUISHABLE VARIATION

distinguishable variation.Copyright. A detectable difference between two works. • Distinguishable variation is the standard for determining whether a work that is based on a work in the public domain can itself be copyrighted. Examples include translations of books and mezzotints of paintings. Some nontrivial originality is also required: exact copies are not protectable.

#### DISTINGUISHING MARK

distinguishing mark.A physical indication or feature that identifies or delineates one person or thing from another <the voting ballots contained distinguishing marks so that they could not be counted>. See DISTINCTIVENESS.

#### DISTRACTED

distracted,adj.1. (Of a person) not concentrating. 2. (Of a person) disordered.

#### DISTRACTIO

distractio (di-strak-shee-oh), n.[Latin fr. distrahere “to draw apart”] Roman law. A separation or division into parts; an alienation or sale, such as a creditor's sale of a pledge.

#### DISTRACTIO BONORUM

distractio bonorum (di-strak-shee-oh b<<schwa>>-nor-<<schwa>>m). [Latin “the sale of goods”] Roman law. A curator bonorum's sale of the property in an insolvent estate to satisfy creditors' claims.

#### DISTRACTION DOCTRINE

distractio doctrine.The rule that a plaintiff may not be guilty of contributory negligence if the plaintiff's attention was diverted from a known danger by a sufficient cause. See contributory negligence under NEGLIGENCE. [Cases: Negligence 506(3), 1286(3). C.J.S. Negligence §§ 234, 635.]

#### DISTRACTIO PIGNORIS

distractio pignoris (di-strak-shee-oh pig-nor-is). [Latin “the sale of something pledged”] Roman law. A creditor's sale of something pledged or hypothecated to obtain satisfaction on a

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debt.

#### DISTRAHERE

distrahere (dis-tray-h<<schwa>>-ree), vb.[fr. Latin dis “apart” + trahere “to draw”] To draw apart; to sell; to dissolve, as in a contract.

#### DISTRAIN

distrain,vb.1. To force (a person, usu. a tenant), by the seizure and detention of personal property, to perform an obligation (such as paying overdue rent). [Cases: Landlord and Tenant 270. C.J.S. Landlord and Tenant §§ 681, 685–696, 701–711.] 2. To seize (goods) by distress, a legal remedy entitling the rightful owner to recover property wrongfully taken. — Also spelled distrein. — distraint,n.

#### DISTRAINEE

distrainee. One who is, or whose property is, distrained.

#### DISTRAINER

distrainer. Someone who seizes property under a distress. — Also spelled distrainor; distreinor.

#### DISTRAINT

distraint. See DISTRESS.

#### DISTREIN

distrein,vb. See DISTRAIN.

#### DISTRESS

distress,n.1. The seizure of another's property to secure the performance of a duty, such as the payment of overdue rent. [Cases: Landlord and Tenant 263–270. C.J.S. Landlord and Tenant §§ 674–681, 683–696, 699–711.] 2. The legal remedy authorizing such a seizure; the procedure by which the seizure is carried out.

“Distress ... may be defined as the taking, either with legal process, or extra-judicially subject to the performance of some necessary condition precedent, by a private individual or by an officer of the court, of a personal chattel, out of the possession of a wrongdoer or defaulter and into the custody of the law to be impounded as a pledge in order to bring pressure to bear upon the owner of the chattel to redress an injury, to perform a duty, or to satisfy a lawful demand, subject, however, to the right of the owner to have the chattel returned to him [up]on the injury being redressed, or the duty performed, or the demand satisfied or [up]on security being given so to do.” F.A. Enever, *History of the Law of Distress* 7–8 (1931).

“The word distress is derived from *distringere*, meaning to put into a strait or pound. In early English customals the word used is *nam*, which is of Scandinavian derivation and indicates a

taking. In the Latin legal documents of early medieval times *pignorare* is used as well as *distringere* to denote the act of distraining, but whereas *distringere* is used in relation to distress for rent and services, *pignorare* is applied to distress for debts.” *Id.* at 3.

**distress damage feasant.**The right to seize animals or inanimate chattels that are damaging or encumbering land and to keep them as security until the owner pays compensation. [Cases: Animals 95. C.J.S. Animals §§ 250, 252.]

**distress infinite.**A distress that the sheriff can repeat from time to time to enforce the performance of something, as in summoning a juror or compelling a party to appear in court. • The goods must be returned after the delinquent person performs his or her duty.

“[F]or the most part it is provided that distresses be reasonable and moderate; but, in the case of distress for fealty or suit of court, no distress can be unreasonable, immoderate, or too large: for this is the only remedy to which the party aggrieved is entitled, and therefore it ought to be such as is sufficiently compulsory; and, be it of what value it will, there is no harm done, especially as it cannot be sold or made away with, but must be restored immediately on satisfaction made. A distress of this nature, that has no bounds with regard to its quantity, and may be repeated from time to time until the stubbornness of the party is conquered, is called a distress infinite.” 3 William Blackstone, *Commentaries on the Laws of England* 231 (1768).

**grand distress.**Hist. In a *quare impedit* action in which the defendant has failed to appear, a distress of the defendant's goods and lands to compel the defendant's appearance.

**second distress.**A supplementary distress allowed when goods seized under the first distress are insufficient to satisfy the claim.

3. The property seized. — Also termed *distrain*.

#### DISTRESSED GOODS

distressed goods. See *GOODS*.

#### DISTRESSED PROPERTY

distressed property. See *PROPERTY*.

#### DISTRESS SALE

distress sale. See *SALE*.

#### DISTRESS WARRANT

distress warrant. See *WARRANT*(1).

#### DISTRIBUTABLE NET INCOME

distributable net income. See *INCOME*.

#### DISTRIBUTE

distribute (di-strib-yoot), vb.1. To apportion; to divide among several. 2. To arrange by class or order. 3. To deliver. 4. To spread out; to disperse.

#### DISTRIBUTED DENIAL-OF-SERVICE ATTACK

distributed denial-of-service attack. See DENIAL-OF-SERVICE ATTACK.

#### DISTRIBUTE

distributee (di-strib-yoo-tee), n.1. A beneficiary entitled to payment. 2. An heir, esp. one who obtains personal property from the estate of an intestate decedent.

expectant distributee. A prospective heir whose interest depends on a contingency; an expectant heir. — Also termed expectant beneficiary. See prospective heir under HEIR.

legal distributee. A person whom the law would entitle to take property under a will.

#### DISTRIBUTION

distribution, n.1. The passing of personal property to an intestate decedent's heirs; specif., the process of dividing an estate after realizing its movable assets and paying out of them its debts and other claims against the estate. Cf. DESCENT(1). [Cases: Descent and Distribution 71; Executors and Administrators 288–318. C.J.S. Descent and Distribution § 82; Executors and Administrators §§ 533–583.] 2. The act or process of apportioning or giving out. — distribute, vb.

controlled-securities-offering distribution. See securities-offering distribution (1).

corporate distribution. A corporation's direct or indirect transfer of money or other property, or incurring of indebtedness to or for the benefit of its shareholders, such as a dividend payment out of current or past earnings. [Cases: Corporations 155(1). C.J.S. Corporations § 300.]

liquidating distribution. A distribution of trade or business assets by a dissolving corporation or partnership. — Also termed distribution in liquidation. [Cases: Corporations 629. C.J.S. Corporations §§ 875–878.]

nonliquidating distribution. A distribution of assets by a corporation or partnership that is not going out of business, such as a distribution of excess capital not necessary for current operations.

partnership distribution. A partnership's payment of cash or property to a partner out of earnings or as an advance against future earnings, or a payment of the partners' capital in partial or complete liquidation of the partner's interest. [Cases: Partnership 232. C.J.S. Partnership § 230.]

probate distribution. The judicially supervised apportionment and division — usu. after the payment of debts and charges — of assets of an estate among those legally entitled to share. [Cases: Executors and Administrators 288–318. C.J.S. Executors and Administrators §§ 533–583.]

secondary distribution. 1. The public sale of a large block of previously issued stock. — Also termed secondary offering. See OFFERING. 2. The sale of a large block of stock after the close of the exchange.

securities-offering distribution. 1. An issuer's public offering of securities through a formal underwriting agreement with a broker-dealer. — Also termed controlled-securities-offering distribution. 2. An issuer's public offering of securities on an informal basis, with or without brokers. — Also termed uncontrolled-securities-offering distribution. [Cases: Securities Regulation 11.10–11.50. C.J.S. Securities Regulation §§ 8, 35–49, 63, 69–72.]

trust distribution. The cash or other property paid or credited to a trust beneficiary. [Cases: Trusts 270–288.]

uncontrolled-securities-offering distribution. See securities-offering distribution (2).

#### DISTRIBUTION CHANNEL

distribution channel. One of several routes through which a manufacturer's or distributor's goods are marketed. • In trademark law, identical or similar marks that are used in the same channel may lead to consumer confusion. — Also termed channel of trade; channel of distribution.

#### DISTRIBUTION COST

distribution cost. See COST(1).

#### DISTRIBUTION IN KIND

distribution in kind. A transfer of property in its original state, such as a distribution of land instead of the proceeds of its sale.

#### DISTRIBUTION IN LIQUIDATION

distribution in liquidation. See liquidating distribution under DISTRIBUTION.

#### DISTRIBUTION LICENSE

distribution license. See LICENSE.

#### DISTRIBUTION RIGHT

distribution right. Copyright. A copyright holder's exclusive right to sell, lease, or otherwise transfer copies of the protected work to the public. Cf. FIRST-SALE DOCTRINE. [Cases: Copyrights and Intellectual Property 36. C.J.S. Copyrights and Intellectual Property §§ 10, 40–41, 97.]

#### DISTRIBUTIVE

distributive (di-strib-y<<schwa>>-tiv), adj. Of or relating to apportioning, dividing, and assigning in separate items or shares; of or relating to distributing.

#### DISTRIBUTIVE CLAUSE

distributive clause. A will or trust provision governing the distribution of income and gifts. [Cases: Wills 492–535. C.J.S. Wills §§ 902–1028.]

#### DISTRIBUTIVE DEVIATION

distributive deviation. A trustee's authorized or unauthorized departure from the express distributional terms of a trust. • A trustee must apply to the court for authority to deviate from the terms of a trust. In American law, courts rarely authorize deviation unless all the beneficiaries consent and there is no material purpose of the settlor yet to be served. Some state statutes provide that deviation is permitted if the court finds that deviation would effectuate the settlor's intention, though the modification is not expressly authorized by the trust's provisions. The Pulitzer trust illustrates the possibility that extraordinary circumstances not anticipated by the settlor may justify deviation, even despite an express prohibition within the trust. Joseph Pulitzer set up a testamentary trust with shares of World newspaper stock; his will directed that the sale of these shares was not authorized under any circumstances. Nonetheless, the court later approved the stock sale when given evidence that because of hemorrhaging losses, the trust's continuation was jeopardized. *In re Pulitzer's Estate*, 249 N.Y.S. 87 (Sur. Ct. 1931).

#### DISTRIBUTIVE FINDING

distributive finding. A jury's decision partly in favor of one party and partly in favor of another.

#### DISTRIBUTIVE JUSTICE

distributive justice. See JUSTICE(1).

#### DISTRIBUTIVE SHARE

distributive share. 1. The share that an heir or beneficiary receives from the legal distribution of an estate. [Cases: Descent and Distribution 20–51; Wills 521–535. C.J.S. Descent and Distribution §§ 23–59; Wills §§ 967–1028.] 2. The portion (as determined in the partnership agreement) of a partnership's income, gain, loss, or deduction that is passed through to a partner and reported on the partner's tax return. [Cases: Internal Revenue 3921; Taxation 1017. C.J.S. Internal Revenue § 429; Taxation § 1709.] 3. The share of assets or liabilities that a partner or partner's estate acquires after the partnership has been dissolved. [Cases: Partnership 302, 305, 306. C.J.S. Partnership §§ 344, 346–347, 349–350.]

#### DISTRIBUTOR

distributor. A wholesaler, jobber, or other manufacturer or supplier that sells chiefly to retailers and commercial users.

#### DISTRIBUTORSHIP

distributorship. A franchise held by a person or company who sells merchandise, usu. in a specific area to individual customers <a car distributorship>. [Cases: Contracts 202(1). C.J.S. Contracts § 341.]

dual distributorship. A business structure in which one party operates a branch or dealership on the same market level as one or more of its customers.

#### DISTRICT



district. 1. A territorial area into which a country, state, county, municipality, or other political subdivision is divided for judicial, political, electoral, or administrative purposes. 2. A territorial area in which similar local businesses or entities are concentrated, such as a theater district or an arts district. — Abbr. D.

assessment district.Tax. A usu. municipal subdivision in which separate assessments of taxable property are made. [Cases: Municipal Corporations 450. C.J.S. Municipal Corporations §§ 1193–1199.]

congressional district.A geographical unit of a state from which one member of the U.S. House of Representatives is elected. [Cases: United States 10. C.J.S. United States § 19.]

consolidated school district.See SCHOOL DISTRICT.

election district.A subdivision of a state, county, or city that is established to facilitate an election or to elect governmental representatives for that subdivision.

floterial district (floh-teer-ee-<<schwa>>l). A legislative district that includes several separate districts or political subdivisions that independently would not be entitled to additional representation, but whose conglomerate population entitles the district to another seat in the legislative body being apportioned. [Cases: Constitutional Law 225.3(8); States 27(7). C.J.S. Constitutional Law §§ 821–822; States § 70.]

influence district.A voting district in which a racial or ethnic minority group does not constitute a majority of the voters, but does make up a sufficient proportion of the voters to constitute an influential minority, thus being able to elect its preferred candidate with a reasonable number of crossover votes from other groups. Cf. majority-minority district. [Cases: Elections 12(6).]

land district.A federally created state or territorial division containing a U.S. land office that manages the disposition of the district's public lands. [Cases: Public Lands 94. C.J.S. Public Lands §§ 167–168.]

legislative district.A geographical subdivision of a state for the purpose of electing legislative representatives. [Cases: States 27. C.J.S. States §§ 62–78.]

levee district.A local or regional political subdivision organized to construct and maintain levees within its territory at public expense. [Cases: Levees and Flood Control 4. C.J.S. Levees and Flood Control § 13.]

majority-minority district.A voting district in which a racial or ethnic minority group makes up a majority of the voting citizens. [Cases: Elections 12(6).]

metropolitan district.A special district, embracing parts of or entire cities and towns in a metropolitan area, created by a state to provide unified administration of one or more common services, such as water supply or public transportation. [Cases: Municipal Corporations 2. C.J.S. Municipal Corporations §§ 7–9.]

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mineral district.A particular region of the country where valuable minerals are typically found and mined.

municipal utility district.A publicly owned corporation, or a political subdivision, that provides the public with a service or services, such as water, electricity, gas, transportation, or telecommunications. — Abbr. MUD. — Also termed public utility district (PUD). [Cases: Telecommunications 16. C.J.S. Telegraphs, Telephones, Radio, and Television § 3.]

school district.See SCHOOL DISTRICT.

special district.A political subdivision that is created to bypass normal borrowing limitations, to insulate certain activities from traditional political influence, to allocate functions to entities reflecting particular expertise, and to provide a single service within a specified area <a transit authority is a special district>. [Cases: Municipal Corporations 2. C.J.S. Municipal Corporations §§ 7–9.]

stock-law district.A district in which cattle or other stock are prohibited from running free.

taxing district.A district — constituting the whole state, a county, a city, or other smaller unit — throughout which a particular tax or assessment is ratably apportioned and levied on the district's inhabitants. [Cases: Taxation 29.]

water district.A geographical subdivision created by a state or local government entity to provide the public with a water supply. [Cases: Waters and Water Courses 183.5. C.J.S. Waters §§ 543–581.]

#### DISTRICT ATTORNEY

district attorney.A public official appointed or elected to represent the state in criminal cases in a particular judicial district; PROSECUTOR(1). — Abbr. D.A. — Also termed public prosecutor; state's attorney; prosecuting attorney. Cf. UNITED STATES ATTORNEY. [Cases: District and Prosecuting Attorneys 1. C.J.S. District and Prosecuting Attorneys § 2.]

#### DISTRICT CLERK

district clerk.See CLERK(2).

#### DISTRICT COURT

district court.See COURT.

#### DISTRICT-COURT MAGISTRATE

district-court magistrate.See MAGISTRATE.

#### DISTRICTING

districting. The act of drawing lines or establishing boundaries between geographic areas to create voting districts. See APPORTIONMENT(3); GERRYMANDERING. [Cases: Elections 12(6).]

## DISTRICTIO

districtio (di-strik-shee-oh), n.[Law Latin “distrain”] Hist. 1.A distress; a distraint. 2. The right of distress. 3. Something (such as a good or animal) that can be distrained. 4. A territory within which distraint can be exercised. 5. Any compulsory proceeding.

## DISTRICT JUDGE

district judge.See JUDGE.

## DISTRICT OF COLUMBIA

District of Columbia.The seat of the U.S. government, situated on the Potomac River between Maryland and Virginia. • Neither a state nor a territory, it is constitutionally subject to the exclusive jurisdiction of Congress. — Abbr. D.C. [Cases: District of Columbia 1–36. C.J.S. District of Columbia §§ 2–43.]

## DISTRICT PARISH

district parish.See PARISH.

## DISTRICT SCHOOL

district school.See SCHOOL.

## DISTRINGAS

distringas (di-string-gas), n.[Law Latin “you are to distrain”] 1. A writ ordering a sheriff to distrain a defendant's property to compel the defendant to perform an obligation, such as appearing in court or giving up a chattel to a plaintiff awarded judgment in a detinue action. 2. A writ ordering the sheriff to seize jurors' goods to compel them to appear for jury service. 3. An equitable process of execution against a corporation that has refused to obey a summons. [Cases: Execution 15. C.J.S. Executions § 18.] 4.Hist. An order, issued initially from the Court of Exchequer, then the Court of Chancery, and finally the High Court of Justice, for someone interested in purchasing Bank of England stock, temporarily restraining the bank officers from transferring the stock or paying a dividend on it. • This proceeding was used to prevent fraudulent dealing by a trustee or other stockholder. The relief was only temporary, and if the bank received a request from the stockholder to permit a stock deal, the bank had to warn the distringing party to promptly obtain a restraining order or a writ of injunction, or else the stock deal would go through.

## DISTRINGAS JURATORES

distringas juratores (di-string-gas joor-<<schwa>>-tor-eez), n.[Law Latin “you are to distrain the jurors”] Hist. A writ ordering the sheriff to distrain jurors or their property to compel their appearance before the judges of assize and nisi prius for jury duty on an appointed day.

## DISTRINGAS NUPER VICECOMITEM

distringas nuper vicecomitem (di-string-gas n[y]oo-p<<schwa>>r vI-see-kom-i-t<<schwa>>m), n.[Law Latin “you are to distrain the late sheriff”] Hist. 1.A writ ordering a sheriff's

successor to distrain the former sheriff's property until the former sheriff brings in a defendant to answer the plaintiff's charge, sells goods attached under a fieri facias, or performs some other obligation that the former sheriff should have completed while still in office. 2. A writ calling on an ex-sheriff to account for the proceeds taken in execution.

#### DISTRINGAS VICE COMITEM

distringas vicecomitem (di-string-gas vI-see-kom-i-t<<schwa>>m), n.[Law Latin "you are to distrain the sheriff"] Hist. A distringas writ ordering the coroner to distrain the sheriff for not executing a writ of venditioni exponas. See VENDITIONI EXPONAS.

#### DISTRINGERE

distringere (di-strinj-<<schwa>>-ree), vb.[Latin] To distrain; to coerce; to compel. • The first-person form of the verb was dstringo ("I distrain").

#### DISTURBANCE

disturbance,n.1. An act causing annoyance or disquiet, or interfering with a person's pursuit of a lawful occupation or the peace and order of a neighborhood, community, or meeting. [Cases: Breach of the Peace 1(3). C.J.S. Breach of the Peace § 4.] 2. At common law, a wrong done to an incorporeal hereditament by hindering the owner's enjoyment of it.

#### DISTURBANCE OF A PUBLIC MEETING

disturbance of a public meeting.The unlawful interference with the proceedings of a public assembly. [Cases: Disturbance of Public Assemblage 1.C.J.S. Disturbance of Public Meetings § 3.]

"Generally speaking, any conduct which, being contrary to the usages of the particular sort of meeting and class of persons assembled, interferes with its due progress and services, or is annoying to the congregation in whole or in part, is a disturbance; and a meeting may be said to be 'disturbed' when it is agitated, aroused from a state of repose, molested, interrupted, hindered, perplexed, disquieted, or diverted from the object of the assembly." 27 C.J.S. Disturbance of Public Meetings § 1, at 817 (1959).

#### DISTURBANCE OF COMMON

disturbance of common.At common law, a wrongful interference with, or impediment to, another's right to commonable property, such as a wrongful fencing or surcharge on the common.

"The disturbance of common comes next to be considered; where any act is done, by which the right of another to his common is incommoded or diminished. This may happen, in the first place, where one who hath no right of common, puts his cattle into the land; and thereby robs the cattle of the commoners of their respective shares of the pasture. Or if one, who hath a right of common, puts in cattle which are not commonable, as hogs and goats; which amounts to the same inconvenience." 3 William Blackstone, Commentaries on the Laws of England 237 (1768).

#### DISTURBANCE OF FRANCHISE

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disturbance of franchise. At common law, a wrongful interference with a liberty or privilege.

“Disturbance of franchises happens when a man has the franchise of holding a court-leet, of keeping a fair or market, of free-warren, of taking toll, of seizing waifs or estrays, or (in short) any other species of franchise whatsoever, and he is disturbed or incommoded in the lawful exercise thereof.” 3 William Blackstone, Commentaries on the Laws of England 236 (1768).

#### DISTURBANCE OF PATRONAGE

disturbance of patronage. A wrongful obstruction of a patron from presenting a clerk to a benefice.

#### DISTURBANCE OF PUBLIC WORSHIP

disturbance of public worship. Any conduct that interferes with the peaceful, lawful assembly of people for religious exercises. [Cases: Disturbance of Public Assemblage 1. C.J.S. Disturbance of Public Meetings § 3.]

#### DISTURBANCE OF TENURE

disturbance of tenure. A stranger's ouster of a tenant from a tenancy. • The tenant's lord could recover damages for the ouster.

#### DISTURBANCE OF THE PEACE

disturbance of the peace. See BREACH OF THE PEACE.

#### DISTURBANCE OF WAYS

disturbance of ways. An impediment to a person's lawful right-of-way, as by an obstruction.

#### DISTURBER

disturber. See IMPEDITOR.

#### DISTURBING THE PEACE

disturbing the peace. See BREACH OF THE PEACE.

#### DITTAY

dittay (dit-ay), n. Scots law. 1. The grounds for an indictment. 2. An indictment.

#### DIVADIATUS

divadiatus. See DEVADIATUS.

#### DIVERSE

diverse, adj. 1. Of or relating to different types <the attorney handles diverse cases ranging from probate matters to criminal law>. 2. (Of a person or entity) having a different citizenship from the party or parties on the other side of the lawsuit <the parties are diverse because the plaintiffs are citizens of Illinois and the defendant is a New York citizen>. See diversity

jurisdiction under JURISDICTION. [Cases: Federal Courts 281.] 3. (Of a group of people) including people of different races, sexes, nationalities, and cultural backgrounds <the school has a diverse student body>.

#### DIVERSIFICATION

diversification, n. 1. A company's movement into a broader range of products, usu. by buying firms already serving the market or by expanding existing operations <the soft-drink company's diversification into the potato-chip market has increased its profits>. 2. The act of investing in a wide range of companies to reduce the risk if one sector of the market suffers losses <the prudent investor's diversification of the portfolio among 12 companies>. — diversify, vb.

#### DIVERSIFIED HOLDING COMPANY

diversified holding company. See COMPANY.

#### DIVERSIFIED INVESTMENT COMPANY

diversified investment company. See COMPANY.

#### DIVERSION

diversion, n. 1. A deviation or alteration from the natural course of things; esp., the unauthorized alteration of a watercourse to the prejudice of a lower riparian owner, or the unauthorized use of funds. 2. A distraction or pastime. — divert, vb.

#### DIVERSION PROGRAM

diversion program. 1. Criminal law. A program that refers certain criminal defendants before trial to community programs on job training, education, and the like, which if successfully completed may lead to the dismissal of the charges. — Also termed pretrial diversion; pretrial intervention. Cf. deferred judgment under JUDGMENT. [Cases: Sentencing and Punishment 2051–2054. C.J.S. Criminal Law §§ 425–444, 449–450.] 2. A community-based program or set of services designed to prevent the need for court intervention in matters of child neglect, minor juvenile delinquency, truancy, or incorrigibility. • Sustained by government funding, the program provides services quickly and in a nonadversarial manner so that there is no need for a formal court trial.

#### DIVERSITÉ DES COURTS

Diversité des courts (di-v<<schwa>>r-si-tay d<<schwa>> koort). [Law French] A treatise on courts written in French, supposedly by Fitzherbert during the reign of Edward III. • It was printed initially in 1525 and again in 1534. — Also spelled Diversité des courtes.

“[F]or in the ancient treatise, entitled diversité de courtes... we have a catalogue of the matters of conscience then cognizable by subpoena in chancery, which fall within a very narrow compass.” 3 William Blackstone, Commentaries on the Laws of England 53 (1768).

#### DIVERSITY

diversity, n. 1. DIVERSITY OF CITIZENSHIP. 2. Ethnic, socioeconomic, and gender heterogeneity within a group; the combination within a population of people with different backgrounds. • The Supreme Court has found diversity in education to be a compelling government interest that can support a narrowly tailored affirmative-action plan. *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003). 3. Hist. A plea that a prisoner to be executed is not the one that was accused and found guilty, at which point a jury is immediately impaneled to try the issue of the prisoner's identity.

diversity, adj. Of, relating to, or involving diversity jurisdiction <a diversity case>.

#### DIVERSITY JURISDICTION

diversity jurisdiction. See JURISDICTION.

#### DIVERSITY OF CITIZENSHIP

diversity of citizenship. A basis for federal-court jurisdiction that exists when (1) a case is between citizens of different states, or between a citizen of a state and an alien, and (2) the matter in controversy exceeds a specific value (now \$75,000). 28 USCA § 1332. • For purposes of diversity jurisdiction, a corporation is considered a citizen of both the state of incorporation and the state of its principal place of business. An unincorporated association, such as a partnership, is considered a citizen of each state where at least one of its members is a citizen. — Often shortened to diversity. See diversity jurisdiction under JURISDICTION. [Cases: Federal Courts 281–360.]

complete diversity. In a multiparty case, diversity between both sides to the lawsuit so that all plaintiffs have different citizenship from all defendants. • Complete diversity must exist for a federal court to have diversity jurisdiction over the matter. The rule of complete diversity was first laid down by Chief Justice Marshall in *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806). [Cases: Federal Courts 286.]

manufactured diversity. Improper or collusively created diversity of citizenship for the sole or primary purpose of creating federal jurisdiction. • Manufactured diversity is prohibited by 28 USCA § 1359. [Cases: Federal Courts 303.]

#### DIVERTEE

divertee. A defendant who participates in a diversion program. See DIVERSION PROGRAM.

#### DIVES COSTS

dives costs (dI-veez), n. Ordinary court costs granted to a successful party, as distinguished from limited costs (such as out-of-pocket costs) allowed to a successful pauper who sued or defended in forma pauperis. • The term derives from the name of Dives, the supposed name of the rich man in the parable of the rich man and Lazarus (Luke 16:19–31). Dives is a Latin word meaning “rich.”

#### DIVESTITIVE FACT

divestitive fact. See FACT.

#### DIVESTITIVE PUBLICATION

divestitive publication. See PUBLICATION.

#### DIVESTITURE

divestiture (di-ves-t<<schwa>>-ch<<schwa>>r or dI-), n. 1. The loss or surrender of an asset or interest. 2. A court order to a party to dispose of assets or property. 3. Antitrust. A court order to a defendant to rid itself of property, securities, or other assets to prevent a monopoly or restraint of trade. — divest, vb.

#### DIVESTMENT

divestment, n. 1. Property. The cutting short of an interest in property before its normal termination. 2. The complete or partial loss of an interest in an asset, such as land or stock. 3. DISINVESTMENT(2). — divest, vb.

#### DIVIDE-AND-PAY-OVER RULE

divide-and-pay-over rule. Wills & estates. The principle that if the only provisions in a testamentary disposition are words ordering that payment be made at some time after the testator's death, time will be of the essence and the interest is future and contingent rather than vested and immediate. [Cases: Wills 630(6). C.J.S. Wills § 1339.]

#### DIVIDED COURT

divided court. An appellate court whose opinion or decision in a particular case is not unanimous, esp. when the majority is slim, as in a 5-to-4 decision of the U.S. Supreme Court.

#### DIVIDED CUSTODY

divided custody. See CUSTODY(2).

#### DIVIDED-DAMAGES RULE

divided-damages rule. Maritime law. The obsolete principle that when two parties are jointly liable to a third party for a tort, each party is liable for only half the damages. • The courts now apply a comparative-negligence standard. [Cases: Collision 143. C.J.S. Collision §§ 242, 245, 259, 261–262.]

“For over a hundred years admiralty law embraced the rule of ‘divided damages’ in collision cases .... In 1975, in *United States v. Reliable Transfer Co.*, 421 U.S. 397, 95 S.Ct. 1708, 44 L.Ed.2d 251 (1975), the Supreme Court jettisoned that inequitable and illogical rule in favor of proportionate allocation of fault among joint-tortfeasors in collision cases. Each vessel now is liable to the other offending vessel in contribution for that part of the total damages proportionate to its fault, and is liable for its per capita (virile) share only when the respective faults of the vessels are equal, or when proportionate fault can not be ascertained.” Frank L. Maraist, *Admiralty in a Nutshell* 165 (2d ed. 1988).



