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M. 1. *abbr.* MORTGAGE. 2. *Hist.* A letter engraved on a treasury note to show that the note bears interest at the rate of one mill per centum. 3. *Hist.* A brand placed on the left thumb of a person convicted of manslaughter who claimed the benefit of clergy.

M1. A measure of the money supply including cash, checking accounts, and travelers' checks.

M2. A measure of the money supply including M1 items, plus savings and time deposits, money-market accounts, and overnight-repurchase agreements.

M3. A measure of the money supply including M2 items, plus large time deposits and money-market funds held by institutions.

mace. (14c) 1. *Hist.* A weapon used in warfare, consisting of a staff topped by a heavy head, usu. of metal. 2. A scepter; an ornamental form of weapon used as an emblem of the dignity of an office, as in Parliament and the U.S. House of Representatives. • In the House of Commons, it is laid on the table when the Speaker is in the chair. In the U.S. House of Representatives, it is usu. placed to the right of the Speaker and is borne upright by the sergeant-at-arms on extraordinary occasions, as when necessary to quell a disturbance or bring refractory members to order. 3. (*cap.*) The trademarked name of a chemical liquid that can be sprayed in a person's face to cause dizziness and temporary immobilization.

mace-bearer. A person who carries a mace before an official, usu. one of high rank. See MACE (2).

Macedonian Decree. See SENATUS CONSULTUM MACEDONIAUM.

mace-greff (mays-gref). *Hist.* A purchaser of stolen goods; esp. a person who knowingly buys stolen food. — Also spelled *mace-griefe*.

mace-proof, vb. To exempt from an arrest; to secure against an arrest.

macer. *Scots law.* See BAILIFF (1).

machination (mak-ə-nay-shən). (15c) 1. An act of planning a scheme, esp. for an evil purpose. 2. The scheme so planned.

machine. (16c) *Patents.* A device or apparatus consisting of fixed and moving parts that work together to perform some function. • Machines are one of the statutory categories of inventions that can be patented. — Also termed *apparatus*; *device*. Cf. MANUFACTURE; PROCESS (3). [Cases: Patents ◊ 10.]

Machinists preemption. See PREEMPTION.

MACRS, abbr. Modified Accelerated Cost Recovery System. See ACCELERATED COST RECOVERY SYSTEM.

mactator (mak-tay-tər), *n.* [Law Latin "slaughterer"] *Hist.* A murderer.

maculare (mak-yə-lair-ee), *vb.* [Law Latin] *Hist.* To wound (a person).

made land. See LAND.

made law. See POSITIVE LAW.

Madison Amendment. See TWENTY-SEVENTH AMENDMENT.

Mad Parliament. In 1258, a commission of 24 barons summoned to Oxford by Henry III to carry out certain reforms and settle differences between the king and the barons. • The assembly was called the Mad Parliament because it ultimately abridged the king's power and gave unprecedented powers to the barons. The commission produced the Provisions of Oxford. — Also termed *parliamentum insanum*. See PROVISIONS OF OXFORD.

Madrid Agreement. Trademarks. 1. An 1890 treaty establishing a system for the international registration of trademarks. • The agreement's official name is the Madrid Arrangement Concerning the International Registration of Marks. A product of the Madrid Revision Conference of the Paris Convention in 1890, it was last revised in 1967. Under this treaty's registration system, called the *Madrid Union*, a mark registered in a treaty nation that is also registered (in French) with the World Intellectual Property Organization receives equal protection in all signatory nations. The United States ratified the treaty in 2002. 2. An 1890 treaty designed to discourage false indications of geographic source by permitting member nations to seize falsely marked imported goods. — Also termed *Madrid Arrangement*; *Madrid Registration of Marks Treaty*; *Madrid Union*. • Also a product of the Madrid Revision Conference of the Paris Convention in 1890, the treaty's official name is the Madrid Arrangement Concerning the Prevention of False or Deceptive Indications of Source. It applies to manufactured and handmade goods, and agricultural products. — Also termed (in sense 2) *Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods*.

Madrid Protocol. Trademarks. 1. A 1996 international agreement that allows citizens of a Madrid Agreement signatory nation to apply for a single international trademark through the World Intellectual Property Organization instead of registering the trademark in each individual nation. • An applicant must apply for the trademark's registration in a treaty-member nation before applying for international trademark protection. 2. A 1989 international trademark-registration agreement that supplements the Madrid Agreement on trademark registration, harmonizes the Agreement's

registration system with that of the European Union, and allows citizens of nonmember nations to apply for international trademark registration without first registering the trademark in a member nation. • When referred to along with the Madrid Registration of Marks Treaty, it is sometimes also termed the *Madrid System*. See MADRID AGREEMENT (1).

Madrid Registration of Marks Treaty. See MADRID AGREEMENT (1).

Madrid System. See MADRID PROTOCOL (2).

Madrid Union. See MADRID AGREEMENT (1).

maegbote. See BOTE (2).

magister (mə-jis-tər), *n.* [fr. Latin *magis* “more”] *Roman law.* 1. A master; a superior, esp. by office or position. 2. A teacher; esp., one who has obtained eminence in a particular field of learning.

magister ad facultates (mə-jis-tər ad fak-əl-tay-teez), *n.* [Latin “master for permissions”] *Eccles. law.* 1. An officer who grants dispensations, as to marry or to eat meat on prohibited days. 2. MASTER OF THE FACULTIES.

magister bonorum vendendorum (mə-jis-tər bə-nor-əm ven-den-dor-əm). [Law Latin “master for sale of goods”] *Roman law.* A master appointed by the creditors of an insolvent debtor to direct the sale of the debtor’s entire estate at auction.

magister cancellariae (mə-jis-tər kan-sə-lair-ee-ee), *n.* [Law Latin “master in chancery”] *Hist.* A master in chancery — so called because the officer was a priest.

magister libellorum (mə-jis-tər lɪ-bə-lor-əm). [Latin “master of written petitions”] *Roman law.* The chief of the imperial chancery bureau that handled petitions to the emperor.

magister litis (mə-jis-tər lɪ-tis), *n.* [Latin “master of a lawsuit”] *Roman law.* A person who directs or controls a lawsuit.

magister navis (mə-jis-tər nay-vis). [Latin “master of a ship”] *Roman law.* The master of a trading vessel. • The master’s trading debts, including the ship’s maintenance expenses, gave rise to an *actio exercitoria*. See *actio exercitoria* under ACTIO.

magister palatii (mə-jis-tər pə-lay-shee-ɪ), *n.* [Latin “master of the palace”] *Civil law.* A master of the palace, similar to the English Lord Chamberlain.

magister societatis (mə-jis-tər sə-st-ə-tay-tis). [Latin “master of partnership”] *Roman law.* A person appointed to administer a partnership’s business; a managing partner or an employee.

magisterial (maj-ə-steer-ee-əl), *adj.* (17c) Of or relating to the character, office, powers, or duties of a magistrate. — Also termed *magistral*; *magistratic*. [Cases: Justices of the Peace ↻1.]

magisterial district. See *magisterial precinct* under PRECINCT.

magisterial precinct. See PRECINCT.

magistracy (maj-ə-strə-see). (16c) 1. The office, district, or power of a magistrate. 2. A body of magistrates. [Cases: Justices of the Peace ↻1.]

magistral, *adj.* (16c) 1. Of or relating to a master or masters <an absolutely magistral work>. 2. Formulated by a physician <a magistral ointment>. 3. MAGISTERIAL.

magistralia brevia (maj-ə-stray-lee-ə bree-vee-ə), *n.* [Law Latin “magisterial writs”] *Hist.* Magisterial writs, which were drafted by clerks of the chancery for use in special matters.

magistrate (maj-ə-strayt), *n.* (14c) 1. The highest-ranking official in a government, such as the king in a monarchy, the president in a republic, or the governor in a state. — Also termed *chief magistrate*; *first magistrate*. [Cases: States ↻41.] 2. A local official who possesses whatever power is specified in the appointment or statutory grant of authority. 3. A judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases. Cf. JUSTICE OF THE PEACE. [Cases: Justices of the Peace ↻31.] 4. See *judicial officer* (3) under OFFICER. — **magisterial** (maj-ə-stir-ee-əl), *adj.*

committing magistrate. (18c) A judicial officer who conducts preliminary criminal hearings and may order that a defendant be released for lack of evidence, sent to jail to await trial, or released on bail. See *examining court* under COURT.

district-court magistrate. (1932) In some states, a quasi-judicial officer given the power to set bail, accept bond, accept guilty pleas, impose sentences for traffic violations and similar offenses, and conduct informal hearings on civil infractions. [Cases: Justices of the Peace ↻31.]

federal magistrate. See UNITED STATES MAGISTRATE JUDGE.

investigating magistrate. (1908) A quasi-judicial officer responsible for examining and sometimes ruling on certain aspects of a criminal proceeding before it comes before a judge.

“The institution of the *investigating magistrate* is another measure for preserving the integrity of the law at the level of enforcement. In this case the measure is directed not toward curing the evils of a lax or sporadic enforcement, but toward the evils of an opposite nature, those resulting from an excess of zeal on the part of the prosecutor. Under the system in question, before a criminal charge may be brought before the regular courts it must be investigated by a special official and, in effect, certified as deserving trial in court. The investigating magistrate is thus a kind of quasi-judge standing halfway between the prosecutor and the regular court. The danger of the institution lies precisely in this twilight zone of function which it occupies. The certification of a case for trial inevitably tends to confirm the criminal charge against the suspect, thus creating what may amount in practice to a strong presumption of guilt. The element of prejudgment involved constitutes a threat to the integrity of the trial in open court; the accused has, in effect, had a kind of half-trial in advance of the real trial, and this half-trial is conducted, not *before* but *by* a kind of half-judge who acts essentially as an inquisitorial court. In those countries where it is a part of the legal system, the role of the investigating magistrate continues to be

a subject of some debate, and even where it is generally accepted, there is always some lingering concern lest it become the subject of inconspicuous abuse." Lon L. Fuller, *Anatomy of the Law* 38–39 (1968).

metropolitan stipendiary magistrate (stī-pen-dee-er-ee). *English law*. A stipendiary magistrate with jurisdiction in inner London areas. • Under the Access to Justice Act 1999, these magistrates have been renamed *district judges (magistrates' courts)*. See *stipendiary magistrate*.

police magistrate. (18c) A judicial officer who has jurisdiction to try minor criminal offenses, breaches of police regulations, and similar violations. — Also termed *police justice*.

stipendiary magistrate (stī-pen-dee-er-ee). *English law*. A salaried magistrate that performs either in the place of or along with Justices of the Peace, and is appointed from barristers and solicitors of seven years standing.

U.S. Magistrate. See UNITED STATES MAGISTRATE JUDGE.

Magistrate Judge, U.S. See UNITED STATES MAGISTRATE JUDGE.

magistrate's court. See COURT.

magistratic, adj. See MAGISTERIAL.

magistratus (maj-ə-stray-təs), *n.* [fr. Latin *magister* "a master"] *Roman law*. 1. A magistrate. 2. A magistrate's office.

"Magistratus. Denotes both the public office and the official himself. Magistracy was a Republican institution; under the Principate some *magistratus* continued to exist but with gradually diminishing importance; in the post-Diocletian Empire some former magistracies still exist but reduced nearly completely to an honorific title The most characteristic features of the Republican magistracy were the limited duration (one year) and collegialship since each magistracy was covered by at least two persons . . . with equal power. . . . Magistrates were elected by the people During his year of service a *magistratus* could not be removed. Misdemeanor in office could be prosecuted only after the term, hence the tenure of an office for two consecutive years was prohibited The tenure of a public office was considered an honor; for that reason the magistrates did not receive any compensation. Their political influence was, however, of greatest importance" Adolf Berger, *Encyclopedic Dictionary of Roman Law* 571-72 (1953).

magistratus majores (maj-ə-stray-təs mə-jor-eez). [Latin "superior magistrates"] *Roman law*. Magistrates with superior powers, including the power to review their own judgments. Cf. MAGISTRATUS MINORES.

magistratus minores (maj-ə-stray-təs mi-nor-eez). [Latin "lesser magistrates"] *Roman law*. Magistrates with limited powers. Cf. MAGISTRATUS MAJORES.

"The *magistratus minores* were officials of minor importance, they had no *imperium* and were vested with a restricted jurisdiction and some functions in specific fields The tenure of a minor magistracy opened the way for the quaestorship, the first step in the career of *magistratus maiores*." Adolf Berger, *Encyclopedic Dictionary of Roman Law* 572 (1953).

magna assisa (mag-nə ə-sī-zə), *n.* [Law Latin] *Hist.* The grand assize. See *grand assize* under ASSIZE (5).

magna assisa eligenda (mag-nə ə-sī-zə el-ə-jen-də). See DE MAGNA ASSISA ELIGENDA.

Magna Carta (mag-nə kahr-tə). [Latin "great charter"] The English charter that King John granted to the barons in 1215 and that Henry III and Edward I later confirmed. • It is generally regarded as one of the great common-law documents and as the foundation of constitutional liberties. The other three great charters of English liberty are the Petition of Right (3 Car. (1628)), the Habeas Corpus Act (31 Car. 2 (1679)), and the Bill of Rights (1 Will. & M. (1689)). — Also spelled *Magna Charta*.

"The history of Magna Carta is the history not only of a document but also of an argument. The history of the document is a history of repeated re-interpretation. But the history of the argument is a history of a continuous element of political thinking. In this light there is no inherent reason why an assertion of law originally conceived in aristocratic interests should not be applied on a wider scale." J.C. Holt, *Magna Carta* 16 (1965).

"Magna Carta came to be reckoned as the beginning of English statute law; it was printed as the first of the statutes of the realm. But to explain this we have first to remark that of Magna Carta there are several editions. We have four versions of the charter, that of 1215, that of 1216, that of 1217 and that of 1225, and between them there are important differences. Several clauses which were contained in the charter of 1215 were omitted in that of 1216 and were never again inserted. It seems to have been thought inadvisable to bind the young king to some of the more stringent conditions to which John had been subjected. The charter of 1217 again differs from that of 1216. Substantially it is in 1217 that the charter takes its final form; still it is the charter of 1225 which is the Magna Carta of all future times. That there were four versions is a fact to be carefully remembered; it is never enough to refer to Magna Carta without saying which edition you mean." F.W. Maitland, *The Constitutional History of England* 15 (1908, repr. 1955).

magna centum (mag-nə sen-təm), *n.* [Law Latin "great hundred"] Six score, or 120.

magna culpa (mag-nə kəl-pə). [Latin "great fault"] *Roman law*. Gross fault. • This is sometimes equivalent to *dolus*. See DOLUS.

magna neglegentia. See *gross negligence* under NEGLIGENCE.

magnum cape. See *cape magnum* under CAPE.

Magnuson–Moss Warranty Act (mag-nə-sən-maws or -mos). A federal statute requiring that a written warranty of a consumer product fully and conspicuously disclose, in plain language, the terms and conditions of the warranty, including whether the warranty is full or limited, according to standards given in the statute. 15 USCA §§ 2301–2312. [Cases: Antitrust and Trade Regulation ↻204.]

magnus rotulus statutorum (mag-nəs roch-ə-ləs stach-ə-tor-əm). [Law Latin "the great statute roll"] The first of the English statute rolls, beginning with Magna Carta and ending with Edward III.

mahr, *n.* *Islamic law.* A gift of money or property that must be made by a man to the woman he marries. • The parties agree to the mahr's amount and time of payment before marrying. If the time of payment is indefinite or if the mahr's outstanding balance is not paid sooner, the agreed amount or outstanding balance becomes due on divorce or the husband's death. Despite the religious basis for a mahr, secular courts may uphold the agreement if its secular terms are enforceable as a prenuptial contract. — Also termed *sadaq*. Cf. *NIKAH*.

maiden. (bef. 12c) **1.** A young unmarried woman. **2.** *Scots law.* An instrument used to behead criminals. • The Earl of Morton, who had introduced the instrument to Scotland, was the first to be executed by it, in 1581. It was the prototype of the guillotine. Hence, "to kiss the maiden was to be put to death." H. Percy Smith, *Glossary of Terms and Phrases* 307 (1883).

maiden assize. See *ASSIZE* (1).

maiden name. See *NAME*.

maiden rent. See *MARCHET*.

maiestas (mə-yes-tas). See *MAJESTAS*.

maihem. See *MAIM*.

maihematus (may-hə-may-təs), *p.pl.* [*Law Latin*] Maimed; wounded.

maihemium. See *MAIM*.

mail, *n.* (13c) **1.** One or more items that have been properly addressed, stamped with postage, and deposited for delivery in the postal system. [Cases: Postal Service ↻13.] **2.** An official system for delivering such items; the postal system. [Cases: Postal Service ↻3.] **3.** One or more written or oral messages sent electronically (e.g., through e-mail or voicemail). [Cases: Telecommunications ↻1343.]

certified mail. Mail for which the sender requests proof of delivery in the form of a receipt signed by the addressee. • The receipt (a green card, which is usu. referred to as such) must be signed before the mail will be delivered. — Also termed *certified mail, return receipt requested*. [Cases: Postal Service ↻19, 22, 23.]

registered mail. Mail that the U.S. Postal Service records at the time of mailing and at each point on its route so as to guarantee safe delivery. [Cases: Postal Service ↻19, 22, 23.]

mail, *vb.* (1827) **1.** To deposit (a letter, package, etc.) with the U.S. Postal Service; to ensure that a letter, package, etc. is properly addressed, stamped, and placed into a receptacle for mail pickup. [Cases: Postal Service ↻19.] **2.** To deliver (a letter, package, etc.) to a private courier service that undertakes delivery to a third person, often within a specified time.

mailable, *adj.* (Of a letter or package) lawful to send through a postal service. [Cases: Postal Service ↻13.]

mailbox rule. (1975) **1.** *Contracts.* The principle that an acceptance becomes effective — and binds the

offeror — once it has been properly mailed. • The mailbox rule does not apply, however, if the offer specifies that an acceptance is not effective until received. [Cases: Contracts ↻22(1).] **2.** The principle that when a pleading or other document is filed or served by mail, filing or service is deemed to have occurred on the date of mailing. • The mailbox rule varies from jurisdiction to jurisdiction. It may apply only to certain types of filings, or it may apply to the use of an overnight courier instead of the U.S. mail. — Also termed *dispatch rule*. [Cases: Habeas Corpus ↻603; Pleading ↻40, 333; Process ↻82; Time ↻3.5.]

mail cover. (1959) A process by which the U.S. Postal Service provides a government agency with information on the face of an envelope or package (such as a postmark) for the agency's use in locating a fugitive, identifying a coconspirator, or obtaining other evidence necessary to solve a crime. [Cases: Postal Service ↻47.]

mail fraud. See *FRAUD*.

mail-order divorce. See *DIVORCE*.

maim, *n.* (14c) *Archaic.* The type of strength-diminishing injury required to support a charge of mayhem; esp., serious injury to a body part that is necessary for fighting. — Also termed *maihem*; *maihemium*. See *MAYHEM*. [Cases: Mayhem ↻1.] — **maim**, *vb.*

"Maihem or maim is where by the wrongful act of another any member is hurt or taken away, whereby the party is made unperfect to fight: as if a bone be taken out of the hand . . . But the cutting of an ear or nose, or breaking of the hinder teeth, or such like, is no maihem, because it is rather a deformity of body than diminishing of strength; and that is commonly tried by the justices beholding the party. And if the justices stand in doubt whether the hurt be a maihem or not, they use and will of their own discretion take the help and opinion of some skilful chirurgeon, to consider thereof, before they determine upon the cause." *Termes de la Ley* 283-84 (1st Am. ed. 1812).

"'Maim' is the modern equivalent of the old word 'mayhem,' and some have long been inclined to abandon the earlier word entirely. There is a tendency, on the other hand, to retain 'mayhem' for the offense and to use 'maim' for the type of injury originally required for such a crime. This usage has a distinct advantage because statutory enlargements have included another type of injury within the scope of this offense, and today mayhem (the offense) may involve something other than *maim* (the injury)." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 239 (3d ed. 1982).

mainad (may-nəd). [fr. Saxon *manath* "a deceitful oath"] *Hist.* Perjury.

main-a-main (may-nah-mayn), *adv.* [*Law French*] *Hist.* Immediately.

main channel. See *CHANNEL*.

main demand. See *DEMAND* (1).

maine-port. *Hist.* A small tribute (such as loaves of bread) that parishioners pay to the rector in lieu of tithes.

main motion. See *MOTION* (2).

main opinion. See *majority opinion* under *OPINION* (1).

mainour (may-nər), *n.* [fr. Law French *manier* “to handle”] *Hist.* A stolen article found in the hands of a thief. • At common law, the thief could be arraigned and tried without an indictment. — Also spelled *manour*; *meinour*. — Also termed *mannopus*; *manuopus*.

mainovre (mə-noo-vər), *n.* [fr. Law French *main* “hand” + *oeuvre* “work”] *Hist.* 1. A trespass committed by hand. 2. Manual labor. — Also spelled *mainoeuvre*.

mainpernable (mayn-pər-nə-bəl), *adj.* Capable of being bailed (mainprised); bailable. See MAINPRISE (2).

mainpernor (mayn-pər-nər), *n.* [Law French, fr. Old French *main* “hand” + *pernor* “taker”] *Hist.* 1. A surety for a prisoner’s appearance; one who gives mainprise for another. — Also termed *mainpriser*.

“Mainpernors differ from bail, in that a man’s bail may imprison or surrender him up before the stipulated day of appearance; mainpernors can do neither, but are barely sureties for his appearance at the day: bail are only sureties, that the party be answerable for the special matter for which they stipulate; mainpernors are bound to produce him to answer all charges whatsoever.” 3 William Blackstone, *Commentaries on the Laws of England* 128 (1768).