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**DIVIDEND**

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dividend. A portion of a company's earnings or profits distributed pro rata to its shareholders, usu. in the form of cash or additional shares. [Cases: Corporations 155(1). C.J.S. Corporations § 300.]

accumulated dividend. A dividend that has been declared but not yet paid. — Also termed accrued dividend. [Cases: Corporations 68, 156. C.J.S. Corporations §§ 158, 177, 180–183.]

accumulative dividend. See cumulative dividend.

asset dividend. A dividend paid in the form of property, usu. the company's product, rather than in cash or stock. — Also termed property dividend.

bond dividend. A dividend in which a shareholder receives a bond instead of scrip, property, or money.

capital-gain dividend. A taxable payment to a mutual-fund shareholder. • The payment is the shareholder's proportional share of the net capital gains realized by securities sales from the mutual fund's portfolio. — Also termed capital-gain distribution.

cash dividend. A dividend paid to shareholders in the form of money. [Cases: Corporations 152. C.J.S. Corporations §§ 295–299.]

consent dividend. A dividend that is not actually paid to the shareholders, but is taxed to the shareholders and increases the basis in their stock investment. • A corporation declares a consent dividend to avoid or reduce an accumulated-earnings or personal-holding-company penalty tax.

constructive dividend. A taxable benefit derived by a shareholder from the corporation even though the benefit was not designated a dividend. • Examples include excessive compensation, bargain purchases of corporate property, and shareholder use of corporate property. [Cases: Internal Revenue 3750–3768. C.J.S. Internal Revenue §§ 72, 389–390, 395.]

cumulative dividend. A dividend that grows from year to year when not paid. • A cumulative dividend is usu. on preferred shares, and it must be paid in full before common shareholders may receive any dividend. If the corporation does not pay a dividend in a particular year or period, it is carried over to the next year or period and must be paid before the common shareholders receive any payment. — Also termed accumulative dividend. Cf. noncumulative dividend. [Cases: Corporations 68, 156. C.J.S. Corporations §§ 158, 177, 180–183.]

deferred dividend. A dividend that is declared, but is payable at a future date.

deficiency dividend. A dividend paid to reduce or avoid personal-holding-company tax in a prior year.

disguised dividend. See informal dividend.

extraordinary dividend. A dividend paid in addition to a regular dividend, usu. because of exceptional corporate profits during the dividend period. — Also termed extra dividend;

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nonrecurring dividend; special dividend. [Cases: Corporations 155(1). C.J.S. Corporations § 300.]

fixed-return dividend. A dividend that is constant throughout the investment's life.

informal dividend. A payment of salary, rent, interest, or the like to or for a shareholder as a substitute for a dividend. — Also termed disguised dividend.

liability dividend. See scrip dividend.

liquidation dividend. A dividend paid to a dissolving corporation's shareholders, usu. from the capital of the corporation, upon the decision to suspend all or part of its business operations. — Also termed liquidating dividend. [Cases: Corporations 629. C.J.S. Corporations §§ 875–878.]

nimble dividend. A dividend paid out of current earnings when there is a deficit in the account from which dividends may be paid. • Some state statutes prohibit nimble dividends.

noncumulative dividend. A dividend that does not accrue for the benefit of a preferred shareholder if there is a passed dividend in a particular year or period. Cf. cumulative dividend. [Cases: Corporations 152. C.J.S. Corporations §§ 295–299.]

nonrecurring dividend. See extraordinary dividend.

passed dividend. A dividend that is not paid when due by a company that has a history of paying regular dividends.

preferred dividend. A dividend paid to preferred shareholders, who are generally paid a fixed amount and take priority over common shareholders. [Cases: Corporations 151, 156. C.J.S. Corporations §§ 158, 293.]

property dividend. See asset dividend.

reinvested dividend. A dividend that is used to purchase additional shares in the corporation, instead of being taken in cash by the shareholder. See DIVIDEND-REINVESTMENT PLAN.

scrip dividend. A dividend paid in certificates entitling the holder to ownership of capital stock to be issued in the future. • This type of dividend usu. signals that the corporation's cash flow is poor. — Also termed liability dividend.

special dividend. See extraordinary dividend.

stock dividend. A dividend paid in stock expressed as a percentage of the number of shares already held by a shareholder. [Cases: Corporations 157. C.J.S. Corporations §§ 294, 302–304.]

unpaid dividend. A declared but unpaid dividend.

year-end dividend. An extra dividend paid at the end of the fiscal year depending on the amount of the profits.

DIVIDENDA

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dividenda (div-i-den-d<<schwa>>), n.[fr. Latin dividere “to divide”] Hist. Something to be divided; an indenture.

#### DIVIDEND ADDITION

dividend addition.An amount added to the face value of a life-insurance policy and purchased by using a dividend as a single premium payment. [Cases: Insurance 2037. C.J.S. Insurance §§ 518–519, 742–745, 749–754.]

#### DIVIDEND-CREDIT RULE

dividend-credit rule.The principle that a corporate reserve fund amassed from unpaid dividends on preferred stock must be used to pay subsequent dividends on preferred stock before dividend payments on common stock. — Also termed cast-iron-pipe doctrine. [Cases: Corporations 156. C.J.S. Corporations § 158.]

#### DIVIDEND DATE

dividend date.The date on which a corporation distributes dividends to record owners of stock shares. See record date under DATE. Cf. EX-DIVIDEND DATE.

#### DIVIDEND INCOME

dividend income.See INCOME.

#### DIVIDEND-PAYOUT RATIO

dividend-payout ratio.A profitability ratio computed by dividing annual dividends per share by earnings per share.

#### DIVIDEND PREFERENCE

dividend preference.The right of a holder of preferred shares to receive a dividend before the company pays dividends to holders of common shares. See preferred stock under STOCK. [Cases: Corporations 156. C.J.S. Corporations § 158.]

#### DIVIDEND-RECEIVED DEDUCTION

dividend-received deduction.A deduction allowed to a corporate shareholder for dividends received from a domestic corporation. IRC (26 USCA) §§ 243–247. [Cases: Internal Revenue 3777.]

#### DIVIDEND-REINVESTMENT PLAN

dividend-reinvestment plan.A stock-purchase program that allows investors to reinvest their dividends, and perhaps convert additional voluntary payments, into shares of the entity's common stock, usu. with no sales charge, and sometimes at a discount from the stock's market price. • Although the investor never receives the cash, it is still treated as income to the investor. An investor may be allowed to make optional cash purchases of additional stock. — Abbr. DRIP; DRP.

brokerage-run dividend-reinvestment plan.A formal or informal program managed by a brokerage and allowing shareholders to reinvest dividends in a portfolio, often at no cost. • Brokerage-run plans are usu. limited to dividend reinvestment.

company-run dividend-reinvestment plan.A program operated by a corporation for its own shareholders. • Company-run plans may offer additional features such as IRAs.

transfer-agent-run dividend-reinvestment plan.A program administered by a financial institution for several companies. • An investor can participate in more than one DRIP program simultaneously and also make additional cash investments in multiple companies.

#### DIVIDEND YIELD

dividend yield.The current annual dividend divided by the market price per share.

#### DIVIDE THE ASSEMBLY

divide the assembly.Parliamentary law. To order that votes in a meeting be counted. — Also termed challenge the vote; divide the house; doubt the vote. See counted vote under VOTE(4).

#### DIVIDE THE HOUSE

divide the house.See DIVIDE THE ASSEMBLY.

#### DIVIDE THE QUESTION

divide the question.Parliamentary law. To break a long or complex motion, usu. one covering more than one subject, into shorter motions that the assembly considers independently.

#### DIVINARE

divinare (div-i-nair-ee), vb.[Latin] To foretell or divine (something).

#### DIVINATIO

divinatio (div-i-nay-shee-oh), n. [Latin] Roman law. A preliminary process for deciding which of two or more applicants had the best claim to conduct a criminal prosecution against an accused.

#### DIVINE LAW

divine law.God's law, as distinguished from human law. See NATURAL LAW.

#### DIVINE RIGHT OF KINGS

divine right of kings.The political theory that the sovereign is a direct representative of God and has the right to rule absolutely by virtue of birth.

“Divine Right of Kings ... originated in the mediaeval concept of God's award of temporal power to civil rulers and spiritual power to the Church. It was claimed by the earlier Stuart kings in England, and explains many of their attitudes in the struggle which developed between them and Parliament for political sovereignty .... The principle of divine right was submerged during the

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Commonwealth but re-emerged under James II, but disappeared with his flight and abdication.”  
David M. Walker, *The Oxford Companion to Law* 366 (1980).

#### DIVINE SERVICE

divine service. 1.Hist. A feudal tenure in which the tenants were obligated to perform special divine functions, such as singing at a certain number of masses or distributing a specified amount in alms. 2. A public worship service.

#### DIVISA

divisa (di-vI-z<<schwa>>), n.[fr. French *diviser* “to divide”] 1. A division, as of goods by a will; a devise. 2. A boundary of neighboring lands. 3. A court held on such a boundary to settle the tenants' disputes.

#### DIVISIBLE CONTRACT

divisible contract.See severable contract under CONTRACT.

#### DIVISIBLE DIVORCE

divisible divorce.See DIVORCE.

#### DIVISIBLE OBLIGATION

divisible obligation.See OBLIGATION.

#### DIVISIBLE OFFENSE

divisible offense.See OFFENSE(1).

#### DIVISIBLE PROMISES

divisible promises.See PROMISE.

#### DIVISIM

divisim (di-vI-z<<schwa>>m), adv.. [Law Latin] Hist. Severally; separately.

#### DIVISION

division. 1.Parliamentary law. A counted vote. See counted vote under VOTE (4); DIVIDE THE ASSEMBLY. — Also termed division of the assembly; division of the house; division vote. 2.Parliamentary law. The separation of a long or complex motion, usu. one covering more than one subject, into shorter motions that the assembly considers independently. — Also termed division of the question. See DIVIDE THE QUESTION.

standing division.See standing vote under VOTE(4).

3.RESTRICTION(4).

#### DIVISIONAL APPLICATION

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divisional application. See PATENT APPLICATION.

**DIVISIONAL BOND**

divisional bond. See BOND(3).

**DIVISIONAL COURT**

divisional court. See COURT.

**DIVISIONAL SECURITY**

divisional security. See SECURITY.

**DIVISION OF FEES**

division of fees. See FEE-SPLITTING.

**DIVISION OF POWERS**

division of powers. The allocation of power between the national government and the states. • Under the Tenth Amendment, powers not delegated to the federal government are reserved to the states or to the people. But today the Tenth Amendment provides only a limited check on Congress's power to regulate the states. Cf. SEPARATION OF POWERS. [Cases: States 4.16. C.J.S. States §§ 25–26.]

**DIVISION OF PROPERTY**

division of property. See PROPERTY SETTLEMENT(1).

**DIVISION OF THE ASSEMBLY**

division of the assembly. See DIVISION(1).

**DIVISION OF THE HOUSE**

division of the house. See DIVISION(1).

**DIVISION OF THE QUESTION**

division of the question. See DIVISION(2).

**DIVISION ORDER**

division order. Oil & gas. A contract for the sale of oil or gas, specifying how the payments are to be distributed. • Royalty owners enter into division orders to sell minerals and to instruct how payments are to be made under a mineral lease. Working-interest owners also commonly sign division orders to instruct purchasers how payments are to be divided. [Cases: Mines and Minerals 79.1(3). C.J.S. Mines and Minerals § 294.]

**DIVISION VOTE**

division vote. See DIVISION(1).

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 DIVISUM IMPERIUM
 

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divisum imperium (di-vI-z<<schwa>>m im-peer-ee-<<schwa>>m), n.[Latin “a divided empire”] Divided jurisdiction; alternate jurisdiction, as of courts.

“This main sea begins at the low-water-mark. But between the high-water-mark and the low-water-mark, where the sea ebbs and flows, the common law and admiralty have divisum imperium, an alternate jurisdiction; one upon the water, when it is full sea; the other upon the land, when it is an ebb.” 1 William Blackstone, Commentaries on the Laws of England 107 (1765).

## DIVORCE

divorce. The legal dissolution of a marriage by a court. — Also termed marital dissolution; dissolution of marriage. Cf. ANNULMENT. [Cases: Divorce 1–420. C.J.S. Divorce §§ 2–138, 140–167, 169–196, 198–211, 213–610, 731, 757–766, 768–825, 837–844, 851–861.] — divorce,vb.

“When used without qualification, the term [divorce] imports a dissolution of the marriage relation between husband and wife, that is, a complete severance of the tie by which the parties were united. However, in its common and wider use, the term includes the dissolution of a valid marriage, a formal separation of married persons, and the annulment of a marriage void from the beginning.

“So, while the term ‘divorce’ has sometimes been broadly defined or applied to include both decrees of nullity and decrees of dissolution of marriage, especially where the marriage was not void but only voidable at the option of the injured party, this has been declared to be not in accord with modern usage, and generally, the term denotes only dissolution or suspension of a marital relation, and does not include annulment of an invalid marriage.” 27A C.J.S. Divorce § 2, at 31–32 (1986).absolute divorce.See divorce a vinculo matrimonii.

bifurcated divorce.See divisible divorce.

conditional divorce.See conversion divorce.

contested divorce. 1. A divorce that one spouse opposes in court. 2. A divorce in which the spouses litigate. • In this sense, although both spouses may want the divorce, they disagree on the terms of the divorce decree. Cf. uncontested divorce.

conversion divorce.A divorce granted after (1) a legal separation has been granted or the parties have signed a separation agreement, and (2) the parties have lived separately for a statutorily prescribed period. — Also termed convertible divorce; conditional divorce.

divisible divorce.A divorce whereby the marriage itself is dissolved but the issues incident to the divorce, such as alimony, child custody, and visitation, are reserved until a later proceeding. • This type of divorce can be granted when the court has subject-matter jurisdiction but lacks personal jurisdiction over the defendant-spouse. The doctrine of divisible divorce was recognized by the Supreme Court in *Estin v. Estin*, 334 U.S. 541, 68 S.Ct. 1213 (1948), and *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 77 S.Ct. 1360 (1957). — Also termed bifurcated divorce. [Cases:

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Divorce 146. C.J.S. Divorce §§ 209–210.]

divorce a mensa et thoro (ay men-s<<schwa>> et thor-oh). [Latin “(divorce) from board and hearth”] Hist. A partial or qualified divorce by which the parties were separated and allowed or ordered to live apart, but remained technically married. • This type of divorce, abolished in England in 1857, was the forerunner of modern judicial separation. — Also termed separation a mensa et thoro; separation from bed and board; limited divorce; legal separation; judicial separation. [Cases: Divorce 155. C.J.S. Divorce §§ 223–225.]

“[The Ecclesiastical Courts] grant also what is called a divorce a mensa et thoro, or rather what we should call a judicial separation, i.e. they release the parties from the duty of living together on grounds of cruelty or misconduct ....” William Geldart, *Introduction to English Law* 38 (D.C.M. Yardley ed., 9th ed. 1984).

divorce a vinculo matrimonii (ay ving-ky<<schwa>>-loh ma-tr<<schwa>>-moh-nee-I). [Latin “(divorce) from the chains of marriage”] A total divorce of husband and wife, dissolving the marriage tie and releasing the parties wholly from their matrimonial obligations. • At common law, but not always in canon law, this type of divorce bastardized any children from the marriage and was granted on grounds that existed before the marriage. In England, the Matrimonial Causes Act of 1857 introduced statutory divorce a vinculo matrimonii. — Usu. shortened to divorce. — Also termed absolute divorce. Cf. limited divorce. [Cases: Divorce 157. C.J.S. Divorce §§ 223–225.]

Dominican divorce. See Mexican divorce.

ex parte divorce (eks pahr-tee). A divorce proceeding in which only one spouse participates or appears in court. [Cases: Divorce 146. C.J.S. Divorce §§ 209–210.]

fault divorce. A divorce granted to one spouse on the basis of some proven wrongful act (grounds for divorce) by the other spouse. • Although all states now have some form of no-fault divorce, some jurisdictions still consider a spouse's fault in precipitating the divorce, esp. when dividing marital property or when awarding alimony. Traditionally, the common grounds for a fault divorce were adultery, abandonment, imprisonment, and physical or mental cruelty; the defenses to alleged fault in a petition for divorce were condonation, connivance, collusion, recrimination, and insanity. Section 303(e) of the Uniform Marriage and Divorce Act has abolished the defenses to divorce. Cf. no-fault divorce.

foreign divorce. A divorce obtained outside the state or country in which one spouse resides. [Cases: Divorce 351–420. C.J.S. Divorce §§ 769–825, 837–844, 851–861.]

Haitian divorce. See Mexican divorce.

hotel divorce. Slang. A form of collusive divorce — occurring before widespread passage of no-fault divorce laws — in which the spouses agree to fake an adultery scene to create “fault.” Cf. no-fault divorce.

“Clearly a lawyer may not originate or participate in a scheme to make it appear to the court that a ground for divorce has occurred when this is not the fact. Such is the case in the so-called



'hotel divorces,' prevalent in jurisdictions where adultery is the only ground for divorce, and based on the principle that intercourse will be presumed from apparently uninhibited opportunity." Henry S. Drinker, *Legal Ethics* 123–24 (1953).

**legislative divorce.** Hist. The legal termination of a particular marriage, enacted by the legislature rather than by a court. • In the 18th century, Colonial American legislatures granted these special statutes. In 1816, the House of Burgesses of Virginia granted a divorce to Rachel Robards Jackson, the wife of then President Andrew Jackson, from a former spouse. Mrs. Jackson's untimely death was attributed to her reaction to the scandal that she had married Jackson before the divorce was procured. Now only state courts have authority to grant decrees of divorce. — Also termed parliamentary divorce. [Cases: Divorce 5. C.J.S. Divorce § 4.]

**limited divorce.** 1. A divorce that ends the legal relationship of marriage by court order but does not address financial support, property distribution, or care and custody of children. • In the days before no-fault divorce, a spouse might seek a quick divorce in a state with a short residency requirement (such as Nevada). Then courts in the home state would give full faith and credit only to the dissolution of the marital res, while maintaining sole jurisdiction over property-division, support, and custody issues. [Cases: Divorce 155. C.J.S. Divorce §§ 223–225.] 2. Loosely, a legal separation. 3. See divorce a mensa et thoro. Cf. divorce a vinculo matrimonii.

**mail-order divorce.** Slang. A divorce obtained by parties who are not physically present or domiciled in the jurisdiction purporting to grant the divorce. • Such a divorce is not recognized in the United States because of the absence of the usual bases for jurisdiction.

**Mexican divorce.** A divorce obtained in Mexico by mail order or by the appearance of one spouse who does not have a Mexican domicile. • Neither type is recognized in the United States. — Also termed Dominican divorce (if granted in the Dominican Republic); Haitian divorce (if granted in Haiti).

**migratory divorce.** A divorce obtained in a jurisdiction other than the marital domicile; esp., a divorce obtained by a spouse who moves to, or temporarily resides in, another state or country to get the divorce.

**no-fault divorce.** A divorce in which the parties are not required to prove fault or grounds beyond a showing of the irretrievable breakdown of the marriage or irreconcilable differences. • The system of no-fault divorce has been adopted throughout the United States. By 1974, 45 states had adopted no-fault divorce; by 1985, every state but New York had adopted some form of it. In New York — one of the last bastions of fault grounds for divorce — the closest equivalent is a conversion divorce one year after legal separation or a legal-separation agreement. Cf. fault divorce; hotel divorce. [Cases: Divorce 12. C.J.S. Divorce §§ 13–18, 70.]

**parliamentary divorce.** See legislative divorce.

**pro-con divorce.** Slang. An uncontested divorce granted after only the plaintiff appears at the proceeding (since the defendant contests nothing).

**quickie divorce.** Slang. A fast divorce granted with minimal paperwork. — Also termed quick

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divorce.

rabbinical divorce. A divorce granted under the authority of a rabbi. • This type of divorce affects the relationship of the parties under the tenets of Judaism. It affects particularly a Jewish woman's ability to remarry in accordance with Judaic law. In the United States, it is not generally a divorce recognized in civil courts. — Also termed get.

uncontested divorce. A divorce that is unopposed by the spouse who did not initiate it. Cf. contested divorce.

#### DIVORCE AGREEMENT

divorce agreement. A contractual agreement that sets out divorcing spouses' rights and responsibilities regarding property, alimony, custody, visitation, and child support. • The divorce agreement usu. becomes incorporated by court order as a part of the divorce decree and thus is enforceable by contempt, among other remedies. — Also termed agreement incident to divorce; marital settlement agreement; separation agreement. Cf. PROPERTY SETTLEMENT.

#### DIVORCE DECREE

divorce decree. See DECREE.

#### DIVORCE PROCTOR

divorce proctor. A person (such as a guardian) who is appointed to protect the interest of the state or children in a divorce action. — Sometimes shortened to proctor. [Cases: Infants 76. C.J.S. Infants § 222.]

#### DIVORTIUM

divortium (di-vor-shee-*<<schwa>>*m), n. [Latin] 1. Roman law. Divorce; a severance of the marriage tie. • In classical law, no grounds were required. Cf. REPUDIUM. 2. Eccles. law. A decree allowing spouses to separate or declaring their marriage invalid.

“Owing to the fact that the church had but slowly made up her mind to know no such thing as a divorce in our acceptation of that term (i.e., the dissolution of a valid marriage) the term divortium is currently used to signify two very different things, namely (1) the divortium quoad torum, which is the equivalent of our ‘judicial separation,’ and (2) what is very often called the divortium quoad vinculum but is really a declaration of nullity. The persistence of the word divortium in the latter case is a trace of an older state of affairs, but in medieval practice the decree of nullity often served the purpose of a true divorce; spouses who had quarrelled began to investigate their pedigrees and were unlucky if they could discover no impedimentum dirimens.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I* 393 n.5 (2d ed. 1899).

D.J

D.J. See district judge under JUDGE.

## DJIA

DJIA.abbr.DOW JONES INDUSTRIAL AVERAGE.

## DLA

DLA.abbr.DEFENSE LOGISTICS AGENCY.

## DL/C

DL/C. See documentary letter of credit under LETTER OF CREDIT.

## DLOP

DLOP.abbr. Dismissal for lack of prosecution. See dismissal for want of prosecution under DISMISSAL(1).

## DLOP DOCKET

DLOP docket.See DWOP docket under DOCKET(2).

## DLSA

DLSA.abbr.DEFENSE LEGAL SERVICES AGENCY.

## DMCA

DMCA.abbr. DIGITAL MILLENNIUM COPYRIGHT ACT.

## DNA

DNA.abbr. Deoxyribonucleic acid; the double-helix structure in cell nuclei that carries the genetic information of most living organisms.

## DNA IDENTIFICATION

DNA identification.A method of scientific identification based on a person's unique genetic makeup; specif., the comparison of a person's deoxyribonucleic acid (DNA) — a patterned chemical structure of genetic information — with the DNA in a biological specimen (such as blood, tissue, or hair) to determine whether the person is the source of the specimen. • DNA evidence is used in criminal cases for purposes such as identifying a victim's remains, linking a suspect to a crime, and exonerating an innocent suspect. — Also termed DNA fingerprinting; genetic fingerprinting; DNA profiling; DNA typing. Cf. HUMAN-LEUKOCYTE ANTIGEN TEST. [Cases: Criminal Law 388.2; Evidence 150. C.J.S. Evidence §§ 216–226.]

## DNR ORDER

DNR order.abbr.DO-NOT-RESUSCITATE ORDER.

## DO

do (doh). [Latin] Hist. I give. • This term was considered the oldest and aptest way to effect a feoffment and gift.

## DOC

DOC.abbr.DEPARTMENT OF COMMERCE.

## DOCK

dock,n.1. A structure that encloses water, often between two piers, in which ships are received for loading, unloading, safekeeping, or repair. [Cases: Wharves 4. C.J.S. Wharves §§ 1–2, 4–5.] 2. The part of a warehouse or other building (usu. elevated with oversized doors) at which trucks are received for loading and unloading. 3.English law. In a criminal court, the enclosure in which the prisoner is placed during trial <it was through his own deliberate choice that Mr. Bourne found himself in the dock at the Old Bailey, charged with a felony>. See BAIL DOCK.

## DOCKAGE

dockage. A charge for the use of a dock, esp. while a vessel is undergoing repairs.

## DOCKET

docket,n.1. A formal record in which a judge or court clerk briefly notes all the proceedings and filings in a court case <review the docket to determine the filing date>. — Also termed judicial record; bench docket; docket sheet. [Cases: Appeal and Error 493–543; Criminal Law 1086.1–1088.20. C.J.S. Appeal and Error §§ 440–457; Criminal Law § 1688; Justices of the Peace § 236.]

appearance docket.A list of the parties and lawyers participating in an action, together with a brief abstract of the successive steps in the action. [Cases: Appearance 5; Federal Civil Procedure 561. C.J.S. Appearances § 17.]

judgment docket.A book that a court clerk keeps for the entry or recordation of judgments, giving official notice of existing judgment liens to interested parties. — Also termed judgment book; judgment file; judgment record; judgment roll. [Cases: Judgment 277, 284. C.J.S. Judgments §§ 130, 132.]

2. A schedule of pending cases <the case is third on Monday's trial docket>. — Also termed court calendar; cause list; trial calendar. [Cases: Criminal Law 632(2); Federal Civil Procedure 1991; Trial 9(1). C.J.S. Criminal Law § 1144; Trial §§ 61–62, 79.]

DWOP docket.A list of cases that the court has set for possible dismissal for want of prosecution. — Also termed doowop docket; DLOP docket. See dismissal for want of prosecution under DISMISSAL(1).

preferred docket.A list of cases set for trial, arranged in order of priority. • Criminal cases are, for example, generally given precedence over civil cases on the preferred docket because of the constitutional right to a speedy trial. [Cases: Criminal Law 632(2); Trial 13. C.J.S. Criminal Law § 1144; Trial §§ 77, 81–90.]

3.DOCKET CALL <the agreed judgment was signed at the court's uncontested docket call on

May 24>.4.Parliamentary law. A list of each motion, report, election, and other business that awaits a deliberative assembly's consideration, from which a board or officer prepares and circulates an agenda for each meeting or for a series of upcoming meetings <in planning the meeting, the chair worked from an exhaustive docket>. See AGENDA. 5. A written abstract that provides specific information (usu. about something attached); esp., a label <check the docket to determine the goods' destination and value>.6.Hist. A notary's attestation at the end of a deed or other instrument; esp., the attestation at the end of an instrument of seisin. — Also spelled docquet. See MANU ALIENA.

docket,vb.1. To make a brief entry in the docket of the proceedings and filings in a court case <to docket the filing date>.2. To abstract and enter in a book <to docket a judgment>.3. To schedule (a case) for trial or some other event <the case was docketed for a May trial>.

#### DOCKET CALL

docket call.A court session in which attorneys (and sometimes parties) appear in court to report the status of their cases. • For example, they may announce readiness for trial or report the suit's settlement. — Often shortened to docket.

#### DOCKET ENTRY

docket entry.A note made in the court's formal record of proceedings and filings. See DOCKET(1).

#### DOCKET FEE

docket fee.See FEE(1).

#### DOCKET NUMBER

docket number.A number that the court clerk assigns to a case on the court's docket.

#### DOCKET ORDER

docket order.See ORDER(2).

#### DOCKET SHEET

docket sheet.See DOCKET(1).

#### DOCKMASTER

dockmaster.English law. An officer who directs the mooring and removal of ships to avoid the obstruction of commerce.

#### DOCK RECEIPT

dock receipt.Maritime law. An interim document issued by a maritime carrier to evidence the delivery of goods at the dock. • Generally, a dock receipt entitles the designated person to receive a bill of lading, waybill, or other transport document. — Also termed dock warrant. See DOCUMENT OF TITLE. [Cases: Shipping 106(1). C.J.S. Shipping §§ 256–257.]

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**DOCK SALE**

dock sale. See SALE.

**DOCK WARRANT**

dock warrant. See DOCK RECEIPT.

**DOCTOR**

doctor. 1. Hist. In Roman Catholic canon law, an honorary title for a scholar. 2. A title of a person who has acquired an advanced degree in academics, or has achieved an honorable distinction. 3. A physician. — Abbr. Dr. [Cases: Health 110.]

**DOCTOR OF JURIDICAL SCIENCE**

Doctor of Juridical Science. A graduate law degree, beyond the J.D. and the LL.M. — Abbr. S.J.D.; J.S.D. — Also termed Doctor of Judicial Science; Doctor of the Science of Jurisprudence; Doctor of the Science of Law.

**DOCTOR OF JURISPRUDENCE**

Doctor of Jurisprudence. See JURIS DOCTOR.

**DOCTOR OF LAW**

Doctor of Law. See JURIS DOCTOR.

**DOCTOR OF LAWS**

Doctor of Laws. An honorary degree bestowed on one who has achieved great distinction. — Abbr. LL.D. Cf. JURIS DOCTOR; MASTER OF LAWS.

**DOCTOR OF THE SCIENCE OF JURISPRUDENCE**

Doctor of the Science of Jurisprudence. See DOCTOR OF JURIDICAL SCIENCE.

**DOCTOR OF THE SCIENCE OF LAW**

Doctor of the Science of Law. See DOCTOR OF JURIDICAL SCIENCE.

**DOCTOR–PATIENT PRIVILEGE**

doctor–patient privilege. See PRIVILEGE(3).

**DOCTOR–PATIENT RELATIONSHIP**

doctor–patient relationship. See RELATIONSHIP.

**DOCTORS' COMMONS**

Doctors' Commons. Hist. Informal. The College of Advocates and Doctors of Law, which trained specialists in admiralty and ecclesiastical law and housed admiralty and ecclesiastical courts from the 16th century to the 19th. • The College was dissolved in the 1860s after its

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functions were absorbed by the High Court. — Sometimes written Doctors' Common.

#### DOCTRINE

doctrine. 1. A principle, esp. a legal principle, that is widely adhered to. 2. Archaic. HOLDING(1).

#### DOCTRINE OF ACQUIRED RIGHTS

doctrine of acquired rights. See ACQUIRED-RIGHTS DOCTRINE.

#### DOCTRINE OF ADVERSE DOMINATION

doctrine of adverse domination. See ADVERSE-DOMINATION DOCTRINE.

#### DOCTRINE OF APPROXIMATION

doctrine of approximation. A doctrine that authorizes a court to vary the details of a trust's administration to preserve the trust and to carry out the donor's intentions. — Also termed equitable doctrine of approximation. Cf. CY PRES.

#### DOCTRINE OF CAPTURE

doctrine of capture. See RULE OF CAPTURE.

#### DOCTRINE OF CLAIM DIFFERENTIATION

doctrine of claim differentiation. See CLAIM DIFFERENTIATION.

#### DOCTRINE OF COERCION

doctrine of coercion. See COERCION(3).

#### DOCTRINE OF COMPLETENESS

doctrine of completeness. See RULE OF OPTIONAL COMPLETENESS.

#### DOCTRINE OF CONTAGION

doctrine of contagion. See CONTAGION.

#### DOCTRINE OF CONTINUITY

doctrine of continuity. See CONTINUITY(2).

#### DOCTRINE OF CONTRA NON VALENTEM

doctrine of contra non valentem (kon-tr<<schwa>> non v<<schwa>>-len-t<<schwa>>m). The rule that a limitations or prescriptive period does not begin to run against a plaintiff who is unable to act, usu. because of the defendant's culpable act, such as concealing material information that would give rise to the plaintiff's claim. — Often shortened to contra non valentem. [Cases: Limitation of Actions 43, 95. C.J.S. Employer–Employee Relationship § 87; Limitations of Actions §§ 81–84, 87, 131, 138, 142, 164–165, 167–168, 170–173, 175–176, 183, 198–205;

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Physicians, Surgeons, and Other Health-Care Providers § 108; RICO (Racketeer Influenced and Corrupt Organizations) § 16.]

#### DOCTRINE OF CONTRA PROFERENTEM

doctrine of contra proferentem. See CONTRA PROFERENTEM.

#### DOCTRINE OF CURATIVE ADMISSIBILITY

doctrine of curative admissibility. A rule allowing a party to introduce otherwise inadmissible evidence to remove the prejudice caused by the improper admission of evidence that was offered by the opposing party. • The doctrine applies when a motion to strike cannot cure the prejudice created by the adverse party. — Also termed curative-admissibility doctrine. [Cases: Criminal Law 396; Evidence 155. C.J.S. Criminal Law § 758; Evidence §§ 248–250.]

#### DOCTRINE OF ELECTION

doctrine of election. A doctrine holding that when a person has contracted with an agent without knowing of the agency and later learns the principal's identity, the person may enforce the contract against the agent or the principal, but not both. See ELECTION(1). [Cases: Principal and Agent 145(4). C.J.S. Agency §§ 416–417.]

#### DOCTRINE OF ENTIRETIES

doctrine of entireties (en-tī-<<schwa>>-teez). In customs law, the rule that when an entry consists of parts that assemble to form an article different from any of the parts, the proper classification will be of the whole article, rather than the individual components.

#### DOCTRINE OF EQUIVALENTS

doctrine of equivalents. Patents. A judicially created theory for finding patent infringement when the accused process or product falls outside the literal scope of the patent claims. • The doctrine evolved to prevent parties from evading liability for patent infringement by making trivial changes to avoid the literal language of the patent claims. *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 339 U.S. 605, 70 S.Ct. 854 (1950). In determining whether infringement exists under the doctrine, the court must first determine whether “the accused product or process contain[s] an element identical or equivalent to each claimed element of the patented invention.” *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 39–40, 117 S.Ct. 1040, 1054 (1997). If it does, it infringes on the patent if the differing element performs substantially the same function in substantially the same way to get the same result as the patented product or process. Prosecution-history estoppel is not an absolute bar to a patentee who seeks to invoke the doctrine of equivalents to prove infringement on a claim that was voluntarily amended. *Festo v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831 (2002). — Also termed equivalents doctrine; doctrine of equivalence; doctrine of equivalency; doctrine of substantial equivalents; nonliteral infringement. Cf. literal infringement under INFRINGEMENT. [Cases: Patents 237. C.J.S. Patents §§ 425–426.]

reverse doctrine of equivalents. The doctrine preventing infringement liability when the



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invention is substantially described by the claims of another's patent but performs the same or similar function in a substantially different way.

#### DOCTRINE OF ESTATES

doctrine of estates.Hist. The rule that a person cannot own land, but can merely own an estate in it, authorizing the person to hold it for some period of time. • This doctrine answers the question of the duration of an estate. Cf. DOCTRINE OF TENURES.

#### DOCTRINE OF FINALITY

doctrine of finality.See FINALITY DOCTRINE.

#### DOCTRINE OF GENERAL AVERAGE

doctrine of general average.Maritime law. A rule allowing a carrier to require cargo owners and the shipowner to contribute pro rata to the cost of protecting the ship and its cargo. [Cases: Shipping 186. C.J.S. Shipping §§ 458–459.]

#### DOCTRINE OF IDENTIFICATION

doctrine of identification.Hist. English law. The rule that if a person traveling in a conveyance is injured in an accident that occurs because of someone else's negligence, and the driver of the conveyance is contributorily negligent, the passenger cannot claim damages against the tortfeasor since the passenger is “identified” with the contributorily negligent driver. • The leading authority for this doctrine was *Thorogood v. Bryan*, 8 C.B. 115 (1849), but the Court of Appeal repudiated the doctrine as unsound in *The Bernina* [1887], 13 App. Cas. 1 (1888).

#### DOCTRINE OF ILLUSORY COVERAGE

doctrine of illusory coverage.A rule requiring an insurance policy to be interpreted so that it is not merely a delusion to the insured. [Cases: Insurance 2090. C.J.S. Insurance § 58.]

#### DOCTRINE OF INCONTROVERTIBLE PHYSICAL FACTS

doctrine of incontrovertible physical facts.See PHYSICAL-FACTS RULE.

#### DOCTRINE OF INEFFECTIVE REVOCATION

doctrine of ineffective revocation.See DEPENDENT RELATIVE REVOCATION.

#### DOCTRINE OF INHERENCY

doctrine of inherency.See INHERENCY DOCTRINE.

#### DOCTRINE OF INTERVENING RIGHTS

doctrine of intervening rights.See INTERVENING RIGHTS.

#### DOCTRINE OF LEGAL UNITIES

doctrine of legal unities.See LEGAL-UNITIES DOCTRINE.

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**DOCTRINE OF MARITAL PRIVACY**

doctrine of marital privacy.See MARITAL-PRIVACY DOCTRINE.

**DOCTRINE OF NECESSARIES**

doctrine of necessities. 1. The rule holding a parent or spouse liable to anyone who sells goods or provides medical services to that person's child or spouse if the goods or services are required for sustenance, support, or healthcare. 2.Archaic. The common-law rule holding a husband or father liable to anyone who sells goods to his wife or child if the goods are required for sustenance or support. See NECESSARIES. [Cases: Husband and Wife 19.]

**DOCTRINE OF NOTICE**

doctrine of notice.See NOTICE DOCTRINE.

**DOCTRINE OF OBLIGATION**

doctrine of obligation.English law. The rule that if a foreign court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, the liability to pay that sum becomes a legal obligation enforceable domestically by a debt action. • Once the plaintiff proves the judgment, the burden shifts to the defendant to show why the obligation should not be performed. The doctrine was established by Baron Parke in *Russell v. Smyth*, 9 M. & W. 810, 819 (1842). — Often shortened to obligation.

**DOCTRINE OF OPTIONAL COMPLETENESS**

doctrine of optional completeness.See RULE OF OPTIONAL COMPLETENESS.

**DOCTRINE OF PARENS PATRIAE**

doctrine of parens patriae.See PARENS PATRIAE(2).

**DOCTRINE OF PRACTICAL LOCATION**

doctrine of practical location.See AGREED-BOUNDARY DOCTRINE.

**DOCTRINE OF PRECEDENT**

doctrine of precedent. 1. The rule that precedents not only have persuasive authority but also must be followed when similar circumstances arise. • This rule developed in the 19th century and prevails today. See STARE DECISIS. [Cases: Courts 88. C.J.S. Courts § 139; Trade-Marks, Trade-Names, and Unfair Competition§ 187.] 2. A rule that precedents are reported, may be cited, and will probably be followed by courts. • This is the rule that prevailed in England until the 19th century.

**DOCTRINE OF PRECLUSION OF INCONSISTENT POSITIONS**

doctrine of preclusion of inconsistent positions.See judicial estoppel under ESTOPPEL.

**DOCTRINE OF RELATION BACK**

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doctrine of relation back. See RELATION BACK.

#### DOCTRINE OF RES JUDICATA

doctrine of res judicata. See RES JUDICATA.

#### DOCTRINE OF REVESTMENT

doctrine of revestment. A rule by which a court regains jurisdiction after the entry of final judgment when the former opposing parties have actively participated in proceedings inconsistent with the court's judgment. [Cases: Courts 30. C.J.S. Courts §§ 71–73.]

#### DOCTRINE OF SCRIVENER'S ERROR

doctrine of scrivener's error. A rule permitting a typographical error in a document to be reformed by parol evidence, if the evidence is precise, clear, and convincing. See clerical error under ERROR(2). [Cases: Reformation of Instruments 17(2). C.J.S. Reformation of Instruments § 25.]

#### DOCTRINE OF SEPARATE SPHERES

doctrine of separate spheres. See SEPARATE-SPHERES DOCTRINE.

#### DOCTRINE OF SPECIALTY

doctrine of specialty. Int'l law. The principle, included as a provision in most extradition treaties, under which a person who is extradited to a country to stand trial for certain criminal offenses may be tried only for those offenses and not for any other pre-extradition offenses. — Also termed specialty doctrine. See EXTRADITION. [Cases: Extradition and Detainers 19.]

#### DOCTRINE OF SPOUSAL UNITY

doctrine of spousal unity. See SPOUSAL-UNITY DOCTRINE(1).

#### DOCTRINE OF SUBSTANTIAL EQUIVALENTS

doctrine of substantial equivalents. See DOCTRINE OF EQUIVALENTS.

#### DOCTRINE OF SUBSTITUTED JUDGMENT

doctrine of substituted judgment. See SUBSTITUTED-JUDGMENT DOCTRINE.

#### DOCTRINE OF SUPERIOR EQUITIES

doctrine of superior equities. Insurance. A rule by which an insurer is unable to recover from anyone whose equities are equal or superior to the insurer's; esp., a rule that a right of subrogation may be invoked against another party only if that party's guilty conduct renders the party's equity inferior to that of the insured. — Also termed risk-stops-here rule. [Cases: Insurance 3517; Subrogation 1. C.J.S. Insurance §§ 1476, 1482, 1484, 1487; Subrogation §§ 2–15, 19, 91.]

#### DOCTRINE OF TENURES

doctrine of tenures.Hist. The rule that all land is held of the Crown, either directly or indirectly, on some type of tenure. • This doctrine answers the question of the manner in which an estate is held. — Also termed doctrine of tenure. Cf. DOCTRINE OF ESTATES.

#### DOCTRINE OF THE CONCLUSIVENESS OF THE JUDGMENT

doctrine of the conclusiveness of the judgment.See judicial estoppel under ESTOPPEL.

#### DOCTRINE OF THE LAST ANTECEDENT

doctrine of the last antecedent.See RULE OF THE LAST ANTECEDENT.

#### DOCTRINE OF THE LAST PRECEDING ANTECEDENT

doctrine of the last preceding antecedent. RULE OF THE LAST ANTECEDENT.

#### DOCTRINE OF UNCONSTITUTIONAL CONDITIONS

doctrine of unconstitutional conditions.See UNCONSTITUTIONAL-CONDITIONS DOCTRINE .

#### DOCTRINE OF VESTED RIGHTS

doctrine of vested rights.See VESTED-RIGHTS DOCTRINE.

#### DOCTRINE OF WORTHIER TITLE

doctrine of worthier title.See WORTHIER-TITLE DOCTRINE.

#### DOCUMENT

document,n.1. Something tangible on which words, symbols, or marks are recorded. See Fed. R. Civ. P. 34(a). 2. (pl.) The deeds, agreements, title papers, letters, receipts, and other written instruments used to prove a fact.

ancient document.Evidence. A document that is presumed to be authentic because its physical condition strongly suggests authenticity, it has existed for 20 or more years, and it has been maintained in proper custody (as by coming from a place where it is reasonably expected to be found).Fed. R. Evid. 901(b)(8). — Also termed ancient writing. [Cases: Evidence 372. C.J.S. Evidence §§ 1010–1012, 1014–1015.]

document of authority.See governing document.

foreign document.A document that originated in, or was prepared or executed in, a foreign state or country.

governing document.Parliamentary law. A document that defines or organizes an organization, or grants or establishes its authority and governance. • An organization's governing documents may include a charter, articles of incorporation or association, a constitution, bylaws, and rules. A charter or articles of incorporation or association, if they have been granted or adopted, are an organization's most authoritative governing document, followed by the constitution, bylaws, and

rules, in that order. — Also termed document of authority. See CHARTER(4), (5); ARTICLES OF INCORPORATION; ARTICLES OF ASSOCIATION(2); CONSTITUTION(4); BYLAW(1); SUBORDINATION(2).

hot document.A document that directly supports a litigant's allegation.

public document.A document of public interest issued or published by a political body or otherwise connected with public business. Cf. public record under RECORD. [Cases: Evidence 325–337. C.J.S. Evidence §§ 813, 834–838, 840–869, 923–924, 1024.]

3.Evidence. Under the best-evidence rule, a physical embodiment of information or ideas, such as a letter, contract, receipt, account book, blueprint, or X-ray plate; esp., the original of such an embodiment. See Fed. R. Evid. 1001 et seq. [Cases: Criminal Law 400; Evidence 157–187. C.J.S. Criminal Law § 837; Evidence §§ 1054–1131.]

document,vb.1. To support with records, instruments, or other evidentiary authorities <document the chain of custody>.2. To record; to create a written record of <document a file>.

#### DOCUMENTARY CREDIT

documentary credit. 1. Credit extended on a document of title or any other legal document. 2. A financing arrangement in which a financial institution authorizes or makes a payment to a third party (usu. an exporter) at a customer's request. • This financing method facilitates international transactions by providing the importer with necessary credit and the exporter with an expedited cash payment.

#### DOCUMENTARY DRAFT

documentary draft.See DRAFT.

#### DOCUMENTARY EVIDENCE

documentary evidence.See EVIDENCE.

#### DOCUMENTARY INSTRUCTION

documentary instruction.A written agreement between an importer and exporter covering the relegation of various documents relating to the shipment and disposition of goods.

#### DOCUMENTARY LETTER OF CREDIT

documentary letter of credit.See LETTER OF CREDIT.

#### DOCUMENTARY-ORIGINALS RULE

documentary-originals rule.See BEST-EVIDENCE RULE.

#### DOCUMENTARY SALE

documentary sale.See SALE.

#### DOCUMENTARY STAMP

documentary stamp. A stamp required to be affixed to a deed or other instrument before it is recorded.

#### DOCUMENTARY-STAMP TRANSFER TAX

documentary-stamp transfer tax. See stamp tax under TAX.

#### DOCUMENT OF TITLE

document of title. A written description, identification, or declaration of goods authorizing the holder (usu. a bailee) to receive, hold, and dispose of the document and the goods it covers. • Documents of title, such as bills of lading, warehouse receipts, and delivery orders, are generally governed by Article 7 of the UCC. See BAILMENT(1)–(3). [Cases: Carriers 51; Warehousemen 11. C.J.S. Carriers § 390; Warehousemen and Safe Depositaries §§ 23, 26–29.]

negotiable document of title. A document of title that actually stands for the goods it covers, so that any transfer of the goods requires a surrender of the document. UCC § 7-104(a). [Cases: Bills and Notes 151; Warehousemen 15. C.J.S. Bills and Notes; Letters of Credit § 131; Warehousemen and Safe Depositaries § 36.]

nonnegotiable document of title. A document of title that merely serves as evidence of the goods it covers. UCC § 7-104(b). [Cases: Warehousemen 15. C.J.S. Warehousemen and Safe Depositaries § 36.]

#### DOCUMENT REQUEST

document request. See REQUEST FOR PRODUCTION.

#### DOCUMENTUM

documentum (dok-y<<schwa>>-men-t<<schwa>>m), n. [Latin] Roman law. 1. Proof. 2. A document. • This term appeared in postclassical imperial constitutions.

#### DOD

DOD.abbr. Department of Defense. See DEFENSE DEPARTMENT.

#### DODDS

DoDDS.abbr. DEPARTMENT OF DEFENSE DEPENDENTS SCHOOLS.

#### DO, DICO, ADDICO

do, dico, addico (doh, dI-koh, <<schwa>>-dI-koh ordik-oh, <<schwa>>-dik-oh). [Latin] I give, I say, I adjudge. • These formal words were spoken by the Roman praetor in the exercise of his jurisdiction on certain days, such as dies fasti. They could not be officially spoken on dies nefasti. Do refers to the granting of actions, exceptions, and the appointment of judges; dico refers to the pronouncement of judgments; and addico refers to the adjudication of controverted property.

#### DOE

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DOE.abbr.1.DEPARTMENT OF EDUCATION. 2.DEPARTMENT OF ENERGY.

DOE, JANE

Doe, Jane.See JANE DOE.

DOE, JOHN

Doe, John.See JOHN DOE.

D'OENCH DUHME<TT> DOCTRINE

D'Oench Duhme doctrine (dench doom). The rule that estops a borrower from asserting a claim or defense against a federal successor to a failed financial institution — if the claim or defense is based on a side or secret agreement or representation — unless the agreements or representations have been (1) put into writing, (2) executed by the financial institution and borrower when the loan was issued, (3) approved by the financial institution's board of directors or loan committee, and (4) made a permanent part of the financial institution's records.D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447, 62 S.Ct. 676 (1942) (now partially codified at 12 USCA § 1823(e), and otherwise of questionable standing in light of O'Melveny & Myers v. FDIC, 512 U.S. 79, 114 S.Ct. 2048 (1994)). [Cases: Banks and Banking 505. C.J.S. Banks and Banking §§ 673, 676–679, 682–687, 690–694, 696, 699–705, 708–717.]

DO EQUITY

do equity.(Of one who seeks an equitable remedy) to treat or offer to treat the other party as fairly as is necessary, short of abandoning one's own legal rights, to bring about a fair result. • The phrase derives from the maxim “One who seeks equity must do equity.” See CLEAN-HANDS DOCTRINE.

D'OFFICE

d'office (daw-fees). [Law French] Of office; officially. • This is similar to the Latin phrase *ex officio*.

DOG

dog.Slang.1. Something undesirable, esp. a lawsuit <the cases assigned to the new lawyer were all dogs>.2.Securities. A stock or other investment that suffers public disdain and repeated price declines or poor performance.

DOG-DRAW

dog-draw.Hist. The apprehension of someone chasing a deer in a forest with a dog.

“Dog-draw is an apparent deprehension of an offender against venison in the forest. There are four kinds of them observed by Manwood, part. 2, cap. 18, num. 9, of his Forest Laws, that is, dog-draw, stable-stand, back-bear, and bloody-hand. Dog-draw is, when one is found drawing after a deer by the scent of a hound led in his hand.” *Termes de la Ley* 181 (1st Am. ed. 1812).

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**DOGMA**

dogma (dawg-m<<schwa>> ordahg-), n. A philosophy, opinion, or tenet that is strongly held, is believed to be authoritative, and is followed steadfastly, usu. to the exclusion of other approaches to the same subject matter; a formally stated and proclaimed doctrine of faith. Pl. dogmas, dogmata (-m<< schwa>>-t<<schwa>>).

**DOHSA**

DOHSA (doh-s<<schwa>>).abbr.DEATH ON THE HIGH SEAS ACT.

**DOING BUSINESS**

doing business.The act of engaging in business activities; specif., the carrying out of a series of similar acts for the purpose of realizing a pecuniary benefit, or otherwise accomplishing a goal, or doing a single act with the intention of starting a series of such acts; esp., a nonresident's participation in sufficient business activities in a foreign state to allow the state's courts to exercise personal jurisdiction over the nonresident. See BUSINESS(1); D/B/A/; DOING-BUSINESS STATUTE; LONG-ARM STATUTE; MINIMUM CONTACTS . [Cases: Corporations 642, 665(1); Courts 12(2).C.J.S. Corporations §§ 907, 942–943; Courts §§ 39, 44.]

**DOING-BUSINESS STATUTE**

doing-business statute.A state law defining the acts that constitute undertaking business there, usu. for the purpose of establishing the circumstances under which the state's courts may exercise personal jurisdiction over a nonresident. See MINIMUM CONTACTS; LONG-ARM STATUTE. [Cases: Courts 12(2). C.J.S. Courts §§ 39, 44.]

**DOJ**

DOJ.abbr.DEPARTMENT OF JUSTICE.

**DOL**

DOL.abbr. DEPARTMENT OF LABOR.

dol (dohl or dol), n.[French “deceit; fraud”] Civil law. Fraud committed in inducing another to enter into a contract. See fraud in the inducement under FRAUD. Cf. FRAUDE.

**DOLE**

dole,n.1. A share of something that is jointly owned but divisible. 2.Slang. Welfare benefits received from a governmental agency. 3.Scots law. Criminal intent; the equivalent of mens rea.

**DO, LEGO**

do, lego (doh, lee-goh). [Latin] Hist. I give and bequeath. • In Roman law, this was the phrase used to make a bequest.

**DOLE-LAND**



dole-land.Hist. Jointly owned land in which each owner or user has an assigned portion with distinct landmarks. • The share may be allotted annually on a rotating basis or permanently. — Also termed dole-meadow; dole-moor.

## DOLE-MEADOW

dole-meadow. See DOLE-LAND.

## DOLE-MOOR

dole-moor. See DOLE-LAND.

## DOLE&lt;TT&gt; TEST

Dole test. A four-part test used to determine the constitutionality of a condition attached by Congress under its Spending Clause power to the receipt of federal money. • The spending must be in pursuit of the general welfare, and the condition must be unambiguous, related to some federal interest, and not barred by any other provision of the Constitution. *South Dakota v. Dole*, 483 U.S. 203, 107 S.Ct. 2793 (1987).

## DOLI CAPAX

doli capax (doh-llkay-paks), adj.[Latin “capable of wrong”] Roman law. Capable of committing a crime or tort; esp., old enough to determine right from wrong. — Also termed capax doli. Cf. DOLI INCAPAX.

“In criminal cases, an infant of the age of fourteen years may be capitally punished for any capital offence: but under the age of seven he cannot. The period between seven and fourteen is subject to much uncertainty: for the infant shall, generally speaking, be judged prima facie innocent; yet if he was doli capax, and could discern between good and evil at the time of the offence committed, he may be convicted and undergo judgment and execution of death, though he hath not attained to years of puberty or discretion.” 1 William Blackstone, *Commentaries on the Laws of England* 452–53 (1765).

## DOLI INCAPAX

doli incapax (doh-II in-kay-paks), adj.[Latin “incapable of wrong”] Roman law. Incapable of committing a crime or tort. — Also termed incapax doli. Cf. DOLI CAPAX.

## DOLLAR-COST AVERAGING

dollar-cost averaging,n. The investment practice of purchasing a fixed dollar amount of a type of security at regular intervals.

## DOLO

dolo (doh-loh), n.[Spanish] Spanish law. Fraud or deceit; bad or mischievous design.

## DOLO CIRCUMVENTUS

dolo circumventus (doh-loh s<<schwa>>r-k<<schwa>>m-ven-t<<schwa>>s). [Latin] Hist.

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Overreached by fraud.

## DOLOSE

dolose (d<<schwa>>-loh-sordoh-lohs). [Latin] Hist. Fraudulently; in a deceitful manner.

## DOLUS

dolus (doh-l<<schwa>>s). [Latin “device; artifice”] Roman & civil law. 1. Fraud or deceit; conduct intended to deceive someone; bad faith. • Although there may be dolus without fraud, fraud always includes dolus. Cf. CASUS(1); CULPA(1).2. Intentional aggression; willful injury, esp. to another's property. — Also termed dolus malus; fraus.

“In the twelfth century the resuscitated Roman law introduced some new ideas. Men began to contrast, as Glanvill does, civil with criminal causes, to speak of dolus and culpa and casus, and to lay stress on the psychical element in crime.” 2 Frederick Pollock & Frederic W. Maitland, *History of English Law Before the Time of Edward I 477* (2d ed. 1899).

“Although the word malitia is not unknown to the Roman lawyers, the usual and technical name for wrongful intent is dolus, or more specifically dolus malus. Dolus and culpa are two forms of mens rea. In a narrower sense, however, dolus includes merely that particular variety of wrongful intent which we term fraud — that is to say, the intent to deceive. From this limited sense it was extended to cover all forms of wilful wrongdoing. The English term fraud has never received an equally wide extension.” John Salmond, *Jurisprudence* 385 (Glanville L. Williams ed., 10th ed. 1947).

dolus bonus (doh-l<<schwa>>s boh-n<<schwa>>s). [Latin “good deceit”] Shrewdness or justifiable deceit, as when a person lies to an attacker to prevent an assault. • Dolus bonus does not produce any legal consequences.

dolus dans locum contractui (doh-l<<schwa>>s danz loh-k<<schwa>>m k<<schwa>>n-trak-choo-I). [Latin] Fraud (or deceit) giving rise to the contract; specif., a fraudulent misrepresentation that, having been made by one of the parties to the contract and relied on by the other, was actually instrumental in inducing the latter to enter into the contract.

dolus incidens (doh-l<<schwa>>s in-si-denz). [Law Latin] Hist. Fraud incidental; fraud that does not affect the essential terms of an agreement.

dolus malus (doh-l<<schwa>>s mal-<<schwa>>s). [Latin “bad or evil deceit”] Evil or fraudulent design or intent; an unjustifiable deceit.

## DOMA

DOMA.abbr.DEFENSE OF MARRIAGE ACT.

## DOMAIN

domain (doh-mayn), n.1. The territory over which sovereignty is exercised <the 19th-century domains of the British Empire>.2. An estate in land <the family domain is more than 6,000

acres>.3. The complete and absolute ownership of land <his domain over this land has now been settled>. See EMINENT DOMAIN; PUBLIC DOMAIN.

#### DOMAIN NAME

domain name. The words and characters that website owners designate for their registered Internet addresses. • All domain names have at least two levels. The first-level domain name identifies the registrant's category as, e.g., a commercial site (.com), a governmental institution (.gov), an educational institution (.edu), a nonprofit group (.org), or a discussion group (.net). The second-level domain name is the unique identifier for the user in a particular category <rhapsangel.com> <rhapsangel.org>. A second-level domain name may be protected under trademark law, but first-level domain names are not. In some circumstances, the entire domain name may be validly registered as a trademark. But trademark rights are not automatically created by registering a domain name. See INTERNET-PROTOCOL ADDRESS.

#### DOMAIN-NAME INFRINGEMENT

domain-name infringement. See INFRINGEMENT.

#### DOMBOC

domboc. See DOOMBOOK.

#### DOMBROWSKI<TT> DOCTRINE

Dombrowski doctrine. A short-lived rule that entitled a person to seek a federal-court injunction to prevent prosecution under a broad or vague state statute that affects rights guaranteed by the First Amendment. *Dombrowski v. Pfister*, 380 U.S. 479, 85 S.Ct. 1116 (1965). • The doctrine was greatly cut back six years after it was announced, when the Supreme Court ruled that a speculative First Amendment chilling effect does not justify federal-court intervention in state affairs. *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971). [Cases: Courts 508. C.J.S. Courts §§ 216, 218–219.]

#### DOMEBOOK

domebook. See DOOMBOOK.

#### DOMESDAY BOOK

Domesday Book (doomz-day). The census or survey, ordered by William the Conqueror and substantially completed in 1086, of England's landholdings, buildings, people, and livestock. — Abbr. D.B. — Also spelled Doomsday Book.

“Domesday Book had several variant names — *Liber de Wintonia*, *Rotulus Wintoniae*, *Scriptura Thesauri Regis*, *Liber Regis*, *Liber Judiciarius*, *Censualis Angliae*, *Angliae Notitia et Lustratio*, *Rotulus Regis*, *Liber de Thesauro*, *Exchequer Domesday*...Domesday Book had as its main object a fiscal one, and a limited fiscal one at that. Beyond that it does not profess to go, and if we get any further information from it as to contemporary law and society, we get it as an indirect consequence.” Percy H. Winfield, *The Chief Sources of English Legal History* 110–11

(1925).

**DOMESTIC**

domestic,adj.1. Of or relating to one's own country <domestic affairs>.2. Of or relating to one's own jurisdiction <in Alaska, a domestic corporation is an Alaskan one>.3. Of or relating to the family or the household <a domestic dispute>.

domestic . See DOMESTIC SERVANT.