2. A form of bail taken under a writ of mainprise. — Also termed *manucaptor* (man-yoo-kap-tər). See MAINPRISE.

main pot. *Tax.* A step in evaluating tax liability in which qualified transactions are compared to determine whether a net gain or loss has occurred. IRC (26 USCA) § 1231. — Also termed *big pot*; *hotchpot*; *hodgepodge*. Cf. CASUALTY POT.

mainprise (mayn-priz), *n.* [Law French, fr. Old French *main* “hand” + *prise* “taking”] *Hist.* 1. Delivery of a prisoner to the mainpernor. 2. A suretyship undertaking that makes the surety responsible for a prisoner’s appearance in court on a specified date and time. 3. A writ ordering the sheriff to take the security of a mainpernor for the prisoner’s appearance and release the prisoner. — Also spelled *mainprize*. — Also termed *writ of mainprise*; *manucaption* (man-yoo-kap-shən). See DE HOMINE REPLEGIANDO.

mainprise, vb. *Hist.* To release (a prisoner) on the surety of a mainpernor.

main-purpose rule. *Contracts.* The doctrine that if a promise to guarantee another’s debt is made primarily for the promisor’s own benefit, then the statute of frauds does not apply and the promise need not be in writing to be enforceable. — Also termed *main-purpose doctrine*; *leading-object rule*. [Cases: Frauds, Statute of ↻23.]

main-relief rule. A doctrine by which venue for a lawsuit may be founded on the primary relief sought by the plaintiff, even if other claims, which alone would not support venue, are included in the suit. [Cases: Venue ↻2.]

main-rent. See VASSALAGE (2).

main sea. See SEA.

mainstreaming. (1973) The practice of educating a disabled student in classes with students who are not

disabled, in a regular-education setting, as opposed to a special-education class. Cf. LEAST-RESTRICTIVE ENVIRONMENT. [Cases: Schools ↻154(2).]

mainsworn (mayn-sworn), *p.pl.* *Hist.* Forsworn, by making a false oath with a hand on a book. • This was used primarily in north England.

maintain, vb. (14c) 1. To continue (something). 2. To continue in possession of (property, etc.). 3. To assert (a position or opinion); to uphold (a position or opinion) in argument. 4. To care for (property) for purposes of operational productivity or appearance; to engage in general repair and upkeep. 5. To support (someone) financially; esp. to pay alimony to. [Cases: Divorce ↻231-247; Husband and Wife ↻282-301.] 6. (Of a third party to a lawsuit) to assist a litigant in prosecuting or defending a lawsuit; to meddle in someone else’s litigation. [Cases: Champerty and Maintenance ↻4.]

maintainor. (15c) *Criminal law.* A person who meddles in someone else’s litigation by providing money or other assistance; a person who is guilty of maintenance. — Also spelled *maintainer*. See MAINTENANCE (6). [Cases: Champerty and Maintenance ↻4.]

maintenance, n. (14c) 1. The continuation of something, such as a lawsuit. 2. The continuing possession of something, such as property. 3. The assertion of a position or opinion; the act of upholding a position in argument. 4. The care and work put into property to keep it operating and productive; general repair and upkeep. 5. Financial support given by one person to another, usu. paid as a result of a legal separation or divorce; esp. ALIMONY. • Maintenance may end after a specified time or upon the death, cohabitation, or remarriage of the receiving party. [Cases: Divorce ↻208, 230; Husband and Wife ↻282.]

maintenance in gross. (1914) A fixed amount of money to be paid upon divorce by one former spouse to the other, in a lump sum or in installments. • Typically, the total amount is unmodifiable regardless of any change in either person’s circumstances. [Cases: Divorce ↻241.]

separate maintenance. (17c) Money paid by one married person to another for support if they are no longer living together as husband and wife. • This type of maintenance is often mandated by a court order. An action for separate maintenance is not maintainable after the marriage has been dissolved. — Also termed *separate support*. [Cases: Husband and Wife ↻282.]

6. Improper assistance in prosecuting or defending a lawsuit given to a litigant by someone who has no bona fide interest in the case; meddling in someone else’s litigation. Cf. CHAMPERTY. [Cases: Champerty and Maintenance ↻1, 4.]

maintenance and cure. *Maritime law.* Compensation provided to a sailor who becomes sick or injured while a member of a vessel’s crew. • The obligation is broader than what would be covered under workers’ compensation, as it applies to illness or injury whether or not

arising out of shipboard duties. See CURE (2). [Cases: Seamen ↷11.]

maintenance assessment. See ASSESSMENT.

maintenance bond. See BOND (2).

maintenance call. See *margin call* under CALL (2).

maintenance fee. 1. A periodic payment required to maintain a privilege, such as a license. 2. A charge for keeping an improvement in working condition or a residential property in habitable condition. — Also termed *maintenance assessment*. 3. A fee charged for reinvesting earnings and dividends in mutual funds. 4. *Patents.* The periodic charge a patentee must pay the U.S. Patent and Trademark Office in order to keep the patent in force. • U.S. maintenance fees are due 3½, 7, and 11½ years from the date the patent is issued. [Cases: Patents ↷103.]

maintenance in gross. See MAINTENANCE.

maintenance margin requirement. See MARGIN REQUIREMENT.

maior (may-ər). See MAJOR.

maister (may-stər). *Archaic.* A master.

maître (may-trə or mayt-ər), *n.* [French] *French law.* A master, esp. of a vessel.

maius Latium. See LATIUM MAIUS.

majestas (mə-jes-tas), *n.* [Latin “supreme power”] *Roman law.* 1. The majesty, sovereign authority, or supreme prerogative of the state or sovereign; the supreme power of the people, esp. as represented by their highest representatives, the consuls, or the emperor. 2. The crime of high treason. See *crimen majestatis* under CRIMEN.

“*Majestas* . . . From being an attribute of the *princeps*, the word ‘majesty’ came to be an honorific title confined, at first, to the Roman emperors of the West but later extended to all kings. From the time of Henry II, it has been used in England, the full form being ‘Her Most Gracious Majesty’. The usual form is ‘Her Majesty’.” David M. Walker, *The Oxford Companion to Law* 798 (1980).

major (may-jər). [Latin] (17c) 1. *Roman law.* An older person, esp. one older than 25 and hence of full capacity. 2. *Roman law.* An ascendant; an ancestor. 3. *Hist.* A mayor. 4. ADULT. 5. In the U.S. Army, U.S. Air Force, or U.S. Marine Corps, a commissioned officer who ranks above a captain and below a lieutenant-colonel.

major action. *Environmental law.* An undertaking that may have a significant impact on the environment, triggering the need for an environmental assessment under the National Environmental Policy Act and some state laws. Cf. MAJOR-FEDERAL ACTION. [Cases: Environmental Law ↷587.]

major-and-minor fault rule. See MAJOR-MINOR FAULT RULE.

major annus (may-jər an-əs). [Latin “the greater year”] A leap year, made up of 366 days.

majora regalia (mə-jər-ee ri-gay-lee-ə). See *regalia majora* under REGALIA.

major crime. See FELONY (1).

major disaster. A catastrophe, such as a hurricane, tornado, storm, flood, earthquake, drought, or fire, so severe that it warrants disaster assistance from the federal government. • When the President declares a major disaster, the federal government supplements the efforts and resources of states, local governments, and relief organizations to alleviate the damage, loss, hardship, and suffering caused by the catastrophe. 40 CFR § 109. [Cases: United States ↷82(5).]

major dispute. See DISPUTE.

majorennitati proximus (may-jər-en-ə-tay-ti prok-sə-məs). [Law Latin] *Scots law.* Near majority. • Minors who were near the age of majority had difficulty arguing that a contracting party had taken advantage of their age and inexperience. See IN CONFINIO MAJORIS AETATIS.

majores (mə-jər-eez), *n.* [Latin “greater persons”] 1. *Roman law.* Ancestors; forebears. 2. *Hist.* Greater persons; persons of a higher status.

major federal action. *Environmental law.* An undertaking, either carried out by a federal agency or approved by a federal agency, that may have a significant impact on the environment. • Examples include constructing an aqueduct or dam, constructing a highway through wetlands, or adopting certain agency regulations. • Under the National Environmental Policy Act, a federal agency that plans to take a major federal action that may significantly affect the environment is required to prepare and file an environmental-impact statement, along with any public comments, with the Environmental Protection Agency. 40 CFR §§ 1506.9, 1508. [Cases: Environmental Law ↷587.]

majori minus inest (mə-jər-i mi-nəs in-est). [Latin] *Scots law.* The greater includes the less. • The phrase refers to the principle that any conveyance of a primary right to property includes any lesser rights to that property.

majority. (16c) 1. The status of one who has attained the age (usu. 18) at which one is entitled to full civic rights and considered legally capable of handling one’s own affairs. See AGE OF MAJORITY. Cf. MINORITY (1). [Cases: Infants ↷1.] 2. A number that is more than half of a total; a group of more than 50 percent <the candidate received 50.4 percent of the votes — barely a majority>. • A majority always refers to more than half of some defined or assumed set. In parliamentary law, that set may be all the members or some subset, such as all members present or all members voting on a particular question. A “majority” without further qualification usu. means a simple majority. See *simple majority*. Cf. PLURALITY; MINORITY (2); HALF PLUS ONE.

absolute majority. A majority of all those who are entitled to vote in a particular election, regardless of how many voters actually cast ballots. See QUORUM. [Cases: Elections ↷126(6), 215.]

constitutional majority. See *majority of all the members*.

extraordinary majority. See *supermajority*.

majority of all the members. A majority of all the actual members, disregarding vacancies. — Also termed *constitutional majority*; *majority of the entire membership*; *majority of the membership*.

majority of all the memberships. A majority of all the possible memberships, including vacancies. — Also termed *majority of the fixed membership*.

majority of the entire membership. See *majority of all the members*.

majority of the fixed membership. See *majority of all the memberships*.

majority of the membership. See *majority of all the members*.

ordinary majority. See *simple majority*.

plural majority. See PLURALITY.

simple majority. A numerical majority of those actually voting. • Absent members, members who are present but do not vote, blanks, and abstentions are not counted. — Also termed *ordinary majority*. [Cases: Elections ⇨ 126(6), 215.]

supermajority. A fixed proportion greater than half (often two-thirds or a percentage greater than 50%), required for a measure to pass. • Such a majority is needed for certain extraordinary actions, such as ratifying a constitutional amendment or approving a fundamental corporate change. — Also termed *extraordinary majority*.

veto-proof majority. A legislative majority large enough that it can override an executive veto.

majority-consent procedure. *Corporations.* A statutory provision allowing shareholders to avoid a shareholders' meeting and to act instead by written consent of the holders of a majority of shares. • Delaware and a few other states have enacted such procedures. [Cases: Corporations ⇨ 191.]

majority-minority district. See DISTRICT.

majority opinion. See OPINION (1).

majority report. See REPORT (1).

majority rule. (1848) **1.** The principle that a majority of a group has the power to make decisions that bind the group; the principle that in the choice of alternatives, the one preferred by the greater number is selected. • It is governance by the majority of those who actually participate, regardless of the number entitled to participate. **2.** The constitutional principle "that a majority of the people of a State . . . elect a majority of that State's legislators," *Reynolds v. Sims*, 377 U.S. 533, 583–84, 84 S.Ct. 1362, 1393 (1964), from which it follows that each voter is entitled to a share of the franchise equal to that of each other voter. See ONE-PERSON, ONE-VOTE RULE. **3.** *Corporations.* The common-law principle that a director or officer owes no fiduciary duty to a shareholder with respect to a stock transaction. • This rule has been restricted by both federal insider-trading rules and state-law doctrine. Cf. SPECIAL-FACTS RULE.

majority shareholder. See SHAREHOLDER.

majority verdict. See VERDICT.

majority vote. See MAJORITY.

majority voting. See VOTING.

major life activity. (1979) A basic activity that an average person in the general population can perform with little or no difficulty, such as seeing, hearing, sleeping, eating, walking, traveling, or working. • A person who is substantially limited in a major life activity is protected from discrimination under a variety of disability laws, most significantly the Americans with Disabilities Act and the Rehabilitation Act. 42 USCA § 12102(2); 29 USCA § 705(9)(B). See AMERICANS WITH DISABILITIES ACT. [Cases: Civil Rights ⇨ 1019(2), 1218(2).]

major-minor fault rule. *Maritime law.* The principle that if the fault of one vessel in a collision is uncontradicted and sufficient to account for the accident, then the other vessel is presumed not to have been at fault and therefore not to have contributed to the accident. • The elimination of the divided-damages rule has made this rule obsolete. — Also termed *major-and-minor fault rule*. [Cases: Collision ⇨ 19, 122.]

major offense. See OFFENSE (1).

major trend. See TREND.

majus jus (*may-jəs jəs*). [Law Latin "a greater right"] *Hist.* A greater right. • This was a plea in a real action.

make, vb. (bef. 12c) **1.** To cause (something) to exist <to make a record>. **2.** To enact (something) <to make law>. **3.** To acquire (something) <to make money on execution>. **4.** To legally perform, as by executing, signing, or delivering (a document) <to make a contract>.

make default. **1.** DEFAULT (1). **2.** DEFAULT (2).

make law. **1.** To legislate. **2.** To issue a legal precedent, esp. a judicial decision, that establishes a new rule of law on a particular subject. **3.** *Hist.* To deny a plaintiff's charge under oath, in open court, with compurgators.

make purpart (*pər-pahrt*), *vb.* To divide and apportion property formerly held in common. See PURPART.

maker. (14c) **1.** One who frames, promulgates, or ordains (as in *lawmaker*). **2.** A person who signs a promissory note. See NOTE (1). Cf. COMAKER. [Cases: Bills and Notes ⇨ 48, 118.] **3.** DRAWER.

accommodation maker. (1829) One who signs a note as a surety. See ACCOMMODATION (2); *accommodation indorser* under INDORSER. [Cases: Bills and Notes ⇨ 49, 122.]

prime maker. (1972) The person who is primarily liable on a note or other negotiable instrument.

makeup gas. *Oil & gas.* Natural gas that has been paid for by the purchaser, usu. under a take-or-pay contract, but that is to be delivered in the years following payment. See *take-or-pay contract* under CONTRACT. [Cases: Gas ⇨ 13(1).]

make-whole doctrine. *Insurance.* The principle that, unless the insurance policy provides otherwise, an insurer will not receive any of the proceeds from the

settlement of a claim, except to the extent that the settlement funds exceed the amount necessary to fully compensate the insured for the loss suffered. [Cases: Insurance ⇨ 3514(2).]

mal (mal), *adj.* [Law French “bad; wrong; against”] Bad; wrong. • In Law French, *mal* was a separable word, equivalent to the Latin *male* (“badly”). In its modern uses, *mal-* is a prefix in terms such as *maladministration* and *malpractice*.

mala antiqua (mal-ə an-tr-kwə). Old crimes; offenses that date back to antiquity.

mala demonstratio (mal-ə dem-ən-stray-shee-oh). [Latin] *Hist.* Erroneous description.

maladministration. Poor management or regulation by a public officer; specif., an official’s abuse of power. — Also termed *misadministration*; *breach of trust*.

mala fides (mal-ə fr-deez), *n.* See BAD FAITH (1).

mala in se (mal-ə in say or see). See MALUM IN SE.

malandrinus (mal-ən-dri-nəs), *n.* [Law Latin “brigand”] *Hist.* A thief; a pirate.

malapportionment, n. (1959) The improper or unconstitutional apportionment of a legislative district. See APPORTIONMENT (3); GERRYMANDERING; LEGISLATIVE DISTRICTING. [Cases: Elections ⇨ 12(6).] — **malapportion, vb.**

mala praxis (mal-ə prak-sis). [Law Latin] *Hist.* Malpractice; unskillful treatment, esp. by a doctor.

“Injuries, affecting a man’s *health*, are where by any unwholesome practices of another a man sustains any apparent damage in his vigor or constitution. As by selling him bad provisions or wine . . . or by the neglect or unskillful management of his physician, surgeon, or apothecary. For it hath been solemnly resolved . . . that *mala praxis* is a great misdemeanor and offence at common law, whether it be for curiosity and experiment, or by neglect, because it breaks the trust which the party had placed in his physician, and tends to the patient’s destruction.” 3 William Blackstone, *Commentaries on the Laws of England* 122 (1768).

mala prohibita (mal-ə proh-hib-i-tə). See MALUM PROHIBITUM.

malconduct in office. See *official misconduct* under MISCONDUCT.

male creditus (mal-ee kred-ə-təs). [Law Latin] *Hist.* (Of a person) in bad repute; untrusted.

malediction (mal-ə-dik-shən). *Hist.* A curse placed on property donated to a church to protect it against anyone attempting to violate the church’s rights.

malefaction (mal-ə-fak-shən), *n.* [Latin *malefacere* “to do evil”] (15c) *Archaic.* An evil deed; a crime or offense. — Also termed *maleficium*. — **malefactor, adj.**

malefactor (mal-ə-fak-tər), *n.* [Latin] (15c) A wrongdoer; a criminal.

maleficium (mal-ə-fish-ee-əm), *n.* [Latin “a misdeed”] *Roman law.* A delict. See MALEFACTION.

maleson. See MALISON.

malesworn (mayl-sworn), *p.pl.* Forsworn. — Also spelled *malsworn*.

malfeasance (mal-fee-zənts), *n.* (17c) A wrongful or unlawful act; esp. wrongdoing or misconduct by a public official; MISFEASANCE IN PUBLIC OFFICE. Cf. MISFEASANCE; NONFEASANCE. [Cases: Officers and Public Employees ⇨ 121.] — **malfeasant** (mal-fee-zənt), *adj.* — **malfeasor** (mal-fee-zər), *n.*

malfunction theory. (1979) *Products-liability law.* A principle permitting a products-liability plaintiff to prove that a product was defective by proving that the product malfunctioned, instead of requiring the plaintiff to prove a specific defect. • A plaintiff relying on the malfunction theory usu. must also prove that the product was not misused, and must disprove all reasonable explanations for the occurrence other than a defect. [Cases: Products Liability ⇨ 358.]

mal gree (mal gree). [Law French “against the will”] *Hist.* Against the will; without consent.

malice, n. (14c) 1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person’s legal rights. 3. Ill will; wickedness of heart. • This sense is most typical in nonlegal contexts.

“Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour. The Latin *malitia* means badness, physical or moral — wickedness in disposition or in conduct — not specifically or exclusively ill-will or malevolence; hence the malice of English law, including all forms of evil purpose, design, intent, or motive. [But] intent is of two kinds, being either immediate or ulterior, the ulterior intent being commonly distinguished as the motive. The term malice is applied in law to both these forms of intent, and the result is a somewhat puzzling ambiguity which requires careful notice. When we say that an act is done maliciously, we mean one of two distinct things. We mean either that it is done intentionally, or that it is done with some wrongful motive.” John Salmond, *Jurisprudence* 384 (Glanville L. Williams ed., 10th ed. 1947).

“[M]alice in the legal sense imports (1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result. . . . The Model Penal Code does not use ‘malice’ because those who formulated the Code had a blind prejudice against the word. This is very regrettable because it represents a useful concept despite some unfortunate language employed at times in the effort to express it.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 860 (3d ed. 1982).

actual malice. (18c) 1. The deliberate intent to commit an injury, as evidenced by external circumstances. — Also termed *express malice*; *malice in fact*. Cf. *implied malice*. 2. *Defamation.* Knowledge (by the person who utters or publishes a defamatory statement) that a statement is false, or reckless disregard about whether the statement is true. • To recover for defamation, a plaintiff who is a public official or public figure must overcome the defendant’s qualified privilege by

proving the defendant's actual malice. And for certain other types of claims, a plaintiff must prove actual malice to recover presumed or punitive damages. — Also termed *New York Times malice*; *constitutional malice*; *common-law malice*. [Cases: Libel and Slander ⇨ 51.]

common-law malice. See *actual malice* (2).

constructive malice. See *implied malice*.

express malice. (17c) **1. Criminal law.** The intent to kill or seriously injure arising from a deliberate, rational mind. [Cases: Assault and Battery ⇨ 49; Homicide ⇨ 529.] **2.** See *actual malice* (1). **3. Defamation.** The bad-faith publication of defamatory material. [Cases: Libel and Slander ⇨ 4, 51.]

general malice. (17c) Malice that is necessary for any criminal conduct; malice that is not directed at a specific person. Cf. *particular malice*. [Cases: Criminal Law ⇨ 20.]

implied malice. (17c) Malice inferred from a person's conduct. — Also termed *constructive malice*; *legal malice*; *malice in law*. Cf. *actual malice* (1).

malice in fact. See *actual malice* (1).

particular malice. (16c) Malice that is directed at a particular person. — Also termed *special malice*.

transferred malice. (1961) Malice directed to one person or object but instead harming another in the way intended for the first. [Cases: Assault and Battery ⇨ 49; Homicide ⇨ 555.]

"[I]f A shoots at B intending to kill him, but the shot actually kills C, this is held to be murder of C. So also if A throws a stone at one window and breaks another, it is held to be malicious damage to the window actually broken. This doctrine, which is known as the doctrine of transferred malice, applies only where the harm intended and the harm done are of the same kind. If A throws a stone at a human being and unintentionally breaks a window, he cannot be convicted of malicious damage to the window." John Salmond, *Jurisprudence* 382 (Glanville L. Williams ed., 10th ed. 1947).

universal malice. (17c) The state of mind of a person who determines to take a life on slight provocation, without knowing or caring who may be the victim.

malice aforethought. (17c) The requisite mental state for common-law murder, encompassing any one of the following: (1) the intent to kill, (2) the intent to inflict grievous bodily harm, (3) extremely reckless indifference to the value of human life (the so-called "abandoned and malignant heart"), or (4) the intent to commit a dangerous felony (which leads to culpability under the felony-murder rule). — Also termed *premeditated malice*; *preconceived malice*; *malice prepense*; *malitia praecogitata*. [Cases: Homicide ⇨ 529, 541, 546.]

"Malice aforethought is the term which came into use during medieval times to indicate the mental element necessary in the felony of murder. It has been the subject of voluminous jurisprudential enquiry . . ." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 27 (16th ed. 1952).

"Every intentional killing is with malice aforethought unless under circumstances sufficient to constitute (1)

justification, (2) excuse, or (3) mitigation." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 58 (3d ed. 1982).

malice exception. (1977) A limitation on a public official's qualified immunity, by which the official can face civil liability for willfully exercising discretion in a way that violates a known or well-established right. See *qualified immunity* under IMMUNITY (1). [Cases: Civil Rights ⇨ 1376.]

malice in fact. See *actual malice* (1) under MALICE.

malice in law. See *implied malice* under MALICE.

malice prepense. See MALICE AFORETHOUGHT.

malicious, adj. (13c) **1.** Substantially certain to cause injury. **2.** Without just cause or excuse.

malicious abandonment. See ABANDONMENT (3).

malicious abuse of legal process. See ABUSE OF PROCESS.

malicious abuse of process. See ABUSE OF PROCESS.

malicious accusation. See ACCUSATION.

malicious act. (17c) An intentional, wrongful act done willfully or intentionally against another without legal justification or excuse.

malicious arrest. See ARREST.

malicious assault with a deadly weapon. See ASSAULT.

malicious bankruptcy. See BANKRUPTCY.

malicious damage. See MALICIOUS MISCHIEF.

malicious defense. See DEFENSE (2).

malicious execution. See EXECUTION.

malicious injury. See INJURY.

malicious institution of civil proceedings. See MALICIOUS PROSECUTION.

malicious killing. (17c) An intentional killing without legal justification or excuse. — Also termed *killing with malice*. Cf. ACCIDENTAL KILLING. [Cases: Homicide ⇨ 529, 546.]

maliciously damaging the property of another. See MALICIOUS MISCHIEF.

malicious mischief. (18c) The common-law misdemeanor of intentionally destroying or damaging another's property. • Although modern statutes predominantly make this offense a misdemeanor, a few make it a felony (depending on the nature of the property or its value). See Model Penal Code § 220.3. — Also termed *malicious mischief and trespass*; *malicious injury*; *malicious trespass*; *malicious damage*; *maliciously damaging the property of another*; (in the Model Penal Code) *criminal mischief*. [Cases: Malicious Mischief ⇨ 1.]