**DOMESTIC ABUSE**

domestic abuse.See domestic violence under VIOLENCE.

**DOMESTIC ANIMAL**

domestic animal.See ANIMAL.

**DOMESTIC AUTHORITY**

domestic authority. 1. The legal power to use nondeadly force when reasonably necessary to protect a person for whom one is responsible. 2. A defense allowing a person responsible for another (such as a parent responsible for a child) to use nondeadly force when reasonably necessary to protect the person being cared for. [Cases: Assault and Battery 14, 68. C.J.S. Assault and Battery §§ 22, 93.]

**DOMESTIC BILL**

domestic bill.See BILL(6).

**DOMESTIC CORPORATION**

domestic corporation.See CORPORATION.

**DOMESTIC COURT**

domestic court.See COURT.

**DOMESTIC CREDITOR**

domestic creditor.See CREDITOR.

**DOMESTIC DISPUTE**

domestic dispute.A disturbance, usu. at a residence and usu. within a family, involving violence and often resulting in a call to a law-enforcement agency. — Also termed domestic disturbance; family disturbance. See domestic violence under VIOLENCE. [Cases: Breach of The Peace 17. C.J.S. Breach of the Peace §§ 14–15, 25; Domestic Abuse and Violence §§ 5–6.]

**DOMESTIC DISTURBANCE**

domestic disturbance.See DOMESTIC DISPUTE.

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**DOMESTIC EXPORT**

domestic export. See EXPORT(1).

**DOMESTIC GUARDIAN**

domestic guardian. See GUARDIAN.

**DOMESTIC INTERNATIONAL SALES CORPORATION**

Domestic International Sales Corporation. A U.S. corporation, esp. a subsidiary whose income is primarily attributable to exports. • Income tax on part of a DISC's income is usu. deferred, resulting in a lower overall corporate tax for the parent than it would otherwise incur. IRC (26 USCA) §§ 991–997 — Abbr. DISC. [Cases: Internal Revenue 4118. C.J.S. Internal Revenue §§ 486–487.]

**DOMESTIC JUDGMENT**

domestic judgment. See JUDGMENT.

**DOMESTIC PARTNERSHIP**

domestic partnership. 1. A nonmarital relationship between two persons of the same or opposite sex who live together as a couple for a significant period of time. 2. A relationship that an employer or governmental entity recognizes as equivalent to marriage for the purpose of extending employee-partner benefits otherwise reserved for the spouses of employees. Cf. CIVIL UNION; same-sex marriage under MARRIAGE(1). — domestic partner, n.

**DOMESTIC-PARTNERSHIP LAW**

domestic-partnership law. A legislative enactment, often a municipal ordinance, that grants unmarried adults living in economically or emotionally based relationships, regardless of their sexual preference, some of the rights of a civil marriage without attempting to change the traditional definition of marriage.

**DOMESTIC-PARTNERSHIP PERIOD**

domestic-partnership period. The period beginning when domestic partners begin living together and ending when the partners stop sharing a primary residence. See DOMESTIC PARTNERSHIP.

**DOMESTIC-PARTNERSHIP PROPERTY**

domestic-partnership property. See PROPERTY.

**DOMESTIC POLICY COUNCIL**

Domestic Policy Council. See OFFICE OF POLICY DEVELOPMENT.

**DOMESTIC RELATIONS**

domestic relations. See FAMILY LAW.

**DOMESTIC-RELATIONS COURT**

domestic-relations court. See family court under COURT.

**DOMESTIC-RELATIONS EXCEPTION**

domestic-relations exception. The exclusion of suits regarding the granting of divorce, alimony, and child custody from federal diversity jurisdiction. • The domestic-relations exemption to federal diversity jurisdiction originated as dictum in *Barber v. Barber*, 62 U.S. (21 How.) 582 (1858). Federal courts do not have jurisdiction to grant divorces, award alimony, or determine child custody. In general, matters of domestic relations are left to the states. But the federal courts may hear other diversity matters involving family members, such as tort claims or suits seeking to enforce alimony orders. *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S.Ct. 2206 (1992).

**DOMESTIC-RELATIONS LAW**

domestic-relations law. See FAMILY LAW.

**DOMESTIC SERVANT**

domestic servant. A household servant. — Often shortened to domestic.

**DOMESTIC TERRORISM**

domestic terrorism. See TERRORISM.

**DOMESTIC TORT**

domestic tort. See marital tort under TORT.

**DOMESTICUS**

domesticus (d<<schwa>>-mes-ti-k<<schwa>>s), n. [Latin] Hist. Steward; judge's assistant; assessor.

**DOMESTIC VIOLENCE**

domestic violence. See VIOLENCE.

**DOMICELLUS**

domicellus (dom-<<schwa>>-sel-<<schwa>>s), n. [Law Latin] Hist. 1. A king's natural son in France. 2. A young lord.

“Domicellus, Is an old obsolete ... Word, anciently given as an Appellation or Addition to the King's natural Sons in France, and sometimes to the eldest Sons of Noblemen there; from whence we borrowed these Additions: As several natural Children of John of Gaunt, Duke of Lancaster, are stiled Domicelli by the Charter of Legitimation.... But according to Thorn, the Domicelli were only the better Sort of Servants in Monasteries.” Giles Jacob, *A New Law-Dictionary* (8th ed. 1762).

**DOMICILE**

domicile (dom-*<<schwa>>-sII*), n.1. The place at which a person has been physically present and that the person regards as home; a person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere. • A person has a settled connection with his or her domicile for legal purposes, either because that place is home or because the law has so designated that place. — Also termed permanent abode. [Cases: Domicile 1. C.J.S. Domicile §§ 2–3, 5, 11.]

“By domicile we mean home, the permanent home; and if you do not understand your permanent home, I am afraid that no illustration drawn from foreign writers or foreign languages will very much help you to it.” *Whicker v. Hume* [1858] 7 H.L.C. 124, 160(per Lord Cranworth).

“It is difficult to give a definition of domicil that will cover at once domicil by operation of law and domicil by choice. The idea of domicil certainly includes the idea of place and the idea of settled connection with the place. Domicil of choice is so closely connected with the idea of home that it seems desirable to include that idea in any definition, and yet the idea is not applicable to many kinds of domicil by operation of law. It has therefore seemed best to state this element in the alternative. If a home is in the place, that is sufficient. If there is no home, or if the party is not sui juris, then the place is assigned by law without his will.” 1 Joseph H. Beale, *A Treatise on the Conflict of Laws* § 9.1, at 89–90 (1935).

“A person's domicile is the place with which that person is most closely associated — his or her ‘home’ with all the connotations of that word. A person can be domiciled in a nation, a state of the United States, a city, or a house within a city. He or she can have a domicile within a broader geographical designation without having a domicile in a narrower geographical designation. For example, a person may be domiciled in a state without being domiciled within any particular city within the state. For interstate choice-of-law purposes, it is the state in which a person is domiciled that is significant.” Russell J. Weintraub, *Commentary on the Conflict of Laws* § 2.2, at 14 (4th ed. 2001).

2. The residence of a person or corporation for legal purposes. — Also termed (in sense 2) legal residence; domicile by operation of law. Cf. RESIDENCE; PLACE OF BUSINESS. — Also spelled (in BrE) domicil. “Tax statutes frequently speak in terms of residence, intending it to be the equivalent of domicile. For example, the New York estate tax speaks in terms of residence and non-residence. Similarly ..., the United States imposes an estate tax on any resident or citizen of the U.S. Although both statutes use the term ‘residence,’ its usage has been construed to mean ‘domicile.’ ” Robert C. Lawrence III, *International Tax and Estate Planning* § 1.03(a)(4), at 8–9 (1989).

after-acquired domicile. A domicile established after the facts relevant to an issue arose. • An after-acquired domicile cannot be used to establish jurisdiction or choice of law.

commercial domicile. 1. A domicile acquired by a nonresident corporation conducting enough activities to permit taxation of the corporation's property or activities located outside the bounds of the taxing state. 2. A domicile acquired by a person or company freely residing or carrying on business in enemy territory or enemy-occupied territory. — Also termed

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quasi-domicile.

corporate domicile. The place considered by law as the center of corporate affairs, where the corporation's functions are discharged; the legal home of a corporation, usu. its state of incorporation or the state in which it maintains its principal place of business. • For purposes of determining whether diversity jurisdiction exists in federal court, a corporation is considered a citizen of both its state of incorporation and the state of its principal place of business. See DIVERSITY OF CITIZENSHIP. [Cases: Corporations 52, 503(1); Taxation 397, 1016. C.J.S. Corporations §§ 107–109, 717, 886; Taxation §§ 577–579, 1708.]

domicile of birth. See domicile of origin.

domicile of choice. 1. A domicile established by physical presence within a state or territory, coupled with the intention to make it home. [Cases: Domicile 4. C.J.S. Domicile § 8.] 2. The domicile that a person chooses after reaching majority or being emancipated.

domicile of origin. The domicile of a person at birth, derived from the custodial parent or imposed by law. — Also termed natural domicile; domicile of birth; original domicile. See necessary domicile. [Cases: Domicile 3. C.J.S. Domicile §§ 6–7.]

“Domicil is sometimes divided into domicil of birth, that by operation of law, and that of choice. Domicil of origin in modern times is domicil in the place where his parents at his birth were domiciled.” Theodore D. Woolsey, *Introduction to the Study of International Law* § 71, at 105 n.2 (5th ed. 1878).

“Domicile of origin is the domicile the law assigns to each person at birth, usually the domicile of the father in the case of a legitimate child and of the mother in the case of an illegitimate child. Domicile of origin has particular significance in English law. If one abandons one's domicile of choice without attaining a new one, the domicile of origin ‘revives’ until a new domicile of choice is attained. In contrast, U.S. jurisdictions generally will not find a domicile abandoned until a new one has been adopted.” Robert C. Lawrence III, *International Tax and Estate Planning* § 1.03(a)(1), at 4 (1989).

domicile of succession. The domicile that determines the succession of a person's estate.

domicile of trustee. The domicile where a trustee is appointed. [Cases: Trusts 113. C.J.S. Trover and Conversion §§ 220–223.]

elected domicile. A contractually agreed domicile between parties for purposes of the contract.

foreign domicile. A domicile established by a citizen or subject of one sovereignty within the territory of another.

matrimonial domicile. A domicile that a husband and wife, as a married couple, have established as their home. — Also termed marital domicile; matrimonial home. [Cases: Divorce 62. C.J.S. Divorce § 99.]



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municipal domicile. A person's residence in a county or municipality, as distinguished from the person's state or national domicile.

national domicile. A domicile considered in terms of a particular nation rather than a locality or subdivision of a nation.

natural domicile. See domicile of origin.

necessary domicile. A domicile legally fixed and independent of choice, as in the domicile of origin. See domicile of origin.

original domicile. See domicile of origin.

quasi-domicile. See commercial domicile.

quasi-national domicile. A person's state of residence, as distinguished from the person's national or local domicile.

#### DOMICILIARY

domiciliary (dom-<<schwa>>-sil-ee-er-ee), adj. Of or relating to domicile < domiciliary jurisdiction>.

domiciliary (dom-<<schwa>>-sil-ee-er-ee), n. A person who resides in a particular place with the intention of making it a principal place of abode; one who is domiciled in a particular jurisdiction. Cf. RESIDENT; CITIZEN.

#### DOMICILIARY ADMINISTRATION

domiciliary administration. See ADMINISTRATION.

#### DOMICILIARY ADMINISTRATOR

domiciliary administrator. See ADMINISTRATOR(2).

#### DOMICILIARY LETTERS TESTAMENTARY

domiciliary letters testamentary. See LETTERS TESTAMENTARY.

#### DOMICILIARY PARENT

domiciliary parent. See PARENT.

#### DOMICILIATE

domiciliate (dom-<<schwa>>-sil-ee-ayt), vb. To establish a domicile; to fix a place of residence.

#### DOMICILIATION

domiciliation (dom-i-sil-ee-ay-sh<<schwa>>n), n. The act of establishing a domicile.

#### DOMICILIUM

domicilium (dom-*<<schwa>>-sil-ee-*<<schwa>>m**), n.[Law Latin] Roman law. DOMICILE.

#### DOMIGERIUM

domigerium (dom-*<<schwa>>-jeer-ee-*<<schwa>>m**), n.[Law Latin] Hist. 1.Power over someone. 2. Danger.

#### DOMINA

domina (dom-*<<schwa>>-n-*<<schwa>>**), n.[Law Latin] 1. A lady. 2. A peeress. Cf. DAME(1), (2).

#### DOMINANT ESTATE

dominant estate.See ESTATE(1).

#### DOMINANT-JURISDICTION PRINCIPLE

dominant-jurisdiction principle.The rule that the court in which a case is first filed maintains the suit, to the exclusion of all other courts that would also have jurisdiction. [Cases: Courts 475, 493, 514; Federal Courts 1145. C.J.S. Courts §§ 188, 211, 224.]

#### DOMINANT PROPERTY

dominant property.See dominant estate under ESTATE(1).

#### DOMINANT TENANT

dominant tenant.See TENANT.

#### DOMINANT TENEMENT

dominant tenement.See dominant estate under ESTATE(1).

#### DOMINATE

dominate,vb.1. To master (someone or something); to control (someone or something).2. Predominate.

#### DOMINATING PATENT

dominating patent.See fencing patent under PATENT(3).

#### DOMINATIO

dominatio (dom-*<<schwa>>-nay-shee-oh*), n.[Latin] Hist. Lordship; rule.

#### DOMINATION

domination.Patents. The effect that an earlier patent (usu. a basic one) has on a later patent (esp. one for improvements on the patented device) because the earlier patent's claims are so broad or generic that the later patent's invention will always read on the earlier patent's claims, resulting in infringement. • Because the patent system is based on exclusion of others from an invention's

subject matter, the earlier, basic patent's claims "dominate" the later-invented improvement. If the improvement is patented and worked, it infringes the basic patent. But the basic patent's owner cannot practice the improvement without infringing on the improvement's patent. This standoff effect encourages improvement- and basic-patentees to seek licenses or cross-licenses with each other. See blocking patent under PATENT(3).

#### DOMINICAL

dominical (d<<schwa>>-min-<<schwa>>-k<<schwa>>l), adj. Of or relating to a Sunday; of or relating to the Lord's day.

#### DOMINICAN DIVORCE

Dominican divorce. See Mexican divorce under DIVORCE.

#### DOMINICIDE

dominicide (d<<schwa>>-min-<<schwa>>-sId), n. [fr. Latin dominus "master" + caedo "to kill"] Hist. 1. The crime of killing one's master. 2. A person who kills his or her master.

#### DOMINICUM

dominicum (d<<schwa>>-min-<<schwa>>-k<<schwa>>m), n. [Latin "domain"] 1. Hist. Domain; lordship. 2. Hist. Land ownership, esp. that retained by a lord for his own possession, as distinguished from the rights given to a tenant. 3. Eccles. law. A church or other religious building.

#### DOMINICUM ANTIQUUM

dominicum antiquum (d<<schwa>>-min-<<schwa>>-k<<schwa>>m an-tI-kw<<schwa>>m), n. [Law Latin] Hist. Ancient domain.

#### DOMINION

dominion. 1. Control; possession <dominion over the car>. 2. Sovereignty <dominion over the nation>. 3. FOREIGN DOMINION.

#### DOMINIUM

dominium (d<<schwa>>-min-ee-<<schwa>>m), n. [fr. Latin dominus "lord"] 1. Roman & civil law. Absolute ownership including the right to possession and use; a right of control over property that the holder might retain or transfer at pleasure. • Dominium was subject to any servitudes, planning restrictions, etc. This term gradually came to also mean merely ownership of property, as distinguished from the right to possession or use.

"Dominium is the Roman term for the rights of an owner against all the world: and the contrast of dominium and obligatio is the nearest approach that can be made, in classical Roman language, to the distinction marked by the modern terms in rem and in personam." Frederick Pollock, *A First Book of Jurisprudence* 83 (1896).

"The one word dominium has to assume so many shades of meaning. The tenant qui tenet

terram in dominio, is dominus rei and has dominium rei; but then he has above him one who is his dominus, and for the rights of this lord over him and over his land there is no other name than dominium." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 4 (2d ed. 1899).

dominium directum (d<<schwa>>-min-ee-<<schwa>>m di-rek-t<<schwa>>m), n.[Law Latin] 1.Civil law. Legal, not equitable, ownership. 2.Feudal law. The right of the superior of land over a tenant.

dominium directum et utile (d<<schwa>>-min-ee-<<schwa>>m di-rek-t<<schwa>>m et yoo-t<<schwa>>-lee), n.[Law Latin] Civil law. Complete ownership of property, including both title and exclusive use.

dominium eminens (d<<schwa>>-min-ee-<<schwa>>m em-<<schwa>>-nenz), n.[Law Latin] Civil law. Eminent domain. See EMINENT DOMAIN.

dominium ex jure quiritium (d<<schwa>>-min-ee-<<schwa>>m eks joor-ee kwI-rish-ee-<<schwa>>m).Roman law. Ownership exercised by Roman citizens in the most complete manner (pleno jure), the property being domestic (not foreign) and having been acquired according to all the forms of law. — Also termed dominium quiritarium; dominium legitimum.

dominium legitimum (l<<schwa>>-jit-i-m<<schwa>>m). See dominium ex jure quiritium.

dominium plenum (d<<schwa>>-min-ee-<<schwa>>m plee-n<<schwa>>m), n.[Law Latin] Civil law. Full ownership combining dominium directum and dominium utile. — Also termed plenum dominium.

dominium quiritarium (d<<schwa>>-min-ee-<<schwa>>m kwI-r<<schwa>>-tair-ee-<<schwa>>m). See dominium ex jure quiritium.

dominium utile (d<<schwa>>-min-ee-<<schwa>>m yoo-t<<schwa>>-lee), n.[Law Latin] Civil law. Equitable ownership; a beneficial right to use property; the right of a tenant to use the soil and its profits.

“The special characteristic of Feudal land was that ownership in it was split into two kinds, the dominium directum of the superior (lord) and the dominium utile of the vassal. The feudists correctly insisted that this was not a form of joint ownership, not yet of ownership burdened with an easement or a ‘usufruct,’ but that two kinds of ownership were present, and that each of these persons, the lord and the vassal, was properly called ‘owner’ or dominus. The lord's dominium directum gave him a reversion in the case of forfeiture of failure of issue and the enjoyment of whatever the naturalia and accidentalia were. The vassal's dominium utile gave him the immediate enjoyment of the land itself.” Max Radin, *Handbook of Anglo-American Legal History* 148 (1936).

nudum dominium (n[y]oo-d<<schwa>>m d<<schwa>>-min-ee-<<schwa>>m). [Latin “bare ownership”] Roman law. Ownership divorced from present possession or use.

plenum dominium.See dominium plenum.

2.Hist. Lordship; sovereignty.“The Latin word for ownership, dominium, is particularly confusing, since in medieval times it is also the word for lordship.” J.H. Baker, *An Introduction to English Legal History* 255 (3d ed. 1990).

#### DOMINO VOLENTE

domino volente (dom-<<schwa>>-noh v<<schwa>>-len-tee). [Law Latin “the owner being willing”] With the owner's consent.

#### DOMINUS

dominus (dom-<<schwa>>-n<<schwa>>s), n.[Latin “lord”] 1.Roman law. An owner of a thing or inheritance. 2.Roman law. The title of the emperor in the later empire. 3.Hist. A lord; a feudal superior, as in dominus rex (“the lord of the king”), dominus capitalis (“a chief lord”), dominus medius (“an intermediate lord”), and dominus ligius (“a liege lord”).4.Hist. Eccles. law. Lord; sir. • This is a title of distinction usu. given to a knight, a clergyman, a lord of a manor, or another gentleman of quality. 5.Civil law. Someone who possesses something by right. Pl. domini.

#### DOMINUS DIRECTUS

dominus directus (dom-<<schwa>>-n<<schwa>>s di-rek-t<<schwa>>s). [Law Latin] Hist. The immediate feudal superior.

#### DOMINUS LITIS

dominus litis (dom-<<schwa>>-n<<schwa>>s li-tis), n.[Latin] 1.Civil law. The party who makes the decisions in a lawsuit, usu. as distinguished from the attorney. 2.Maritime law. A third person who represents an absent party in a case. — Also termed litis dominium.

#### DOMINUS NAVIS

dominus navis (dom-<<schwa>>-n<<schwa>>s nay-vis), n.[Latin] Civil law. The absolute owner of a shipping vessel.

#### DOMINUS OMNIUM BONORUM

dominus omnium bonorum (dom-<<schwa>>-n<<schwa>>s ahm-nee-<<schwa>>m b<<schwa>>-nor-<<schwa>>m). [Law Latin] Hist. Proprietor of all movable goods. • The phrase formerly described a husband who owned goods in common with his wife.

#### DOMITAE NATURAE

domitae naturae (dom-<<schwa>>-tee n<<schwa>>-tyoor-ee). [Latin] Hist. Of a tame nature; not wild. • This term usu. refers to long-domesticated animals, such as sheep or cattle, in which a person has absolute property rights. But it can also refer to naturally wild animals that have been tamed.

#### DOMMAGE SURVENU

dommage survenu (daw-mazh suur-v<<schwa>>-noo). [French] Damage sustained. • This is

from article 17 of the Warsaw Convention providing for compensatory damages, rather than awards for loss of society or punitive damages, for bodily injury that a passenger suffers while onboard an aircraft, or while boarding or disembarking. [Cases: Carriers 307, 319. C.J.S. Aeronautics and Aerospace §§ 265, 267; Carriers §§ 573, 587.]

#### DOMO REPARANDA

domo reparanda (doh-moh rep-<<schwa>>-ran-d<<schwa>>), n.[Latin “to repair a house”] Hist. A writ available to a person to force a neighbor who owns a decrepit house to repair it because the person is worried that the neighbor's house will fall and cause injury.

#### DOM. PROC.

Dom. Proc.abbr.DOMUS PROCERUM.

#### DOMUS

domus (doh-m<<schwa>>s), n.[Latin] A house; an abode.

#### DOMUS CONVERSORUM

domus conversorum (doh-m<<schwa>>s kon-v<<schwa>>r-sor-<<schwa>>m), n.[Law Latin “house of the converts”] Hist. An institution, established by Henry III for converted Jews, that continued until Edward III expelled Jews from the kingdom and converted the institution to a chancery record office.

#### DOMUS DEI

domus Dei (doh-m<<schwa>>s dee-I), n.[Law Latin] House of God. • This term was applied to various hospitals and religious houses, such as the Hospital of St. Julian in Southampton.

#### DOMUS PROCERUM

Domus Procerum (doh-m<<schwa>>s pros-<<schwa>>r<<schwa>>m), n.[Latin “house of nobles”] The House of Lords. — Abbr. Dom. Proc.; D.P.

#### DONATARIUS

donatarius (doh-n<<schwa>>-tair-ee-<<schwa>>s), n.[Latin] A donee; a gift recipient.

#### DONATE

donate,vb. To give (property or money) without receiving consideration for the transfer. — donation,n. — donative (doh-n<<schwa>>-tiv), adj.

#### DONATED STOCK

donated stock.See STOCK.

#### DONATED SURPLUS

donated surplus.See SURPLUS.

**DONATIO**

donatio (doh-nay-shee-oh). [Latin] A gift.

**DONATIO CAUSA MORTIS**

donatio causa mortis (doh-nay-shee-oh kaw-z<<schwa>> mor-tis), n. See gift causa mortis under GIFT. Pl. donationes causa mortis.

**DONATIO INOFFICIOSA**

donatio inofficiosa (doh-nay-shee-oh in-<<schwa>>-fish-ee-oh-s<<schwa>>). [Latin "inofficious gift"] A gift so large that it diminishes an heir's birthright portion of the donor's property.

**DONATIO INTER VIRUM ET UXOREM**

donatio inter virum et uxorem (doh-nay-shee-oh in-t<<schwa>>r vI-r<<schwa>>m et <<schwa>>k-sor-<<schwa>>m). [Latin] Roman law. Donation between husband and wife. • With a few exceptions (such as suitable anniversary gifts), a donation between spouses was invalid, but might be confirmed if the donor died without revoking it.

**DONATIO INTER VIVOS**

donatio inter vivos (doh-nay-shee-oh in-t<<schwa>>r vI-vohs). See inter vivos gift under GIFT.

**DONATIO MORTIS CAUSA**

donatio mortis causa, n. See gift causa mortis under GIFT. Pl. donationes mortis causa.

**DONATION**

donation. 1. A gift, esp. to a charity. [Cases: Gifts 1.]

donation purely gratuitous. Louisiana law. An unconditional inter vivos gift. Cf. onerous donation.

onerous donation. Civil law. An inter vivos gift burdened with a condition imposed by the donor. • There is no gift unless the gift's value is more than twice as much as the condition's value to the donor. La. Civ. Code arts. 1524, 1526. Cf. donation purely gratuitous.

remunerative donation. Civil law. An inter vivos gift made to compensate a person for services rendered. • It is not a gift unless the value of the property given is more than twice as much as the value of the services. La. Civ. Code arts. 1525, 1526.

2. Eccles. law. A method of acquiring a benefice by deed of gift alone, without presentation, institution, or induction.

**DONATION ACT**

donation act. Hist. Property law. A statute granting public lands to settlers who satisfy certain

conditions or to veterans as a reward for military service. See donation land, bounty land under LAND.

#### DONATION CLAIM

donation claim. See CLAIM(3).

#### DONATION DEED

donation deed. See DEED.

#### DONATION LAND

donation land. See LAND.

#### DONATIO PROPTER NUPTIAS

donatio propter nuptias (doh-nay-shee-oh prahp-t<<schwa>>r n<<schwa>>p-shee-<<schwa>>s). [Latin "a gift on account of marriage"] Roman law. A gift from a husband to his wife equivalent to her dowry and subject to similar conditions. • It was formerly called donatio ante nuptias ("gift before marriage") because it was not allowed after the marriage celebration. Justinian later changed the law and the name. See DOS.

#### DONATIO VELATA

donatio velata (doh-nay-shee-oh vi-lay-t<<schwa>>). [Latin] Hist. A veiled gift; a concealed gift.

#### DONATIVE

donative (don-<<schwa>>-tiv ordoh-n<<schwa>>-tiv), adj. 1. Of, relating to, or characterized by a donation <a donative transfer>. 2. Subject to a donation <an advowson donative>.

#### DONATIVE ADVOWSON

donative advowson. See advowson donative under ADVOWSON.

#### DONATIVE INTENT

donative intent. See INTENT(1).

#### DONATIVE TRUST

donative trust. See TRUST.

#### DONATOR

donator (doh-nay-t<<schwa>>r or doh-nay-t<<schwa>>r also -tor), n. [Latin] A donor; a person who makes a gift.

#### DONATORY

donatory (don-<<schwa>>-tor-ee ordoh-n<<schwa>>-tor-ee), n. Scots law. A recipient of a



gift; specif., a donee of the Crown.

“A donatory is the donee or receiver of a gift or donation. In practice, the term is applied exclusively to the person to whom the Crown makes a gift, as of escheat, ultimus haeres, or the like.” William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 299 (George Watson ed., 1882).

#### DONEC

donec (doh-nek). [Latin] Hist. As long as; while; until; within a certain time. • This term was used in old conveyances.

#### DONEC PROBETUR IN CONTRARIUM

donec probetur in contrarium (doh-nek proh-bee-t<<schwa>>r in k<<schwa>>n-trair-ee-<<schwa>>m). [Latin] Until proof is given to the contrary.

#### DONEE

donee (doh-nee).1. One to whom a gift is made; the recipient of a gift. 2. The person in whose favor a power of appointment is created or reserved. See DONEE OF POWER.

#### DONEE BENEFICIARY

donee beneficiary. See BENEFICIARY.

#### DONEE OF POWER

donee of power. A person who has been given a power of appointment, i.e., the power to dispose of someone else's property. — Often shortened to donee. See DONEE(2). Cf. DONOR(3).

#### DONOR

donor. 1. One who gives something without receiving consideration for the transfer. 2. SETTLOR(1). 3. The person who creates or reserves a power of appointment. Cf. DONEE OF POWER.

#### DO-NOT-RESUSCITATE ORDER

do-not-resuscitate order. A document, executed by a competent person, directing that if the person's heartbeat and breathing both cease while in a hospital, nursing home, or similar facility, no attempts to restore heartbeat or breathing should be made. — Abbr. DNR order. See advance directive.

out-of-hospital do-not-resuscitate order. A do-not-resuscitate order, executed by a person who has been diagnosed by a physician as having a terminal condition, directing healthcare professionals to withhold certain life-sustaining treatments when acting outside a hospital or similar facility. — Abbr. OOH-DNR order.

#### DONUM

donum (doh-n<<schwa>>m), n.[Latin "a gift"] Roman law. A gift.

#### DONUM GRATUITUM

donum gratuitum.See gratuitous gift under GIFT.

#### DOOM

doom, n. Hist. 1.A statute or law. 2. A judgment; esp., a sentence in a criminal matter. 3. Justice; fairness. 4. A trial; the process of adjudicating.

“The word ‘doom’ is, perhaps, best translated as ‘judgment.’ It survived in occasional use until the fourteenth century. Wyclif’s translation of the Bible, rendering the verse, ‘For with what judgment ye judge, ye shall be judged,’ as ‘For in what dome ye demen, ye schuln be demed.’ The distinction which we make to-day between the legislator, who makes the law, and the judge, who interprets, declares and applies it, was not known to our Anglo-Saxon ancestors. The dooms were judgments in the sense that they were declarations of the law of the people.” W.J.V. Windeyer, *Lectures on Legal History* 1 (2d ed. 1949).

#### DOOMBOOK

doombook,n.[fr. Saxon dombec] Hist. A code, compiled under Alfred, containing maxims of common law, judicial forms, and criminal penalties. • The code existed until the reign of Edward IV when it was lost. — Also termed domebook (doom-buuk); domboc; liber judicialis of Alfred.

#### DOOMSDAY BOOK

Doomsday book.See DOMESDAY BOOK.

#### DOOR-CLOSING STATUTE

door-closing statute.A state law closing or denying access to local courts unless a plaintiff meets specified conditions; esp., a statute requiring a foreign corporation to “qualify” before doing business in the state, including registering with the secretary of state, paying a fee or tax, and appointing an agent to receive service of process. [Cases: Corporations 661(2, 6); Courts 6, 14. C.J.S. Corporations § 939; Courts § 19.]

#### DOORKEEPER

doorkeeper.Parliamentary law. An officer charged with regulating access to the chamber or hall where a deliberative assembly meets. — Also termed guard.

#### DOORSTEP LOAN

doorstep loan.See LOAN.

#### DOOWOP DOCKET

doowop docket.Slang. See DWOP docket under DOCKET(2).

#### DOPE

dope. 1. A thick liquid used esp. for medicinal purposes. 2.Slang. A drug, esp. a narcotic.  
[Cases: Controlled Substances 9.]

## DORMANT

dormant (dor-m<<schwa>>nt), adj. Inactive; suspended; latent <a dormant judgment>. —  
dormancy,n.

## DORMANT CLAIM

dormant claim.A claim that is in abeyance.

## DORMANT COMMERCE CLAUSE

Dormant Commerce Clause.See COMMERCE CLAUSE.

## DORMANT CORPORATION

dormant corporation.See CORPORATION.

## DORMANT EXECUTION

dormant execution.See EXECUTION.

## DORMANT JUDGMENT

dormant judgment.See JUDGMENT.

## DORMANT LEGISLATIVE INTENT

dormant legislative intent.See LEGISLATIVE INTENT.

## DORMANT PARTNER

dormant partner.See silent partner under PARTNER.

## DORMANT TITLE

dormant title.See TITLE(2).

## DORSUM

dorsum (dor-s<<schwa>>m). [Latin] Hist. The back. • This term usu. appeared as part of the phrase in dorso to indicate that an instrument had been signed on the back. In dorso recordi, for example, meant “on the back of the record.”

“In the first place then the payee, or person to whom or whose order such bill of exchange or promissory note is payable, may by endorsement, or writing his name in dorso or on the back of it, assign over his whole property to the bearer, or else to another person by name ....” 2 William Blackstone, Commentaries on the Laws of England 468 (1766).

## DOS

dos (dos), n.[Latin] 1.Roman law. Dowry.

“Dos was a gift made to the husband on the part of the wife as her contribution towards the expenses of the joint establishment. It was made by the wife or by another person on her behalf, usually before marriage and conditionally on the marriage taking place; but it might also be made or increased after marriage.” R.W. Lee, *The Elements of Roman Law* 150 (4th ed. 1956).

**dos adventitia** (dos ad-ven-tish-ee-<<schwa>>). [Latin] Roman law. A dowry brought by a bride to her husband when furnished by someone other than the bride or her father.

**dos profectitia** (dos proh-fek-tish-ee-<<schwa>>). [Latin] Roman law. A dowry brought by a bride to her husband when furnished by the bride's father or the bride herself.

**dos receptitia** (dos ree-sep-tish-ee-<<schwa>>). [Latin] Roman law. A dowry (whether adventitia or profectitia) that is specially stipulated to be returnable to the giver when the marriage ends.

2.Hist. Dower.

**DOS ATTACK**

DoS attack.See DENIAL-OF-SERVICE ATTACK.

**DOS RATIONABILIS**

dos rationabilis.See dower by the common law under DOWER.

**DOSSIER**

dossier (dos-ee-ay), n.[French] A file or brief; a bundle of papers pertaining to a particular matter.

**DOT**

DOT.abbr.DEPARTMENT OF TRANSPORTATION.

dot (dot or dawt), n.[French fr. Latin dos] Civil law. Dowry; the property that a woman brings to the marriage to help with marriage expenses. • The income is usu. controlled by the husband, while the principal remains the wife's separate property.

**DOTAGE**

dotage (doh-tij).1. Senility; feebleness of a person's mind in old age. 2. Foolish affection; excessive fondness.

**DOTAL**

dotal (doht-<<schwa>>l), adj. Of or relating to dowry. See DOWRY.

**DOTALITIUM**

dotalitium (doh-t<<schwa>>-lish-ee-<<schwa>>m), n.[Law Latin] Hist. Dower.

“[S]ome have ascribed the introduction of dower to the Normans, as a branch of their local

tenures; though we cannot expect any feudal reason for its invention, since it was not a part of the pure, primitive, simple law of feuds, but was first of all introduced into that system (wherein it was called ...dotalitium) by the emperor Frederick the second; who was contemporary with our king Henry III. It is possible therefore that it might be with us the relic of a Danish custom: since, according to the historians of that country, dower was introduced into Denmark by Swein, the father of our Canute the great, out of gratitude to the Danish ladies, who sold all their jewels to ransom him when taken prisoner by the Vandals.” 2 William Blackstone, Commentaries on the Laws of England 129–30 (1766).

#### DOTAL PROPERTY

dotal property. See PROPERTY.

#### DOTATION

dotation (doh-tay-sh<<schwa>>n), n.1. The act of giving a dowry. 2. An endowment, esp. of funds for a charitable institution such as a hospital.

#### DOTE

dote (doht), vb.1. To be silly due to old age. 2. To bestow excessive fondness.

#### DOTE ASSIGNANDA

dote assignanda (doh-tee as-ig-nan-d<<schwa>>). See DE DOTE ASSIGNANDA.

#### DOTE UNDE NIL HABET

dote unde nil habet (doh-tee <<schwa>>n-dee nil hay-bet). See DE DOTE UNDE NIL HABET .

#### DOTIS ADMINISTRATIO

dotis administratio (doh-tis ad-min-<<schwa>>-stray-shee-oh). See DE ADMENSURATIONE DOTIS .

#### DOTISSA

dotissa (doh-tis-<<schwa>>), n.[Law Latin] A dowager.

#### DOUBLE ADULTERY

double adultery. See ADULTERY.

#### DOUBLE ASSESSMENT

double assessment. See ASSESSMENT.

#### DOUBLE AUDIT

double audit. See AUDIT.

#### DOUBLE-BILL

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double-bill,vb. To charge two different clients or customers the same charge; to charge two different customers for services rendered to each customer at the same time.

**DOUBLE-BREASTED OPERATION**

double-breasted operation.An arrangement in which a business owner operates both a union business and a similar nonunion business, to compete for both types of business contracts. — Also termed open-shop–closed-shop operation.

**DOUBLE COMMISSION**

double commission.See COMMISSION(5).

**DOUBLE COMPLAINT**

double complaint.See DUPLEX QUERELA.

**DOUBLE CREDITOR**

double creditor.See CREDITOR.

**DOUBLE CRIMINALITY**

double criminality.Int'l law. The punishability of a crime in both the country where a suspect is being held and a country asking for the suspect to be handed over to stand trial. • Double criminality is a requirement for extradition.

**DOUBLE DAMAGES**

double damages.See DAMAGES.

**DOUBLE-DECLINING DEPRECIATION METHOD**

double-declining depreciation method.See DEPRECIATION METHOD.

**DOUBLE-DIPPING**

double-dipping,n. An act of seeking or accepting essentially the same benefit twice, either from the same source or from two different sources, as in simultaneously accepting retirement and unemployment benefits. [Cases: Social Security and Public Welfare 721–728. C.J.S. Social Security and Public Welfare §§ 209–210, 213, 291–293.] — double-dipper,n.

**DOUBLE-ENTRY BOOKKEEPING**

double-entry bookkeeping.See BOOKKEEPING.

**DOUBLE FORGERY**

double forgery.See FORGERY.

**DOUBLE-FRACTION PROBLEM**

double-fraction problem.Oil & gas. A common ambiguity that arises when the owner of a

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fractional interest conveys or reserves a fractional interest. • For example, if the owner of an undivided half interest in minerals conveys “an undivided half interest in the minerals,” it is unclear whether the intention is to convey the owner's entire half interest or half of the owner's half interest.

**DOUBLE GIBBET**

double gibbet. See GIBBET.

**DOUBLE HEARSAY**

double hearsay. See HEARSAY.

**DOUBLE INDEMNITY**

double indemnity. See INDEMNITY.

**DOUBLE INSURANCE**

double insurance. See INSURANCE.

**DOUBLE JEOPARDY**

double jeopardy. The fact of being prosecuted or sentenced twice for substantially the same offense. • Double jeopardy is prohibited by the Fifth Amendment. Cf. FORMER JEOPARDY. [Cases: Double Jeopardy 132.1.]

**DOUBLE JEOPARDY CLAUSE**

Double Jeopardy Clause. The Fifth Amendment provision stating, “nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” • The clause, which was ratified in 1791, does not prevent postacquittal appeals by the government if those appeals could not result in the defendant's being subjected to a second trial for substantially the same offense before a second fact-trier. See *United States v. Wilson*, 420 U.S. 332, 95 S.Ct. 1013 (1975). [Cases: Double Jeopardy 2. C.J.S. Criminal Law § 209.]

**DOUBLE PATENTING**

double patenting. 1. Obtaining two patents covering the same invention. • An inventor is not allowed to receive more than one patent on one invention. — Also termed same-invention double patenting. [Cases: Patents 120.] 2. The issuance or obtaining of a patent for an invention that differs from an already patented invention only in some unpatentable detail. — Also termed obviousness-type double patenting.

judicially created double patenting. Attempting to patent an invention that is an obvious variation of another invention by the same inventor when the first invention has already been patented or has a pending patent application. • Double patenting is grounds for rejecting a patent application, limiting the term of a patent through a terminal disclaimer, or invalidating a patent. In *re Longi*, 225 USPQ 645 (Fed. Cir. 1985). A double-patenting challenge can be overcome by filing a terminal disclaimer. — Also termed obviousness-type double patenting.

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obviousness-type double patenting. See judicially created double patenting.

same-invention double patenting. See statutory double patenting.

statutory double patenting. Attempting to patent an invention that is the same subject matter as another invention by the same inventor, when the first invention has already been patented or has a pending patent application. • Any double patenting is grounds for invalidating a patent claim or rejecting a claim in a patent application. 35 USCA § 101. — Also termed same-invention double patenting.

#### DOUBLE PLEA

double plea. See PLEA(3).

#### DOUBLE PLEADING

double pleading. See DUPLICITY(2).

#### DOUBLE POSSESSION

double possession. See POSSESSION.

#### DOUBLE PROOF

double proof. See PROOF.

#### DOUBLE QUARREL

double quarrel. See DUPLEX QUERELA.

#### DOUBLE RECOVERY

double recovery. See RECOVERY.

#### DOUBLE RENT

double rent. See RENT(1).

#### DOUBLE STANDARD

double standard. A set of principles permitting greater opportunity or greater lenience for one class of people than for another, usu. based on a difference such as gender or race. See DISCRIMINATION. [Cases: Civil Rights 1007, 1033(3). C.J.S. Civil Rights §§ 2–5, 7–9, 11–13, 18, 20, 23–24, 44.]

#### DOUBLE TAXATION

double taxation. See TAXATION.

#### DOUBLE USE

double use. See USE(1).

#### DOUBLE VALUE



double value. Twice the value of something; specif., a penalty payable by a tenant to a landlord of twice the yearly value of lands held by the tenant, who refused to leave when the landlord provided written notice of intent to possess the property. • The penalty was provided under the Landlord and Tenant Act (1730). St. 4 Geo. 2. ch. 28, § 1. [Cases: Landlord and Tenant 216. C.J.S. Landlord and Tenant §§ 547–551.]

#### DOUBLE VOUCHER

double voucher. In a common-recovery suit, a voucher first by the fictitious tenant to the real tenant, and then by the real tenant to the common vouchee. See COMMON RECOVERY.

“The recovery, here described, is with a single voucher only; but sometimes it is with double... or farther voucher, as the exigency of the case may require. And indeed it is now usual always to have a recovery with double voucher at the least; by first conveying an estate of freehold to any indifferent person, against whom the praecipe is brought; and then he vouches the tenant in tail, who vouches over the common vouchee. For, if a recovery be had immediately against tenant in tail, it bars only such estate in the premises of which he is then actually seised; whereas if the recovery be had against another person, and the tenant in tail be vouched, it bars every latent right and interest which he may have in the lands recovered.” 2 William Blackstone, Commentaries on the Laws of England 359 (1766).

#### DOUBLE WASTE

double waste. See WASTE(1).

#### DOUBLE WILL

double will. See mutual will under WILL.

#### DOUBT, REASONABLE

doubt, reasonable. See REASONABLE DOUBT.

#### DOUBTFUL TITLE

doubtful title. See TITLE(2).

#### DOULOCRACY

doulocracy. See DULOCRACY.

#### DOUBT THE VOTE

doubt the vote. See DIVIDE THE ASSEMBLY.

#### DOUN

doun (doon or dohn), n. [Law French] A gift.

#### DO UT DES

do ut des (doh <<schwa>>t deez). [Latin “I give that you may give”] Roman law. An

innominate contract in which a party gives something in exchange for something that the other party is to give. See innominate contract under CONTRACT.

#### DO UT FACIAS

do ut facias (doh <<schwa>>t fay-shee-<<schwa>>s). [Latin “I give that you may do”] Roman law. An innominate contract in which a person gives something to another person who is to do or perform certain work. See innominate contract, bilateral contract under CONTRACT.

#### DOVETAIL SENIORITY

dovetail seniority. The combination of seniority lists from merging companies into one list that allows employees to keep their premerger seniority.

#### DOW

Dow (dow). See DOW JONES INDUSTRIAL AVERAGE.

#### DOWABLE

dowable (dow-<<schwa>>-b<<schwa>>l), adj. 1. Capable of being endowed <the widow received the dowable estate>. [Cases: Dower and Curtesy 10.C.J.S. Dower §§ 10, 12–17, 140.] 2. Capable of receiving dower <the woman was dowable of the estate>. [Cases: Dower and Curtesy 21.C.J.S. Dower § 7.]

#### DOWAGER

dowager (dow-<<schwa>>-j<<schwa>>r). A widow holding property or title — esp. a life estate in real property — received from her deceased husband.

#### DOWAGER-QUEEN

dowager-queen. The widow of the king of England. — Also termed queen dowager. See QUEEN MOTHER.

“A queen dowager is the widow of the king, and as such enjoys most of the privileges belonging to her as queen consort. But it is not high treason to conspire her death; or to violate her chastity ... because the succession to the crown is not thereby endangered. Yet still, ... no man can marry a queen dowager without special licence from the king, on pain of forfeiting his lands and goods.... A queen dowager, when married again to a subject, doth not lose her regal dignity, as peeresses dowager do their peerage when they marry commoners.” 1 William Blackstone, Commentaries on the Laws of England 217 (1765).

#### DOWER

dower (dow-<<schwa>>r). At common law, a wife's right, upon her husband's death, to a life estate in one-third of the land that he owned in fee. • With few exceptions, the wife could not be deprived of dower by any transfer made by her husband during his lifetime. Although most states have abolished dower, many states retaining the concept have expanded the wife's share to a life estate in all the land that her husband owned in fee. — Also termed dowment; maritagium. Cf.

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CURTESY. [Cases: Dower and Curtesy 1–118.C.J.S. Dower §§ 2–170.]

consummate dower (k<<schwa>>n-s<<schwa>>m-it orkahn-s<<schwa>>-mit). A wife's interest in her deceased husband's estate until that interest is legally assigned to her. — Also termed dower consummate. [Cases: Dower and Curtesy 54. C.J.S. Dower §§ 64–84.]

dower ad ostium ecclesiae (ad ahs-tee-<<schwa>>m e-klee-z[h]ee-ee), n.[Law Latin “dower at the church door”] Hist. An endowment of dower made by a man to his wife at the church door or porch, usu. as part of the marriage ceremony.

“DOWER AD OSTIUM ECCLESIAE.... This appears to have been the original English dower .... It was formerly the most usual species of dower, and, though latterly fallen into disuse, was not abolished until the statute of 3 & 4 Will. IV. c. 105, s. 13 .... The wife might be endowed of personalty or goods as well as of lands, and a trace of this ancient kind of dower is still distinctly preserved in the marriage ritual of the church of England, in the expression ‘with all my worldly goods I thee endow.’ ” 1 Alexander M. Burrill, *A Law Dictionary and Glossary* 520 (2d ed. 1867).

dower by custom.Hist. Dower that is determined by custom rather than the general law. — Also termed dower by particular custom.

“Dower by ...custom; as that the wife shall have half the husband's lands, or in some places the whole, and in some only a quarter.” 2 William Blackstone, *Commentaries on the Laws of England* 132 (1766).

dower by particular custom.See dower by custom.

dower by the common law.The regular dower, consisting of a life interest in one-third of the lands that the husband held in fee. — Also termed dos rationabilis (dos rash-[ee]-<<schwa>>-nab-<<schwa>>-l<<schwa>>s). [Cases: Dower and Curtesy 10, 11. C.J.S. Dower §§ 10, 12–29, 140, 147–152.]

dower consummate.See consummate dower.

dower ex assensu patris (eks <<schwa>>-sen-s[y]oo pa-tris), n.[Law Latin “dower by the father's assent”] Hist. A type of dower ad ostium ecclesiae made while the husband's father is alive and consents to the endowment to his son's wife.

dower inchoate.See inchoate dower.

election dower.A widow's right to take a statutory share of her deceased husband's estate if she chooses to reject her share under a will. See RIGHT OF ELECTION.

equitable dower.See equitable jointure under JOINTURE(1).

inchoate dower (in-koh-it). A wife's interest in her husband's estate while both are living. — Also termed dower inchoate. [Cases: Dower and Curtesy 29–53. C.J.S. Dower §§ 41–63, 141, 153–162.]

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**DOWERESS**

doweress. See DOWRESS.

**DOW JONES INDUSTRIAL AVERAGE**

Dow Jones Industrial Average. A stock-market-performance indicator that consists of the price movements in the stocks of 30 leading industrial companies in the United States. — Abbr. DJIA. — Often shortened to Dow. — Also termed Dow Jones Average.

**DOWLE STONES**

dowle stones (dohl). Rocks used as land boundaries.

**DOWMENT**

dowment. See DOWER.

**DOWN MARKET**

down market. See bear market under MARKET.

**DOWN PAYMENT**

down payment. See PAYMENT.

**DOWN REVERSAL**

down reversal. Securities. A sudden market-price decline after a rising trend. • The term applies to the early stage of the decline; if the decline continues for several months, it is termed a bear market. — Also termed correction; market correction.

**DOWNRIGHT EVIDENCE**

downright evidence. Rare. A preponderance of evidence.

**DOWNSIDE**

downside. Securities. 1. A downward movement of stock prices. 2. The potential of a downward movement in stock prices. Cf. UPSIDE.

**DOWNSIDE RISK**

downside risk. Securities. A likely risk that stock prices will drop.

**DOWNSIDE TREND**

downside trend. Securities. The portion of the market cycle that shows declining stock prices. — Also termed down trend.

**DOWNSIZING**

downsizing. Reducing the number of employees, usu. to decrease labor costs and to increase efficiency.

**DOWNSTREAM MERGER**

downstream merger. See MERGER.

**DOWN TREND**

down trend. See DOWNSIDE TREND.

**DOWNWARD DEPARTURE**

downward departure. See DEPARTURE.

**DOWRESS**

dowress (dow-ris). Archaic. 1. A woman legally entitled to dower. [Cases: Dower and Curtesy 1. C.J.S. Dower §§ 2, 5–6, 136–138.] 2. A tenant in dower. — Also spelled doweress.

**DOWRY**

dowry (dow-ree). Archaic. The money, goods, or property that a woman brings to her husband in marriage. — Also termed marriage portion; maritagium (mair-<<schwa>>-tay-jee-<<schwa>>m); maritage (mair-i-tij). [Cases: Dower and Curtesy 10. C.J.S. Dower §§ 10, 12–17, 140.]

**DOZEN PEERS**

dozen peers. Hist. During the reign of Henry III, 12 peers assembled by the barons to be the King's advisers.

**D.P**

D.P.abbr.DOMUS PROCERUM.

**DPPA**

DPPA.abbr.DEADBEAT PARENTS PUNISHMENT ACT.

**DPW**

DPW.abbr.DEPARTMENT OF PUBLIC WELFARE.

**DR**

Dr.abbr.1.DEBTOR. 2.DOCTOR.

DR.abbr.DISCIPLINARY RULE.

**DRACONIAN**

draconian (dray- or dr<<schwa>>-koh-nee-in), adj. (Of a law) harsh; severe. • This term derives from Draco, the name of the ancient Athenian lawgiver. — Also termed draconic.

**DRAFF**

draff (draf). Refuse; dregs; sweepings of dust and dirt. • In weighing commodities, it is not included as part of the waste allowance for goods sold by weight.

#### DRAFT

draft,n.1. An unconditional written order signed by one person (the drawer) directing another person (the drawee or payor) to pay a certain sum of money on demand or at a definite time to a third person (the payee) or to bearer. • A check is the most common example of a draft. — Also termed bill of exchange; letter of exchange. Cf. NOTE(1). [Cases: Banks and Banking 137, 189; Bills and Notes 1–27. C.J.S. Banks and Banking §§ 328, 330, 452–458; Bills and Notes; Letters of Credit §§ 2–6, 8–10, 12–22, 203–204, 250.]

bank draft.A draft drawn by one financial institution on another. [Cases: Banks and Banking 189. C.J.S. Banks and Banking §§ 452–458.]

clean draft.A draft with no shipping documents attached.

demand draft.See sight draft.

documentary draft.A payment demand conditioned on the presentation of a document, such as a document of title, invoice, certificate, or notice of default. [Cases: Banks and Banking 161(1). C.J.S. Banks and Banking §§ 317, 319, 327, 385–386, 388–392, 407, 409–410, 414.]

export draft.A draft drawn by a domestic seller on a foreign buyer, directing the buyer to pay the trade amount to the seller or the seller's bank.

foreign draft.A draft drawn in one country or state but payable in another. — Also termed foreign bill of exchange; international bill of exchange. [Cases: Bills and Notes 13. C.J.S. Bills and Notes; Letters of Credit § 5.]

inland draft.A draft drawn and payable in the same state or country. [Cases: Bills and Notes 13. C.J.S. Bills and Notes; Letters of Credit § 5.]

overdraft. See OVERDRAFT.

share draft.A demand that a member draws against a credit-union share account, payable to a third party. • A share draft is similar to a check that is written to draw funds out of a checking account at a bank. [Cases: Building and Loan Associations 24, 40. C.J.S. Building and Loan Associations, Savings and Loan Associations, and Credit Unions §§ 4, 11, 18–19, 66–69, 71–79.]

sight draft.A draft that is payable on the bearer's demand or on proper presentment to the drawer. — Also termed demand draft. [Cases: Bills and Notes 129(3). C.J.S. Bills and Notes; Letters of Credit § 90.]

time draft.A draft that contains a specified payment date. UCC § 3-108. — Also termed time bill.

trade draft.A draft that instructs a commercial enterprise or its agent to pay the amount specified.

2. The compulsory enlistment of persons into military service <his illness disqualified him from the draft>. — Also termed conscription; military draft. [Cases: Armed Services 20. C.J.S. Armed Services § 47.] 3. An initial or preliminary version <the second draft of the contract>.

draft,vb.1. To write or compose <to draft a contract>.2. To recruit or select (someone) <to draft someone to run for political office> <to draft someone into the armed services>.

#### DRAFT BOARD

draft board.A civilian board that registers and selects persons for mandatory military service. See SELECTIVE SERVICE SYSTEM. [Cases: Armed Services 20.8. C.J.S. Armed Services §§ 60–65, 67–68.]

#### DRAFTER

drafter. A person who draws or frames a legal document, such as a will, contract, or legislative bill. — Also termed draftsman.

#### DRAFTING

drafting. The practice, technique, or skill involved in preparing legal documents — such as statutes, rules, regulations, contracts, and wills — that set forth the rights, duties, liabilities, and entitlements of persons and legal entities. — Also termed legal drafting.

#### DRAFTSMAN

draftsman. See DRAFTER.

#### DRAGNET CLAUSE

dragnet clause.1.MOTHER HUBBARD CLAUSE(1).2.CROSS-COLLATERAL CLAUSE.

#### DRAGNET LIEN

dragnet lien.See LIEN.

#### DRAGO DOCTRINE

Drago doctrine.The principle asserted by Luis Drago, Minister of Foreign Affairs of the Argentine Republic, in a December 29, 1902 letter to the Argentine Minister in Washington, in which Drago, in response to the forcible coercion of Venezuela's unpaid loans by Great Britain and others, argued that no public debt should be collected from a sovereign state by force or through the occupation of American territory by a foreign power. • The subject was presented at the Hague Conference of 1907, when a modified version of the Drago doctrine was adopted.

#### DRAIN

drain,n.1. The act of drawing a liquid off gradually; the act of emptying. 2. The act of gradually exhausting. 3. A conduit for draining liquid, as a ditch or a pipe.

drain,vb.1. To draw (a liquid) off gradually <the farmer drained water from the property>.2.

To exhaust gradually <the facility has drained the area's natural resources>.3. To empty gradually <the water drained>.

#### DRAINAGE DISTRICT

drainage district.A political subdivision authorized to levy assessments for making drainage improvements within its area. [Cases: Drains 12.C.J.S. Drains § 8.]

“In the United States there are numerous special districts that administer drainage projects. They are typically formed under state law after a local election or petition showing consent of a majority of affected landowners. The projects are usually publicly financed, and assessments are made against all property benefited, whether or not all individual landowners have consented. Such projects can increase the agricultural capacity of drained lands and provide ‘new’ land for buildings and other improvements .... Special statutes governing drainage districts generally exempt them from restraints .... But if private property rights are taken or if others are damaged, compensation must be paid.” David H. Getches, *Water Law in a Nutshell* 301 (3d ed. 1997).

#### DRAINAGE RIGHTS

drainage rights.The interest that a property owner has in the natural drainage and flow of water on the land. [Cases: Waters and Water Courses 116.C.J.S. Waters §§ 255, 277–279.]

#### DRAM

dram (dram).1. An apothecary measurement of fluid equal to an eighth of an ounce. [Cases: Weights and Measures 3. C.J.S. Weights and Measures § 3.] 2. A small amount of anything, esp. liquor.

#### DRAMA

drama,n.1. A presentation of a story portrayed by words and actions or actions alone; a play. Cf. DRAMATIC COMPOSITION.

“The term [drama] is applied to compositions which imitate action by representing the personages introduced in them as real and as employed in the action itself. The varieties of the drama differ more or less widely, both as to the objects imitated and as to the means used in the imitation. But they all agree as to the method or manner which is essential to the dramatic art, viz., imitation in the way of action.” 7 *Encyclopaedia Britannica* 338 (9th ed. 1907).

2. An event or series of events having conflicting and exciting elements that capture people's attention.

#### DRAMATIC COMPOSITION

dramatic composition.Copyright. A literary work setting forth a story, incident, or scene intended to be performed by actors, often with a musical accompaniment. Cf. DRAMA(1). [Cases: Copyrights and Intellectual Property 7. C.J.S. Copyrights and Intellectual Property § 13.]

#### DRAMATIC WORK



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dramatic work. See WORK(2).

#### DRAM SHOP

dram shop. Archaic. A place where alcoholic beverages are sold; a bar or saloon. — Also spelled dram-shop; dramshop. — Also termed grog-shop; drinking shop.

#### DRAM-SHOP ACT

dram-shop act. A statute allowing a plaintiff to recover damages from a commercial seller of alcoholic beverages for the plaintiff's injuries caused by a customer's intoxication. — Also termed civil-liability act; civil-damage law. [Cases: Intoxicating Liquors 282–324. C.J.S. Intoxicating Liquors §§ 428–463.]

“Largely at the behest of the temperance movement, statutes (called ‘dram shop acts’) were enacted in many states which imposed some form of civil liability on those engaged in the business of selling such beverages in favor of third persons injured thereby .... At one time, almost half the states had such laws; today, that number seems to be declining.... A growing minority of states have overthrown the common law rule and have created a common law dram shop action. In most of these jurisdictions, liability is predicated on statutes which regulate the liquor business and prohibit certain sales by liquor licensees (to minors, intoxicated persons, etc.) thus, where the sale is unlawful, it is negligence per se ....” Edward J. Kionka, *Torts in a Nutshell* 293–94 (2d ed. 1992).

#### DRAM-SHOP LIABILITY

dram-shop liability. Civil liability of a commercial seller of alcoholic beverages for personal injury caused by an intoxicated customer. • Claims based on a similar type of liability have been brought against private citizens for personal injury caused by an intoxicated social guest. [Cases: Intoxicating Liquors 282–324. C.J.S. Intoxicating Liquors §§ 428–463.]

#### DRAW

draw, vb. 1. To create and sign (a draft) <draw a check to purchase goods>. 2. To prepare or frame (a legal document) <draw up a will>. 3. To take out (money) from a bank, treasury, or depository <she drew \$6,000 from her account>. 4. To select (a jury) <the lawyers began voir dire and had soon drawn a jury>.