"Such phrases as 'malicious mischief and trespass,' 'malicious injury,' and 'maliciously damaging the property of another,' are merely additional labels used at times to indicate the same offense. It was a misdemeanor according to the common law of England, although some confusion has resulted from Blackstone's statement that it was 'only a trespass at common law.' Before the word 'misdemeanor' became well established the old writers tended to use the word 'trespass' to indicate an offense below the grade of felony. And it was used at times by Blackstone for this

purpose, as in the phrase 'treason, felony, or trespass.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 405 (3d ed. 1982).

malicious motive. See MOTIVE.

malicious prosecution. (17c) **1.** The institution of a criminal or civil proceeding for an improper purpose and without probable cause. • The tort requires proof of four elements: (1) the initiation or continuation of a lawsuit; (2) lack of probable cause for the lawsuit's initiation; (3) malice; and (4) favorable termination of the original lawsuit. Restatement (Second) of Torts §§ 674–81B (1977). **2.** The tort claim resulting from the institution of such a proceeding. • Once a wrongful prosecution has ended in the defendant's favor, he or she may sue for tort damages. — Also termed (in the context of civil proceedings) *malicious use of process*; (archaically) *malicious institution of civil proceedings*. Cf. ABUSE OF PROCESS; VEXATIOUS SUIT; MALICIOUS DEFENSE. [Cases: Malicious Prosecution ⇨ 0.5.]

"The distinction between an action for malicious prosecution and an action for abuse of process is that a malicious prosecution consists in maliciously causing process to be issued, whereas an abuse of process is the employment of legal process for some purpose other than that which it was intended by the law to effect — the improper use of a regularly issued process. For instance, the initiation of vexatious civil proceedings known to be groundless is not abuse of process, but is governed by substantially the same rules as the malicious prosecution of criminal proceedings." 52 Am. Jur. 2d *Malicious Prosecution* § 2, at 187 (1970).

malicious technology. Any electronic or mechanical means, esp. software, used to monitor or gain access to another's computer system without authorization for the purpose of impairing or disabling the system. • Examples of malicious technology are Trojan horses, time-outs, keystroke logging, and data-scrambling devices. — Also termed *malware*.

malicious trespass. See MALICIOUS MISCHIEF.

malicious use of process. See MALICIOUS PROSECUTION.

malignare (mal-æg-nair-ee), *vb.* [Latin] *Hist.* **1.** To malign; to slander. **2.** To maim.

malinger, *vb.* (1820) To feign illness or disability, esp. in an attempt to avoid an obligation or to continue receiving disability benefits.

malison (mal-ə-zən or -sən). [fr. Latin *malum* "evil" + *sonus* "a sound"] *Hist.* A curse. — Also spelled *maleson*.

malitia (mə-lish-ee-ə). [Latin "malice"] *Hist.* An actual evil design; express malice. • *Malitia* originally signified general wrongdoing, and did not describe a wrongdoer's state of mind; *malitia praecogitata*, for example, indicated only the seriousness of the offense, though it was eventually rendered *malice aforethought*.

malitia capitalis (mə-lish-ee-ə kap-i-tay-lis). [Latin] *Hist.* Deadly malice.

malitia excogitata (eks-koj-ə-tay-tə). See *malitia praecogitata*.

malitia praecogitata (pree-koj-ə-tay-tə). See MALICE AFORETHOUGHT. — Also termed *malitia excogitata*.

"[T]he word *felony* is often coupled with what will in the future be another troublesome term of art, to wit, *malice aforethought* or *malice prepense* (*malitia excogitata, praecogitata*). . . . When it first came into use, it hardly signified a state of mind; some qualifying adjective such as *praemeditata* or *excogitata* was needed if much note was to be taken of intention or of any other psychical fact. When we first meet with *malice prepense* it seems to mean little more than intentional wrong-doing; but the somewhat weighty adjectives which are coupled with *malitia* in its commonest context — adjectives such as *excogitata* — are, if we mistake not, traces of the time when *forsteal, guetapens, waylaying, the setting of ambush, was* (what few crimes were) a specially reserved plea of the crown to be emended, if indeed it was emendable, by a heavy *wite*." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 468-69 (2d ed. 1899).

malleable, *adj.* (14c) **1.** (Of an object) capable of extension by hammering <the metal was malleable>. **2.** (Of a person) capable of being influenced <the young student was malleable>.

Malleus Maleficarum (mal-ee-əs mal-ə-fi-kair-əm). [Latin "Hammer of Witches"] *Hist.* An encyclopedic work of demonology and witchcraft, prepared in 1486 by two Dominican friars (Heinrich Kraemer and Johann Sprenger) as part of their efforts to eradicate witchcraft in Germany. • The *Malleus Maleficarum* was based largely on folk beliefs, but it was relied on for several centuries as an authoritative source on how to detect, extract confessions from, and prosecute witches.

Mallory rule. See MCNABB–MALLORY RULE.

mallum (mal-əm), *n.* [Law Latin] *Hist.* **1.** A superior court among the Salian Franks, with criminal jurisdiction; a high court that handles important business. **2.** A public national assembly. — Also termed *mallus*.

mallus. See MALLUM.

malo animo (mal-oh an-ə-moh), *adv.* [Latin] With evil intent; with malice.

malo grato (mal-oh gray-toh), *adv.* [Latin] Unwillingly.

Maloney Act. A 1938 amendment to the Securities Exchange Act of 1934, providing for broker registration in over-the-counter markets.

malpractice (mal-prak-tis). (17c) An instance of negligence or incompetence on the part of a professional. • To succeed in a malpractice claim, a plaintiff must also prove proximate cause and damages. — Also termed *professional negligence*. [Cases: Negligence ⇨ 321.]

legal malpractice. A lawyer's failure to render professional services with the skill, prudence, and diligence that an ordinary and reasonable lawyer would use under similar circumstances. — Also termed *attorney malpractice*. [Cases: Attorney and Client ⇨ 107.]

medical malpractice. A doctor's failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar

circumstances. — Often shortened to *med. mal.*
[Cases: Health ⇨ 600–835.]

malpractice insurance. See INSURANCE.

malsworn. See MALESWORN.

maltreatment. (18c) Bad treatment (esp. improper treatment by a surgeon) resulting from ignorance, neglect, or willfulness. See MALPRACTICE.

malum (mal-əm also may-ləm), *n.* [Latin] Something bad or evil. Pl. *mala*.

malum in se (mal-əm in say or see), *n.* [Latin “evil in itself”] (17c) A crime or an act that is inherently immoral, such as murder, arson, or rape. — Also termed *malum per se*. Cf. MALUM PROHIBITUM. Pl. *mala in se*. — *malum in se*, *adj.*

“The basis for the distinction between *mala in se* and *mala prohibita*, between what one might call a crime and an offence — or between what one might call a felony and a misdemeanour, if one could modernize those terms so that the latter was given its natural meaning — is that crime means to the ordinary man something that is sinful or immoral, and an offence at worst a piece of misbehaviour.” Patrick Devlin, *The Enforcement of Morals* 33 (1968).

“The distinction between offenses *mala in se* and offenses *mala prohibita* was recognized at least as early as the fifteenth century. It has been criticized repeatedly. About a century and a half ago the distinction was said to be one ‘not founded upon any sound principle’ and which had ‘long since been exploded.’ [Quoting *Bensley v. Bignold*, 5 B. & A. 335, 341, 106 Eng. Rep. 1214, 1216 (1822); other citations omitted.] The Supreme Court, however, has shown that it is just as firmly entrenched today as it was in 1495.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 880 (3d ed. 1982).

malum prohibitum (mal-əm proh-ib-i-təm), *n.* [Latin “prohibited evil”] (18c) An act that is a crime merely because it is prohibited by statute, although the act itself is not necessarily immoral. • Misdemeanors such as jaywalking and running a stoplight are *mala prohibita*, as are many regulatory violations. Cf. MALUM IN SE. Pl. *mala prohibita*. — *malum prohibitum*, *adj.*

“Much of the criminal law that is regulatory in character — the part of it that deals with *malum prohibitum* rather than *malum in se* — is based upon the . . . principle . . . that the choice of the individual must give way to the convenience of the many.” Patrick Devlin, *The Enforcement of Morals* 16 (1968).

“As customarily used these phrases are mutually exclusive. An offense *malum prohibitum* is not a wrong which is prohibited, but something which is wrong *only* in the sense that it is against the law. This is emphasized at times by such phrases as ‘*malum prohibitum* only’ or ‘but *malum prohibitum*,’ although it is understood without any such qualification. A failure to understand this usage of the terms has led some to assume that all statutory additions to the common law of crimes are *mala prohibita*. One writer emphasized his confusion by speaking of embezzlement as *malum prohibitum*. This assumption is utterly without foundation. An act may be *malum in se* although no punishment is provided by law. If this defect is corrected by appropriate legislation, what previously was *malum in se* does not cease to be so by reason of having been defined and made punishable by law.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 884–85 (3d ed. 1982).

malum regimen (mal-əm rej-ə-men). [Law Latin] *Scots law*. Bad medical treatment. • A defendant in a

homicide case may assert as a defense that the decedent actually died as a result of bad medical treatment, not the defendant’s actions.

malus animus (mal-əs an-ə-məs). [Latin] *Scots law*. Bad intention. • This intention, coupled with a prohibited act carrying it out, resulted in a crime. See DOLE; MENS REA.

malveilles (mal-vay also mal-vayls), *n.* [French “misdemeanors”] *Hist.* 1. Ill will. 2. Crimes; misdemeanors; malicious acts.

malveis procurors (mal-vay prə-kyoor-ərz). [Law French “defective procurers”] *Hist.* Persons who pack juries, as by nomination or other practice.

malversation (mal-vər-say-shən), *n.* [French “ill behavior”] Official corruption; misbehavior by an official in the exercise of the duties of the office. [Cases: Officers and Public Employees ⇨ 121.] — *malverse*, *vb.*

malware. (1990) *Slang*. See MALICIOUS TECHNOLOGY.

man. (bef. 12c) 1. An adult male. 2. Humankind. — Also termed *mankind*. 3. A human being. 4. *Hist.* A vassal; a feudal tenant.

manacle (man-ə-kəl). (14c) A shackle; a handcuff.

managed care. (1982) A system of comprehensive health-care provided by a health-maintenance organization, a preferred-provider organization, or a similar group. [Cases: Health ⇨ 294; Insurance ⇨ 2501.]

managed-care organization. An association of professional healthcare providers that offers healthcare-service plans to subscribers. Cf. HEALTH-MAINTENANCE ORGANIZATION; PREFERRED-PROVIDER ORGANIZATION. [Cases: Health ⇨ 294; Insurance ⇨ 2501.]

management. (16c) The people in an organization who are vested with a certain amount of discretion and independent judgment in managing its affairs. [Cases: Corporations ⇨ 296.]

middle management. People who exercise some discretion and independent judgment in carrying out top management’s directives.

top management. The highest level of a company’s management, at which major policy decisions and long-term business plans are made. — Also termed *upper management*.

management buyout. See BUYOUT.

management company. See COMPANY.

Management Directorate. The division of the Department of Homeland Security responsible for handling the Department’s financial and personnel affairs.

management fee. See FEE (1).

manager. (16c) 1. A person who administers or supervises the affairs of a business, office, or other organization.

general manager. A manager who has overall control of a business, office, or other organization, including authority over other managers. • A general manager

is usu. equivalent to a president or chief executive officer of a corporation.

2. A legislator appointed to a conference committee charged with adjusting differences in a bill passed by both houses in different versions. — Also termed *conferee*; *manager of a conference*. [Cases: States ↻ 34.] 3. *Parliamentary law*. A member who displays the evidence against another member who is charged with misconduct and faces possible disciplinary action. 4. A representative appointed by the House of Representatives to prosecute an impeachment before the Senate. [Cases: United States ↻ 35.] 5. A member of a board of managers; DIRECTOR (2). See BOARD OF DIRECTORS. 6. A court-of-equity appointee responsible for carrying on a business for the benefit of creditors or other beneficiaries.

manager of a conference. See MANAGER (2).

managing agent. See AGENT (2).

managing conservator. See CONSERVATOR.

managing conservatorship. See CUSTODY (2).

managium (mə-nay-jee-əm), *n.* [Law Latin, fr. Law French *manage* “a dwelling”] *Hist.* A dwelling; a mansion house. — Also termed *mensa* (men-sə).

Manahan-type carried interest. *Oil & gas.* A transaction in which the owner of a lease assigns all the working interest to someone else — who takes on specified costs of drilling and development — and the assignor retains a reversionary interest in part of the working interest, which reverts to the assignor once the assignee has recovered the specified costs during the payout period. *Manahan Oil Co. v. Commissioner*, 8 T.C. 1159 (1947). [Cases: Mines and Minerals ↻ 74.]

manbote. See BOTE (2).

manceps (man-seps), *n.* [Latin “an agent”] 1. *Roman law.* A purchaser of something at a state auction, esp. a right or advantage, as in the right to farm taxes. See CONDUCTOR (2).

“Manceps. One who at a public auction, conducted by a magistrate, through the highest bid obtained the right to collect taxes (a tax farmer) or custom duties, the lease of public land (*ager publicus*) or other advantages (a monopoly). — In postal organization *manceps* was a post-station master.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 573 (1953).

2. A person who undertakes to perform a task and gives security for the performance. 3. *Roman law.* A state postmaster.

manche-present (mah-nsh-pray-zon). [Law French “a present from the donor’s own hand”] A bribe.

mancipable (man-si-pə-bəl), *adj.* Capable of mancipation.

mancipant (man-si-pant), *n.* One who transfers property by mancipation.

mancipare (man-sə-pair-ee), *vb.* [fr. Latin *manus* “hand” + *capere* “to take”] *Roman law.* 1. To alienate (a thing) through mancipation. 2. To sell (esp. a person) fic-

titiously as part of the emancipation process. See MANCIPATION.

mancipatio (man-sə-pay-shee-oh), *n.* [Latin] See MANCIPATION.

mancipation (man-si-pay-shən), *n.* [fr. Latin *mancipatio* “hand-grasp”] 1. *Roman law.* A legal formality for transferring property by either an actual or a simulated purchase; a formal conveyance in the guise of a sale. • The formality required the presence of the thing being conveyed (*res Mancipi*), and of five adult male citizens acting as witnesses. Another person (the *libripens*) held the bronze scales with which the purchase price had been weighed out. The buyer made an assertion of ownership, struck the scales with a piece of bronze or copper, then gave the metal piece to the seller as a symbolic price. In Roman classical law, either this procedure or *cessio in jure* was necessary to pass legal title. This form of sale was abolished by Justinian. 2. A similar form used for making a will, adoption, emancipation of children, etc. — Also termed *mancipatio*. See RES MANCIPI. Cf. EMANCIPATION. — **mancipate**, *vb.* — **mancipatory** (man-si-pə-tohr-ee), *adj.*

“Mancipatio is the solemn sale per aes et libram. In the presence of five witnesses (cives Romani puberes) a skilled weighmaster (*libripens*) weighs out to the vendor a certain amount of uncoined copper (*aes, raudus, raudusculum*) which is the purchase-money, and the purchaser, with solemn words, takes possession with his hand — hence the description of the act as ‘hand-grasp’ — of the thing purchased as being his property.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 48 (James Crawford Ledlie trans., 3d ed. 1907).

mancipatory will. See WILL.

mancipi res (man-sə-pi reez). See RES MANCIPI.

mancipium (man-sip-ee-əm), *n.* [Latin “a slave”] *Roman law.* 1. A slave, esp. by virtue of being captured by an enemy in war. 2. A temporary quasi-servile status, necessarily occurring in an emancipation, and also when a master or father noxally surrendered a slave or son to an injured party to answer for an offense committed by the slave or son against that party. See EMANCIPATION; NOXAL ACTION (1).

“But if the *patria potestas* could be created, it could also be terminated, by an artificial process . . . The father could not by a simple act of his own will release the son from his control. For this purpose he must sell him out of his own hands into that state of *mancipium* or qualified slavery of which we have spoken. Even then the father’s power was not destroyed: it was suspended during the existence of the *mancipium*; but if the *mancipium* ceased, if the son was set free by the person who held him in that condition, the father’s right revived . . . It was not until he had sold him three times over, that he used up his right of control beyond the possibility of a revival. This, then, was the form by which the son was liberated from the *patria potestas*.” James Hadley, *Introduction to Roman Law* 126-27 (1881).

3. MANCIPATION (1).

M & A. *abbr.* Mergers and acquisitions. See MERGER.

mandamus (man-day-məs), *n.* [Latin “we command”] (16c) A writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body, usu. to correct a prior action or failure

to act. — Also termed *writ of mandamus*; *mandate*; (in BrE) *order*. [Cases: Mandamus ⇨ 1.] Pl. **mandamuses**. — **mandamus**, *vb*.

alternative mandamus. A writ issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it. [Cases: Mandamus ⇨ 158.]

peremptory mandamus. An absolute and unqualified command to the defendant to do the act in question. ● It is issued when the defendant defaults on, or fails to show sufficient cause in answer to, an alternative mandamus. [Cases: Mandamus ⇨ 179.]

mandans (**man-danz**), *n*. [Latin] *Roman law*. The principal for whom a mandated person undertakes to perform a gratuitous service. See **MANDATOR** (2).

mandant (**man-dənt**), *n*. [French] *French & Scots law*. The principal in a contract of mandate, such as a bailor in a bailment. See **MANDATOR**.

mandatary (**man-də-ter-ee**), *n*. (15c) **1**. A person to whom a mandate is given. See **MANDATE** (5). **2**. An agent, esp. one who acts gratuitously but is entitled to be indemnified for expenses incurred in carrying out the mandate. — Also termed (in Roman law) *mandatarius*. **3**. *Civil law*. The person who is employed to a mandator in a gratuitous agency. — Also termed *mandatee*; *mandatarius*. See **MANDATE** (5). — **mandatary**, *adj*.

mandate, *n*. (16c) **1**. An order from an appellate court directing a lower court to take a specified action. — Also termed (in BrE) *order*. See **MANDAMUS**. [Cases: Appeal and Error ⇨ 1186.1; Federal Courts ⇨ 949.1.] **2**. A judicial command directed to an officer of the court to enforce a court order. **3**. In politics, the electorate's overwhelming show of approval for a given political candidate or platform. **4**. *Roman & civil law*. A written command given by a principal to an agent; specif., a commission or contract by which one person (the *mandator*) requests someone (the *mandatary*) to perform some service gratuitously, the commission becoming effective when the mandatary agrees. La. Civ. Code art. 2989. ● In this type of contract, no liability is created until the service requested has begun. The mandatary is bound to use reasonable care in performance, while the mandator is bound to indemnify against loss incurred in performing the service. — Also termed *mandatum*. **5**. *Louisiana law*. A contract by which one person, the principal, confers authority on another person, the mandatary, to transact one or more affairs for the principal. La. Civ. Code arts. 2989 et seq. ● The contract of mandate may be either onerous or gratuitous. It is gratuitous if the parties do not state otherwise. **6**. *Hist. Int'l law*. An authority given by the League of Nations to certain governments to take over the administration and development of designated territories. Cf. **TRUSTEESHIP** (2). — **mandate**, *vb*.

mandatee. See **MANDATARY**.

mandate rule. (1958) The doctrine that, after an appellate court has remanded a case to a lower court, the

lower court must follow the decision that the appellate court has made in the case, unless new evidence or an intervening change in the law dictates a different result. [Cases: Appeal and Error ⇨ 1195(1); Federal Courts ⇨ 950.]

mandator (**man-day-tər** or **man-day-tər**). (17c) **1**. A person who delegates the performance of a mandate to another. **2**. *Civil law*. The person who employs another (called a *mandatary* or *mandatarius*) in a gratuitous agency. See **MANDATE** (5). — Also termed *mandant*. **3**. **BAILOR** (1).

mandatory, *adj*. (15c) Of, relating to, or constituting a command; required; preemptory.

"A provision in a statute is said to be mandatory when disobedience to it, or want of exact compliance with it, will make the act done under the statute absolutely void." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 334 (1896).

mandatory commitment. See **COMMITMENT**.

mandatory injunction. See **INJUNCTION**.

mandatory instruction. See **JURY INSTRUCTION**.

mandatory joinder. See *compulsory joinder* under **JOINER**.

mandatory penalty. See *mandatory sentence* under **SENTENCE**.

mandatory power. See **POWER** (5).

mandatory presumption. See *conclusive presumption* under **PRESUMPTION**.

mandatory punishment. See *mandatory sentence* under **SENTENCE**.

mandatory rule. See **RULE** (1).

mandatory sentence. See **SENTENCE**.

mandatory sentencing. See **SENTENCING**.

mandatory statute. See **STATUTE**.

mandatory subject of bargaining. *Labor law*. A topic that is required by the National Labor Relations Act to be discussed in good faith by the parties during labor negotiations; an essential employment matter, including wages, hours, and other terms and conditions of employment, about which management and the union are required to negotiate in good faith, and that can lawfully form the basis of a collective-bargaining impasse. 29 USCA § 158(d). — Often shortened to *mandatory subject*. Cf. **PERMISSIVE SUBJECT OF BARGAINING**. [Cases: Labor and Employment ⇨ 1125.]

mandatory trust. See **TRUST**.

mandatory waiver. The mandatory transfer, without judicial discretion, of a case from juvenile court to criminal court once the prosecutor has charged a juvenile with one of certain statutorily enumerated serious crimes. See **TRANSFER STATUTE**. Cf. **STATUTORY EXCLUSION**. [Cases: Infants ⇨ 68.7.]

mandatum (**man-day-təm**). *Roman & civil law*. A bailment in which the bailee will, without recompense, perform some service relating to the goods; **MANDATE**

(4). • This type of bailment is for the sole benefit of the bailor.

mandavi ballivo (man-day-vī bā-ll-voh). [Law Latin "I have commanded the bailiff"] *Hist.* A sheriff's return stating that the sheriff ordered a bailiff to execute a writ.

man-endangering state of mind. See PERSON-ENDANGERING STATE OF MIND.

manerium (mə-neer-ee-əm), *n.* [Law Latin, fr. Latin *manere* "to remain"] *Hist.* A manor.

"The term *manerium* seems to have come in with the Conqueror, though other derivatives from the Latin verb *manere*, in particular *mansa*, *mansio*, *mansiuncula* had been freely employed by the scribes of the land-books. But these had as a rule been used as representatives of the English *hide*, and just for this reason they were incapable of expressing the notion that the Normans desired to express by the word *manerium*. In its origin that word is but one more name for a house. Throughout the Exeter Domesday the word *mansio* is used instead of the *manerium* of the Exchequer record, and even in the Exchequer record we may find these two terms used interchangeably . . ." Frederic W. Maitland, *Domesday Book and Beyond* 108-09 (1921).

mangonare (mang-gə-nair-ee), *vb.* [fr. Latin *mango* "a dealer"] To buy in a market; to deal.

manhood. (13c) 1. A male person's majority. 2. *Hist.* A ceremony of a vassal paying homage to the vassal's lord. — Also termed *homagium*.

"Besides an oath of *fealty*, or profession of faith to the lord, which was the parent of our oath of allegiance, the vassal or tenant upon investiture did usually *homage* to his lord; openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of the lord, who sat before him; and there professing that 'he did become his *man*, from that day forth, of life and limb and earthly honour;' and then he received a kiss from his lord. Which ceremony was denominated *homagium*, or *manhood*, by the feudists." 2 William Blackstone, *Commentaries on the Laws of England* 53 (1766).

mania a potu. See DELIRIUM TREMENS.

mania transitoria. *Hist.* Insanity of brief duration, experienced while committing a criminal act. • In a memorandum opinion, the Supreme Court used the term to mean *emotional insanity*. See *Mutual Life Ins. Co. v. Terry*, 82 U.S. 580, 583-84 (1872). But other courts have applied the literal meaning (temporary insanity). See, e.g., *Rush v. Megee*, 36 Ind. 69 (1871). Cf. *emotional insanity* and *temporary insanity* under INSANITY.

manifest, *n.* (16c) A document listing the cargo or passengers carried on a ship, airplane, or other vehicle; esp., a shipping or warehousing document containing a list of the contents, value, origin, carrier, and destination of the goods. Cf. CONTENT.

manifestation of intention. (1826) *Wills & estates.* The external expression of the testator's intention, as distinguished from an undisclosed intention. — Also termed *manifestation of intent*.

manifestation theory. *Insurance.* The doctrine that coverage for an injury or disease falls to the policy in effect when the symptoms of the covered injury or disease first appear. Cf. EXPOSURE THEORY; ACTUAL-

INJURY TRIGGER; TRIPLE TRIGGER. [Cases: Insurance ⇨ 2265.]

"Some injuries do not manifest themselves until a period of time has elapsed between the occurrence of the event that produces the harm and the time when it becomes apparent. Particularly when these claims result from what often were not recognized as dangerous products or chemicals when the exposure occurred, such as asbestos or dioxin, the consequences are referred to as 'delayed manifestation' injuries . . . [Under the] '[m]anifestation' theory . . . [some] courts have concluded that coverage is provided by the insurance policy in place at the time the injury becomes apparent, that is, when the injury is manifested." Robert E. Keeton & Alan I. Widiss, *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* § 5.10(d)(3), at 598 (1988).

manifest constitutional error. See ERROR (2).

manifest-disregard doctrine. (1983) The principle that an arbitration award will be vacated if the arbitrator knows the applicable law and deliberately chooses to disregard it, but will not be vacated for a mere error or misunderstanding of the law. [Cases: Alternative Dispute Resolution ⇨ 329.]

manifest error. See ERROR (2).

manifest-error-or-clearly-wrong rule. (1981) In some jurisdictions, the doctrine that an appellate court cannot set aside a trial court's finding of fact unless a review of the entire record reveals that the finding has no reasonable basis. [Cases: Appeal and Error ⇨ 999(1), 1008.1(5, 7).]

manifest injustice. A direct, obvious, and observable error in a trial court, such as a defendant's guilty plea that is involuntary or is based on a plea agreement that the prosecution has rescinded. [Cases: Criminal Law ⇨ 273.1(2), 274(3.1).]

manifest intent. See INTENT (1).

manifest law. See LEX MANIFESTA.

manifest necessity. See NECESSITY.

manifesto. (17c) A written statement publicly declaring the issuer's principles, policies, or intentions; esp. a formal document explaining why a state or nation declared war or took some other significant international action.

manifest thief. See FUR MANIFESTUS.

manifest weight of the evidence. A deferential standard of review under which a verdict will be reversed or disregarded only if another outcome is obviously correct and the verdict is clearly unsupported by the evidence. Cf. WEIGHT OF THE EVIDENCE. [Cases: Criminal Law ⇨ 549; Evidence ⇨ 584.]

manipulation. *Securities.* (1888) The illegal practice of raising or lowering a security's price by creating the appearance of active trading. • Manipulation is prohibited by section 10(b) of the Securities Exchange Act of 1934. 15 USCA § 78j(b). — Also termed *market manipulation*; *stock manipulation*. [Cases: Securities Regulation ⇨ 60.25.]

mankind. See MAN (2).

Mann Act. A federal law, enacted originally in 1910, making it illegal to transport an individual in interstate or foreign commerce for prostitution or other criminal sexual activity. • It is named its sponsor, Rep. James Robert Mann. 18 USCA § 2421–2424. — Also termed *White Slave Traffic Act*. [Cases: Prostitution ⇨15.]

manner and form. See MODO ET FORMA.

mannire (mə-ni-ree), *vb.* [Law Latin] *Hist.* To summon (an adverse party) to court; to prosecute (a case).

mannopus (man-oh-pəs). [fr. Latin *manus* “hand” + *opus* “work”] *Hist.* 1. Manual labor. 2. A day’s work. 3. Goods taken from the hands of an apprehended thief; MAINOUR.

manor. (14c) 1. A feudal estate, usu. granted by the king to a lord or other high person and cultivated as a unit. • In more ancient times, the lord’s manor included a village community, usu. composed of serfs.

“[T]o ask for a definition of a manor is to ask for what can not be given. We may however draw a picture of a typical manor, and, this done, we may discuss the deviations from this type . . . [W]e may regard the typical manor (1) as being, *qua* vill, a unit of public law, of police and fiscal law, (2) as being a unit in the system of agriculture, (3) as being a unit in the management of property, (4) as being a jurisdictional unit. But we . . . see that hardly one of these traits can be considered as absolutely essential. The most important is the connection between the manor and the vill . . .” 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 596–97 (2d ed. 1898).

“The term [*manor*] applied, after the Norman conquest, to estates organized under knights, ecclesiastical corporations, or otherwise. and managed and cultivated as units. By the end of the 11th century, the main element was the feudal lord, and soon he came to be regarded as the owner of the manor, and to have authority over the tenants, and the right to hold a court for them . . . In the thirteenth and fourteenth centuries, a manor also implied a right of jurisdiction exercised through a court baron, attended by both freeholders and villein tenants . . . In the eighteenth century the manorial court decayed rapidly, cases being generally brought in the King’s courts, the only surviving business being copyhold conveyancing.” David M. Walker, *The Oxford Companion to Law* 803 (1980).

reputed manor. A manor in which the lands not granted in tenancy but reserved for the lord’s own use (demesne lands) and services become absolutely separated. • The manor is no longer a manor in actuality, only in reputation. — Also termed *seignior in gross*.

2. A jurisdictional right over tenants of an estate, usu. exercised through a court baron. 3. *Hist.* In the United States, a tract of land occupied by tenants who pay rent to a proprietor. 4. A mansion on an estate.

manorial extent. *Hist.* A survey of a manor by a jury of tenants, giving the numbers and names of tenants, the size of their holdings, the kind of tenure, and the kind and amount of the tenants’ services.

manorial system. The medieval system of land ownership in which serfs and some freemen cultivated the soil of a manor in return for a lord’s protection. See MANOR (1).

manse (mans), *n.* [Law Latin] *Hist.* 1. A portion of land large enough to maintain one family; a sufficient amount of land to be worked by a yoke of oxen for a year. 2. A house without land; MESSUAGE. 3. The residence of a minister, esp. a Presbyterian minister. 4. A large, imposing residence. — Also termed *mansus*.

manser (man-sər), *n.* [Law Latin] *Hist.* A bastard.

Mansfield rule. (1968) The doctrine that a juror’s testimony or affidavit about juror misconduct may not be used to challenge the verdict. • This Mansfield rule is intended to ensure that jurors are heard through their verdict, not through their postverdict testimony. In practice, the rule lessens the possibility that losing parties will seek to penetrate the secrets of the jury room. The rule was first announced in *Vaise v. Delaval*, 99 Eng. Rep. 944 (K.B. 1785), in an opinion by William Murray, first Earl of Mansfield, the Lord Chief Justice of the Court of King’s Bench. [Cases: Criminal Law ⇨957; Federal Civil Procedure ⇨2371; New Trial ⇨143; Trial ⇨344.]

mansio (man-shee-oh), *n.* [Law Latin] *Hist.* 1. An inn. 2. A house.

mansion-house. 1. *Hist.* The residence of the lord of a manor. 2. DWELLING-HOUSE.

mansion-house rule. The doctrine that a tract of land lying in two counties will be assessed, for property-tax purposes, in the county in which the house is located. [Cases: Taxation ⇨2216.]

manslaughter, n. (15c) The unlawful killing of a human being without malice aforethought. — Also termed (in some jurisdictions) *culpable homicide*. Cf. MURDER. [Cases: Homicide ⇨654.] — **manslaughter, vb.**

first-degree manslaughter. See *voluntary manslaughter*.

intentional manslaughter. See *voluntary manslaughter*.

intoxication manslaughter. An unintentional homicide committed by an intoxicated person while operating a vehicle or some other type of machinery. [Cases: Automobiles ⇨344.]

involuntary manslaughter. (18c) Homicide in which there is no intention to kill or do grievous bodily harm, but that is committed with criminal negligence or during the commission of a crime not included within the felony-murder rule. — Also termed *negligent manslaughter*; *second-degree manslaughter*; *manslaughter in the second degree*. Cf. ACCIDENTAL KILLING. [Cases: Homicide ⇨659.]

“Involuntary manslaughter is a ‘catch-all’ concept. It includes all manslaughter not characterized as voluntary.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 104 (3d ed. 1982).

“The only differences between the legal use and the everyday use of ‘voluntary,’ ‘not voluntary,’ and ‘involuntary’ seem to be (a) a more frequent use of ‘involuntary’ as a synonym of ‘not voluntary’ and (b) a technical use of ‘involuntary’ in the crime of ‘involuntary manslaughter,’ where it seems to have the meaning of ‘unintentional.’ Thus, as contrasted with ‘voluntary manslaughter,’ there

is no suggestion that death, as contrasted with harm, was intended or foreseen. Though it is often confined to cases of assault and battery where death results, for example either from the withholding of food or from excessive chastisement of a child, some jurists say that it can be due to any unlawful and dangerous action causing death." Alan R. White, *Grounds of Liability* 61-62 (1985).

manslaughter in the first degree. See *voluntary manslaughter*.

manslaughter in the second degree. See *involuntary manslaughter*.

misdeemeanor manslaughter. (1947) Unintentional homicide that occurs during the commission of a misdemeanor (such as a traffic violation). [Cases: Homicide ↷661.]

negligent manslaughter. See *involuntary manslaughter*.

second-degree manslaughter. See *involuntary manslaughter*.

voluntary manslaughter. (18c) An act of murder reduced to manslaughter because of extenuating circumstances such as adequate provocation (arousing the "heat of passion") or diminished capacity. — Also termed *intentional manslaughter*; *first-degree manslaughter*; *manslaughter in the first degree*; *unintentional murder*. [Cases: Homicide ↷658.]

manstealing. See *KIDNAPPING*.

mansuetae naturae (man-swee-tee nā-tyoor-ee), *adj.* [Latin "of a tamable nature"] *Civil law.* (Of animals) tame or tamable. [Cases: Animals ↷1.5.]

mansuetae naturae (man-swee-tee nā-tyoor-ee), *n.* *Civil law.* Tame, domesticated animals. See *domestic animal* under *ANIMAL*. [Cases: Animals ↷1.5.]

mansuetus (man-swee-təs), *adj.* [Latin] *Roman law.* Tame; tamed.

mansus. See *MANSE*.

manticulate (man-tik-yə-layt), *vb.* To pick pockets. — **manticulation**, *n.*

mantle child. See *CHILD*.

mantrap. See *TRAP*.

manual, *adj.* Used or performed by hand <manual labor>.

manual delivery. Delivery of personal property by actual and corporeal change in possession.

Manual for Courts-Martial. A manual that implements the Uniform Code of Military Justice. • It was adopted in 1969 by presidential executive order. [Cases: Military Justice ↷507.]

manual gift. See *GIFT*.

manu aliena (man-yoo ay-lee-ee-nə or al-ee-). [Latin] *Scots law.* By the hand of another. • The phrase was contained in a notary's docket and was attached to the end of an instrument of seisin, as a means for the notary to indicate that the instrument was written by another person. See *DOCKET* (5).

manualis obedientia (man-yoo-ay-lis ə-bee-dee-en-shee-ə). [Latin "obedience by (taking or kissing) hand"] Sworn obedience upon an oath.

manual labor. Work performed chiefly through muscular exertion, with or without tools or machinery.

Manual of Classification. *Patents.* The U.S. Patent and Trademark Office's official looseleaf publication describing the patent classification system and giving brief explanations of each class and subclass within the system.

Manual of Patent Examining Procedure. The book of substantive law (judicial and administrative-law precedents) and procedural rules for patent examiners at the U.S. Patent and Trademark Office. • The MPEP is the primary resource that patent examiners use to process patent applications. — Abbr. MPEP. [Cases: United States ↷97.]

Manual of the Judge Advocate General. The Secretary of the Navy's directive on military justice, with minor variations between rules applicable to the Navy and those applicable to the Marine Corps. — Also termed *JAG Manual*. [Cases: Military Justice ↷510.]

manual-rating insurance. See *INSURANCE*.

manu brevi (man-yoo bree-vi). See *BREVI MANU*.

manu captio (man-yə-kap-shee-oh), *n.* [Law Latin] *Hist.* 1. Surety; security; bail. 2. A writ allowing a person to be admitted to bail, when the person had been arrested for a felony but could not be admitted to bail by the sheriff. See *MAINPRISE*.

manu captio (man-yoo-kap-shən), *n.* *Hist.* 1. *MAINPRISE*. 2. A writ ordering someone to produce an alleged felon in court.

manucaptor. See *MAINPERNOR* (2).

manufacture, *n.* (16c) *Patents.* A thing that is made or built by a human being (or by a machine), as distinguished from something that is a product of nature; esp. any material form produced by a machine from an unshaped composition of matter. • Manufactures are one of the statutory categories of inventions that can be patented. Examples of manufactures are chairs and tires. 35 USCA § 101. — Also termed *article of manufacture*. Cf. *MACHINE*; *PROCESS* (3). [Cases: Patents ↷13.]

"A manufacture must have a definable structure that is claimed as its patentable characteristic. Manufactures are, after all, a category of product patents, and therefore must be 'things,' as opposed to ways or means. In summary, a patentable manufacture is any *human-made structure* that has inventive characteristics." Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 30 (2d ed. 1990).

manufactured diversity. See *DIVERSITY OF CITIZENSHIP*.

manufactured home. See *HOME*.

manufacturer. (17c) A person or entity engaged in producing or assembling new products. • A federal law has broadened the definition to include those who act for (or are controlled by) any such person or entity in

the distribution of new products, as well as those who import new products for resale. 42 USCA § 4902(6).

manufacturer's liability. See PRODUCTS LIABILITY.

manufacturer's lien. See LIEN.

manufacturing clause. *Hist.* 1. A component of the Copyright Act of 1976 prohibiting imports of more than 2,000 copies of a nondramatic English-language literary work by an American author, unless the material was manufactured in Canada or the U.S. • The manufacturing clause expired in 1986. 2. A component of the Copyright Act of 1909 limiting copyright protection for English-language books and periodicals to those printed in the U.S.

manufacturing cost. See COST (1).

manufacturing defect. See DEFECT.

manu forti (man-yoo for-ti). [Latin] With strong hand. • This term was used in old writs of trespass to allege forcible entry, as in *manu forti et cum multitudine gentium* ("with strong hand and multitude of people").

manu longa (man-yoo long-gə). See LONGA MANU.

manu militari (man-yoo mil-ə-tair-i). [Latin] *Hist.* By military force.

manumission (man-yə-mish-ən), *n.* [Latin *manumissio* "I send out of hand"] (15c) *Roman law.* The granting of freedom to a slave. • In the Republic and early Empire, there were three usual methods, all of which made the freed slave a citizen. These were (1) *manumission vindicta* (by the rod), a fictitious lawsuit in which a liberator touched the slave with a wand or rod in the presence of the praetor and alleged that he was free; (2) *manumission censu*, by which the slave's name was enrolled in the census as a citizen; and (3) *manumission testamento*, by will. Under Justinian, a grant of freedom in any form (except in fraud of creditors) made the slave free and a citizen. — Also termed *manumissio*. [Cases: Slaves ⇨ 22.]

"Manumission is a kind of new birth. The master (patronus) therefore stands to his freedman in a relation analogous to the relation between father and son. The patron, as such, is entitled, as against his libertus, to a father's rights of succession and guardianship. He has the right of moderate chastisement (levis coercitio). He has the same claim to be treated with respect as he has against his son. He can claim to be supported by the libertus, if he falls into poverty. He is, lastly, entitled to certain services on the part of the freedman, which he can, if necessary, enforce by action, provided only the freedman had promised them after his manumission and in a manner not derogatory to his liberty." Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 170 (James Crawford Ledlie trans., 3d ed. 1907).

manumission censu. The freeing of a slave by having the censor enter the slave's name on the census roll, the slave professing to be a freeman in the presence of the master. • Once the censor entered the slave's name on the census roll, the slave became a freeman and a citizen — by a simple stroke of the pen. — Also termed *manumissio censu*.

manumission sacrorum causa. The freeing of a slave by the master's solemnly declaring that the slave was to be free while holding a limb of the slave and promising to pay a sum of money if the freedman later departs from the *sacra* (family rites). • The master then turned around and released the slave, who became free but was bound to perform the family rites. — Also termed *manumissio sacrorum causa*.

manumission testamento. The freeing of a slave by will in either of two ways: (1) the master's granting the slave freedom outright in the will, or (2) the master's imposing on an heir the obligation of freeing the slave, in which case the slave became the freedman of the heir. — Also termed *manumissio testamento*.

manumission vindicta. The ceremonial freeing of a slave whereby a third party, in the presence of the praetor, placed a rod (*vindicta*) on the slave while claiming that the slave was a freedman, whereupon the master admitted the slave's freedom and the praetor then declared the slave to be free. • This ceremony was actually a fictitious action at law. — Also termed *manumissio vindicta*.

manumit (man-yə-mit), *vb.* To free (a slave). — **manumitter**, *n.*

manung (man-əng). *Hist.* An official's jurisdictional district. — Also spelled *monung*.

manuopus (man-yoo-oh-pəs). See MAINOUR.

manupes (man-yə-pee-z), *n.* [Law Latin] *Hist.* A full 12-inch foot as a legal measure.

manupretium (man-yoo-pree-shee-əm), *n.* [Latin] *Roman law.* Wages for performed labor or services.

manu propria (man-yoo proh-ree-ə). [Latin] *Hist.* By one's own hand.

manurable (mə-n[ɪ]oor-ə-bəl), *adj.* [Law French fr. Old French *main* "hand"] *Hist.* (Of a thing) capable of being held in hand; capable of being touched.

manure (mə-nyoor), *vb.* [Law French fr. Old French *main* "hand"] *Hist.* To use (something) manually; to perform manual labor on (something).

manus (may-nəs), *n.* [Latin "hand"] 1. *Roman law.* The power exercised by the head of a family over all its members and slaves; esp. a husband's power over his wife; marital subordination, which accompanied most marriages in early Rome. 2. *Hist.* A compurgator, or the oath taken. • This usage of *manus* may stem from the affiant's placing a hand on the Bible while taking the oath. See COMPURGATOR.

manuscript. (16c) An unpublished writing; an author's typescript or written work product that is proposed for publication.

manuscript policy. See INSURANCE POLICY.

manus mortua (may-nəs mor-choo-ə). [Latin "dead hand"] See MORTMAIN.

manutenentia (man-yə-tə-nen-shee-ə), *n.* [Law Latin] *Hist.* The old writ of maintenance. See MAINTENANCE.

manworth. *Hist.* The value of a person's life.

Mapp hearing. (1971) *Criminal procedure.* A hearing held to determine whether evidence implicating the accused was obtained as the result of an illegal search and seizure, and should therefore be suppressed. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684 (1961). [Cases: Criminal Law ⇨ 394.6.]

maquiladora (mah-kee-lə-dohr-ə), *n.* [fr. Spanish *maquilar* "gristmill"] (1976) A Mexican corporation, esp. one that holds a permit to operate under a special customs regime that temporarily allows the corporation to import duty-free into Mexico various raw materials, equipment, machinery, replacement parts, and other items needed for the assembly or manufacture of finished goods for export. — Often shortened to *maquila*.

mara (mair-ə), *n.* [Law Latin] *Hist.* A lake; a pool; a body of water that cannot be drained.

MARAD. *abbr.* MARITIME ADMINISTRATION.

maraud (mə-rawd), *vb.* (18c) To rove about to pillage or plunder; to loot. — **marauder**, *n.*

marcatus (mahr-kay-təs), *n.* [Law Latin] *Hist.* The yearly rent of a tract of land.

march. *Hist.* A boundary between countries or territories, esp. the border between England and Wales or between England and Scotland.

Marchers. *Hist.* Lords who lived on the borders of Scotland and Wales, and operated, with the permission of the English sovereigns, under their own private laws.

- The laws were eventually abolished by the statute 27 Hen. 8, ch. 26. — Also termed *Lords Marchers*.

"Thus the Lords Marchers were practically independent potentates of a kind very unusual in England. From this two consequences flowed. In the first place there grew up in their jurisdictions a mixture of Welsh custom and English law known as the custom of the Marches. In the second place, although they held of the king, their allegiance sat so lightly upon them that it was necessary to declare in 1354 that 'all the Lords of the Marches of Wales shall be perpetually attending and annexed to the crown of England, and not to the principality of Wales, in whose hands so ever the same principality be.'" 1 William Holdsworth, *A History of English Law* 121 (7th ed. 1956).

marchet (mahr-chet), *Hist.* A fee paid by a feudal tenant to the lord so that the tenant's daughter could marry someone outside the lord's jurisdiction or so that the lord would waive the *droit du seigneur*. — Also termed *marcheta*; *marketum*; *merchet*; *mercheta*; *merchetum*; *maiden rent*. See DROIT DU SEIGNEUR.

"Any service which stamps the tenant as an unfree man, stamps his tenure as unfree, and in common opinion such services there are, notably the *merchetum*. Now among the thousands of entries in English documents relating to this payment, it would we believe be utterly impossible to find one which gave any sanction to the tales of a *ius primae noctis*. The context in which this duty is usually mentioned explains at least one of the reasons which underlie it. The tenant may not give his daughter (in some cases his son or daughter) in marriage — at least not outside the manor . . . No doubt a subjection to this restraint was regarded as very base, and sometimes it is described in vigorous words which express a free man's loathing

for servility: — 'he must buy, he must make ransom for, his flesh and blood.'" 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 372 (2d ed. 1898).

march-in rights. *Patents.* The government's right to step in and grant a new license or revoke an existing license if the owner of a federally funded invention (or the owner's licensee) has not adequately developed or applied the invention within a reasonable time. 35 USCA § 203. [Cases: Patents ⇨ 221.]

marchioness (mahr-shə-nis or mahr-shə-nes), *n.* [fr. Law Latin *marchionissa*, the feminine counterpart to *marchio* "marquess"] A female dignity, equivalent to a marquis, conferred by creation or by marriage with a marquis. See MARQUIS.