#### DRAWBACK

drawback. A government allowance or refund on import duties when the importer reexports imported products rather than selling them domestically. 19 USCA § 1313. [Cases: Customs Duties 100. C.J.S. Customs Duties §§ 127–134.]

#### DRAWEE

drawee (draw-ee). The person or entity that a draft is directed to and that is requested to pay the amount stated on it. • The drawee is usu. a bank that is directed to pay a sum of money on an instrument. — Also termed payor. [Cases: Banks and Banking 137; Bills and Notes 24. C.J.S.

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Banks and Banking §§ 328, 330; Bills and Notes; Letters of Credit § 19.]

#### DRAWEE BANK

drawee bank. See payor bank under BANK.

#### DRAWER

drawer. One who directs a person or entity, usu. a bank, to pay a sum of money stated in an instrument — for example, a person who writes a check; the maker of a note or draft. See MAKER. [Cases: Banks and Banking 137; Bills and Notes 23. C.J.S. Banks and Banking §§ 328, 330; Bills and Notes; Letters of Credit §§ 9, 18, 20–21.]

#### DRAWING

drawing. 1. Patents. A specially prepared figure included with a patent application to explain and describe the invention. • A drawing is required when necessary to understand the invention. 35 USCA § 113. [Cases: Patents 100. C.J.S. Patents § 143.] 2. Trademarks. A graphic or textual depiction of a trademark, filed as part of an application for the mark to be placed on the primary register. • The drawing serves as the element that is published in the Official Gazette. It must include the applicant's name and address, the type of goods or services it will identify, and the date of first use or a statement of intent to use it in commerce. [Cases: Trade Regulation 212. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 176–177.]

formal drawing. A drawing that complies with the formatting requirements of the U.S. Patent and Trademark Office, as set forth in 37 CFR § 1.84, and is stamped “Approved” by the PTO Drafter. Cf. informal drawing.

front-page drawing. A drawing submitted with the patent application and selected by the examiner as the application's representative drawing. • The drawing is reproduced on the front page of the published application or patent. [Cases: Patents 100. C.J.S. Patents § 143.]

informal drawing. A drawing that does not comply with the formatting requirements of the U.S. Patent and Trademark Office. • A drawing may be submitted as informal by the patent applicant, or declared informal by the PTO Drafter. Cf. formal drawing.

original drawing. A drawing submitted with the original application.

special-form drawing. A drawing of a trademark that contains some graphical element, such as a logo, a picture, or a special type style. • A stylized or special-form drawing must be submitted in black-and-white, with a description of the colors to be used on the final mark. — Also termed stylized drawing.

substitute drawing. A drawing submitted after the original application has been filed. • A substitute drawing is often a formal drawing filed to replace an informal drawing.

typed drawing. A drawing of a trademark that is purely textual, with no graphical component. • A typed drawing consists solely of the words, letters, and numbers that make up the mark, typed in all capitals. — Also termed typed-form drawing.

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**DRAWING LOTS**

drawing lots. An act of selection or decision-making based on pure chance, with the result depending on the particular lot drawn. • Jurors are usu. instructed by the court not to base their verdict on drawing lots or similar methods of chance.

**DRAWLATCH**

drawlatch. Hist. A thief; a robber who waits until homes are empty, then draws the homes' door latches to steal what is inside.

**DRAYAGE**

drayage. A charge for transporting property.

**DRE**

DRE. abbr. DRUG-RECOGNITION EXPERT.

**DREAD-DISEASE INSURANCE**

dread-disease insurance. See INSURANCE.

**DREIT DREIT**

dreit dreit. See DROIT-DROIT.

**D REORGANIZATION**

D reorganization. See REORGANIZATION(2).

**DRIFT OF THE FOREST**

drift of the forest. Hist. A periodic examination of forest cattle by officers who drive them to an enclosed place to determine their ownership or common status.

“Drift of the forest is nothing else but an exact view or examination taken once, twice, or oftener in a year as occasion shall require, what beasts there are in the forest, to the end that the common in the forest be not overcharged, that the beasts of foreigners that have no common there be not permitted, and that beasts not commonable may be put out.” Termes de la Ley 185–87 (1st Am. ed. 1812).

**DRIFT-STUFF**

drift-stuff. Any material floating at random in water without a discoverable source. • Drift-stuff is usu. the property of the riparian owner.

**DRILLING CONTRACT**

drilling contract. Oil & gas. A well-drilling agreement between a drilling contractor, who owns drilling rigs and associated equipment, and the owner or lessor of the mineral rights. • The contract spells out the rights and duties of the parties. In general, the more control the

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interest-owner retains over the contractor, the more liability the owner is exposed to for damages the drilling causes.

**daywork drilling contract.** Oil & gas. A contract under which the lease operator hires a drilling rig and oilfield workers, pays an amount based on the time spent in drilling operations, and retains the right to direct drilling operations. • This type of contract gives the lease operator broad control over the drilling contractor, so courts in turn impose broad liability on the lease operator for any damages that result from the drilling. Cf. footage drilling contract; turnkey drilling contract.

**footage drilling contract.** Oil & gas. A drilling contract under which the drilling contractor is paid to drill to a specified formation or depth, is paid a set amount per foot drilled, and is given broad control over how to do the work. • The risk of unexpected delays, as well as most liabilities, is on the contractor rather than the lease operator under this type of contract. Cf. daywork drilling contract; turnkey drilling contract.

**turnkey drilling contract.** Oil & gas. A drilling contract under which the drilling contractor promises to perform specified functions for an agreed price. • The lease operator has little or no discretion to control the drilling contractor, and so assumes little or no liability for damages that the drilling may cause. Cf. daywork drilling contract; footage drilling contract.

#### DRILLING-DELAY RENTAL CLAUSE

**drilling-delay rental clause.** Oil & gas. A provision in an oil-and-gas lease giving the lessee the right to maintain the lease from period to period during the primary term by paying delay rentals instead of starting drilling operations. • Lessees use drilling-delay rental clauses because courts have said that they obviate any implied covenant to drill a test well on the premises. They are accepted by lessors because they provide for periodic income from the lease. See “or”lease, “unless”lease under LEASE. [Cases: Mines and Minerals 78.1(3). C.J.S. Mines and Minerals §§ 269–270.]

“The purpose of the lease drilling-delay rental clause is to ensure that the lessee has no obligation to drill during the primary term by negating any implied obligation to test the premises. Before drilling-delay rental clauses became common in oil and gas leases, many courts held that lessees had an implied duty to drill a test well on the leased premises within a reasonable time after grant of the lease. The rationale for the implied covenant was that the major consideration for the grant of the lease by the lessor was the expectation that the property would be tested within a reasonable time. The courts' determination of what was a reasonable time ranged from a few months to several years, depending upon the circumstances. Lessees found that they could not rely upon a long stated term alone to preserve their rights.” John S. Lowe, *Oil and Gas Law in a Nutshell* 195–96 (3d ed. 1995).

#### DRINKING SHOP

drinking shop. See DRAM SHOP.

#### DRIP

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DRIP.abbr.DIVIDEND-REINVESTMENT PLAN.

DRIP RIGHTS

drip rights.A servitude allowing water dripping off a person's roof to fall on a neighbor's land. [Cases: Waters and Water Courses 121. C.J.S. Waters § 257.]

DRIVER

driver. 1. A person who steers and propels a vehicle. 2. A person who herds animals; a drover.

DRIVER'S LICENSE

driver's license.The state-issued certificate authorizing a person to operate a motor vehicle. [Cases: Automobiles 136. C.J.S. Motor Vehicles §§ 22, 257, 259–261, 277–279.]

DRIVING

driving.n. The act of directing the course of something, such as an automobile or a herd of animals.

DRIVING UNDER THE INFLUENCE

driving under the influence.The offense of operating a motor vehicle in a physically or mentally impaired condition, esp. after consuming alcohol or drugs. • Generally, this is a lesser offense than driving while intoxicated. But in a few jurisdictions the two are synonymous. — Abbr. DUI. — Also termed driving while ability-impaired (DWAI); driving under the influence of liquor (DUIL); driving while intoxicated (DWI); operating under the influence (OUI); operating while intoxicated (OWI); operating a motor vehicle while intoxicated (OMVI); operating a motor vehicle under the influence (OMVUI). Cf. DRIVING WHILE INTOXICATED. [Cases: Automobiles 332.C.J.S. Motor Vehicles §§ 1382–1394.]

DRIVING WHILE ABILITY-IMPAIRED

driving while ability-impaired.See DRIVING UNDER THE INFLUENCE.

DRIVING WHILE INTOXICATED

driving while intoxicated. 1. The offense of operating a motor vehicle in a physically or mentally impaired condition after consuming enough alcohol to raise one's blood alcohol content above the statutory limit (.08% in many states), or after consuming drugs. • Penalties vary widely; for example, the maximum penalty in Missouri and Louisiana is a \$500 fine and six months in jail, while the penalties in New York range from \$500 to \$5,000 in fines and up to four years in jail. 2.DRIVING UNDER THE INFLUENCE. — Abbr. DWI. — Also termed drunk driving. Cf. DRIVING UNDER THE INFLUENCE. [Cases: Automobiles 332. C.J.S. Motor Vehicles §§ 1382–1394.]

DRL

DRL.abbr.BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR.

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 DRM

DRM. See direct-reduction mortgage under MORTGAGE.

## DROFLAND

drofland (drohf-l<<schwa>>nd).Hist. A socage tenure that required the holder to drive the landlord's cattle to fairs and markets.

## DROIT

droit (drwah or droyt). [French "right"] 1. A legal right or claim. 2. The whole body of law.

## DROIT-CLOSE

droit-close (droyt klohz), n.[Law French] Hist. A writ against a lord on behalf of a tenant in ancient demesne holding land by charter in fee simple, in fee-tail, for life, or in dower.

## DROIT COMMON

droit common (droyt kom-<<schwa>>n), n.[Law French] The common law. — Also termed droit coutumier. See COMMON LAW(2).

## DROIT COUTUMIER

droit coutumier.See DROIT COMMON.

## DROIT D'ACCESSION

droit d'accession (drwah dak-ses-syawn), n.[French "right of accession"] Civil law. The right of the owner of a thing to whatever is produced by it or is united with it, either naturally or artificially. La. Civ. Code arts. 483, 490, 507. • The equivalent of the Roman specificatio, the right includes, for example, the right of a landowner to new land deposited on a riverbank and the right of an orchard owner to the fruit of the trees in the orchard. See ACCESSION(3).

"DROIT D'ACCESSION.... The civil law rule is that if the thing can be reduced to the former matter it belongs to the owner of the matter, e.g. a statue made of gold; but if it cannot so be reduced it belongs to the person who made it, e.g. a statue made of marble." 1 John Bouvier, Bouvier's Law Dictionary 941 (8th ed. 1914).

## DROIT D'ACCROISSEMENT

droit d'accroissement (drwah da-krwas-mawn), n.[French] French law. A right of survivorship by which an heir's interest is combined with the interest of a coheir who either has refused or is unable to accept the interest.

## DROIT D'AUBAINE

droit d'aubaine (drwah doh-ben), n.[Law French "right of alienage"] Hist. With certain exceptions, a sovereign's right to a deceased alien's property, regardless of whether the alien had a will. • This right was primarily exercised in France, where it was revived in some form by

Napoleon after its initial abolishment in 1790. It was ultimately abolished in 1819. — Also spelled *droit d'aubaine*; *droit d'aubinage*. — Also termed *jus albanagii*; *jus albinatus*.

“Under the French rule of law, known as the *droit d'aubaine*..., the whole property of an alien dying in France without leaving children born in that country escheated to the crown. The royal right was not universally exacted, and at a very early period special exceptions were introduced in favour of certain classes. Thus Louis XI exempted merchants of Brabant, Flanders, Holland, and Zealand from the operation of the law, and a similar privilege was extended by Henri II to merchants of the Hanse towns, and from Scotland.” 1 R.H. Inglis Palgrave, *Palgrave's Dictionary of Political Economy* 68 (Henry Higgs ed., 2d ed. 1925).

“In France by the fourteenth century it was accepted that a stranger might acquire and possess but not inherit or transmit by will or on intestacy. In 1386 the French king assumed the seigniorial *droit d'aubaine* or right to inherit. In treaties in the seventeenth and eighteenth centuries the right was frequently renounced. Louis XVI in 1787 abolished the right as against subjects of Great Britain without reciprocity. The constituent Assembly abolished the right in 1790 and it was commonly abolished elsewhere in the early nineteenth century.” David M. Walker, *The Oxford Companion to Law* 378 (1980).

#### DROIT D'AUTEUR

*droit d'auteur* (drwah doh-t<<schwa>>r), n. [French “author's right”] The copyright system used in France and other civil-law nations and differing from common-law copyright by giving more protection to an author's moral right. See AUTHOR'S RIGHT.

#### DROIT DE BRIS

*droit de bris* (drwah d<<schwa>> bree), n. [Law French “right of a wreck”] Hist. A right claimed by lords of the coasts of France to fragments of shipwrecks, including persons or property that had washed ashore. • The right was exercised primarily in Bretagne but was abrogated by Henry III as duke of Normandy, Aquitaine, and Guienne, in a charter granted in A.D. 1226. — Also termed *droit de bris sur le naufrages*. Cf. DROIT DE NAUFRAGE.

#### DROIT DE DÉTRACTION

*droit de détraction* (drwah d<<schwa>> day-trak-syawn), n. [French “the right of withdrawal”] Int'l law. A tax on property acquired by succession or by will and then removed to another state or country.

#### DROIT DE GARDE

*droit de garde* (drwah d<<schwa>> gahrd), n. [French “right of ward”] Hist. French law. A king's right to wardship of a noble vassal who has not reached majority.

#### DROIT DE GITE

*droit de gite* (drwah d<<schwa>> zheet), n. [French “right of lodging”] Hist. French law. A duty of a commoner holding land in the royal domain to provide lodging and food to a royal party

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traveling on royal business.

#### DROIT DE GREFFE

droit de greffe (drwah d<<schwa>> gref), n.[French “a right concerning the clerk's office”] Hist. French law. The Crown's privilege to sell offices connected with the custody of judicial records or official acts.

#### DROIT DE MAITRISE

droit de maitrise (drwah d<<schwa>> may-treez), n.[French “a right of mastership”] Hist. French law. A required payment to the Crown by an apprentice who has become a master worker.

#### DROIT DE NAUFRAGE

droit de naufrage (drwah d<<schwa>> noh-frazh), n.[French] Hist. French law. The right of a sovereign or a lord owning a seashore to seize the wreckage of a shipwreck and kill the crew or sell them as slaves. Cf. DROIT DE BRIS.

#### DROIT DE PRISE

droit de prise (drwah d<<schwa>> preez), n.[French “a right of prize”] Hist. French law. A commoner's duty to supply articles on credit to the royal household for domestic consumption.

#### DROIT DE QUINT

droit de quint (drwah d<<schwa>> kant), n.[French “the right of a fifth”] Hist. French law. A required payment made by a noble vassal to the king each time ownership of the vassal's fief changed.

#### DROIT DE SUITE

droit de suite (drwah d<<schwa>> sweet), n.[French “right to follow”] 1. A creditor's right to recover a debtor's property after it passes to a third party. 2. Copyright. An artist's resale royalty; the right of a work's creator to benefit from appreciation in the value of the work by receiving a portion of the profit from its later resales. • A droit de suite is recognized in some European nations.

“The droit de suite (literally translated as the right to follow the work) enables artists to claim a portion of the price for which a work is resold. The idea is that an artist may sell a painting for a low price at a time when they are unknown and have little bargaining power. In due course, as the artist's reputation develops, the painting may be resold for continually increasing sums.... The right is seen to be justified not only because it encourages creation, but also because the artist is conceived (through the authorial link) as being responsible for the increase in value (economic success of their works).” Lionel Bently & Brad Sherman, *Intellectual Property Law* 281 (2001).

#### DROIT D'EXÉCUTION

droit d'exécution (drwah dek-say-kyoo-syawn), n.[French “right of execution”] French law. 1. A stockbroker's right to sell the stock bought for a client who later refuses it. 2. A stockbroker's



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right to sell deposited securities to secure the broker against a loss in buying for a client.

#### DROIT-DROIT

droit-droit (drwah-drwah), n.[Law French “double right”] Hist. The unification of the right of possession with the right of property. — Also termed *jus duplicatum*; *dreit dreit*.

“A complete title to lands, tenements, and hereditaments. For it is an ancient maxim of the law, that no title is completely good, unless the right of possession be joined with the right of property; which right is then denominated a double right, *jus duplicatum*, or *droit droit*. And when to this double right the actual possession is also united ... then, and then only, is the title completely legal.” 2 William Blackstone, *Commentaries on the Laws of England* 199 (1766).

#### DROIT DU SEIGNEUR

droit du seigneur (drwah d<<schwa>> sen-yuur). [French “right of the lord”] Hist. 1.A supposed customary right of a feudal lord to have sexual intercourse with a tenant's bride on her wedding night. 2. A supposed custom requiring sexual abstinence by a couple on their wedding night. — Also spelled *droit de seigneur*. — Also termed *jus primae noctis*.

#### DROIT ÉCRIT

droit écrit (drwaht ay-kree), n.[French “the written law”] French law. The civil law; the *corpus juris civilis*.

#### DROIT INTERNATIONAL

droit international (drwaht an-tair-nah-syoh-nahl), n.[French] International law.

#### DROIT MARITIME

droit maritime (drwah ma-ree-teem). [French] Maritime law.

#### DROIT MORAL

droit moral (drwah maw-ral). [French] The doctrine of moral right, which entitles artists to prevent others from altering their works. • The basic rights protected by this doctrine are (1) the right to create, (2) the right to disclose or publish, (3) the right to withdraw from publication, (4) the right to be identified with the work, and (5) the right to ensure the integrity of the work, including the right to object to any mutilation or distortion of the work. These rights are sometimes called moral rights. See *MORAL RIGHT*. [Cases: Copyrights and Intellectual Property 6. C.J.S. Copyrights and Intellectual Property § 16.]

#### DROIT NATUREL

droit naturel (drwah na-tuu-rel), n.[French] Natural law.

#### DROITS CIVILS

droits civils (drwah see-veel), n.[French] French law. Private rights not connected to a person's civil status. • Foreigners had certain rights that could be enforced when there was

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reciprocity with the foreigner's home country.

#### DROITS OF ADMIRALTY

droits of admiralty (droys), n. The Lord High Admiral's rights in connection with the sea, such as the right to recover proceeds from shipwrecks, enemy goods confiscated at the beginning of hostilities, jetsam, flotsam, treasure, deodand, fines, forfeitures, sturgeons, whales, and other large fishes. • The droit proceeds are paid to the Exchequer's office for the public's use. See PRIZE(2).

“The crown had originally certain rights to property found upon the sea, or stranded upon the shore. The chief kinds of property to which the crown was thus entitled were, great fish (such as whales or porpoises), deodands, wreck of the sea, flotsam, jetsam, and lagan, ships or goods of the enemy found in English ports or captured by uncommissioned vessels, and goods taken or retaken from pirates .... After the rise of the court of Admiralty the Lord High Admiral became entitled to these droits by royal grant .... The right to droits carried with it a certain jurisdiction. Inquisitions were held into these droits at the ports, or the Vice-Admirals or droit gatherers reported them to the Admiral. The large terms of the Admiral's Patents incited them, or their grantees, to frequent litigation with private persons or other grantees of the crown .... The Admiralty droits ... are now transferred to the consolidated fund.” 1 William Holdsworth, *A History of English Law* 559–61 (7th ed. 1956).

#### DROITURAL

droitural (droy-ch<<schwa>>-r<<schwa>>l), adj.[fr. Old French droiture “right”] Of or relating to an interest in property, as distinguished from actual possession.

#### DROIT VOISINS

droit voisins (drwah vwah-san), n.[French] NEIGHBORING RIGHT.

#### DROMONES

dromones (dr<<schwa>>-moh-neeZ), n. pl. Hist. 1.Large ships. 2. War vessels of recognized navies, usu. prepared for hostilities. — Also termed dromos; dromunda.

#### DROOP QUOTA

Droop quota.In some proportional-representation elections, the minimum number of votes needed to win a legislative seat. • The quota is determined by a formula based on the reciprocal of the number of representatives plus one — or  $1/(n + 1)$ , where “n” is the number of representatives being elected. The term is named for the developer of the election format, Henry Richmond Droop (1831–1884).

#### DROP

drop.English law. A rule nisi that is not adopted because the members of a court are equally divided on the issue. • The rule is dropped rather than discharged or made absolute.

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**DROP-DEAD DATE**

drop-dead date. The date by which performance is required as a condition. Cf. TIME-IS-OF-THE-ESSENCE CLAUSE.

**DROP-DOWN CLAUSE**

drop-down clause. Insurance. An insurance-policy provision requiring an excess insurer to provide coverage to the insured even though the underlying coverage has not been exhausted, usu. because the underlying insurers are insolvent. [Cases: Insurance 2396.]

**DROP LETTER**

drop letter. A letter addressed to someone in the delivery area of the post office where the letter was posted. [Cases: Postal Service 23.C.J.S. Postal Service and Offenses Against Postal Laws § 22.]

**DROP-SHIPMENT DELIVERY**

drop-shipment delivery. A manufacturer's shipment of goods directly to the consumer rather than initially to a wholesaler. • If the wholesaler takes the order, it may receive part of the profit from the sale.

**DROP SHIPPER**

drop shipper. A wholesaler who arranges to have goods shipped directly from a manufacturer to a consumer. See DROP-SHIPMENT DELIVERY.

**DROPSY TESTIMONY**

dropsy testimony. See TESTIMONY.

**DROVE**

drove, n. 1. A group of animals driven in a herd. 2. A large group of people in motion.

**DROVER'S PASS**

drover's pass. A free pass issued by a railroad company to the cattle's drover, who accompanies the cattle on the train. [Cases: Carriers 253.5. C.J.S. Carriers § 499.]

**DRP**

DRP. abbr. DIVIDEND-REINVESTMENT PLAN.

**DRUG**

drug, n. 1. A substance intended for use in the diagnosis, cure, treatment, or prevention of disease. 2. A natural or synthetic substance that alters one's perception or consciousness. See CONTROLLED SUBSTANCE. [Cases: Controlled Substances 9.]

addictive drug. A drug (such as heroin or nicotine) that, usu. after repeated consumption,

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causes physical dependence and results in well-defined physiological symptoms upon withdrawal. [Cases: Controlled Substances 9.]

adulterated drug. A drug that does not have the strength, quality, or purity represented or expected.

copycat drug. See generic drug.

dangerous drug. A drug that has potential for abuse or injury, usu. requiring a label warning that it cannot be dispensed without a prescription. [Cases: Controlled Substances 9.]

designer drug. A chemical substance that is created to duplicate the pharmacological effects of controlled substances, often by using the same chemicals contained in controlled substances, but manipulating their formulas. [Cases: Controlled Substances 9, 43.]

ethical drug. A drug that can be dispensed only with a doctor's prescription. Cf. proprietary drug.

generic drug. A drug containing the active ingredient of but not necessarily the same excipient substances (such as binders or capsules) as the pioneer drug marketed under a brand name. — Also termed copycat drug. See pioneer drug. [Cases: Health 319.]

new drug. A drug that experts have not recognized as safe and effective for use under the conditions prescribed. 21 USCA § 321(p)(1). • The Food and Drug Administration must approve all new drugs before they can be marketed. [Cases: Health 317.]

orphan drug. A prescription drug developed to treat diseases affecting fewer than 200,000 people in the United States (such as a rare cancer) or whose developmental costs are not reasonably expected to be recovered from the drug's sales. 21 USCA § 360bb. [Cases: Health 319.]

pioneer drug. The first drug that contains a particular active ingredient that is approved by the FDA for a specified use.

precompounded prescription drug. A drug that is distributed from the manufacturer, to the pharmacist, and then to the consumer without a change in form.

proprietary drug. A drug that is prepared and packaged for the public's immediate use. • Proprietary drugs may be sold over the counter. Cf. ethical drug.

#### DRUG ABUSE

drug abuse. The detrimental state produced by the repeated consumption of a narcotic or other potentially dangerous drug, other than as prescribed by a doctor to treat an illness or other medical condition. [Cases: Chemical Dependents 1; Controlled Substances 38. C.J.S. Chemical Dependents §§ 2–3.]

#### DRUG ADDICT

drug addict. See ADDICT.

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**DRUG-ASSISTANCE PROGRAM**

drug-assistance program. 1. A governmental program to ensure access to necessary prescription medicines for needy people who are uninsured or underinsured or who otherwise lack health coverage. 2. Rehabilitative counseling, and monitoring, usu. in a nonresidential setting, for detecting and treating users of illegal drugs.

**DRUG COURT**

drug court. See COURT.

**DRUG DEPENDENCE**

drug dependence. Psychological or physiological need for a drug. [Cases: Chemical Dependents 1. C.J.S. Chemical Dependents §§ 2–3.]

**DRUG-FREE ZONE**

drug-free zone. An area in which the possession or distribution of a controlled substance results in an increased penalty. • Drug-free zones are often established, for example, around public schools. [Cases: Controlled Substances 100.]

**DRUGGIST**

druggist. A person who mixes, compounds, dispenses, or otherwise deals in drugs and medicines, usu. either as a proprietor of a drugstore or as a pharmacist.

**DRUG KINGPIN**

drug kingpin. An organizer, leader, manager, financier, or supervisor of a drug conspiracy; a person who has great authority in running an illegal drug operation.

**DRUG PARAPHERNALIA**

drug paraphernalia. Anything used, intended for use, or designed for use with a controlled substance. • Possession of drug paraphernalia is a crime. [Cases: Controlled Substances 42, 89.]

**DRUG PRICE COMPETITION AND PATENT TERM RESTORATION ACT OF 1984**

Drug Price Competition and Patent Term Restoration Act of 1984. See HATCH–WAXMAN ACT.

**DRUG-RECOGNITION EXPERT**

drug-recognition expert. A person trained to identify various types of drugs and alcohol, to understand the effects that drugs and alcohol have on people, and to recognize the signs and symptoms of drug and alcohol intoxication. — Abbr. DRE.

**DRUMMER**

drummer. 1. A commercial agent who travels around taking orders for goods to be shipped from wholesale merchants to retail dealers; a traveling sales representative. 2. A traveling

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salesperson. [Cases: Licenses 15(6).]

**DRUMMER FLOATER POLICY**

drummer floater policy. See INSURANCE POLICY.

**DRUNGARIUS**

drungarius (dr<<schwa>>ng-gair-ee-<<schwa>>s), n. [Law Latin] Hist. 1. A commander of a band of soldiers. 2. A naval commander.

**DRUNGUS**

drungus (dr<<schwa>>ng-g<<schwa>>s), n. [Law Latin] Hist. A band of soldiers.

**DRUNK**

drunk, adj. Intoxicated; (of a person) under the influence of intoxicating liquor to such a degree that the normal capacity for rational thought and conduct is impaired.

**DRUNKARD**

drunkard. 1. A person who consumes intoxicating substances frequently and excessively; esp., one who is habitually or often intoxicated. 2. An alcoholic. • This term may also be used to refer to a drug addict. — Also termed habitual drunkard. [Cases: Chemical Dependents 1. C.J.S. Chemical Dependents §§ 2–3.]

**DRUNK DRIVING**

drunk driving. See DRIVING WHILE INTOXICATED.

**DRUNKENNESS**

drunkenness. 1. A state of intoxication; inebriation; the condition resulting from a person's ingestion of excessive amounts of intoxicating liquors sufficient to affect the person's normal capacity for rational thought and conduct. 2. A habitual state of intoxication. [Cases: Chemical Dependents 1. C.J.S. Chemical Dependents §§ 2–3.]

excessive drunkenness. A state of drunkenness in which a person is so far deprived of reason and understanding that he or she is incapable of understanding the character and consequences of an act.

**DRUNKOMETER**

drunkometer (dr<<schwa>>ng-kom-<<schwa>>-t<<schwa>>r). See BREATHALYZER.

**DRY**

dry, adj. 1. Free from moisture; desiccated <dry land>. 2. Unfruitful; destitute of profitable interest; nominal <a dry trust>. 3. (Of a jurisdiction) prohibiting the sale or use of alcoholic beverages <a dry county>. [Cases: Intoxicating Liquors 24–43. C.J.S. Intoxicating Liquors §§ 49–89.]

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**DRY CHECK**

dry check. See bad check under CHECK.

**DRY EXCHANGE**

dry exchange. Something that pretends to pass on both sides of a transaction, but passes on only one side.

“Dry exchange ... seems to be a subtil term invented to disguise usury, in which something is pretended to pass on both sides, whereas in truth nothing passes on the one side.” *Termes de la Ley* 185 (1st Am. ed. 1812).

“DRY EXCHANGE.... A euphemism applied to the ‘coverture’ or ‘colouring’ of the stringent statutes passed during the tudor period against usury .... Usury, which was condemned by religion and law alike during the middle ages, was from the middle of the 16th century no longer to be confounded with the legitimate employment of capital; but the sentiment which inspired the above enactments was that of governing classes associated with the landed interest.” 1 R.H. Inglis Palgrave, *Palgrave's Dictionary of Political Economy* 643 (Henry Higgs ed., 2d ed. 1925).

**DRY HOLE**

dry hole. Oil & gas. An oil or gas well that is incapable of producing enough minerals to justify the cost of completing it and putting it into production.

**DRY-HOLE AGREEMENT**

dry-hole agreement. Oil & gas. A support agreement in which the contributing party agrees to make a cash contribution to the drilling party in exchange for geological or drilling information if the well drilled is unproductive. See SUPPORT AGREEMENT.