Marcus model. *Labor law.* A method for determining whether a union member's state-law claim against the employer is preempted by federal law, by focusing on whether the state-law claim can be maintained independently of an interpretation of the collective-bargaining agreement. • In *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877 (1988), the Supreme Court held that a union member's state-law retaliatory-discharge claim was not preempted by the Labor-Management Relations Act because the claim could be resolved without interpreting the collective-bargaining agreement. There are at least two models for applying the *Lingle* test: the White model, which focuses on whether the claim is negotiable or nonnegotiable (that is, whether state law allows the claim to be waived by a private contract), and the Marcus model, which focuses on the independence of the claim in relation to the collective-bargaining agreement. Under the Marcus model, if the claim can be maintained separately from an interpretation of the collective-bargaining agreement, it is not preempted regardless of whether the claim is generally waivable in contract. The Marcus model is named for the author of the law-review note in which it was proposed. Stephanie R. Marcus, Note, *The Need for a New Approach to Federal Preemption of Union Members' State Law Claims*, 99 Yale L.J. 209 (1989). See LINGLE TEST. Cf. WHITE MODEL.

mare (mair-ee or mahr-ee), *n.* *Hist.* [Latin] The sea. See SEA.

mare clausum (mair-ee or mahr-ee klaw-zəm), [Latin "closed sea"] A sea or other body of navigable water that is under the jurisdiction of a particular nation and is closed to other nations.

mare liberum (mair-ee or mahr-ee lib-ər-əm or ɪ-bər-əm), [Latin "free sea"] 1. A sea or other body of navigable water that is open to all nations. 2. FREEDOM OF THE SEAS.

marescallus (mar-ə-skal-əs), *n.* [Law Latin] 1. A marshal; a high royal officer. — Also termed *mareschal*. 2. A master of the stables. 3. A military officer, similar to a constable, who acted as quartermaster. 4. An officer of the Court of Exchequer. 5. A state officer. 6. An officer of a manor.

marettum (mə-ret-əm), *n.* [fr. Latin *mare* "the sea" + *tegere* "to cover"] *Hist.* Marshy ground flooded by the sea.

margin, *n.* (14c) 1. A boundary or edge. 2. A measure or degree of difference. 3. PROFIT MARGIN. 4. The difference between a loan's face value and the market value of the collateral that secures the loan. 5. Cash or collateral required to be paid to a securities broker by an investor to protect the broker against losses from securities bought on credit. [Cases: Securities Regulation ⇨45.10, 45.11.] 6. The amount of an investor's equity in securities bought on credit through the broker. — **margin**, *vb.* — **marginal**, **margined**, *adj.*

good-faith margin. The amount of margin that a creditor exercising good judgment would customarily require for a specified security position. • This amount is established without regard to the customer's other assets or securities positions held with respect to unrelated transactions.

marginable security. See SECURITY.

margin account. See ACCOUNT.

marginal cost. See COST (1).

marginal note. A brief notation, in the nature of a sub-heading, placed in the margin of a printed statute to give a brief indication of the matters dealt with in the section or subsection beside which it appears. • For ease of reference, marginal notes are usu. in distinctive print. Many jurisdictions hold that notes of this kind cannot be used as the basis for an argument about the interpretation of a statute. — Also termed *sidenote*. [Cases: Statutes ⇨211.]

marginal release. See RELEASE (2).

marginal revenue. See REVENUE.

marginal tax rate. See TAX RATE.

margin call. See CALL (2).

margin deficiency. *Securities.* The extent to which the amount of the required margin exceeds the equity in a margin account. [Cases: Securities Regulation ⇨45.11.]

margined security. See SECURITY.

margin list. A Federal Reserve Board list limiting the loan value of a particular bank's stock to a certain percentage (e.g., 50%) of its market value. • When a bank is not on the list, no limit is placed on the loan value of stock used as collateral.

margin requirement. *Securities.* The percentage of the purchase price that a buyer must deposit with a broker to buy a security on margin. • This percentage of the purchase price is set and adjusted by the Federal Reserve Board. [Cases: Securities Regulation ⇨45.11.]

"Margin requirements are the statutory and administrative restrictions placed upon the percentage of the value of securities that may be borrowed for the purpose of the purchase of such securities, the term 'margin' referring to the percentage of the value that must be paid in cash by the purchaser. Such requirements have been implemented for the purposes of preventing the excessive use of credit for the purchase or carrying of securities, and of reducing the

aggregate amount of the national credit resources, which are directed by speculation into the stock market, and of achieving a more balanced use of such resources." 69 Am. Jur. 2d *Securities Regulation — Federal* § 481 (1993).

initial margin requirement. The minimum percentage of the purchase price that a buyer must deposit with a broker. • The Federal Reserve Board establishes minimum margin requirements to prevent excessive speculation and price volatility. [Cases: Securities Regulation ⇨45.11.]

maintenance margin requirement. The minimum equity that a buyer must keep in a margin account, expressed as a percentage of the account value. [Cases: Securities Regulation ⇨45.11.]

margin stock. See *marginable security* under SECURITY.

margin transaction. A securities or commodities transaction made through a broker on a margin account. — Also termed *buying on margin*. See MARGIN (5). [Cases: Securities Regulation ⇨45.11.]

mariage de convenance. See *marriage of convenience* under MARRIAGE (1).

marinarius (mar-ə-nair-ee-əs), *n.* [Law Latin] *Hist.* A seaman; a mariner. • *Marinarius capitaneus* (kap-ə-tay-nee-əs) was the admiral or warden of the ports.

marine, *adj.* (15c) 1. Of or relating to the sea <marine life>. 2. Of or relating to sea navigation or commerce <marine insurance> <marine interest>.

marine belt. See *territorial waters* under WATER.

marine carrier. See CARRIER.

marine contract. See *maritime contract* under CONTRACT.

Marine Court in the City of New York. The New York City court, originally created to resolve seamen's disputes, that was the predecessor of the City Court of New York.

marine insurance. See INSURANCE.

marine interest. See MARITIME INTEREST.

marine league. See LEAGUE.

marine loan. See *maritime loan* under LOAN.

marine peril. See PERIL OF THE SEA.

marine protest. A writing attested by a justice of the peace, a notary public, or a consul, made or verified by the master of a vessel, stating that the vessel has suffered a severe voyage and that the master has engaged in neither misconduct nor negligence. See PROTEST.

mariner. (14c) A person employed on a vessel in sea navigation; SEAMAN. [Cases: Seamen ⇨2.]

marine-rescue doctrine. The rule that when a person on a ship goes overboard, the ship must use all reasonable means to retrieve the person from the water if the person can be seen, and, if the person cannot be seen, must search for the person as long as it is reasonably possible that the person is still alive. [Cases: Seamen ⇨29(1).]

marine risk. See PERIL OF THE SEA.

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

marine rule. The doctrine that if the cost of restoring damaged property would exceed one-half the value of the property before the damage, then the property is deemed to be totally destroyed. • The marine rule developed in the context of applying marine insurance to damaged ships, but it has also been applied to other property, including buildings.

mariner's hypothec. See HYPOTHEC.

marine service. See MARITIME SERVICE.

marriage (ma-ri-tij), n. See DOWRY.

maritagium (mar-ə-tay-jee-əm), n. [Law Latin] *Hist.* 1. A lord's right to arrange a marriage for his infant ward; specif., the power of a feudal lord to give his infant ward or a vassal's heiress, minor heir, or widow in marriage, or to extract a fine from a vassal upon the vassal's marriage. 2. *Hist.* The income derived from fines paid by vassals for the lord's permission to marry. 3. DOWER. 4. A marriage gift; DOWRY. See DOS. — Also termed (in sense 4) *maritage*.

"[W]hile to the common lawyer *dos* meant dower, in other systems it meant dowry: a gift to the wife, or to husband and wife, by the bride's parents or other relatives. In England this was called the 'marriage-gift' or *maritagium*. Marriage-gifts were commonly made either to establish a cadet branch of a family or to assist a daughter who was not an heiress to make a good match." J.H. Baker, *An Introduction to English Legal History* 310 (3d ed. 1990).

maritagium habere (mar-ə-tay-jee-əm hə-beer-ee). [Law Latin] To have the right of arranging a woman's marriage. • This was a privilege granted by the Crown to favored subjects. See MARITAGIUM.

marital, adj. (17c) Of or relating to the marriage relationship <marital property>. [Cases: Divorce ↷248; Husband and Wife ↷1-354.]

marital agreement. (1866) An agreement between spouses or two people engaged to be married concerning the division and ownership of marital property during marriage or upon dissolution by death or divorce; esp. a premarital contract or separation agreement primarily concerned with dividing marital property in the event of divorce. — Also termed *marriage settlement*; *property settlement*. See PRENUPTIAL AGREEMENT; POSTNUPTIAL AGREEMENT. [Cases: Husband and Wife ↷1.]

marital-communications privilege. See *marital privilege* (1) under PRIVILEGE (3).

marital deduction. See DEDUCTION.

marital-deduction trust. See TRUST.

marital dissolution. See DIVORCE.

marital domicile. See *matrimonial domicile* under DOMICILE.

marital estate. See *marital property* under PROPERTY.

marital home. See FAMILY HOME.

marital immunity. See *husband-wife immunity* under IMMUNITY (2).

marital life-estate trust. See *bypass trust* under TRUST.

marital misconduct. Any of the various statutory grounds for a fault divorce, such as adultery or cruelty. See *fault divorce* under DIVORCE. [Cases: Divorce ↷12-38, 252.2.]

marital portion. 1. *Civil law.* The portion of a deceased spouse's estate to which the surviving spouse is entitled. 2. *Louisiana law.* The portion of a deceased spouse's estate to which the surviving spouse is entitled if the spouse died "rich in comparison with the surviving spouse." La. Civ. Code art. 2432. [Cases: Descent and Distribution ↷52(1).]

marital-privacy doctrine. A principle that limits governmental intrusion into private family matters, such as those involving sexual relations between married persons. • The marital-privacy doctrine was first recognized in *Griswold v. Connecticut*, 381 U.S. 479, 85 S.Ct. 1678 (1965). The doctrine formerly deterred state intervention into incidents involving domestic violence. Today, with the trend toward individual privacy rights, the doctrine does not discourage governmental protection from domestic violence. — Also termed *doctrine of marital privacy*. [Cases: Constitutional Law ↷1247.]

marital privilege. See PRIVILEGE (3).

marital property. See PROPERTY.

marital rape. See RAPE.

marital residence. See FAMILY HOME.

marital rights. (18c) Rights and incidents (such as property or cohabitation rights) arising from the marriage contract. [Cases: Husband and Wife ↷1-25(6).]

marital settlement agreement. See DIVORCE AGREEMENT.

marital status. The condition of being single, married, legally separated, divorced, or widowed.

marital tort. See TORT.

maritare (mar-ə-tair-ee), vb. *Hist.* To marry.

mariticide. (1992) 1. The murder of one's husband. 2. A woman who murders her husband. Cf. UXORICIDE. — **mariticial, adj.**

maritima Angliae (mə-rit-ə-mə ang-gee-ee). [Law Latin] *Hist.* 1. The seacoast. 2. The Crown's sea revenue, as from wreckage and from whales or sturgeons cast ashore. • The revenue was formerly collected by sheriffs and later by the Lord High Admiral.

maritima incrementa (mə-rit-ə-mə in-krə-men-tə). [Latin "marine increases"] *Hist.* Alluvion caused by the sea; land gained from the sea.

maritime (mar-i-tim), adj. (16c) 1. Connected with or situated near the sea. 2. Of or relating to sea navigation or commerce.

"The word 'maritime' has in the Constitution its appropriate meaning, *i.e.*, relating to the sea, and 'sea' is a word of wide extension and application . . . Its classical and scriptural equivalents are applied to all sorts of navigable waters. It is not restricted, even in common speech, to waters where the tide ebbs and flows, for the Baltic Sea, the Black Sea,

the Sea of Azof, the Sea of Marmora, the Mediterranean Sea, the great scenes of early maritime enterprise, have no visible tide." 1 Steven F. Friedell, *Benedict on Admiralty* § 103, at 7-5 (7th ed. 1996).

Maritime Administration. A unit in the U.S. Department of Transportation responsible for subsidizing certain costs of operating ships under the U.S. flag; constructing or supervising the construction of merchant-type ships for the U.S. government; administering the War Risk Insurance Program; and operating the Merchant Marine Academy, which trains merchant-marine officers. — Abbr. MARAD. [Cases: Shipping ↻ 3, 14.]

maritime belt. See *territorial waters* under WATER.

Maritime Commission. See FEDERAL MARITIME COMMISSION.

maritime-connection doctrine. See LOCALITY-PLUS TEST.

maritime contract. See CONTRACT.

maritime court. See ADMIRALTY (1).

maritime employment. Under the Longshoremen's and Harbor Workers' Compensation Act, a job that is related to the loading, unloading, construction, or repair of a vessel. 33 USCA § 902(3). [Cases: Workers' Compensation ↻ 260, 262.]

maritime flavor. The relation of a given case to shipping concerns. • This is a factor used in determining federal admiralty jurisdiction over a particular matter by analyzing whether the matter sufficiently relates to marine and shipping concerns and whether there is need for a federal response. [Cases: Admiralty ↻ 10(2), 18.]

"There is perhaps no more elusive concept in the law of admiralty than 'maritime flavor.' . . . While 'maritime flavor' is incapable of precise definition, certain observations may be helpful. Generally, courts find 'maritime flavor' in those events and transactions which are major concerns of the shipping industry. This is tempered by the realization that exercise of federal control will not necessarily promote maritime shipping with the same vigor as control by a coastal or predominantly maritime state. Since federal law will not necessarily be more favorable, courts may find 'maritime flavor' only when there is a perceived need for a uniform national rule, which can only be provided by the federal sovereign." Frank L. Maraist, *Admiralty in a Nutshell* 23 (2d ed. 1988).

maritime interest. Interest charged on a loan secured by a sea vessel or its cargo, or both. • Because of the lender's considerable risk, the interest rate may be extraordinarily high. — Also termed *marine interest*.

maritime jurisdiction. See ADMIRALTY AND MARITIME JURISDICTION.

maritime law. The body of law governing marine commerce and navigation, the carriage at sea of persons and property, and marine affairs in general; the rules governing contract, tort, and workers'-compensation claims or relating to commerce on or over water. — Also termed *admiralty*; *admiralty law*; *sea law*. Cf. GENERAL MARITIME LAW; LAW OF THE SEA. [Cases: Admiralty ↻ 1.5.]

maritime lien. See LIEN.

maritime loan. See LOAN.

maritime peril. A danger or risk arising from navigating or being at sea. [Cases: Salvage ↻ 5.]

maritime service. *Maritime law.* Work performed in connection with a ship or commerce on navigable waters, such as service to preserve a ship's crew, cargo, or equipment. — Also termed *marine service*. [Cases: Admiralty ↻ 13.]

maritime state. *Hist.* The collective officers and mariners of the British navy.

maritime tort. See TORT.

maritus (mə-ri-təs), *n.* [Latin] A husband; a married man.

mark, n. (bef. 12c) **1.** A symbol, impression, or feature on something, usu. to identify it or distinguish it from something else. **2.** TRADEMARK (1). **3.** SERVICEMARK.

benchmark. See BENCHMARK.

certification mark. See *certification trademark* under TRADEMARK.

collective mark. See *collective trademark* under TRADEMARK.

markdown. A reduction in a selling price.

marked money. (1883) Money that bears a telltale mark so that the money can be traced, usu. to a perpetrator of a crime, as when marked money is given to a kidnapper as ransom.

market, n. (bef. 12c) **1.** A place of commercial activity in which goods or services are bought and sold <the farmers' market>. — Also termed *mart*. **2.** A geographic area or demographic segment considered as a place of demand for particular goods or services; esp. prospective purchasers of goods, wherever they are <the foreign market for microchips>. **3. Hist.** The privilege of having a public market. **4.** The opportunity for buying and selling goods or services; the extent of economic demand <a strong job market for accountants>. **5.** A securities or commodities exchange <the stock market closed early because of the blizzard>. [Cases: Exchanges ↻ 1-10.10.] **6.** The business of such an exchange; the enterprise of buying and selling securities or commodities <the stock market is approaching an all-time high>. [Cases: Exchanges ↻ 1-13.10.] **7.** The price at which the buyer and seller of a security or commodity agree <the market for wheat is \$8 per bushel>. [Cases: Exchanges ↻ 13.]

advancing market. See *bull market*.

aftermarket. See *secondary market*.

auction market. A market (such as the New York Stock Exchange) in which securities are bought and sold by competitive bidding through brokers. Cf. *negotiated market*.

bear market. A securities market characterized by falling prices over a prolonged period. — Also termed *down market*; *receding market*.

black market. An illegal market for goods that are controlled or prohibited by the government, such as the underground market for prescription drugs.

bull market. A securities market characterized by rising prices over a prolonged period. — Also termed *advancing market*; *strong market*.

buyer's market. A market in which supply significantly exceeds demand, resulting in lower prices.

capital market. A securities market in which stocks and bonds with long-term maturities are traded. See *financial market*.

common market. An economic association formed by several nations to reduce or eliminate trade barriers among them, and to establish uniform trade barriers against nonmembers; esp. (*usu. cap.*), EUROPEAN UNION.

currency market. See *foreign-exchange market*.

derivative market. A market for the exchange of derivative instruments. — Also termed *paper market*. See DERIVATIVE.

discount market. The portion of the money market in which banks and other financial institutions trade commercial paper.

down market. See *bear market*.

financial market. A market for the exchange of capital and debt instruments. See *capital market*; *money market*.

foreign-exchange market. A market where various currencies are traded internationally. • Foreign-exchange markets take the form of spot, futures, and options markets. — Also termed *currency market*. See *futures market*; *spot market*.

forward market. See *futures market*.

free market. See *open market*.

Friday market. The normal tendency for stock prices to decline on Fridays. • The tendency occurs because many investors balance their accounts before the weekend to avoid any adverse changes in market prices over the weekend.

futures market. A commodity exchange in which futures contracts are traded; a market for a trade (e.g., commodities futures contracts and stock options) that is negotiated at the current price but calls for delivery at a future time. — Also termed *forward market*. See FUTURES CONTRACT. [Cases: Commodity Futures Trading Regulation ⇨6.]

geographic market. *Antitrust.* The part of a relevant market that identifies the regions in which a firm might compete. • If a firm can raise prices or cut production without causing a quick influx of supply to the area from outside sources, that firm is operating in a distinct geographic market. [Cases: Antitrust and Trade Regulation ⇨558.]

"For purposes of [the Sherman Act], the relevant geographic market comprises the area in which the defendant effectively competes with other individuals or businesses

for distribution of the relevant product. Stated differently, the relevant geographic market consists of the area from which the sellers of a particular product derive their customers, and the area within which the purchasers of the product can practically seek the product." 54 Am. Jur. 2d *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 57, at 119-20 (1996).

gray market. A market in which the seller uses legal but sometimes unethical methods to avoid a manufacturer's distribution chain and thereby sell goods (esp. imported goods) at prices lower than those envisioned by the manufacturer. See PARALLEL IMPORTS.

"One of the most controversial areas of customs law concerns 'gray market goods,' goods produced abroad with authorization and payment but which are imported into unauthorized markets. Trade in gray market goods has increased dramatically in recent years, in part because fluctuating currency exchange rates create opportunities to import and sell such goods at a discount rate from local price levels." Ralph H. Folsom & Michael W. Gordon, *International Business Transactions* § 20.8 (1995).

institutional market. The demand among large investors and corporations for short-term funds and commercial paper.

market overt. An open, legally regulated public market where buyers, with some exceptions, acquire good title to products regardless of any defects in the seller's title. Cf. FAIR. [Cases: Sales ⇨234(2).]

money market. The financial market for dealing in short-term negotiable instruments such as commercial paper, certificates of deposit, banker's acceptances, and U.S. Treasury securities. See *financial market*.

negotiated market. A market (such as an over-the-counter securities market) in which buyers and sellers seek each other out and negotiate prices. Cf. *auction market*.

open market. A market in which any buyer or seller may trade and in which prices and product availability are determined by free competition. — Also termed *free market*.

original market. See *primary market*.

over-the-counter market. See OVER-THE-COUNTER MARKET.

paper market. See *derivative market*.

primary market. The market for goods or services that are newly available for buying and selling; esp. the securities market in which new securities are issued by corporations to raise capital. — Also termed *original market*.

product market. *Antitrust.* The part of a relevant market that applies to a firm's particular product by identifying all reasonable substitutes for the product and by determining whether these substitutes limit the firm's ability to affect prices. [Cases: Antitrust and Trade Regulation ⇨557.]

"For purposes of an antitrust claim under . . . the Sherman Act, the relevant product market includes those services or commodities which are reasonably interchangeable by consumers for the same purposes. In order to establish

the relevant product market, therefore, a plaintiff must sufficiently identify what types of products are reasonably interchangeable substitutes for the defendant's product within the appropriate area of competition." 54 Am. Jur. 2d *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 58, at 121 (1996).

public market. A market open to both buyers and sellers.

receding market. See *bear market*.

recognized market. A market where the items bought and sold are numerous and similar, where competitive bidding and bartering are not prevalent, and where prices paid in sales of comparable items are publicly quoted. • Examples of recognized markets include stock and commodities exchanges. Under the UCC, a secured creditor may, upon the debtor's default, sell the collateral in a recognized market without notifying the debtor. Such a sale is presumed to be commercially reasonable.

relevant market. *Antitrust.* A market that is capable of being monopolized — that is, a market in which a firm can raise prices above the competitive level without losing so many sales that the price increase would be unprofitable. • The relevant market includes both the *product market* and the *geographic market*. [Cases: Antitrust and Trade Regulation ⇨ 556.]

secondary market. The market for goods or services that have previously been available for buying and selling; esp. the securities market in which previously issued securities are traded among investors. — Also termed *aftermarket*.

seller's market. A market in which demand exceeds (or approaches) supply, resulting in raised prices.

soft market. A market (esp. a stock market) characterized by falling or drifting prices and low volume.

spot market. A market (esp. in commodities) in which payment or delivery is immediate <the spot market in oil>.

strong market. See *bull market*.

thin market. A market in which the number of bids or offerings is relatively low.

marketability. (1877) Salability; the probability of selling property, goods, securities, or services at specified times, prices, and terms. [Cases: Sales ⇨ 272; Vendor and Purchaser ⇨ 130(5).]

marketability test. *Mining law.* The principle that, for someone to obtain a patent on a mining claim on federal land, there must be a showing that a reasonably prudent person could extract and market the claimed mineral at a profit, and that at the time of discovery, a large enough market for the mineral existed to attract the efforts of a reasonably prudent person. [Cases: Mines and Minerals ⇨ 39.]

marketable, adj. (16c) Of commercially acceptable quality; fit for sale and in demand by buyers. — Also termed *merchantable*. [Cases: Sales ⇨ 272.]

marketable-product rule. *Oil & gas.* For royalty-calculation purposes, the doctrine that "production" occurs when oil or gas is pumped up, stored, and made marketable through processing. • Until producing a marketable product, the lessee bears all costs of capturing and handling oil and gas. Cf. CAPTURE-AND-HOLD RULE.

marketable security. See SECURITY.

marketable title. See TITLE (2).

marketable-title act. (1957) A state statute providing that a person can establish good title to land by searching the public records only back to a specified time (such as 40 years). See *marketable title* under TITLE (2). [Cases: Limitation of Actions ⇨ 19(1); Vendor and Purchaser ⇨ 231(1).]

market activity. See MARKET VOLUME.

market approach. (1958) A method of appraising real property, by surveying the market and comparing the property to similar pieces of property that have been recently sold, and making appropriate adjustments for differences between the properties, including location, size of the property, and the dates of sale. — Also termed *comparative-sales approach*; *market-comparison approach*; *market-data approach*; *market-comparables analysis*; *comparable-sales approach*; *comparables analysis*. Cf. COST APPROACH; INCOME APPROACH.

market average. A price level for a specific group of stocks.

market-comparables analysis. See MARKET APPROACH.

market-comparison approach. See MARKET APPROACH.

market correction. See DOWN REVERSAL.

market-data approach. See MARKET APPROACH.

market equity. The percentage of the total market value that a particular company's securities account for, represented by each class of security. Cf. BOOK EQUITY.

marketing, n. (16c) **1.** The act or process of promoting and selling, leasing, or licensing products or services.

2. The part of a business concerned with meeting customers' needs. **3.** The area of study concerned with the promotion and selling of products or services.

marketing contract. See CONTRACT.

marketing covenant. *Oil & gas.* In a mineral lease, the implied promise that the lessee will market the production from the lease within a reasonable time and at a reasonable price. See REASONABLY-PRUDENT-OPERATOR STANDARD. [Cases: Mines and Minerals ⇨ 78.1(8).]

marketing defect. See DEFECT.

market intermediary. *Securities.* A person whose business is to enter into transactions on both sides of the market. Investment Company Act, 15 USCA § 80a-3(c)(2)(B)(i).

market-maker. *Securities.* One who helps establish a market for securities by reporting bid-and-asked quotations. • A market-maker is typically a specialist permitted to act as a dealer, a dealer acting in the capacity of block positioner, or a dealer who, with respect to a

security, routinely enters quotations in an interdealer communication system or otherwise and is willing to buy and sell securities for the dealer's own account. [Cases: Securities Regulation ⇨ 53.17(3).]

market-making, n. The practice of establishing prices for over-the-counter securities by reporting bid-and-asked quotations. • A broker-dealer engaged in this practice, which is regulated by both the NASD and the SEC, buys and sells securities as a principal for its own account, and thus accepts two-way bids (both to buy and to sell). See BID AND ASKED. [Cases: Securities Regulation ⇨ 53.17(3).]

market manipulation. See MANIPULATION.

market order. See ORDER (8).

market-out clause. *Oil & gas.* A contract provision permitting a pipeline purchaser of natural gas to lower the purchase price if market conditions make it uneconomical to continue buying at the contract price, and permitting the well owner to respond by accepting the lower price or by rejecting it and canceling the contract. • Market-out clauses often refer to competing fuels such as fuel oil. — Also termed *economic-out clause*. [Cases: Gas ⇨ 13(1).]

market overt. See MARKET.

market-participant doctrine. (1983) The principle that, under the Commerce Clause, a state does not discriminate against interstate commerce by acting as a buyer or seller in the market, by operating a proprietary enterprise, or by subsidizing private business. • Under the Dormant Commerce Clause principle, the Commerce Clause — art. I, § 8, cl. 3 of the U.S. Constitution — disallows most state regulation of, or discrimination against, interstate commerce. But if the state is participating in the market instead of regulating it, the Dormant Commerce Clause analysis does not apply, and the state activity will generally stand. See *Dormant Commerce Clause* under COMMERCE CLAUSE. [Cases: Commerce ⇨ 56.]

marketplace of ideas. (1949) A forum in which expressions of opinion can freely compete for acceptance without governmental restraint. • Although Justice Oliver Wendell Holmes was the first jurist to discuss the concept as a metaphor for explaining freedom of speech, the phrase *marketplace of ideas* dates in American caselaw only from 1954.

market portfolio. See PORTFOLIO.

market power. (1915) The ability to reduce output and raise prices above the competitive level — specif., above marginal cost — for a sustained period, and to make a profit by doing so. • In antitrust law, a large amount of market power may constitute monopoly power. See MONOPOLIZATION. Cf. MARKET SHARE.

"In economic terms, market power is the ability to raise prices without a total loss of sales; without market power, consumers shop around to find a rival offering a better deal." 54 Am. Jur. 2d *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 49, at 110 n.87 (1996).

market price. See PRICE.

market quotation. See QUOTATION.

market-recovery program. See JOB-TARGETING PROGRAM.

market share. (1954) The percentage of the market for a product that a firm supplies, usu. calculated by dividing the firm's output by the total market output. • In antitrust law, market share is used to measure a firm's market power, and if the share is high enough — generally 70% or more — then the firm may be guilty of monopolization. See MONOPOLIZATION. Cf. MARKET POWER. [Cases: Antitrust and Trade Regulation ⇨ 553.]

market-share liability. See LIABILITY.

market-share theory. *Antitrust.* 1. A method of determining damages for lost profits by calculating the impact of the defendant's violation on the plaintiff's output or market share. Cf. BEFORE-AND-AFTER THEORY; YARDSTICK THEORY. [Cases: Antitrust and Trade Regulation ⇨ 553.] 2. *Patents.* A theory of lost-profits remedy offered when the patentee and the infringer share the market with a noninfringing competitor. • Using this method, the court assumes that the percentage of the market that the patentee holds is the same as the percentage of the infringer's market that the patentee would have captured but for the infringement.

market stand-off agreement. *Securities.* A provision in a stock-purchase contract in which the stockholder promises not to sell or otherwise transfer any securities during a specified period after the corporation makes a public stock offering. Cf. LOCKUP AGREEMENT.

market structure. The broad organizational characteristics of a particular market, including seller concentration, product differentiation, and barriers to entry.

market trend. See TREND.

market value. See *fair market value* under VALUE (2).

market value at the well. *Oil & gas.* The value of oil or gas at the place where it is sold, minus the reasonable cost of transporting it and processing it to make it marketable.

market volume. 1. The total number of shares traded on one day on a stock exchange. 2. The total number of shares of one stock traded on one day. — Also termed *market activity*.

Mark Hopkins doctrine. The principle that when an employee leaves a job because of a labor dispute, any later employment the employee has must be bona fide and intended as permanent for the employee to avoid a labor-dispute disqualification from unemployment benefits if the employee leaves the later job. *Mark Hopkins, Inc. v. Employment Comm'n*, 151 P.2d 229 (Cal. 1944). [Cases: Unemployment Compensation ⇨ 172.]

marking estoppel. See ESTOPPEL.

Markman hearing. (1996) *Patents.* A hearing at which the court receives evidence and argument concerning the construction to be given to terms in a patent

claim at issue. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 984–85 (Fed. Cir. 1995) (*en banc*), *aff'd*, 517 U.S. 370, 116 S.Ct.1384 (1996). • In the namesake decision, the Federal Circuit Court of Appeals held that the construction of patent claims — and therefore the scope of the patentee's rights — is a question of law. In a *Markman* hearing, the court interprets the claims before the question of infringement is submitted to the fact-finder. [Cases: Patents ↷314.]

markmoot (*mahrk*-moot), *n.* *Hist.* An early English or Scottish court that held hearings on a territorial border (i.e., a march or mark) between counties, hundreds, or countries. — Also spelled *markmote*.

markon. An amount (usu. expressed as a percentage) initially added to a product's cost to obtain the list price. • Further increases or decreases in price are called *markups* or *markdowns*, respectively.

marksman. 1. A person who signs documents with some kind of character or symbol instead of writing his or her name. [Cases: Signatures ↷5.] 2. A highly skilled shooter.

Marks rule. The doctrine that, when the U.S. Supreme Court issues a fractured, plurality opinion, the opinion of the justices concurring in the judgment on the narrowest grounds — that is, the legal standard with which a majority of the Court would agree — is considered the Court's holding. *Marks v. United States*, 430 U.S. 188, 97 S.Ct. 990 (1977). [Cases: Courts ↷90(2).]

mark-to-market accounting method. See *fair-value accounting method* under ACCOUNTING METHOD.

mark up, vb. (1868) 1. To increase (the price of goods, etc.) 2. To revise or amend (a legislative bill, a rule, etc.) 3. To place (a case) on the trial calendar.

markup, n. (1916) 1. An amount added to an item's cost to determine its selling price. See PROFIT MARGIN. 2. A session of a congressional committee during which a bill is revised and put into final form before it is reported to the appropriate house. [Cases: United States ↷23(3).]

Markush claim. See PATENT CLAIM.

Markush doctrine (*mahr*-kəsh). *Patents.* An exception to the policy against the use of alternative language in claims, by which in certain claims (esp. those involving chemical components) a claimant can use an alternative, subgeneric phrase when there is no applicable, commonly accepted generic expression. • Characterized by a phrase such as "selected from the group consisting of," the claim includes a group of substances any one of which could serve the same function in the process. The term *Markush* comes from Dr. Eugene A. Markush, who was granted a dye-preparation patent in 1923. *Ex parte Markush*, 1925 Dec. Comm'r Pat. 126. See MARKUSH GROUP. [Cases: Patents ↷101(7).]

"The Patent Office early adopted a policy against use of alternative language in claims. Thus, a claimant could not use the specific alternative phrase 'glass or plastic' but could use a generic phrase (such as 'impervious transparent material') that would cover effectively the desired alternatives. The *Markush* doctrine developed as

an exception . . . With chemical compounds there may be no suitable phrase to cover the alternatives. Under limited circumstances a claimant could use an artificial or coined subgeneric group in the form of 'material selected from the group consisting of X, Y, and Z.'" 2 Donald S. Chisum, *Patents* § 8.06[2], at 8-119 to 8-120 (1992).

Markush group. *Patents.* A limited form of generic claim that recites an element, states the element is a member of a group, and names the other group members, any of which could substitute for the first recited element. • All Markush group members must have at least one common property that is mainly responsible for their function in the claimed relationship. Although each material in the group is different, each must be able to serve the same function. See MARKUSH DOCTRINE. [Cases: Patents ↷101(7).]

marque (*mahrk*). *Archaic.* Reprisal. See LETTERS OF MARQUE.

marque, law of. *Archaic.* A reprisal entitling one who has been wronged and is unable to receive ordinary justice to take the goods of the wrongdoer (if they can be found within one's own precinct) in satisfaction for the wrong. See LETTERS OF MARQUE.

marquis (*mahr*-kwis or *mahr*-kee). (14c) An English nobleman below and next in order to a duke. — Also termed *marquess*.

marquisate (*mahr*-kwi-sit or -zit), *n.* [Law Latin] *Hist.* The seigniorship of a marquis.

marriage, n. (13c) 1. The legal union of a couple as spouses. • The essentials of a valid marriage are (1) parties legally capable of contracting to marry, (2) mutual consent or agreement, and (3) an actual contracting in the form prescribed by law. Marriage has important consequences in many areas of the law, such as torts, criminal law, evidence, debtor-creditor relations, property, and contracts. — Also termed *matrimony*; *conjugal union*. [Cases: Marriage ↷1.12.]

"It has frequently been said by courts, and even by Legislatures, that marriage is a 'civil contract.' But to conclude from these statements that marriage . . . has all, or even many, of the incidents of an ordinary private contract, would be a grave error. In fact, these statements to the effect that marriage is a 'civil contract' will be found, upon examination, to have been used only for the purpose of expressing the idea that marriage, in the American states, is a civil, and not a religious institution, or that . . . in some states mutual consent alone without formal celebration is sufficient to constitute a valid marriage known as a common law marriage, or that, as is true in all states, the mutual consent of the parties is essential, even in the case of a ceremonial marriage." Joseph W. Madden, *Handbook of the Law of Persons and Domestic Relations* § 1-3, at 2-3 (1931).

attempted marriage. See *void marriage*.

clandestine marriage (*klan*-des-tin). 1. A marriage that rests merely on the agreement of the parties. 2. A marriage entered into in a secret way, as one solemnized by an unauthorized person or without all required formalities. See *Fleet marriage*. [Cases: Marriage ↷20(1).]

common-law marriage. (17c) A marriage that takes legal effect, without license or ceremony, when two people capable of marrying live together as husband and wife, intend to be married, and hold themselves out to others as a married couple. • The common-law marriage traces its roots to the English ecclesiastical courts, which until 1753 recognized a kind of informal marriage known as *sponsalia per verba de praesenti*, which was entered into without ceremony. Today a common-law marriage, which is the full equivalent of a ceremonial marriage, is authorized in 11 states and in the District of Columbia. If a common-law marriage is established in a state that recognizes such marriages, other states, even those that do not authorize common-law marriage, must give full faith and credit to the marriage. A common-law marriage can be dissolved only by annulment, divorce, or death. — Also termed *consensual marriage*; *informal marriage*. See *common-law husband* under HUSBAND; *common-law wife* under WIFE. See PER VERBA DE FUTURO CUM COPULA; SPONSALIA PER VERBA DE PRAESENTI. [Cases: Marriage ⇨ 13, 22.]

confidential marriage. In some jurisdictions (such as California), a marriage between a man and a woman in which only the two parties and the officiant are present at the ceremony. • Confidential marriages are neither witnessed nor recorded in public records. They are recorded in nonpublic records. Although rarely performed, they are generally legal. To obtain a confidential marriage, the parties must each be at least 18, must be of the opposite sex, and usu. must have lived together for an extended period. In ecclesiastical law, such a marriage is termed an *occult marriage* or, if performed in the strictest secrecy, a *marriage of conscience*.

"A few states provide for confidential marriages. This allows parties to go through all the formalities but have the records of the marriage, including the license, remain confidential. . . . A key practical effect of confidential marriage is to allow parties who have been living as husband and wife in a jurisdiction that does not recognize informal marriages to achieve marital status without publicity. However, it does not relate back to the time when the parties started holding themselves out as a married couple and thus it can have consequences in determining the extent of marital or community property or various other rights." Walter Wadlington & Raymond C. O'Brien, *Family Law in Perspective* 26 (2001).

consensual marriage. Marriage by consent alone, without any formal process. See *common-law marriage*. [Cases: Marriage ⇨ 18.]

consular marriage. A marriage solemnized in a foreign country by a consul or diplomatic official of the United States. • Consular marriages are recognized in some jurisdictions. [Cases: Marriage ⇨ 27.]

covenant marriage. (1990) A special type of marriage in which the parties agree to more stringent requirements for marriage and divorce than are otherwise imposed by state law for ordinary marriages. • In the late 1990s, several states (beginning with Louisiana: see Acts 1997, No. 1380, § 5) passed laws providing for

covenant marriages. The requirements vary, but most of these laws require couples who opt for covenant marriage to undergo premarital counseling. A divorce will be granted only after the couple has undergone marital counseling and has been separated for a specified period (usu. at least 18 months). The divorce prerequisites typically can be waived with proof that a spouse has committed adultery, been convicted of a felony, abandoned the family for at least one year, or physically or sexually abused the other spouse or a child. — Also termed (in slang) *high-test marriage*.

cross-marriage. A marriage by a brother and sister to two people who are also brother and sister.

dead marriage. A marriage whose substance has disintegrated; a marriage that has irretrievably broken down. [Cases: Divorce ⇨ 12.]

de facto marriage (di fak-toh). A marriage that, despite the parties' living as husband and wife, is defective for some reason. [Cases: Marriage ⇨ 12.]

defunct marriage. A marriage in which both parties, by their conduct, indicate their intent to no longer be married. [Cases: Divorce ⇨ 12.]

Fleet marriage. *Hist.* 1. A clandestine ceremonial marriage performed in the 17th or 18th century in the Fleet prison in London by a chaplain who had been imprisoned for debt. 2. A clandestine ceremonial marriage performed by an unscrupulous itinerant clergymen in the area in London near the Fleet Prison. • Parliament attempted to stop the practice, but it was not until the statute of 26 George 2, ch. 33, declaring marriages performed outside public chapels or churches to be void and punishable as a felony, that the practice ceased.

fraudulent marriage. A marriage based on a misrepresentation regarding some issue of fundamental importance to the innocent party, who relies on the misrepresentation in the decision to marry. • The misrepresentation must concern something of fundamental importance to a marriage, such as religious beliefs, the ability to have sexual relations, or the ability or desire to have children. Cf. *sham marriage*. [Cases: Divorce ⇨ 34.]

green-card marriage. *Slang.* A sham marriage in which a U.S. citizen marries a foreign citizen for the sole purpose of allowing the foreign citizen to become a permanent U.S. resident. • The Marriage Fraud Amendments were enacted to regulate marriages entered into for the purpose of circumventing U.S. immigration laws. 8 USCA §§ 1154 (h), 1255(e). See *sham marriage*.

Gretna-Green marriage. A marriage entered into in a jurisdiction other than where the parties reside to avoid some legal impediment that exists where they live; a runaway marriage. • Gretna Green, a Scottish village close to the English border, served as a convenient place for eloping English couples to wed since in Scots law parties over 16 did not need parental consent.

"A 'Gretna-Green marriage' was a marriage solemnized in Scotland by parties who went there to avoid the delay and formalities required in England. . . . In the United States, the term describes marriages celebrated between residents of a State who go to a place beyond and yet near to the boundary line of an adjoining State, on account of some advantage afforded by the law of that State." William C. Anderson, *A Dictionary of Law* 496 (1889).

handfast marriage. 1. *Hist.* A marriage, often lacking only solemnization by clergy, characterized by the couple's joining of hands to conclude a marriage contract. 2. *Hist.* A betrothal with all the binding effects of a marriage, including conjugal rights and cohabitation, followed by a later formal ceremony. 3. A trial or probationary marriage wherein the couple agrees to cohabit and behave as spouses for a definite period, usu. one year, at the end of which they will mutually decide to separate or go through a permanently binding marriage. • The legal status of such a marriage is unsettled, as many such trial marriages are initiated with a ritual ceremony including an exchange of vows before a presiding officer legally empowered to perform marriages, yet the couple intends to remain free to end the relationship without legal proceedings. Cf. *marriage in jest*; *common-law marriage*. 4. A binding form of marriage practiced by some modern pagan religions. • Unlike in sense 3, such marriages are entered into with the expectation of permanent duration. — Also termed (in senses 3 and 4) *handfasting*.

high-test marriage. See *covenant marriage*.

homosexual marriage. See *same-sex marriage*.

informal marriage. See *common-law marriage*.

in-marriage. Marriage between relatives; in-breeding.

left-handed marriage. See *morganatic marriage*.

limited-purpose marriage. A marriage in which the parties agree to be married only for certain reasons. • An example is a marriage in which the parties agree to marry so that a child will not be born illegitimate but agree not to live together or to have any duties toward each other. Courts have usu. found these marriages to be binding for all purposes. Cf. *sham marriage*; *green card-marriage*.

marriage by habit and repute. *Scots law.* An irregular marriage created by cohabitation that implies a mutual agreement to be married. • This type of marriage is still recognized in Scotland. See *Scotch marriage*. [Cases: Marriage ⇨22.]

marriage in jest. A voidable marriage in which the parties lack the requisite intent to marry.

marriage of conscience. *Eccles. law.* See *confidential marriage*.

marriage of convenience. (18c) 1. A marriage entered into for social or financial advantages rather than out of mutual love. — Also termed *mariage de convenance*. 2. Loosely, an ill-considered marriage that, at the time, is convenient for the parties involved.

marriage of the left hand. See *morganatic marriage*.

marriage per verba de futuro subsequente copula.

Scots law. Hist. An irregular marriage created by a promise to marry in the future followed by an act of sexual intercourse. • Originally medieval canon law, this type of marriage was recognized in Scotland until 1940. See *Scotch marriage*. [Cases: Marriage ⇨20(2).]

marriage per verba de praesenti. *Scots law. Hist.* An irregular marriage created at the time of a mutual agreement to be married. • Originally medieval canon law, this type of marriage was recognized in Scotland until 1940. See *Scotch marriage*. [Cases: Marriage ⇨20(2).]

mixed marriage. See *MISCEGENATION*.

morganatic marriage (mor-gə-nat-ik). *Hist.* A marriage between a man of superior status to a woman of inferior status, with the stipulation that the wife and her children have no claims to the husband's title or possessions. • By extension, the term later referred to the marriage of a woman of superior status to a man of inferior status. The concept is now limited to royal marriages. — Also termed *left-handed marriage*; *marriage of the left hand*; *salic marriage*.

occult marriage. *Eccles. law.* See *confidential marriage*.

plural marriage. (1862) A marriage in which one spouse is already married to someone else; a bigamous or polygamous union; *POLYGAMY*. [Cases: Bigamy ⇨1; Marriage ⇨11.]

putative marriage (pyoo-tə-tiv). A marriage in which either the husband or the wife believes in good faith that the two are married, but for some technical reason they are not formally married (as when the ceremonial official was not authorized to perform a marriage). • A putative marriage is typically treated as valid to protect the innocent spouse. The concept of a putative marriage was adopted from the Napoleonic Code in those states having a civil-law tradition, such as California, Louisiana, and Texas. This type of marriage is also recognized in the Uniform Marriage and Divorce Act. The legal rule by which putative marriages exist is sometimes referred to as the *putative-spouse doctrine*. — Also termed *putative matrimony*. [Cases: Marriage ⇨54(1).]

salic marriage. See *morganatic marriage*.

same-sex marriage. The ceremonial union of two people of the same sex; a marriage or marriage-like relationship between two women or two men. • The United States government and most American states do not recognize same-sex marriages, even if legally contracted in other countries such as Canada, so couples usu. do not acquire the legal status of spouses. But in some states same-sex couples have successfully challenged the laws against same-sex marriage on constitutional grounds. See *Goodridge v. Dept. of Pub. Health*, 798 N.E.2d 941 (Mass. 2003). Cf. *Baehr v. Lewin*, 852 P.2d 44 (Haw. 1993); *Baehr v. Miike*, 994 P.2d 566 (Haw. 1999); *Baker v. State*, 744 A.2d 864

(Vt. 1999). — Also termed *gay marriage*; *homosexual marriage*. Cf. CIVIL COMMITMENT (2); CIVIL UNION; DOMESTIC PARTNERSHIP.

Scotch marriage. *Scots law.* A marriage by consensual contract, without the necessity of a formal ceremony.

• Until 1940, Scots law retained the medieval canon-law forms of marriage *per verba de praesenti* and *per verba de futuro subsequente copula*. These promises constituted irregular but valid marriages. Scots law still retains the irregular marriage by cohabitation with habit and repute. No ceremony needs to be proved but, after the death of one spouse, the surviving spouse or any child can obtain a court's confirmation that a marriage existed, based on the general belief of neighbors, friends, and family. [Cases: Marriage ↷20(1).]

sham marriage. (18c) A purported marriage in which all the formal requirements are met or seemingly met, but in which the parties go through the ceremony with no intent of living together as husband and wife. Cf. *green-card marriage*; *fraudulent marriage*; *limited-purpose marriage*. [Cases: Aliens, Immigration, and Citizenship ↷264, 428.]

valid marriage. See MARRIAGE (1).

voidable marriage. (1845) A marriage that is initially invalid but that remains in effect unless terminated by court order. • For example, a marriage is voidable if either party is underage or otherwise legally incompetent, or if one party used fraud, duress, or force to induce the other party to enter the marriage. The legal imperfection in such a marriage can be inquired into only during the lives of both spouses, in a proceeding to obtain a judgment declaring it void. A voidable marriage can be ratified once the impediment to a legal marriage has been removed. [Cases: Marriage ↷37, 54(1), 56.]

void marriage. (17c) A marriage that is invalid from its inception, that cannot be made valid, and that can be terminated by either party without obtaining a divorce or annulment. • For example, a marriage is void if the parties are too closely related or if either party is already married. A void marriage does not exist, has never existed, and needs no formal act to be dissolved — although a judicial declaration may be obtained. — Also termed *attempted marriage*. See NULLITY OF MARRIAGE (1). [Cases: Marriage ↷53–54.]