**DRY-HOLE CLAUSE**

dry-hole clause. Oil & gas. A provision in an oil-and-gas lease specifying what a lessee must do to maintain the lease for the remainder of the primary term after drilling an unproductive well.

- A dry-hole clause is intended to make clear that the lessee may maintain the lease by paying delay rentals for the remainder of the primary term.

**DRY MORTGAGE**

dry mortgage. See MORTGAGE.

**DRY PRESUMPTION**

dry presumption. See PRESUMPTION.

**DRY RECEIVERSHIP**

dry receivership. See RECEIVERSHIP.

**DRY RENT**

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dry rent. See RENT(1).

**DRY TRUST**

dry trust. See TRUST.

**DS**

DS. abbr. BUREAU OF DIPLOMATIC SECURITY.

**D.S.B**

d.s.b. abbr. DEBET SINE BREVE.

**DSCA**

DSCA. abbr. DEFENSE SECURITY COOPERATION AGENCY.

**DSS**

DSS. abbr. 1. DEPARTMENT OF SOCIAL SERVICES. 2. DEFENSE SECURITY SERVICE.

**DTC**

DTC. abbr. DEPOSITORY TRUST CORPORATION.

**DTRA**

DTRA. abbr. DEFENSE THREAT REDUCTION AGENCY.

**D.T.'S**

d.t.'s. abbr. DELIRIUM TREMENS.

**DUAL AGENT**

dual agent. See co-agent under AGENT(2).

**DUAL-CAPACITY DOCTRINE**

dual-capacity doctrine. The principle that makes an employer — who is normally shielded from tort liability by workers'-compensation laws — liable in tort to an employee if the employer and employee stand in a secondary relationship that confers independent obligations on the employer. Cf. DUAL-PURPOSE DOCTRINE. [Cases: Workers' Compensation 2162.]

**DUAL CITIZENSHIP**

dual citizenship. 1. A person's status as a citizen of two countries, as when the person is born in the United States to parents who are citizens of another country, or one country still recognizes a person as a citizen even though that person has acquired citizenship in another country. [Cases: Citizens 18. C.J.S. Citizens §§ 17–18.] 2. The status of a person who is a citizen of both the United States and the person's country of residence.

**DUAL CONTRACT**



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dual contract. See CONTRACT.

#### DUAL-CRIMINALITY PRINCIPLE

dual-criminality principle. The rule prohibiting the international extradition of a fugitive unless the offense involves conduct that is criminal in both countries. [Cases: Extradition and Detainers 5.]

#### DUAL DISTRIBUTOR

dual distributor. A firm that sells goods simultaneously to buyers on two different levels of the distribution chain; esp., a manufacturer that sells directly to both wholesalers and retailers.

#### DUAL DISTRIBUTORSHIP

dual distributorship. See DISTRIBUTORSHIP.

#### DUAL EMPLOYMENT

dual employment. See MOONLIGHTING.

#### DUAL FUND

dual fund. See MUTUAL FUND.

#### DUAL INHERITANCE

dual inheritance. See INHERITANCE.

#### DUALITY OF ART

duality of art. Copyright. The twofold nature of applied art as both functional and aesthetic. • The United States takes a duality-of-art approach to copyright, protecting applied art only when the item could stand alone as an identifiable work of art even if it did not perform the function it was designed to do. — Also termed noncumulative approach. Cf. UNITY OF ART.

#### DUAL LISTING

dual listing. See LISTING(2).

#### DUAL-PERSONA DOCTRINE

dual-persona doctrine (d[y]oo-<<schwa>>l p<<schwa>>r-soh-n<<schwa>>). The principle that makes an employer (who is normally shielded from tort liability by workers'-compensation laws) liable in tort to an employee if the liability stems from a second persona unrelated to the employer's status as an employer. [Cases: Workers' Compensation 2162.]

#### DUAL-PRIORITIES RULE

dual-priorities rule. The principle that partnership creditors have priority for partnership assets and that individual creditors have priority for a partner's personal assets. • This rule has been abandoned by the bankruptcy laws and the Revised Uniform Partnership Act. The Bankruptcy

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Code now allows partnership creditors access to all assets of bankrupt partners, not just those remaining after payment to individual creditors. — Also termed jingle rule. [Cases: Partnership 178, 186. C.J.S. Partnership §§ 174, 181.]

#### DUAL-PROSECUTION RULE

dual-prosecution rule. The principle that the federal government and a state government may both prosecute a defendant for the same offense because both governments are separate and distinct entities. See DUAL-SOVEREIGNTY DOCTRINE . [Cases: Double Jeopardy 186. C.J.S. Criminal Law § 258.]

#### DUAL-PURPOSE DOCTRINE

dual-purpose doctrine. The principle that an employer is liable for an employee's injury that occurs during a business trip even though the trip also serves a personal purpose. Cf. DUAL-CAPACITY DOCTRINE. [Cases: Master and Servant 302(2, 6); Workers' Compensation 661. C.J.S. Employer–Employee Relationship §§ 204–217, 221–223; Workmen's Compensation §§ 401–402.]

#### DUAL-PURPOSE FUND

dual-purpose fund. See dual fund under MUTUAL FUND.

#### DUAL-RESIDENTIAL PARENT

dual-residential parent. See PARENT.

#### DUAL-SOVEREIGNTY DOCTRINE

dual-sovereignty doctrine. The rule that the federal and state governments may both prosecute someone for a crime, without violating the constitutional protection against double jeopardy, if the person's act violated both jurisdictions' laws. See DUAL-PROSECUTION RULE. [Cases: Double Jeopardy 186. C.J.S. Criminal Law § 258.]

#### DUARCHY

duarchy (d[y]oo-ahr-kee), n. [fr. Greek duo “two” + archia “rule”] See DIARCHY.

#### DUBII JURIS

dubii juris (d[y]oo-bee-Ijoor-is). [Latin] Hist. Of doubtful law. • The phrase appeared in reference to an unsettled legal point.

#### DUBITANTE

dubitante (d[y]oo-bi-tan-tee). [Latin] Doubting. • This term was usu. placed in a law report next to a judge's name, indicating that the judge doubted a legal point but was unwilling to state that it was wrong. — Also termed dubitans.

“[E]xpressing the epitome of the common law spirit, there is the opinion entered dubitante — the judge is unhappy about some aspect of the decision rendered, but cannot quite bring himself to

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record an open dissent.” Lon L. Fuller, *Anatomy of the Law* 147 (1968).

#### DUBITATUR

dubitatur (d[y]oo-bi-tay-t<<schwa>>r). [Latin] It is doubted. • This phrase indicates that a point of law is doubtful. — Also termed dubitavit.

#### DUCAT

ducat (d<<schwa>>k-it). A gold coin used as currency, primarily in Europe and first appearing in Venice in the early 1100s, with the motto *sit tibi, Christe, dato, quem tu regis, iste Ducatus* (“let this duchy which thou rulest be dedicated to thee, O Christ”). • It survived into the 20th century in several countries, including Austria and the Netherlands.

#### DUCATUS

ducatus (d[y]<<schwa>>-kay-t<<schwa>>s), n.[Law Latin] A duchy; a dukedom.

#### DUCES TECUM

duces tecum (d[y]oo-s<<schwa>>s tee-k<<schwa>>m alstoy-k<<schwa>>m). [Latin] Bring with you. See subpoena duces tecum under SUBPOENA.

#### DUCES TECUM LICET LANGUIDUS

duces tecum licet languidus (d[y]oo-s<<schwa>>s tee-k<<schwa>>m II-set lang-gw<<schwa>>-d<<schwa>>s), n.[Law Latin “bring with you, although sick”] Hist. A habeas corpus writ ordering a sheriff to bring someone into court despite a return by the sheriff noting that the person was too ill to come.

#### DUCHY COURT OF LANCASTER

Duchy Court of Lancaster (d<<schwa>>ch-ee kort <<schwa>>v lang-k<<schwa>>-st<<schwa>>r).Hist. English law. A court with special equity jurisdiction, similar to the equity courts of chancery, in which the Duchy of Lancaster's chancellor or deputy presides over issues primarily relating to land held by the Crown in right of the Duchy.

#### DUCHY OF LANCASTER

Duchy of Lancaster (d<<schwa>>ch-ee <<schwa>>v lang-k<<schwa>>-st<<schwa>>r). Land in the county of Lancaster, around the Savoy in London, and around Westminster that originally belonged to the Duke of Lancaster and later belonged to the Crown in right of the Duchy.

#### DUCKING STOOL

ducking stool.See CASTIGATORY.

#### DUE

due,adj.1. Just, proper, regular, and reasonable <due care> <due notice>.2. Immediately

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enforceable <payment is due on delivery>.3. Owing or payable; constituting a debt <the tax refund is due from the IRS>.

DUE-BILL

due-bill. See IOU.

DUE CARE

due care. See reasonable care under CARE.

DUE COMPENSATION

due compensation. See just compensation under COMPENSATION.

DUE CONSIDERATION

due consideration. 1. The degree of attention properly paid to something, as the circumstances merit. 2. See sufficient consideration under CONSIDERATION (1).

DUE COURSE, PAYMENT IN

due course, payment in. See PAYMENT IN DUE COURSE.

DUE-COURSE HOLDER

due-course holder. See HOLDER IN DUE COURSE.

DUE COURSE OF LAW

due course of law. See DUE PROCESS.

DUE DAY

due day. See BOON DAY.

DUE DILIGENCE

due diligence. See DILIGENCE.

DUE-DILIGENCE INFORMATION

due-diligence information. Securities. Information that a broker-dealer is required to have on file and make available to potential customers before submitting quotations for over-the-counter securities. • The informational requirements are set out in SEC Rule 15c2-11 (17 CFR § 240.15c2-11). [Cases: Securities Regulation 25.21(4), 25.62(2). C.J.S. Securities Regulation §§ 87, 95.]

DUE INFLUENCE

due influence. The sway that one person has over another, esp. as a result of persuasion, argument, or appeal to the person's affections. Cf. UNDUE INFLUENCE .

DUEL

duel. 1. TRIAL BY COMBAT. 2. A single combat; specif., a prearranged combat with deadly weapons fought between two or more persons under prescribed rules, usu. in the presence of at least two witnesses, to resolve a previous quarrel or avenge a deed. • In England and the United States, death resulting from a duel is treated as murder, and seconds may be liable as accessories. — Also termed monomachy; single combat. Cf. MUTUAL COMBAT. [Cases: Homicide 537.]

“[A] duel which did not end in death was only a misdemeanour, till the passing of Lord Ellenborough's Act, 43 Geo. 3, c. 58, passed in 1803 .... A duel which did end fatally might be either murder or manslaughter, according to the following distinctions: — If the duel was on a sudden falling out, if the parties fought in hot blood and on the spot and one was killed, the offence was only manslaughter, however aggravated the case might be.... If a fatal duel took place when the parties were in cool blood, it was held to be murder, and of this there has never been any doubt whatever in this country, though juries not unfrequently acquitted in such cases if they sympathized with the prisoner.” 3 James Fitzjames Stephen, *A History of the Criminal Law of England* 100 (1883).

“Duelling is distinguished from other offenses in that it has none of the elements of sudden heat and passion, and is usually carried out with some formality. A duel has been distinguished from an ‘affray’ in that an affray occurs on a sudden quarrel while a duel is always the result of design.” 28A C.J.S. *Duelling* § 2, at 154 (1996).

#### DUELING

dueling, n. The common-law offense of fighting at an appointed time and place after an earlier disagreement. • If one of the participants is killed, the other is guilty of murder, and all who are present, abetting the crime, are guilty as principals in the second degree. [Cases: Criminal Law 45.30. C.J.S. *Duelling* §§ 2–3.]

“Duelling is prearranged fighting with deadly weapons, usually under certain agreed or prescribed rules.... It is a misdemeanor at common law to fight a duel, even though no death result, to challenge another to a duel, intentionally to provoke such a challenge, or knowingly to be the bearer of such a challenge.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 243 (3d ed. 1982).

#### DUELLUM

duellum (d[y]oo-el-*<<schwa>>*m), n. [fr. Latin duo “two”] Hist. See TRIAL BY COMBAT .

#### DUE NEGOTIATION

due negotiation. See NEGOTIATION.

#### DUE NOTICE

due notice. See NOTICE.

#### DUE-ON-ENCUMBRANCE CLAUSE

due-on-encumbrance clause. A mortgage provision giving the lender the option to accelerate

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the debt if the borrower further mortgages the real estate without the lender's consent. • All state laws on the enforcement of due-on-sale clauses have been preempted, and the subject is now governed exclusively by the Garn Act. 12 USCA § 1701j-3. [Cases: Mortgages 403. C.J.S. Mortgages §§ 102, 506, 509-510, 512, 519, 521.]

#### DUE-ON-SALE CLAUSE

due-on-sale clause. A mortgage provision that gives the lender the option to accelerate the debt if the borrower transfers or conveys any part of the mortgaged real estate without the lender's consent. [Cases: Mortgages 403. C.J.S. Mortgages §§ 102, 506, 509-510, 512, 519, 521.]

#### DUE POSTING

due posting. 1. The stamping and placing of letters or packages in the U.S. mail. [Cases: Postal Service 15. C.J.S. Postal Service and Offenses Against Postal Laws §§ 18-19.] 2. The proper entry of an item into a ledger. 3. Proper publication; proper placement of an item (such as an announcement) in a particular place, as on a particular wall.

#### DUE PROCESS

due process. The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights, including notice and the right to a fair hearing before a tribunal with the power to decide the case. — Also termed due process of law; due course of law. See FUNDAMENTAL-FAIRNESS DOCTRINE. [Cases: Constitutional Law 251-320.5. C.J.S. Constitutional Law §§ 455, 461-467, 470, 501, 503, 513, 518, 540, 557, 576-581, 585, 587, 596, 612, 614-618, 704, 883, 945-1348, 1350-1396, 1399-1401, 1405-1427; Right to Die § 2; Zoning and Land Planning § 23.]

“The words ‘due process’ have a precise technical import, and are only applicable to the process and proceedings of the courts of justice; they can never be referred to an act of legislature.” Alexander Hamilton, Remarks on an Act for Regulating Elections, New York Assembly, 6 Feb. 1787, in 4 Papers of Alexander Hamilton 34, 35 (Harold C. Syrett ed., 1962).

“The words, ‘due process of law,’ were undoubtedly intended to convey the same meaning as the words, ‘by the law of the land,’ in Magna Charta.” Murray's Lessee v. Hoboken Land & Improvement Co., 59 U.S. (18 How.) 272, 276 (1855) (Curtis, J.).

“Due process of law in each particular case means, such an exertion of the powers of government as the settled maxims of law sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.” Thomas M. Cooley, A Treatise on the Constitutional Limitations 356 (1868).

“An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.... The notice must be of such nature as reasonably to convey the required information.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657

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(1950)(Jackson, J.).

economic substantive due process. The doctrine that certain social policies, such as the freedom of contract or the right to enjoy property without interference by government regulation, exist in the Due Process Clause of the 14th Amendment, particularly in the words “liberty” and “property.”

procedural due process. The minimal requirements of notice and a hearing guaranteed by the Due Process Clauses of the 5th and 14th Amendments, esp. if the deprivation of a significant life, liberty, or property interest may occur. • The Supreme Court has ruled that the fundamental guarantees of due process apply to children as well as to adults and that they apply in situations in which a juvenile may be deprived of liberty even though the juvenile proceedings may be labeled civil rather than criminal. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967). In that case, the Court held that an accused child was entitled to notice of the charges, the privilege against self-incrimination, the right to confront witnesses, and the right to summon witnesses on his or her own behalf. Justice Abe Fortas wrote the majority opinion in *Gault*, and Chief Justice Earl Warren predicted that it would come to be called the “Magna Carta for juveniles.” [Cases: Constitutional Law 251.5. C.J.S. Constitutional Law §§ 946, 968–969.]

substantive due process. The doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable in content and to further a legitimate governmental objective. [Cases: Constitutional Law 251.2. C.J.S. Constitutional Law §§ 964, 970–975.]

#### DUE PROCESS CLAUSE

Due Process Clause. The constitutional provision that prohibits the government from unfairly or arbitrarily depriving a person of life, liberty, or property. • There are two Due Process Clauses in the U.S. Constitution, one in the 5th Amendment applying to the federal government, and one in the 14th Amendment applying to the states (although the 5th Amendment's Due Process Clause also applies to the states under the incorporation doctrine). Cf. EQUAL PROTECTION CLAUSE. [Cases: Constitutional Law 251–320.5. C.J.S. Constitutional Law §§ 455, 461–467, 470, 501, 503, 513, 518, 540, 557, 576–581, 585, 587, 596, 612, 614–618, 704, 883, 945–1348, 1350–1396, 1399–1401, 1405–1427; Right to Die § 2; Zoning and Land Planning § 23.]

#### DUE PROCESS OF LAW

due process of law. See DUE PROCESS.

#### DUE-PROCESS RIGHTS

due-process rights. The rights (as to life, liberty, and property) so fundamentally important as to require compliance with due-process standards of fairness and justice. See DUE PROCESS; DUE PROCESS CLAUSE; FUNDAMENTAL-FAIRNESS DOCTRINE E.

#### DUE PROOF

due proof. Sufficient and properly submitted evidence to produce a result or support a

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conclusion, such as an entitlement to benefits supported by an insurance policy.

#### DUHIG<TT> RULE

Duhig rule.Oil & gas. A rule of title interpretation developed to deal with the common problem of overconveyance of fractional interests by giving priority to the granted interest over the reserved interest. *Duhig v. Peavy-Moore Lumber Co., Inc.*, 144 S.W.2d 878 (Tex. 1940). • The rule is not accepted in all states and is generally limited to conveyances by warranty deed.

#### DUI

DUI.abbr.DRIVING UNDER THE INFLUENCE.

#### DUIL

DUIL.abbr.Driving under the influence of liquor. See DRIVING UNDER THE INFLUENCE .

#### DUKE

duke. 1. A sovereign prince; a ruler of a duchy. 2. The first order of nobility in Great Britain below the royal family.

“But after the Norman conquest, which changed the military policy of the nation, the kings themselves continuing for many generations dukes of Normandy, they would not honour any subjects with that title, till the time of Edward III; who, claiming to be the king of France, and thereby losing the ducal in the royal dignity, in the eleventh year of his reign created his son, Edward the black prince, duke of Cornwall: and many, of the royal family especially, were afterwards raised to the honour. However, in the reign of queen Elizabeth, A.D. 1572, the whole order became utterly extinct: but it was revived about fifty years afterwards by her successor, who was remarkably prodigal of honours, in the person of George Villiers duke of Buckingham.” 1 William Blackstone, *Commentaries on the Laws of England* 385 (1765).

#### DUKE OF EXETER'S DAUGHTER

Duke of Exeter's Daughter.A torture rack in the Tower of London, named after the Duke of Exeter, Henry VI's minister who assisted in introducing it to England. — Also termed brake.

“The rack ... to extort a confession from criminals, is a practice of a different nature .... And the trial by rack is utterly unknown to the law of England; though once when the dukes of Exeter and Suffolk ... had laid a design to introduce the civil law into this kingdom as the rule of government, for a beginning thereof they erected a rack for torture; which was called in derision the duke of Exeter's daughter, and still remains in the tower of London: where it was occasionally used as an engine of state, not of law, more than once in the reign of queen Elizabeth.” 4 William Blackstone, *Commentaries on the Laws of England* 320–21 (1769).

#### DUKE OF YORK'S LAWS

Duke of York's Laws.A body of laws compiled in 1665 by Governor Nicholls for the more



orderly government of the New York colony. • The laws were gradually extended to the entire province.

#### DULOCRACY

dulocracy (d[y]oo-lok-r<<schwa>>-see), n.[fr. Greek doulos “servant” + kratein “to rule”] A government in which servants or slaves have so many privileges that they essentially rule. — Also spelled doulocracy.

#### DULY

duly,adv. In a proper manner; in accordance with legal requirements.

#### DUM

dum (d<<schwa>>m). [Latin] While; provided that.

#### DUMB BIDDING

dumb bidding.An auction bidding process in which the minimum acceptance price is placed under the object for sale — unbeknownst to the bidders — and no bids are accepted until they meet that price. • Dumb bidding was initially intended to avoid the taxes imposed on auction sales by the statute of 1779, 19 Geo. 3, ch. 56, §§ 5–6, but the courts determined that the practice was fraudulent. [Cases: Auctions and Auctioneers 7. C.J.S. Auctions and Auctioneers §§ 2, 8–17.]

#### DUM FERRET OPUS

dum fervet opus (d<<schwa>>m f<<schwa>>r-vet oh-p<<schwa>>s). [Latin] While the action is fresh; in the heat of action. • This term usu. referred to matters of testimony.

#### DUM FUT INFRA AETATEM

dum fuit infra aetatem (d<<schwa>>m fyoo-it in-fr<<schwa>> ee-tay-t<<schwa>>m), n.[Law Latin “while he was within age”] Hist. A writ allowing a person of full age to recover lands feoffed while the person was an infant. • The remedy was also available to the person's heirs. It was later replaced by the action of ejectment. See EJECTMENT.

#### DUM FUT IN PRISONA

dum fuit in prisona (d<<schwa>>m fyoo-it in priz-<<schwa>>-n<<schwa>>), n.[Law Latin “while he was in prison”] Hist. A writ restoring a man to his estate after he transferred the estate under duress of imprisonment. See duress of imprisonment under DURESS.

#### DUMMODO

dummodo (d<<schwa>>m-<<schwa>>-doh). [Latin] So that; provided that. • This term was used as a limitation in conveyances, as in dummodo solverit talem redditum (d<<schwa>>m-<<schwa>>-doh sol-v<<schwa>>-rit tay-lem red-i-t<<schwa>>m), meaning “provided he shall pay such a rent.”

#### DUMMODO CONSTET DE PERSONA

dummodo constet de persona (d<<schwa>>m-<<schwa>>-doh kon-stet dee p<<schwa>>r-soh-n<<schwa>>). [Latin] Hist. Provided it be evident who is the person meant. See CONSTAT DE PERSONA.

#### DUMMODO VASSALLI CONDITIO NON SIT DETERIOR

dummodo vassalli conditio non sit deterior (d<<schwa>>m-<<schwa>>-doh vas-<<schwa>>-II k<<schwa>>n-dish-ee-oh non sit di-teer-ee-or). [Law Latin] Hist. Provided the vassal's condition be not made worse. • The phrase was used as a limitation in a conveyance. See DUMMODO.

#### DUMMY

dummy,adj. Sham; make-believe; pretend <dummy corporation>.

dummy,n.1. A party who has no interest in a transaction, but participates to help achieve a legal goal. 2. A party who purchases property and holds legal title for another. Cf. STRAW MAN(3).

#### DUMMY CORPORATION

dummy corporation.See CORPORATION.

#### DUMMY DIRECTOR

dummy director.See DIRECTOR.

#### DUMMY SHAREHOLDER

dummy shareholder.See SHAREHOLDER.

#### DUM NON FUIT COMPOS MENTIS

dum non fuit compos mentis (d<<schwa>>m non fyoo-it kom-p<<schwa>>s men-tis), n.[Law Latin “while he was of unsound mind”] Hist. A writ allowing heirs to recover an estate transferred by someone of unsound mind.

#### DUMP

dump,vb.1. To drop (something) down, esp. in a heap; to unload. 2. To sell (products) at an extremely low price; specif., to sell (products) in a foreign market at a lower price than at home.

#### DUMPING

dumping. 1. The act of selling a large quantity of goods at less than fair value. 2. Selling goods abroad at less than the market price at home. See ANTIDUMPING LAW. [Cases: Customs Duties 21.5. C.J.S. Customs Duties §§ 135–152.]

“Dumping involves selling abroad at a price that is less than the price used to sell the same goods at home (the ‘normal’ or ‘fair’ value). To be unlawful, dumping must threaten or cause material injury to an industry in the export market, the market where prices are lower. Dumping is

recognized by most of the trading world as an unfair practice (akin to price discrimination as an antitrust offense).” Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* § 6.1 (1995).

3. The disposal of waste matter into the environment. [Cases: Environmental Law 341.]

#### DUMPING ACT

Dumping Act. A federal antidumping law requiring the Secretary of the Treasury to notify the U.S. International Trade Commission (USITC) whenever the Secretary determines that goods are likely to be sold abroad at less than their fair value, so that the USITC can take appropriate action. 19 USCA § 1673. [Cases: Customs Duties 21.5. C.J.S. Customs Duties §§ 135–152.]

#### DUMP-TRUCK LAWYER

dump-truck lawyer. Slang. A public defender who spends little time or effort and exhibits little skill mounting a defense on behalf of an indigent defendant. • This derogatory term arises from criminal defendants' common perception (typically a misperception) that public defenders prefer to dump cases by making plea bargains rather than spend time preparing for trial.

#### DUM SE BENE GESSERIT

dum se bene gesserit (d<<schwa>>m see bee-nee jes-<<schwa>>r-it). [Latin “while he behaves himself properly”] Hist. During good conduct. Cf. QUAMDIU BENE SE GESSERINT .

#### DUM SOLA

dum sola (d<<schwa>>m soh-l<<schwa>>). [Latin] While single. • This phrase was used to limit conveyances, esp. to women, as in dum sola fuerit (“while she remains single”), dum sola et casta vixerit (“while she remains single and chaste”), and dum sola et casta (“while she is unmarried and lives chastely”).

#### DUN

dun (d<<schwa>>n), vb. To demand payment from (a delinquent debtor) <his creditors are dunning him daily>. — dun, n.

#### DUNAWAY HEARING

Dunaway hearing. A hearing to determine whether evidence has been seized from an accused in violation of his or her Fourth Amendment rights, as by a search conducted without probable cause. *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248 (1979). See FOURTH AMENDMENT.

#### DUNGEON

dungeon. 1. The bottom part of a fortress or tower, often used as a prison. — Also termed dungeon-keep. 2. A dark underground prison.

#### DUNNAGE

dunnage (d<<schwa>>n-ij). Anything, esp. pieces of wood, that is put underneath or between

cargo on a vessel to prevent the cargo from bruising or getting wet from water leaking into the hold. [Cases: Shipping 110. C.J.S. Shipping §§ 326, 328.]

## DUODECEMVirALE JUDICIUM

duodecemvirale      judicium      (d[y]oo-oh-des-<<schwa>>m-v<<schwa>>-ray-lee joo-dish-ee-<<schwa>>m). [Latin] A trial by 12 persons; a trial by jury.

## DUODECIMA MANUS

duodecima manus (d[y]oo-oh-des-<<schwa>>-m<<schwa>> man-<<schwa>>s). [Latin] Twelve men.

“The manner of waging and making law is this. He that has waged, or given security, to make his law, brings with him into court eleven of his neighbours: ... for by the old Saxon constitution every man's credit in courts of law depended upon the opinion which his neighbours had of his veracity. The defendant then, standing at the end of the bar, is admonished by the judges of the nature and danger of a false oath.... And thereupon his eleven neighbours or compurgators shall avow upon their oaths that they believe in their consciences that he saith the truth .... It is held indeed by later authorities ... that fewer than eleven compurgators will do: but Sir Edward Coke is positive that there must be this number ... for as wager of law is equivalent to a verdict in the defendant's favor, it ought to be established by the same or equal testimony, namely, by the oath of twelve men. And so indeed Glanvil expresses it, ... ‘jurabit duodecima manu’....” 3 William Blackstone, Commentaries on the Laws of England 343 (1768).

## DUODENA

duodena (d[y]oo-<<schwa>>-dee-n<<schwa>>). [Latin] 1. A jury of 12. 2. A dozen of anything.

## DUOPOLY

duopoly (d[y]oo-op-<<schwa>>-lee). A market in which there are only two sellers of a product.

## DUOPSONY

duopsony (d[y]oo-op-s<<schwa>>-nee). A market in which there are only two buyers of a product.

## DUOVIRI

duoviri (d[y]oo-oh-v<<schwa>>-rIor d[y]oo-oh vI-rI). See DUUMVIRI(2).

## DUPLEX QUERELA

duplex querela (d[y]oo-pleks kw<<schwa>>-ree-l<<schwa>>). 1.Hist. Eccles. law. An appeal by a clerk to the archbishop in response to the bishop's delaying or wrongfully refusing to do justice. 2.Eccles. law. An appeal to a person's immediate superior, as when a bishop appeals to an archbishop. — Also termed double quarrel; double complaint.

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 DUPLEX VALOR MARITAGII
 

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duplex valor maritagii (d[y]oo-pleks val-*<<schwa>>*r mar-*<<schwa>>*-tay-jee-I), n.[Law Latin “double the value of a marriage”] Hist. A ward's forfeiture of double the value of a marriage made without the guardian's consent. • In the quotation that follows, Blackstone uses the accusative form (*duplicem valorem maritagii*) because the phrase follows the verb forfeited.

“For, while the infant was in ward, the guardian had the power of tendering him or her a suitable match, without disparagement, or inequality: which if the infants refused, they forfeited the value of the marriage ... to their guardian; that is, so much as a jury would assess, or any one would bona fide give to the guardian for such an alliance: ... and, if the infants married themselves without the guardian's consent, they forfeited double the value, *duplicem valorem maritagii*. This seems to have been one of the greatest hardships of our ancient tenures.” 2 William Blackstone, *Commentaries on the Laws of England* 70 (1766).