2. Roman law. A consensual agreement between a man and a woman to be married. • The consent of both parties and of any paterfamilias was necessary. Other requirements were the attainment of puberty and legal capacity (*conubium*). If either or both withdrew consent to be married, the marriage ended in divorce; no specific grounds were necessary. In the Christian empire, divorce without adequate grounds was penalized. **3. MARRIAGE CEREMONY.** — **marital, adj.**

ceremonial marriage. (1876) A wedding that follows all the statutory requirements and that has been

solemnized before a religious or civil official. [Cases: Marriage ↷23–32.]

civil marriage. (17c) A wedding ceremony conducted by an official, such as a judge, or by some other authorized person — as distinguished from one solemnized by a member of the clergy. [Cases: Marriage ↷27.]

double-proxy marriage. A wedding in which both parties to a marriage are absent but represented by stand-ins. • Only Montana allows this type of marriage.

proxy marriage. (1924) A wedding in which someone stands in for an absent bride or groom, as when one party is stationed overseas in the military. • Proxy marriages are prohibited in most states. [Cases: Marriage ↷23.]

marriage article. (1831) A premarital stipulation between spouses who intend to incorporate the stipulation in a postnuptial agreement. [Cases: Husband and Wife ↷29.]

marriage bonus. *Tax.* The difference between the reduced income-tax liability owed by a married couple filing a joint income-tax return and the greater amount they would have owed had they been single and filed individually. — Also termed *singles' penalty*. Cf. MARRIAGE PENALTY.

marriage broker. One who arranges a marriage in exchange for consideration. • A marriage broker may be subject to criminal liability.

marriage-brokerage contract. An agreement under which a person, acting for compensation, procures someone for a marriage. • Traditionally, these contracts have been void as being against public policy. [Cases: Contracts ↷111.]

marriage ceremony. (17c) The religious or civil proceeding that solemnizes a marriage. — Sometimes shortened to *marriage*. — Also termed *wedding*.

marriage certificate. (1821) A document that is executed by the religious or civil official presiding at a marriage ceremony and filed with a public authority (usu. the county clerk) as evidence of the marriage. — Also termed *certificate of marriage*. Cf. MARRIAGE LICENSE. [Cases: Marriage ↷31.]

marriage contract. See CONTRACT.

marriage license. (17c) A document, issued by a public authority, that grants a couple permission to marry. Cf. MARRIAGE CERTIFICATE. [Cases: Marriage ↷25(2).]

marriage mill. A place that facilitates hasty, often secret, marriages by requiring few or no legal formalities. • Marriage-mill unions may be voidable but are rarely void in the absence of absolute impediments to marriage.

marriage-notice book. An English registry of marriage applications and licenses.

marriage penalty. *Tax.* The difference between the greater income-tax liability owed by a married couple filing a joint income-tax return and the lesser amount

they would owe had they been single and filed individually. • A marriage penalty exists whenever a married couple is treated disadvantageously under a tax code in comparison with an unmarried couple. Cf. MARRIAGE BONUS.

marriage portion. See DOWRY.

marriage promise. See PROMISE.

marriage records. Government or church records containing information on prospective couples (such as a woman's maiden name and address) and on wedding services performed. [Cases: Marriage ↷32.]

marriage settlement. 1. See MARITAL AGREEMENT. 2. See PRENUPTIAL AGREEMENT.

married woman's separate estate in equity. *Hist.* At common law, a trust that a rich family could set up for a daughter so that she would not lose control of her own money and property to her husband. • The daughter could escape the severe limits of coverture by having her family establish a separate estate in equity, allowing her the benefit of income that was not controlled by her husband even if the husband was named as trustee. See COVERTURE; MARRIED WOMEN'S PROPERTY ACTS. [Cases: Husband and Wife ↷110.]

married women's property acts. (*sometimes cap.*) Statutes enacted to remove a married woman's legal disabilities; esp. statutes that abolished the common-law prohibitions against a married woman's contracting, suing and being sued, or acquiring, holding, and conveying property in her own right, free from any restrictions by her husband. • In addition, these acts abolished the spousal-unity doctrine. In actual usage, the term almost always appears in the plural form (*acts*, not *act*), except when referring to a particular statute. — Also termed *married women's acts*; *married woman's property acts*; *married woman's acts*; *emancipation acts*; *married women's emancipation acts*. See MERGER DOCTRINE OF HUSBAND AND WIFE; LEGAL-UNITIES DOCTRINE. [Cases: Husband and Wife ↷111.]

"The women's rights movement existed throughout the nineteenth century. It succeeded in partially reducing the legal disabilities of married women during the second half of that century by bringing about the enactment in all states of Married Women's Property Acts. The purpose of these Acts was to place married women on an equal footing with their husbands with respect to contracts, earnings, the ownership of property and the right to sue or be sued, but as they were construed by the courts they frequently failed to accomplish the intended reforms." Homer H. Clark Jr. & Ann Laquer Estlin, *Domestic Relations: Cases and Problems* 8 (6th ed. 2000).

Marsden motion. A criminal defendant's request that a court dismiss or replace a court-appointed attorney on grounds that the attorney is not completely or adequately representing the defendant. *People v. Marsden*, 465 P.2d 44 (Cal. 1970). [Cases: Criminal Law ↷1824.]

marshal, n. (13c) 1. A law-enforcement officer with duties similar to those of a sheriff. [Cases: Municipal Corporations ↷183.] 2. A judicial officer who provides court

security, executes process, and performs other tasks for the court. [Cases: Courts ↷58.] — **marshalsip, n.**

United States Marshal. A federal official who carries out the orders of a federal court. • U.S. Marshals are employees of the executive branch of government. [Cases: United States Marshals ↷29.]

marshal, vb. (15c) 1. To arrange or rank in order <the brief effectively marshaled the appellant's arguments>. 2. To arrange (assets, etc.) according to their liability or availability for payment of debts. 3. To fix the order of (creditors) according to their priority.

marshaling assets, rule of. See RULE OF MARSHALING ASSETS.

marshaling doctrine. The principle that, when a senior creditor has recourse to two or more funds to satisfy its debt, and a junior creditor has recourse to only one fund to satisfy its debt, the senior creditor must satisfy its debt out of the funds in which the junior creditor has no interest. See RULE OF MARSHALING ASSETS. [Cases: Debtor and Creditor ↷13.]

marshaling the evidence. (1892) 1. Arranging all of a party's evidence in the order that it will be presented at trial. [Cases: Federal Civil Procedure ↷2011; Trial ↷59(1).] 2. The practice of formulating a jury charge so that it arranges the evidence to give more credence to a particular interpretation. [Cases: Federal Civil Procedure ↷2173.1; Trial ↷204, 234(2).]

Marshal of the Queen's Bench. *Hist.* A custodial officer of the Queen's Bench prison. • The position was abolished by the Queen's Prison Act of 1842 (St. 5 & 6 Vict., ch. 22).

Marshalsea (mahr-shəl-see), n. [fr. Law Latin *marescallia*] *Hist.* 1. The court or seat of the marshal of the royal household. 2. A debtor's prison in London under the jurisdiction of the Court of Marshalsea. See COURT OF MARSHALSEA.

mart. See MARKET (1).

martē suo decurrere (mahr-tee s[y]oo-oh də-kər-ər-ee). [Latin] *Hist.* To run its course by its own force. • In the civil law, this term was applied to a suit that ran its course without obstruction.

martial law (mahr-shəl). (1933) 1. The law by which during wartime the army, instead of civil authority, governs the country because of a perceived need for military security or public safety. • The military assumes control purportedly until civil authority can be restored. 2. A body of firm, strictly enforced rules that are imposed because of a perception by the country's rulers that civil government has failed, or might fail, to function. • Martial law is usu. imposed when the rulers foresee an invasion, insurrection, economic collapse, or other breakdown of the rulers' desired social order. [Cases: War and National Emergency ↷31.]

"Martial law is the public law of necessity. Necessity calls it forth, necessity justifies its exercise, and necessity measures the extent and degree to which it may be employed. That necessity is no formal, artificial, legalistic concept but an actual and factual one: it is the necessity of

taking action to safeguard the state against insurrection, riot, disorder, or public calamity. What constitutes necessity is a question of fact in each case." Frederick B. Wiener, *A Practical Manual of Martial Law* 16 (1940).

"[M]artial law is nothing more and nothing less than an application of the common law doctrine that force, to whatever degree necessary, may be used to repress illegal force. Martial law is the public right of self-defense against a danger threatening the order or the existence of the state. Where the ordinary civil authorities — the police — are unable to resist or subdue a disturbance, additional force, military in nature, may be applied. The extent of military force used depends in each instance upon the extent of the disturbance." *Id.* at 16-17.

absolute martial law. The carrying on of government functions entirely by military agencies, as a result of which the authority of civil agencies is superseded. [Cases: War and National Emergency ⇨ 31.]

qualified martial law. The carrying on of government functions partly by military agencies, as a result of which the authority of some civil agencies is superseded. [Cases: War and National Emergency ⇨ 31.]

3. The law by which the army in wartime governs foreign territory that it occupies. 4. Loosely, MILITARY LAW.

Martindale-Hubbell Law Directory. A series of books, published annually, containing a roster and ratings of lawyers and law firms in most cities of the United States, corporate legal departments, government lawyers, foreign lawyers, and lawyer-support providers, as well as a digest of the laws of the states, the District of Columbia, and territories of the United States, and a digest of the laws of many foreign jurisdictions, including Canada and its provinces.

Martinez report. A report that a court may require a prose party to file in order to clarify a vague or incomprehensible complaint. *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978). [Cases: Federal Civil Procedure ⇨ 2538, 2734.]

Martinmas. See *quarter day* under DAY.

Mary Carter agreement. (1972) A contract (usu. a secret one) by which one or more, but not all, codefendants settle with the plaintiff and obtain a release, along with a provision granting them a portion of any recovery from the nonparticipating codefendants. • In a Mary Carter agreement, the participating codefendants agree to remain parties to the lawsuit and, if no recovery is awarded against the nonparticipating codefendants, to pay the plaintiff a settled amount. Such an agreement is void as against public policy in some states but is valid in others if disclosed to the jury. *Booth v. Mary Carter Paint Co.*, 202 So. 2d 8 (Fla. Dist. Ct. App. 1967). Cf. GALLAGHER AGREEMENT. [Cases: Compromise and Settlement ⇨ 100.]

Mary Major. See JANE DOE.

masking. *n.* In critical legal studies, the act or an instance of concealing something's true nature <being a critic, Max contends that the legal system is merely an elaborate masking of social injustices>. — **mask**, *vb.*

mask work. *Copyright.* A three-dimensional pattern of metallic insulation or semiconducting material present or removed from the layers of a computer chip. • Mark works are protected under the Semiconductor Chip Protection Act of 1984. 17 USCA §§ 902 et seq. [Cases: Copyrights and Intellectual Property ⇨ 10.4.]

massa (*mas-ə*), *n.* [Latin] A mass or lump of metal, esp. of gold and silver before it is made into a cup or other useful or ornamental object.

Massachusetts ballot. See BALLOT (4).

Massachusetts trust. See *business trust* under TRUST (4).

mass-action theory. The principle that, as long as a labor union is functioning, it is vicariously liable for the joint acts of its members.

mass-appraisal method. A technique for valuing large areas of land by studying market data to determine the price that similar property would sell for, without engaging in a parcel-by-parcel analysis. [Cases: Taxation ⇨ 2514.]

mass asset. See ASSET.

Massiah rule. (1966) The principle that an attempt to elicit incriminating statements (usu. not during a formal interrogation) from a suspect whose right to counsel has attached but who has not waived that right violates the Sixth Amendment. *Massiah v. United States*, 377 U.S. 201, 84 S.Ct. 1199 (1964). See DELIBERATE ELICITATION. [Cases: Criminal Law ⇨ 412.2(4).]

mass layoff. See LAYOFF.

mass meeting. See MEETING.

mass murder. See MURDER.

mass tort. See TORT.

mast. 1. Military law. A Navy disciplinary proceeding at which the commanding officer of a unit considers minor offenses charged against enlisted personnel. • The charges may be dismissed, the accused person may receive a punishment prescribed by military law, or the matter may be referred to a court-martial. The proceeding is not officially a trial, and no conviction or acquittal results. Traditionally, when a ship's captain disciplines crew members at sea, the hearing is held and the discipline announced (and sometimes carried out) at the ship's mainmast or *at the mast*. Depending on the rank of the presiding officer, it may be also termed a *captain's mast*, *admiral's mast*, or (for an admiral) *flag mast*. [Cases: Armed Services ⇨ 39.] 2. On board a ship, the usual place of assembly for a court hearing, public sale, etc. • On sailing ships, the place is the mainmast. On all other vessels, the captain designates a place as the "mast." Cf. (in sense 2) MAST SELLING.

mast, at the. See MAST (1).

master, n. (bef. 12c) 1. One who has personal authority over another's services; specif., a principal who employs another to perform one or more services and who controls or has the right to control the physical conduct of the other in the performance of the services;

EMPLOYER <the law of master and servant>. [Cases: Labor and Employment ↻25.]

"[A] master is a species of principal. All masters are principals, but all principals are not necessarily masters. A principal becomes a master only if his control of the agent's physical conduct is sufficient." William A. Gregory, *The Law of Agency and Partnership* 5 (3d ed. 2001).

2. A parajudicial officer (such as a referee, an auditor, an examiner, or an assessor) specially appointed to help a court with its proceedings. • A master may take testimony, hear and rule on discovery disputes, enter temporary orders, and handle other pretrial matters, as well as computing interest, valuing annuities, investigating encumbrances on land titles, and the like — usu. with a written report to the court. Fed. R. Civ. P. 53. — Also termed *special master*. [Cases: Federal Civil Procedure ↻1871-1908; Reference ↻35-77.]

special master. (1833) A master appointed to assist the court with a particular matter or case. [Cases: Federal Civil Procedure ↻1871-1908; Reference ↻47.]

standing master. (1848) A master appointed to assist the court on an ongoing basis.]

master agreement. *Labor law.* An agreement between a union and industry leaders, the terms of which serve as a model for agreements between the union and individual companies within the industry.

master and servant. (16c) The relation between two persons, one of whom (the master) has authority over the other (the servant), with the power to direct the time, manner, and place of the services. • This relationship is similar to that of principal and agent, but that terminology applies to employments in which the employee has some discretion, while the servant is almost completely under the control of the master. Also, an agent usu. acts for the principal in business relations with third parties, while a servant does not. See *master-servant relationship* under RELATIONSHIP. [Cases: Labor and Employment ↻23.]

Master at Common Law. An officer of an English superior court of common law, appointed to record court proceedings, supervise the issuance of writs, and receive and account for fees paid into the court.

Master-General of the Ordnance. See MASTER OF THE ORDNANCE.

master in chancery. 1. An officer appointed by a court of equity to assist the court. 2. *English law. (usu. cap.)* A senior official or clerk of a court of chancery who assists the Chancellor in various duties such as inquiring into matters referred by the court, examining cases, taking oaths and affidavits, hearing testimony, and computing damages. • There were many Masters in Chancery at the same time. The office was abolished in 1897 and was replaced by the office of Master of the Supreme Court. — Also termed *master of the chancery*. See MASTER OF THE SUPREME COURT. [Cases: Equity ↻395.]

Master in Lunacy. *Hist.* A judicial officer appointed by the Lord Chancellor to conduct inquiries into the state

of mind of people alleged to be lunatics incapable of handling their own affairs and to ensure in each case that the lunatic's property is properly managed for his or her benefit.

master lease. See LEASE.

master limited partnership. See *publicly traded partnership* under PARTNERSHIP.

master of a ship. *Maritime law.* A commander of a merchant vessel; a captain of a ship. • The master is responsible for the vessel's navigation and the safety and care of the crew and cargo. — Also termed *ship-master*. [Cases: Shipping ↻60.]

Master of Laws. A law degree conferred on those completing graduate-level legal study, beyond the J.D. or LL.B. — Abbr. LL.M. Cf. JURIS DOCTOR; LL.B.; DOCTOR OF LAWS.

Master of Requests. *Hist.* A judge of the Court of Requests.

master of the chancery. See MASTER IN CHANCERY.

Master of the Crown Office. *English law.* A Supreme Court officer who is appointed by the Lord Chief Justice. • Formerly, the Master was the Queen's Coroner and attorney, who was originally appointed by the Lord Chancellor to prosecute criminal cases in the name of the Crown.

Master of the Faculties. *Eccles. law.* An officer in the province of Canterbury who heads the Court of Faculties, grants licenses, and admits or removes notaries public. — Also termed *magister ad facultates*. See COURT OF FACULTIES.

Master of the Horse. *English law.* A peer who as third officer of the royal household, next to the lord steward and lord chamberlain, attends the sovereign on state occasions. • The official was originally in charge of the royal stables, but that duty is now entrusted to the Crown Equerry.

Master of the Mint. *Hist.* A salaried warden who supervised all activities of the royal mint. • The office was abolished under the Coinage Act of 1870 and replaced with Master Worker and Warden of Her Majesty's Royal Mint.

Master of the Ordnance. *Hist.* Beginning with the reign of Henry VIII, a superior officer responsible for the royal artillery and weapons. • The more modern representative is the Master-General of the Ordnance, a military officer and member of the Army Council. — Also termed *Master-General of the Ordnance*.

Master of the Pells. See CLERK OF THE PELLs.

Master of the Rolls. The president of the Court of Appeal in England. • Formerly, the Master of the Rolls was an assistant judge to a court of chancery, responsible for keeping the rolls and chancery records. In recent times, the most famous Master of the Rolls was Lord Denning (who lived from 1899 to 1999).

"Since 1875, the Master of the Rolls has been president of the Court of Appeal. Until 1958 he had the general responsibility for the public records (a responsibility then

transferred to the Lord Chancellor) and is still responsible for the records of the Chancery of England. He admits persons as solicitors of the Supreme Court." David M. Walker, *The Oxford Companion to Law* 816 (1980).

Master of the Supreme Court. An official of the Queen's Bench and Chancery Divisions of the Supreme Court who fills the several positions of master in the common-law courts, the Queen's Coroner and Attorney, the Master of the Crown Office, record and writ clerks, and associates.

master plan. (1914) *Land-use planning.* A municipal plan for housing, industry, and recreation facilities, including their projected environmental impact. See PLANNED-UNIT DEVELOPMENT. [Cases: Zoning and Planning ↷30.]

master policy. See INSURANCE POLICY.

master's draft. *Maritime law.* A contract for money loaned to a ship's master to cover necessary disbursements, payable from the first freight the ship receives, and secured by the vessel and freight. See BOTTOMRY BOND. [Cases: Shipping ↷93.]

master-servant relationship. See RELATIONSHIP.

master-servant rule. See RESPONDEAT SUPERIOR.

master's report. A master's formal report to a court, usu. containing a recommended decision in a case as well as findings of fact and conclusions of law. [Cases: Federal Civil Procedure ↷1896; Reference ↷83-97.]

mast selling. *Hist.* The practice of selling the goods of a dead seaman at the mast. See MAST (2).

matched order. See ORDER (8).

matching-acceptance rule. See MIRROR-IMAGE RULE.

matching principle. (1979) *Tax.* A method for handling expense deductions, by which the depreciation in a given year is matched by the associated tax benefit.

mate. (14c) **1.** A spouse or other long-term life partner. **2.** A second-in-command officer on a merchant vessel. **3.** A petty officer who assists a warrant officer. **4.** A friend or companion.

materfamilias (may-tər-fə-mil-ee-əs), *n.* [Latin] *Roman law.* **1.** The wife of a *paterfamilias*, or the mistress of a family. **2.** A respectable woman, either married or single.

materia (mə-teer-ee-ə), *n.* [Latin] **1.** Materials, esp. for building, as distinguished from the form given to something by the exercise of labor or skill. **2.** Matter; substance.

material, adj. (14c) **1.** Of or relating to matter; physical <material goods>. **2.** Having some logical connection with the consequential facts <material evidence>. [Cases: Criminal Law ↷382; Evidence ↷143.] **3.** Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential <material alteration of the document>. Cf. RELEVANT. — **materiality, n.**

material adverse information. See MATERIAL INFORMATION.

material allegation. See ALLEGATION.

material alteration. See ALTERATION (2).

material breach. See BREACH OF CONTRACT.

material change in circumstances. See CHANGE IN CIRCUMSTANCES.

material evidence. See EVIDENCE.

material fact. See FACT.

material fallacy. See FALLACY.

material information. *Securities.* Information that would be important to a reasonable investor in making an investment decision. • In the context of an "efficient" market, materiality translates into information that alters the price of a firm's stock. Securities Exchange Act of 1934 § 10(b), 15 USCA § 78j(b); 17 CFR § 240.10b-5. [Cases: Securities Regulation ↷60.28(11), 60.46.]

material adverse information. *Securities.* Material information that is likely to make an investment less attractive.

material issue. See ISSUE (1).

materialman. A person who supplies materials used in constructing or repairing a structure or vehicle. — Also termed *material supplier*. [Cases: Automobiles ↷373; Mechanics' Liens ↷82.]

materialman's lien. See *mechanic's lien* under LIEN.

material misrepresentation. See MISREPRESENTATION.

material representation. See REPRESENTATION (1).

material supplier. See MATERIALMAN.

material term. See TERM (2).

material witness. See WITNESS.

material-witness arrest. See ARREST.

maternal, adj. (15c) Of, relating to, or coming from one's mother <maternal property>. Cf. PATERNAL.

maternal line. See LINE.

maternal-line descent. See DESCENT.

maternal-preference presumption. *Family law.* The belief that custody of a child, regardless of age, should generally be awarded to the mother in a divorce unless she is found to be unfit. • Most jurisdictions no longer adhere to the maternal-preference presumption. — Also termed *maternal-preference doctrine*. Cf. PRIMARY-CAREGIVER DOCTRINE; TENDER-YEARS DOCTRINE. [Cases: Child Custody ↷24, 458.]

maternal property. See PROPERTY.

materna maternis (mə-tər-nə mə-tər-nis). Goods acquired through the mother descend to those connected with her. • The phrase invoked the distinction between the succession of consanguineous half-brothers and uterine half-brothers. Cf. PATERNA PATERNIS.

maternity (mə-tər-ni-tee). (17c) **1.** The state or condition of being a mother, esp. a biological one; motherhood. Cf. FILIATION. **2.** The section of a hospital devoted to the

care of mothers and infants during and after childbirth.
3. **ATTRIBUTION RIGHT.**

maternity presumption. See **PRESUMPTION OF MATERNITY.**

matertera (mə-tər-tər-ə), *n.* [Latin] *Roman law.* A maternal aunt.

matertera magna (mə-tər-tər-ə mag-nə). [Latin] *Roman law.* A great-aunt; the sister of one's grandmother.