## DUPLICATE

duplicate (d[y]oo-pli-kit), n.1. A reproduction of an original document having the same particulars and effect as the original. See Fed. R. Evid. 101(4). 2. A new original, made to replace an instrument that is lost or destroyed. — Also termed (in sense 2) duplicate original. [Cases: Criminal Law 399; Evidence 173. C.J.S. Evidence §§ 1074, 1114.] — duplicate (d[y]oo-pli-kit), adj.

“A ‘duplicate’ is defined for purposes of the best evidence rule as a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography including enlargements and miniatures, by mechanical or electronic recording, by chemical reproduction, or by other equivalent techniques which accurately reproduce the original; copies subsequently produced manually, either handwritten or typed, are not within this definition.” 29A Am. Jur. 2d Evidence § 1085 (1994).

duplicate (d[y]oo-pli-kayt), vb.1. To copy exactly <he duplicated the original document>.2. To double; to repeat <she duplicated the performance>.

## DUPLICATE-CLAIMING REJECTION

duplicate-claiming rejection.See REJECTION.

## DUPLICATE TAXATION

duplicate taxation.See double taxation under TAXATION.

## DUPLICATE WILL

duplicate will.See WILL.

## DUPLICATIO

duplicatio (d[y]oo-pli-kay-shee-oh), n.[fr. Latin *duplicare* “to double”] 1.Roman & civil law. A defendant's answer to the plaintiff's replication, similar to a rejoinder in common law. — Also

termed (in Scots law) duply. See REPLICATION. 2. The fourth in a series. 3. A duplication of a transaction.

#### DUPLICATIVE

duplicative (doo-plik-<<schwa>>-tiv alsodoo-pli-kay-tiv), adj.1. Having or characterized by having overlapping content, intentions, or effect < duplicative sources> <duplicative evidence> <duplicative regulations>. 2. Duplicate; having or characterized by having identical content <duplicative database> <duplicative backup>.

#### DUPLICATUM JUS

duplicatum jus (d[y]oo-pli-kay-t<<schwa>>m j<<schwa>>s), n.[Law Latin “double right”] A double right, such as droit-droit (both the “right of possession and right of property”).

#### DUPLICITOUS

duplicitous (d[y]oo-plis-i-t<<schwa>>s), adj.1. (Of a person) deceitful; double-dealing. 2. (Of a pleading, esp. an indictment) alleging two or more matters in one plea; characterized by double pleading.

#### DUPLICITOUS APPEAL

duplicitous appeal. See APPEAL.

#### DUPLICITOUS INDICTMENT

duplicitous indictment. See INDICTMENT.

#### DUPLICITOUS INFORMATION

duplicitous information. See INFORMATION.

#### DUPLICITY

duplicity (d[y]oo-plis-i-tee), n.1. Deceitfulness; double-dealing. 2. The charging of the same offense in more than one count of an indictment. 3. The pleading of two or more distinct grounds of complaint or defense for the same issue. • In criminal procedure, this takes the form of joining two or more offenses in the same count of an indictment. — Also termed double pleading. Cf. alternative pleading under PLEADING(2); double plea under PLEA(3). [Cases: Indictment and Information 125; Pleading 64. C.J.S. Indictments and Informations §§ 146–148; Pleading § 152.]

#### DUPLUM

duplum (d[y]oo-pl<<schwa>>m). [Latin] Roman & civil law. Double the price of something; esp., a measure of damages equal to double a thing's value. • This measure was used for certain delicts. Cf. SIMPLUM.

#### DUPLY

duply. See DUPLICATIO(1).

#### DURABLE GOODS

durable goods. See GOODS.

#### DURABLE LEASE

durable lease. See LEASE.

#### DURABLE POWER OF ATTORNEY

durable power of attorney. See POWER OF ATTORNEY.

#### DURABLES

durables. See durable goods under GOODS.

#### DURANTE

durante (d[y]<<schwa>>-ran-tee). [Law Latin] While; during, as in *durante minore aetate* (“during minority”), *durante viduitate* (“during widowhood”), *durante virginitate* (“during virginity”), and *durante vita* (“during life”). • The term was often used in conveyancing.

#### DURANTE ABSENTIA

durante absentia (d[y]<<schwa>>-ran-tee ab-sen-shee-<<schwa>>). [Law Latin] During absence. • This term referred to the administration of an estate while the executor was out of the county or otherwise absent. During the executor's absence, the administration sometimes continued because a delay until the executor's return would impair the estate settlement.

#### DURANTE BENE PLACITO

durante bene placito (d[y]<<schwa>>-ran-tee bee-nee plas-<<schwa>>-toh). [Law Latin] During good pleasure. • This phrase was used in the royal writ granting tenure *durante bene placito* to the king's judges.

#### DURANTE FURORE

durante furore (d[y]<<schwa>>-ran-tee fyuu-ror-ee). [Law Latin] Hist. While the insanity endures. • The phrase appeared in reference to the rule prohibiting the state from prosecuting an insane person. The state could, however, prosecute the person once the insanity ended.

#### DURATION

duration. 1. The length of time that something lasts <the duration of the lawsuit>.

duration of interest. The length of time that a property interest lasts.

duration of trust. The length of time that a trust exists. [Cases: Trusts 60. C.J.S. Trover and Conversion § 117.]

2. A length of time; a continuance in time <an hour's duration>.

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**DURATIONAL-RESIDENCY REQUIREMENT**

durational-residency requirement. The requirement that one be a state resident for a certain time, such as one year, as a precondition to the exercise of a specified right or privilege. • When applied to voting, this requirement has been held to be an unconstitutional denial of equal protection because it burdens voting rights and impairs the fundamental personal right of travel.

**DURATION DIRECTIVE**

Duration Directive. See **DIRECTIVE HARMONIZING THE TERM OF COPYRIGHT AND CERTAIN RELATED RIGHTS** .

**DUREN<TT> TEST**

Duren test. Constitutional law. A test to determine whether a jury's composition violates the fair-cross-section requirement and a criminal defendant's Sixth Amendment right to an impartial jury. • Under the test, a constitutional violation occurs if (1) a distinctive group is not fairly and reasonably represented in the jury pool in relation to its population in the community, (2) the underrepresentation is the result of a systematic exclusion of the group from the jury-selection process, and (3) the government cannot reasonably justify the discrepancy. *Duren v. Missouri*, 439 U.S. 357, 99 S.Ct. 664 (1979). See **FAIR-CROSS-SECTION REQUIREMENT; STATISTICAL-DECISION THEORY; ABSOLUTE DISPARITY; COMPARATIVE DISPARITY**. [Cases: Jury 33(1.1). C.J.S. Juries §§ 269–273, 279, 306.]

**DURESS**

duress (d[y]uu-res). 1. Strictly, the physical confinement of a person or the detention of a contracting party's property. • In the field of torts, duress is considered a species of fraud in which compulsion takes the place of deceit in causing injury.

“Duress consists in actual or threatened violence or imprisonment; the subject of it must be the contracting party himself, or his wife, parent, or child; and it must be inflicted or threatened by the other party to the contract, or else by one acting with his knowledge and for his advantage.” William R. Anson, *Principles of the Law of Contract* 261–62 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“Few areas of the law of contracts have undergone such radical changes in the nineteenth and twentieth centuries as has the law governing duress. In Blackstone's time relief from an agreement on grounds of duress was a possibility only if it was coerced by actual (not threatened) imprisonment or fear of loss of life or limb. ‘A fear of battery ... is no duress; neither is the fear of having one's house burned, or one's goods taken away or destroyed’; he wrote, ‘because in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages: but no suitable atonement can be made for the loss of life, or limb.’ Today the general rule is that any wrongful act or threat which overcomes the free will of a party constitutes duress. This simple statement of the law conceals a number of questions, particularly as to the meaning of ‘free will’ and ‘wrongful.’ ” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 9-2, at 337 (3d ed. 1987).



2. Broadly, a threat of harm made to compel a person to do something against his or her will or judgment; esp., a wrongful threat made by one person to compel a manifestation of seeming assent by another person to a transaction without real volition. • A marriage that is induced by duress is generally voidable. 3. The use or threatened use of unlawful force — usu. that a reasonable person cannot resist — to compel someone to commit an unlawful act. • Duress is a recognized defense to a crime, contractual breach, or tort. See Model Penal Code § 2.09. See COERCION. “[In most states,] the age-old rule of duress — that the doing of a prohibited act is not a crime if reasonably believed to be necessary to save from death or great bodily injury — together with the equally ancient exception in the form of the ‘inexcusable choice,’ are as firm today as ever except for the realization that they cover only part of the field.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 1064 (3d ed. 1982).

“Among defenses, necessity needs to be distinguished from duress. Necessity is generally regarded as a justification, while duress is held to be an excuse. This means that the person who acts under necessity chooses to act in a way that the law ultimately approves. The person who acts under duress acts in a way that the law disapproves and seeks to discourage, but he acts under circumstances which make conviction and punishment inappropriate and unfair. This is so because to act under duress is to act under pressures that a person of reasonable firmness would not be able to resist. Thus, both the theory of necessity and the theory of duress refer to the pressure of exigent and extraordinary situations, but they do so in different ways.” Thomas Morawetz, “Necessity,” in 3 *Encyclopedia of Crime and Justice* 957, 959 (Sanford H. Kadish ed., 1983).

duress of circumstances. See NECESSITY(1).

duress of goods. 1. The act of seizing personal property by force, or withholding it from an entitled party, and then extorting something as the condition for its release. 2. Demanding and taking personal property under color of legal authority that either is void or for some other reason does not justify the demand.

duress of imprisonment. The wrongful confining of a person to force the person to do something.

duress of the person. Compulsion of a person by imprisonment, by threat, or by a show of force that cannot be resisted.

duress per minas (p<<schwa>>r mI-n<<schwa>>s). [Law Latin] Duress by threat of loss of life, loss of limb, mayhem, or other harm to a person.

“Duress per minas is either for fear of loss of life, or else for fear of mayhem, or loss of limb. And this fear must be upon sufficient reason .... A fear of battery, or being beaten, though never so well grounded, is no duress; neither is the fear of having one's house burned, or one's goods taken away and destroyed; because in these cases, should the threat be performed, a man may have satisfaction by recovering equivalent damages: but no suitable atonement can be made for the loss of life, or limb.” 1 William Blackstone, *Commentaries on the Laws of England* 127 (1765).

“Duress per minas is a very rare defence; so rare that Sir James Stephen, in his long forensic

experience, never saw a case in which it was raised. It has, however, been thought that threats of the immediate infliction of death, or even of grievous bodily harm, will excuse some crimes that have been committed under the influence of such threats." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 58 (16th ed. 1952).

economic duress. An unlawful coercion to perform by threatening financial injury at a time when one cannot exercise free will. — Also termed business compulsion.

"Courts have shown a willingness to recognize the concept of 'economic duress.' For instance it has been held that a defence on these grounds may be available to the purchaser of a ship from a shipbuilder, if the latter extracts a promise of extra payment as a condition of delivery of the ship." P.S. Atiyah, *An Introduction to the Law of Contract* 230 (3d ed. 1981).

moral duress. An unlawful coercion to perform by unduly influencing or taking advantage of the weak financial position of another. • Moral duress focuses on the inequities of a situation while economic duress focuses on the lack of will or capacity of the person being influenced.

#### DURESSOR

duressor (d[y]r-ess-er). A person who coerces another person to do something against his or her will or judgment.

#### DURHAM

Durham (d-r-ess-m). One of the three remaining county palatines in England, the others being Chester and Lancaster. • Its jurisdiction was vested in the Bishop of Durham until the statute 6 & 7 Will. 4, ch. 19 vested it as a separate franchise and royalty in the Crown. The jurisdiction of the Durham Court of Pleas was transferred to the Supreme Court of Judicature by the Judicature Act of 1873, but Durham continued to maintain a Chancery Court according to the Palatine Court of Durham Act of 1889. See COUNTY PALATINE.

#### DURHAM RULE

Durham rule. Criminal law. A test for the insanity defense, holding that a defendant is not criminally responsible for an act that was the product of mental disease or defect (*Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954)). • Formerly used in New Hampshire and the District of Columbia, the Durham rule has been criticized as being too broad and is no longer accepted in any American jurisdiction. — Also termed product test. See INSANITY DEFENSE. [Cases: Criminal Law 48.]

#### DURRETT RULE

Durrett rule. Bankruptcy. The principle that a transfer of property in exchange for less than 70% of the property's value should be invalidated as a preferential transfer. *Durrett v. Washington Nat'l Ins. Co.*, 621 F.2d 201 (5th Cir. 1980); 11 USCA § 548. • This rule has been applied most frequently to foreclosure sales. But it has essentially been overruled by the U.S. Supreme Court, which has held that, at least for mortgage foreclosure sales, the price received at a regularly conducted, noncollusive sale represents a reasonably equivalent value of the property, and the

transfer is presumed valid. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 114 S.Ct. 1757 (1994). [Cases: Bankruptcy 2650. C.J.S. Bankruptcy § 156.]

#### DUTCH AUCTION

Dutch auction. See AUCTION.

#### DUTCH-AUCTION TENDER METHOD

Dutch-auction tender method. See Dutch auction (3) under AUCTION.

#### DUTCH LOTTERY

Dutch lottery. See LOTTERY.

#### DUTIABLE

dutiable (d[y]oo-tee-<<schwa>>-b<<schwa>>l), adj. Subject to a duty <dutiable goods>.

#### DUTY

duty. 1. A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.

“There is a duty if the court says there is a duty; the law, like the Constitution, is what we make it. Duty is only a word with which we state our conclusion that there is or is not to be liability; it necessarily begs the essential question... [M]any factors interplay: the hand of history, our ideas of morals and justice, the convenience of administration of the rule, and our social ideas as to where loss should fall.” William L. Prosser, *Palsgraf Revisited*, 52 Mich. L. Rev. 1, 15 (1953).

“A classic English definition [of duty] from the late nineteenth century holds that, when circumstances place one individual in such a position with regard to another that thinking persons of ordinary sense would recognize the danger of injury to the other if ordinary skill and care were not used, a duty arises to use ordinary skill and care to avoid the injury. A much quoted American judicial definition of duty emphasizes its relational aspects, with a focus on the foreseeability of risk to those ‘within the range of apprehension.’ At about the same time, one of the most creative of American law teachers defined duty as a complex of factors, including administrative, economic, and moral ones, to be applied by judges in their analyses of the legal strength of personal injury cases.” Marshall S. Shapo, *The Duty to Act* xi–xii (1977).

“While courts frequently say that establishing ‘duty’ is the first prerequisite in an individual tort case, courts commonly go on to say that there is a ‘general duty’ to ‘exercise reasonable care,’ to avoid subjecting others to ‘an unreasonable risk of harm,’ or to comply with the ‘legal standard of reasonable conduct.’ Though cast in the language of duty, these formulations merely give the expression to the point that negligence is the standard of liability.” Restatement (Third) of Torts § 6 cmt. a (Discussion Draft 1999).

absolute duty. 1. A duty to which no corresponding right attaches. • According to John

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Austin's legal philosophy, there are four kinds of absolute duties: (1) duties not regarding persons (such as those owed to God and to lower animals), (2) duties owed to persons indefinitely (i.e., to the community as a whole), (3) self-regarding duties (such as the duty not to commit suicide), and (4) duties owed to the sovereign. 1 John Austin, *The Providence of Jurisprudence Determined* 400 (Sarah Austin ed., 2d ed. 1861). 2. A duty as to which nothing but lapse of time remains necessary to make immediate performance by the promisor obligatory.

active duty. See positive duty.

affirmative duty. A duty to take a positive step to do something.

conditional duty. A duty that is conditioned on the occurrence of an event other than the lapse of time.

contractual duty. 1. A duty arising under a particular contract. [Cases: Contracts 1. C.J.S. Contracts §§ 2–3, 9, 12.] 2. A duty imposed by the law of contracts.

delegable duty. A duty that may be transferred to another to perform. See ASSIGNMENT.

duty to act. A duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances. [Cases: Negligence 210. C.J.S. Negligence §§ 32–33, 36, 39–40, 60, 79.]

duty to defend. Insurance. The obligation of an insurer to provide an insured with a legal defense against claims of liability, within the terms of the policy. • The duty to defend applies if the terms of the policy and the facts of the claim allow an ambiguity about whether the insurer will have a duty to indemnify the insured. It does not apply if no such ambiguity exists.

duty to indemnify. An obligation to compensate another for the other's loss. • The duty arises under the terms of an agreement, which governs the extent of the duty. An insurance policy is fundamentally an indemnification agreement, but the duty is often made a part of other contracts as well.

duty to settle. Insurance. The obligation of an insurer to negotiate and settle third-party claims against an insured in good faith.

duty to speak. A requirement (not strictly a duty) to say something to correct another's false impression. • For example, a duty to speak may arise when a person has, during the course of negotiations, said something that was true at the time but that has ceased to be true before the contract is signed. [Cases: Fraud 17.]

equitable duty. A duty enforceable in a court of chancery or in a court having the powers of a court in chancery.

imperfect duty. 1. A duty that, though recognized by law, is not enforceable against the person who owes it. 2. A duty that is not fit for enforcement but should be left to the discretion and conscience of the person whose duty it is.

implied duty of cooperation. A duty existing in every contract, obligating each party to

cooperate with, or at least not to wrongfully hinder, the other party's performance. • Breach of this implied duty excuses performance. [Cases: Contracts 168. C.J.S. Contracts §§ 346–347.]

legal duty.A duty arising by contract or by operation of law; an obligation the breach of which would give a legal remedy <the legal duty of parents to support their children>.

moral duty.A duty the breach of which would be a moral wrong. — Also termed natural duty.

negative duty.A duty that forbids someone to do something; a duty that requires someone to abstain from something. — Also termed passive duty.

noncontractual duty.A duty that arises independently of any contract.

nondelegable duty (non-del-~~<<schwa>>-g<<schwa>>-b<<schwa>>l~~).1.Contracts. A duty that cannot be delegated by a contracting party to a third party. • If a contracting party purports to delegate the duty, the other party can rightfully refuse to accept performance by the third party. [Cases: Assignments 19; Principal and Agent 27. C.J.S. Agency § 49; Assignments §§ 32–33.]

2.Torts. A duty that may be delegated to an independent contractor by a principal, who retains primary (as opposed to vicarious) responsibility if the duty is not properly performed. • For example, a landlord's duty to maintain common areas, though delegated to a service contractor, remains the landlord's responsibility if someone is injured by improper maintenance. [Cases: Master and Servant 315; Negligence 1204. C.J.S. Employer–Employee Relationship §§ 231–235, 242, 244–246, 248, 251–252, 254–255; Negligence §§ 532–535.]

perfect duty.A duty that is not merely recognized by the law but is actually enforceable.

positive duty.A duty that requires a person either to do some definite action or to engage in a continued course of action. — Also termed active duty.

preexisting duty.A duty that one is already legally bound to perform. See PREEXISTING-DUTY RULE.

quasi-judicial duty.A discretionary judicial duty that a nonjudicial officer may perform under some circumstances.

2. Any action, performance, task, or observance owed by a person in an official or fiduciary capacity.

discretionary duty.A duty that allows a person to exercise judgment and choose to perform or not perform. Cf. ministerial duty.

duty of candor (kan-d<<schwa>>r). A duty to disclose material facts; esp., a duty of a director seeking shareholder approval of a transaction to disclose to the shareholders all known material facts about the transaction. [Cases: Corporations 307, 312(5). C.J.S. Corporations §§ 476–479, 500–501, 503, 524.]

duty of candor and good faith.Patents. A patent applicant's responsibility to disclose to the U.S. Patent and Trademark Office all known information relevant to the invention's patentability, esp. prior art, novelty, and embodiment. • If an applicant fails to be candid in disclosing all

relevant information, the PTO may reject the application. If the patent issues and undisclosed but relevant information is discovered later, the patent may be invalidated, and the applicant charged with fraud on the PTO, even if the undisclosed information might not have barred the patent's issuance. [Cases: Patents 97. C.J.S. Patents §§ 135–138, 145, 178.]

duty of fair representation.A labor union's duty to represent its member employees fairly, honestly, and in good faith. [Cases: Labor Relations 219. C.J.S. Labor Relations § 213.]

duty of good faith and fair dealing.A duty that is implied in some contractual relationships, requiring the parties to deal with each other fairly, so that neither prohibits the other from realizing the agreement's benefits. See GOOD FAITH; BAD FAITH. [Cases: Contracts 168, 189. C.J.S. Contracts §§ 341–342, 346–347.]

duty of loyalty.A person's duty not to engage in self-dealing or otherwise use his or her position to further personal interests rather than those of the beneficiary. • For example, directors have a duty not to engage in self-dealing to further their own personal interests rather than the interests of the corporation.

fiduciary duty (fi-d[y]oo-shee-er-ee). A duty of utmost good faith, trust, confidence, and candor owed by a fiduciary (such as a lawyer or corporate officer) to the beneficiary (such as a lawyer's client or a shareholder); a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person (such as the duty that one partner owes to another). See FIDUCIARY; fiduciary relationship under RELATIONSHIP. [Cases: Fraud 7.]

ministerial duty.A duty that requires neither the exercise of official discretion nor judgment. Cf. discretionary duty.

proprietary duty.A duty owed by a governmental entity while engaged in a proprietary, rather than governmental, activity. [Cases: Municipal Corporations 725. C.J.S. Municipal Corporations § 664.]

3.Torts. A legal relationship arising from a standard of care, the violation of which subjects the actor to liability. — Also termed duty of care. [Cases: Negligence 210. C.J.S. Negligence §§ 32–33, 36, 39–40, 60, 79.] 4. A tax imposed on a commodity or transaction, esp. on imports; IMPOST. • A duty in this sense is imposed on things, not persons.

account duty.An inheritance tax payable by a decedent's beneficiary.

ad valorem duty.A tax calculated as a percentage of an imported product's value. Cf. compound duty; specific duty.

compound duty.A tax based on a combination of imported goods' weight, volume, or item count, plus a percentage of their value. Cf. ad valorem duty; specific duty.

countervailing duty.A tax imposed on manufacturers of imported goods to protect domestic industry by offsetting subsidies given by foreign governments to those manufacturers. [Cases: Customs Duties 21.5. C.J.S. Customs Duties §§ 135–152.]

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customs duty.A tax levied on an imported or exported commodity; esp., the federal tax levied on goods shipped into the United States.

death duty.An estate tax or inheritance tax. — Also termed estate duty.

duty of detraction.A tax on property acquired by succession or will and then removed from one state to another.

estate duty.Hist. English law. A tax imposed on the principal value of all property that passed on death. • Estate duties were first imposed in 1889. A capital transfer tax replaced it in 1975. Since 1986, an inheritance tax has applied instead, with exceptions for certain transactions entered into before then. See death duty.

import duty.A tax on the importation of a product. — Also termed duty on import.

legacy duty.See legacy tax under TAX.

probate duty.A tax assessed by the government either on every will admitted to probate or on the gross value of the decedent's personal property.

specific duty.A tax calculated on an import's weight, volume, or item count. Cf. ad valorem duty; compound duty.

succession duty.A tax payable by the successor to real property, esp. when the successor has not purchased the property for value but has succeeded to the property in some other way.

tonnage duty.A charge imposed on a commercial vessel for entering, remaining in, or leaving a port, usu. assessed on the basis of the ship's weight. • U.S. Const. art. I, § 10, cl. 3 prohibits the states from levying tonnage duties. — Also termed tonnage tax; tonnage. [Cases: Commerce 78; Shipping 7. C.J.S. Commerce § 120; Shipping §§ 18–20.]

unascertained duty.A preliminary, estimated payment to a customs collector of the duty that will be due on final accounting. • An importer pays this duty to receive permission to land and sell the goods.

#### DUTY-BOUND

duty-bound,adj. Required by legal or moral obligation to do something <Jones is duty-bound to deliver the goods by Friday>.

#### DUTY-FREE

duty-free,adj. Of or relating to products of foreign origin that are not subject to import or export taxes.

#### DUTY JUDGE

duty judge.See JUDGE.

#### DUTY OF CARE

duty of care. See DUTY(3).

#### DUTY OF THE FLAG

duty of the flag. Hist. A maritime ceremony by which a foreign vessel struck her flag and lowered her topsail upon meeting the British flag. • The ceremony was an acknowledgment of British sovereignty over the British seas.

#### DUTY OF TONNAGE

duty of tonnage (t<<schwa>>n-ij). See tonnage duty under DUTY(4).

#### DUTY OF WATER

duty of water. The amount of water necessary to irrigate a given tract.

#### DUTY ON IMPORT

duty on import. See import duty under DUTY(4).

#### DUTY-TO-DEFEND CLAUSE

duty-to-defend clause. Insurance. A liability-insurance provision obligating the insurer to take over the defense of any lawsuit brought by a third party against the insured on a claim that falls within the policy's coverage. See duty to defend under DUTY(1). [Cases: Insurance 2911. C.J.S. Insurance §§ 1144–1145.]

#### DUTY TO MITIGATE

duty to mitigate (mit-i-gayt). A nonbreaching party's or tort victim's duty to make reasonable efforts to limit losses resulting from the other party's breach or tort. • Not doing so precludes the party from collecting damages that might have been avoided. See MITIGATION-OF-DAMAGES DOCTRINE. [Cases: Sales 384(1), 418(7). C.J.S. Sales §§ 363, 365–366, 391–393, 403.]

#### DUUMVIRI

duumviri (d[y]oo-<<schwa>>m-v<<schwa>>-rI), n. pl.[fr. Latin due “two” + viri “men”] 1. Roman law. Magistrates elected or appointed in pairs to hold an office or perform a function.

duumviri                                  municipales                                  (d[y]oo-<<schwa>>m-v<<schwa>>-rI myoo-nis-<<schwa>>-pay-leez). [Latin] Two judicial magistrates annually elected in towns and colonies.

duumviri navales (d[y]oo-<<schwa>>m-v<<schwa>>-rI n<<schwa>>-vay-leez). [Latin] Two officers appointed to man, equip, and refit the navy.

2. Two peers in authority. — Also termed duoviri.

#### DUX

dux (d<<schwa>>ks), n.[fr. Latin ducere “to lead”] 1. Roman law. An army commander. 2. Roman law. A military governor of a province. • This term was eventually used also as a title of



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distinction. 3.Hist. (cap.) Duke; a title of nobility. See DUKE.

DWAI

DWAI.abbr.Driving while ability-impaired. See DRIVING UNDER THE INFLUENCE.

DWELL

dwel, vb. 1. To remain; to linger <the case dwelled in her memory>. 2. To reside in a place permanently or for some period <he dwelled in California for nine years>.

DWELLING DEFENSE

DWELLING HOUSE

dwelling house. 1. The house or other structure in which a person lives; a residence or abode. 2. Real estate. The house and all buildings attached to or connected with the house. 3. Criminal law. A building, a part of a building, a tent, a mobile home, or another enclosed space that is used or intended for use as a human habitation. • The term has referred to connected buildings in the same curtilage but now typically includes only the structures connected either directly with the house or by an enclosed passageway. — Often shortened to dwelling. — Also termed (archaically) mansion house; (more broadly) dwelling place. [Cases: Burglary 4.C.J.S. Burglary §§ 27–28, 30–37.]

“A ‘dwelling house’ or ‘dwelling’ has been defined in connection with the crime of arson as any house intended to be occupied as a residence, or an enclosed space, permanent or temporary, in which human beings usually stay, lodge, or reside. If a building is not used exclusively as a dwelling, it is characterized as a dwelling if there is internal communication between the two parts of the building. Dwellings include mobile homes and a boat, if the person resides on it.” 5 Am. Jur. 2d Arson and Related Offenses § 13, at 789 (1995).

quasi-dwelling-house.Hist. Any outbuilding, such as a barn, that is in proximity to the building used as a residence. See BURGLARY(1).

DWI

DWI.abbr.DRIVING WHILE INTOXICATED.

DWOP

DWOP (dee-wop).abbr. See dismissal for want of prosecution under DISMISSAL (1).

DWOP DOCKET

DWOP docket. See DOCKET(2).

DYARCHY

dyarchy (dI-ahr-kee), n. [fr. Greek dy “two” + archein “rule”] See DIARCHY.

DYATHANASIA

dyathanasia (dI-ath-<<schwa>>-nay-zh<<schwa>>), n. The act of permitting death to occur

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naturally by withholding, terminating, or not offering life-prolonging treatments or intervention. — Also termed passive mercy killing. See EUTHANASIA.

**DYER ACT**

Dyer Act. A federal law, originally enacted in 1919, making it unlawful either (1) to transport a stolen motor vehicle across state lines, knowing it to be stolen, or (2) to receive, conceal, or sell such a vehicle, knowing it to be stolen. 18 USCA §§ 2311–2313. — Also termed National Motor Vehicle Theft Act. [Cases: Automobiles 341. C.J.S. Motor Vehicles §§ 1528–1531, 1533–1540.]

**DYET**

dyet. See DIET.

**DYING DECLARATION**

dying declaration. See DECLARATION(6).

**DYING WITHOUT ISSUE**

dying without issue. See FAILURE OF ISSUE.

**DYNAMITE CHARGE**

dynamite charge. See ALLEN CHARGE.

**DYNAMITE INSTRUCTION**

dynamite instruction. See ALLEN CHARGE.

**DYNASTY**

dynasty. 1. A powerful family line that continues for a long time <an Egyptian dynasty>. 2. A powerful group of individuals who control a particular industry or field and who control their successors <a literary dynasty> <a banking dynasty>.

**DYNASTY TRUST**

dynasty trust. See TRUST.

**DYSNOMY**

dysnomy (dis-n<<schwa>>-mee), n. [fr. Greek dys “bad” + nomos “law”] The enactment of bad legislation. Cf. EUNOMY.