matertera major (mə-tər-tər-ə may-jər). [Latin] *Roman law.* A greater aunt; the sister of one's great-grandmother.

matertera maxima (mə-tər-tər-ə maks-ə-mə). [Latin] *Roman law.* A great-great-aunt; the sister of one's great-great-grandmother. — Also termed *abmatertera*.

mathematical-algorithm exception. See **ALGORITHM EXCEPTION.**

mathematical evidence. See **EVIDENCE.**

Mathews v. Eldridge test. (1980) *Constitutional law.* The principle for determining whether an administrative procedure provides due-process protection, by analyzing (1) the nature of the private interest that will be affected by the governmental action, (2) the risk of an erroneous deprivation through the procedure used, (3) the probable value of additional or substitute procedural safeguards, (4) the governmental function involved, and (5) the administrative burden and expense that would be created by requiring additional or substitute procedural safeguards. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893 (1976). [Cases: Constitutional Law ↷ 3875, 4025.]

matima (mat-i-mə), *n.* [Law Latin] *Hist.* A godmother.

matricide (ma-trə-std), *n.* (16c) 1. The act of killing one's own mother. 2. One who kills his or her mother. — **matricidal**, *adj.*

matricula (mə-trik-yə-lə), *n.* [Latin] 1. *Roman law.* A register of public officials. 2. *Hist.* A register or certificate of enrollment in any organized group or society.

matriculate, *vb.* (16c) To enroll or register (in a university, college, etc.) [Cases: Colleges and Universities ↷ 9.15.] — **matriculation**, *n.*

matrimonial action. See **ACTION** (4).

matrimonial cohabitation. See **COHABITATION.**

matrimonial domicile. See **DOMICILE.**

matrimonial home. See *matrimonial domicile* under **DOMICILE.**

matrimonial res. (1893) 1. The marriage estate. 2. The state of marriage; the legal relationship between married persons, as opposed to the property and support obligations arising from the marriage.

matrimonium (ma-trə-moh-nee-əm), *n.* [Latin] *Roman law.* Marriage. — Also termed *nuptiae* (nəp-shee-ee).

matrimonium ipsum (ma-trə-moh-nee-əm ip-səm). [Latin] *Hist.* Marriage itself.

matrimonium non justum (ma-trə-moh-nee-əm non jəs-təm). [Latin] *Roman law.* A marriage between two persons one or both of whom do not have the legal capacity to wed (*conubium*). • Children resulting from such a marriage were legitimate but were not considered in *potestas*.

matrimony, *n.* (14c) The ceremony or state of being married; **MARRIAGE** (1). [Cases: Marriage ↷ 1.] — **matrimonial**, *adj.*

matrix (may-triks), *n.* [Latin] 1. *Hist.* Mother. 2. *Civil law.* The original legal instrument, from which all copies must be made. 3. A list of the parties to a lawsuit, including the addresses at which pleadings and notices can be served. • A matrix is commonly used to list the names and addresses of creditors and other parties in a bankruptcy case. Many bankruptcy courts have specific rules on how to prepare the matrix.

matrix ecclesia (may-triks e-klee-z[h]ee-ə). [Latin] *Eccles. law.* A mother church; a cathedral church in relation to parochial churches in the same diocese, or a parish church in relation to dependent chapels.

matter, *n.* (13c) 1. A subject under consideration, esp. involving a dispute or litigation; **CASE** (1) <this is the only matter on the court's docket today>. 2. Something that is to be tried or proved; an allegation forming the basis of a claim or defense <the matters raised in the plaintiff's complaint are not actionable under state law>.

matter in deed. 1. A matter that can be proved by a writing under seal. 2. See *matter of fact*.

matter in pais (in pay). A matter of fact that has not been recorded in writing and that must therefore be proved by parol evidence.

matter of fact. (16c) A matter involving a judicial inquiry into the truth of alleged facts. — Also termed *matter in deed*.

matter of form. A matter concerned only with formalities or noncritical characteristics <the objection that the motion was incorrectly titled related to a matter of form>. Cf. *matter of substance*.

matter of law. A matter involving a judicial inquiry into the applicable law.

matter of record. A matter that has been entered on a judicial or other public record and therefore can be proved by producing that record.

matter of substance. A matter concerning the merits or critical elements, rather than mere formalities <the party objected because the motion was based on a repealed statute that related to a matter of substance>. Cf. *matter of form*.

new matter. 1. A litigant's claim or defense that goes beyond the issues raised in the original litigation, either by raising a new issue with new facts to be proved or by raising a defense that does not implicate an element of the original claims. • A typical example of new matter is an affirmative defense. 2. See **NEW MATTER** (2).

special matter. *Common-law pleading.* Out-of-the-ordinary evidence that a defendant is allowed to enter, after notice to the plaintiff, under a plea of the general issue.

matter in controversy. See AMOUNT IN CONTROVERSY.

matter of. See IN RE.

matter of course. (17c) Something done as a part of a routine process or procedure.

mature, vb. (1861) (Of a debt or obligation) to become due <the bond matures in ten years>. [Cases: Bills and Notes ⇨129.] — **maturity, n.** — **mature, adj.**

matured claim. See CLAIM (3).

mature-minor doctrine. *Family law.* A rule holding that an adolescent, though not having reached the age of majority, may make decisions about his or her health and welfare if the adolescent demonstrates an ability to articulate reasoned preferences on those matters. • The mature-minor doctrine was recognized as constitutionally protected in medical decisions (abortion rights) in *Planned Parenthood of Cent. Missouri v. Danforth*, 428 U.S. 52, 96 S.Ct. 2831 (1976). Not all states recognize the common-law mature-minor doctrine. Cf. PARENTAL-CONSENT STATUTE. [Cases: Abortion and Birth Control ⇨120.]

maturity date. See *date of maturity* under DATE.

maturity value. The amount that is due and payable on an obligation's maturity date.

maugre (maw-gər), prep. *Archaic.* Despite <the witness may testify maugre counsel's objection>.

maxim (mak-sim). (16c) A traditional legal principle that has been frozen into a concise expression. • Examples are "possession is nine-tenths of the law" and *caveat emptor* ("let the buyer beware"). — Also termed *legal maxim*.

maximalist retributivism. See RETRIBUTIVISM.

maximum cure. *Maritime law.* The point at which a seaman who is injured or sick has stabilized, and no additional medical treatment will improve the seaman's condition. • A shipowner's obligation to provide maintenance and cure to a sick or injured seaman usu. continues until the seaman has reached maximum cure. *Farrell v. United States*, 336 U.S. 511, 69 S.Ct. 707 (1949); *Vella v. Ford Motor Co.*, 421 U.S. 1, 95 S.Ct. 1381 (1975). See CURE (2); MAINTENANCE AND CURE. [Cases: Seamen ⇨11(6).]

maximum medical improvement. (1955) The point at which an injured person's condition stabilizes, and no further recovery or improvement is expected, even with additional medical intervention. • This term is most often used in the context of a workers'-compensation claim. An injured employee usu. receives temporary benefits until reaching maximum medical improvement, at which time a determination can be made about any permanent disability the employee has suffered and any corresponding benefits the employee should receive. — Abbr. MMI. [Cases: Workers' Compensation ⇨868.]

maximum sentence. See SENTENCE.

may, vb. (bef. 12c) **1.** To be permitted to <the plaintiff may close>. **2.** To be a possibility <we may win on appeal>. Cf. CAN. **3.** Loosely, is required to; shall; must <if two or more defendants are jointly indicted, any defendant who so requests may be tried separately>. • In dozens of cases, courts have held *may* to be synonymous with *shall* or *must*, usu. in an effort to effectuate legislative intent. [Cases: Statutes ⇨227.]

mayhem (may-hem), n. (15c) **1.** The crime of maliciously injuring a person's body, esp. to impair or destroy the victim's capacity for self-defense. • Modern statutes usu. treat this as a form of aggravated battery. See BATTERY. Cf. *serious bodily injury* under INJURY. [Cases: Mayhem ⇨1.]

"Mayhem, according to the English common law, is maliciously depriving another of the use of such of his members as may render him less able, in fighting, either to defend himself or to annoy his adversary. It is a felony." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 239 (3d ed. 1982).

2. Violent destruction. **3.** Rowdy confusion or disruption. — **maim** (for sense 1), *vb.*

May it please the court. (17c) An introductory phrase that lawyers use when first addressing a court, esp. when presenting oral argument to an appellate court.

mayn (mayn), n. [Law French] *Hist.* A hand; handwriting.

maynover (mə-noo-vər or may-noh-vər), n. [Law French] *Hist.* A work by hand; something produced by manual labor.

mayor, n. (14c) An official who is elected or appointed as the chief executive of a city, town, or other municipality. [Cases: Municipal Corporations ⇨168.] — **mayoral (may-ər-əl), adj.**

mayoralty (may-ər-əl-tee). (14c) The office or dignity of a mayor. — Also termed *mayorship*.

mayor of the staple. *Hist.* A person appointed to take recognizances of debt between staple merchants, and to hear disputes arising between merchants. See STAPLE (1), (2).

mayor's court. See COURT.

mayorship. See MAYORALTY.

MBDA. *abbr.* MINORITY BUSINESS DEVELOPMENT AGENCY.

MBE. See *Multistate Bar Examination* under BAR EXAMINATION.

MBO. See *management buyout* under BUYOUT.

MC. *abbr.* MEMBER OF CONGRESS.

McCarran Act. A federal law requiring, among other things, members of the Communist party to register with the Attorney General and requiring Communist organizations to provide the government with a list of its members. • The Act was passed in 1950, during the Cold War. Over the years, the U.S. Supreme Court declared various portions of the Act unconstitutional,

but it was not fully repealed until 1993. *See, e.g., United States v. Spector*, 343 U.S. 169, 72 S.Ct. 591 (1952); *Aptheker v. Secretary of State*, 378 U.S. 500, 84 S.Ct. 1659 (1964); *United States v. Robel*, 389 U.S. 258, 88 S.Ct. 419 (1967). — Also termed *McCarran Internal Security Act*; *Subversive Activities Control Act of 1950*.

McCarran-Ferguson Act. *Insurance.* A federal law allowing a state to regulate insurance companies doing business in that state, and also to levy a tax on them. 15 USCA §§ 1011–1015. [Cases: Insurance ⇨ 1100.]

McCarran Internal Security Act. *See* MCCARRAN ACT.

McClanahan presumption. The presumption that the states do not have jurisdiction to tax members of a Native American tribe who live or work on tribal land. • The presumption is not limited to tribal members who live or work on a formal reservation. Instead, it includes those who live or work on informal reservations, in dependent tribal communities, and on tribal allotments. *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 93 S.Ct. 1257 (1973). [Cases: Taxation ⇨ 2273, 3412, 3612.]

McDonnell Douglas test. *Employment law.* The principle for applying a shifting burden of proof in employment-discrimination cases, essentially requiring the plaintiff to come forward with evidence of discrimination and the defendant to come forward with evidence showing that the employment action complained of was taken for nondiscriminatory reasons. • Under this test, the plaintiff must first establish a prima facie case of discrimination, as by showing that the plaintiff is a member of a protected group and suffered an adverse employment action. If the plaintiff satisfies that burden, then the defendant must articulate a legitimate, nondiscriminatory reason for the employment action complained of. If the defendant satisfies that burden, then the plaintiff must prove that the defendant's stated reason is just a pretext for discrimination and that discrimination was the real reason for the employment action. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 (1973). *Cf. burden-shifting analysis*. [Cases: Civil Rights ⇨ 1118, 1536.]

mcf. *Abbr. Oil & gas.* One thousand cubic feet, one of the standard units for measuring natural gas.

McNabb-Mallory rule. *Criminal procedure.* The doctrine that a confession is inadmissible if obtained during an unreasonably long detention period between arrest and a preliminary hearing. • Because of the broader protections afforded under the *Miranda* rule, the *McNabb-Mallory* rule is rarely applied in modern cases. *McNabb v. United States*, 318 U.S. 332, 63 S.Ct. 608 (1943); *Mallory v. United States*, 354 U.S. 449, 77 S.Ct. 1356 (1957). — Often shortened to *Mallory rule*. [Cases: Criminal Law ⇨ 519(8).]

McNaghten rules (mik-nawt-ən). (1917) *Criminal law.* The doctrine that a person is not criminally responsible for an act when a mental disability prevented the person from knowing either (1) the nature and quality of the act or (2) whether the act was right or wrong. • The

federal courts and most states have adopted this test in some form. *McNaghten's Case*, 8 Eng. Rep. 718 (H.L. 1843). — Also spelled *McNaughten rules*; *M'Naghten rules*; *M'Naughten rules*. — Also termed *right-and-wrong test*; *right-wrong test*. *See* INSANITY DEFENSE. [Cases: Criminal Law ⇨ 48; Homicide ⇨ 817.]

"Four points stand out and should be understood whenever reference to M'Naghten is made other than in regard to procedure. (1) It applies only in case of 'a defect of reason, from disease of the mind' and without this the following do not apply except that 'disease' as so used will be interpreted to include congenital defect or traumatic injury. (2) If, because of this 'defect of reason,' the defendant did not know what he was doing he is not guilty of crime. (3) Even if the defendant knew what he was doing he is not guilty of crime if, because of this 'defect of reason,' he did not know he was doing wrong. (4) If the defendant acted under an insane delusion, and was not otherwise insane, his accountability to the criminal law is the same as if the facts were as they seemed to him to be." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 959–60 (3d ed. 1982).

McNary comity. The principle that a U.S. district court should not hear a taxpayer's civil-rights challenge to the administration of a state's tax system. *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 102 S.Ct. 177 (1981). [Cases: Federal Courts ⇨ 27.]

M.D. abbr. (15c) 1. Middle District, usu. in reference to U.S. judicial districts. 2. Doctor of medicine.

MDA. abbr. MISSILE DEFENSE AGENCY.

MDL. abbr. MULTIDISTRICT LITIGATION.

MDP. abbr. MULTIDISCIPLINARY PRACTICE.

MDV. abbr. MOTION FOR DIRECTED VERDICT.

mean, adj. (14c) 1. Of or relating to an intermediate point between two points or extremes <a mean position>. 2. Medium in size <a mean height>. 3. (Of a value, etc.) average <a mean score>. *Cf.* MEDIAN.

meander line (mee-an-dər). (1865) A survey line (not a boundary line) on a portion of land, usu. following the course of a river or stream. [Cases: Boundaries ⇨ 12.]

mean high tide. *See* TIDE.

meaning. (14c) The sense of anything, but esp. of words; that which is conveyed (or intended to be conveyed) by a written or oral statement or other communicative act. • The word ordinarily includes a mistaken but reasonable understanding of a communication. *Cf.* AMBIGUITY.

objective meaning. The meaning that would be attributed to an unambiguous document (or portion of a document) by a disinterested reasonable person who is familiar with the surrounding circumstances. • A party to a contract is often held to its objective meaning, which it is considered to have had reason to know, even if the party subjectively understood or intended something else. [Cases: Contracts ⇨ 147(1).]

plain meaning. The meaning attributed to a document (usu. by a court) by giving the words their ordinary sense, without referring to extrinsic indications of the

author's intent. — Also termed *ordinary meaning*. See PLAIN-MEANING RULE. [Cases: Contracts ⇨152.]

subjective meaning. The meaning that a party to a legal document attributes to it when the document is written, executed, or otherwise adopted. [Cases: Contracts ⇨170(1).]

mean lower low tide. See TIDE.

mean low tide. See TIDE.

mean reserve. See RESERVE.

means, n. (14c) **1.** Available resources, esp. for the payment of debt; income. — Also termed *means of support*. **2.** Something that helps to attain an end; an instrument; a cause.

means-combination claim. See PATENT CLAIM.

means of support. See MEANS (1).

means-plus-function clause. *Patents.* An element in a patent claim, usu. in a claim for an apparatus patent, asserting that the claim element is a way to perform a given function or is a step in the process of performing a given function. • The claim will be interpreted as including the structure or means stated in the patent specification and equivalents at the time of interpretation or infringement, but not all possible means of achieving the same function. 35 USCA § 112 ¶ 6. — Also termed *means-plus-function element*; *means-plus-function claim*. See *combination patent* under PATENT (3). [Cases: Patents ⇨101(8).]

mean trading price. See PRICE.

mearstone. See MERESTONE.

measure of damages. (18c) The basis for calculating damages to be awarded to someone who has suffered an injury. • For example, the measure of damages in an action on a penal bond is compensation for the actual loss, not exceeding the established penalty. [Cases: Damages ⇨95–126.]

measuring life. (1922) Under the rule against perpetuities, the last beneficiary to die who was alive at the testator's death and who usu. holds a preceding interest. • A measuring life is used to determine whether an interest will vest under the rule against perpetuities. See RULE AGAINST PERPETUITIES. Cf. LIFE IN BEING. [Cases: Perpetuities ⇨4(1).]

measuring money. *Hist.* An extra duty collected on cloth. • It was abolished during the reign of Henry IV.

mechanical license. See LICENSE.

mechanical rights. *Copyright.* The right to reproduce a song in a phonorecord form, such as audiotape or compact disc. • The right is obtained by paying a statutory royalty; it is not necessary to obtain the songwriter's express permission. See MECHANICAL ROYALTY. Cf. PERFORMANCE RIGHTS. [Cases: Copyrights and Intellectual Property ⇨48.1.]

mechanical royalty. *Copyright.* The payment to which a songwriter is entitled each time a mechanical-right holder reproduces a song on a phonorecord. • Mechanical-royalty rates are statutory, and payable per song or

per minute (whichever is higher). If an artist is willing to pay the statutory rate, the songwriter's permission is not needed before a recording is made. If they choose to, artists and songwriters may negotiate lower royalty rates. 37 CFR § 255. — Also termed *statutory rate*. [Cases: Copyrights and Intellectual Property ⇨48.1.]

mechanic's lien. See LIEN.

MED. *abbr.* OFFICE OF MEDICAL SERVICES.

medfee (med-fee). *Hist.* A bribe or reward; compensation given for things exchanged of unequal value.

media concludendi (mee-dee-ə kon-kloo-den-dī). [Latin] *Hist.* The steps of an argument.

medial, adj. See INTERLOCUTORY.

median, adj. (15c) Located in or related to the precise midpoint in a range of values or quantities, such that half of them fall above the midpoint and half below. Cf. MEAN.

media nox (mee-dee-ə noks), n. [Latin] *Hist.* Midnight.

medianus homo (mee-dee-ay-nəs hoh-moh). [Latin] *Hist.* A man of middle fortune.

media sententia (mee-dee-ə sen-ten-shee-ə). [Latin] *Roman law.* A middle view.

"The Procleians held that specification, by changing the form of the raw material, changed its nature, and replaced it by something quite new, and that, therefore, the maker of the new article was the owner of it, and not the person to whom belonged the material of which it was made. The Sabinians, on the other hand, were of opinion that the material retained its original nature, and continued to subsist, notwithstanding its change of form, and that, accordingly, the new article belonged to the proprietor of the material. Neither of these extreme views were adopted by Justinian, who followed a middle opinion, based on this distinction: 'If the thing made can be reduced to its former rude materials, then the owner of the materials is also considered the owner of the thing made; but if the thing cannot be so reduced, then he who made it is the owner of it.' (Just. Inst. B. 2, T. 1, § 25.)" John Trayner, *Trayner's Latin Maxims* 349 (4th ed. 1894).

mediate datum (mee-dee-ay-tee day-təm). [Latin] An intermediate fact whose existence implies the existence of ultimate facts.

mediate descent. See DESCENT.

mediated settlement agreement. See SETTLEMENT (2).

mediate evidence. See *secondary evidence* under EVIDENCE.

mediate possession. See POSSESSION.

mediate powers (mee-dee-it). (1820) Subordinate powers incidental to primary powers, esp. as given by a principal to an agent; powers necessary to accomplish the principal task <adjusting debt is a mediate power to collecting debt>. Cf. PRIMARY POWERS.

mediate testimony. See *secondary evidence* under EVIDENCE.

mediation (mee-dee-ay-shən), n. (14c) **1.** A method of nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a

mutually agreeable solution; CONCILIATION. — Also termed *case evaluation*; *facilitated negotiation*. Cf. COLLABORATIVE LAW; COOPERATIVE LAW. [Cases: Alternative Dispute Resolution ↻441.] 2. *Int'l law*. A process whereby a neutral country helps other countries peacefully resolve disputes between them. Cf. ARBITRATION. — **mediate** (*mee-dee-ayt*), *vb*. — **mediatory** (*mee-dee-ə-tor-ee*), *adj*.

"The distinction between *mediation* and *conciliation* is widely debated among those interested in ADR, arbitration, and international diplomacy. Some suggest that *conciliation* is 'a nonbinding arbitration,' whereas *mediation* is merely 'assisted negotiation.' Others put it this way: *conciliation* involves a third party's trying to bring together disputing parties to help them reconcile their differences, whereas *mediation* goes further by allowing the third party to suggest terms on which the dispute might be resolved. Still others reject these attempts at differentiation and contend that there is no consensus about what the two words mean — that they are generally interchangeable. Though a distinction would be convenient, those who argue that usage indicates a broad synonymy are most accurate." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 554 (2d ed. 1995).

Mediation and Conciliation Service. A federal agency that tries to prevent the interruption of commerce resulting from labor disputes, by assisting parties in settling their disputes through mediation and conciliation. • The agency can intervene on its own motion or on the motion of a party to the dispute. — Also termed *Federal Mediation and Conciliation Service*. 29 USCA §§ 172, 173.

mediator (*mee-dee-ay-tər*), *n*. (14c) A neutral person who tries to help disputing parties reach an agreement. Cf. ARBITRATOR. [Cases: Alternative Dispute Resolution ↻470.]

mediators of questions. *Hist.* Six persons authorized by 27 Edw. 3, St. 2, ch. 24 to settle disputes between merchants.

Medicaid. (1966) A cooperative federal–state program that pays for medical expenses for qualifying individuals who cannot afford private medical services. • The program is authorized under the Social Security Act. — Also termed *Medical Assistance*; (in California) *MediCal*. Cf. MEDICARE. [Cases: Health ↻460–512.]

Medicaid-qualifying trust. See TRUST.

MediCal. See MEDICAID.

Medical Assistance. See MEDICAID.

medical directive. See ADVANCE DIRECTIVE (2).

medical-emergency exception. (1975) *Criminal law*. The principle that a police officer does not need a warrant to enter a person's home if the entrance is made to render aid to someone whom the officer reasonably believes to be in need of immediate assistance. [Cases: Searches and Seizures ↻42.1.]

medical evidence. See EVIDENCE.

medical examiner. (1820) A public official who investigates deaths, conducts autopsies, and helps the state prosecute homicide cases. • Medical examiners have replaced coroners in many states. — Sometimes

shortened to *examiner*. See CORONER. [Cases: Coroners ↻1.]

medical expense. See EXPENSE.

medical-expense reimbursement plan. See EMPLOYEE BENEFIT PLAN.

medical jurisprudence. See FORENSIC MEDICINE.

medical lien. See *healthcare lien* under LIEN.

medical malpractice. See MALPRACTICE.

medical neglect. See NEGLECT.

medical probability. See REASONABLE MEDICAL PROBABILITY.

medicals. See *medical expense* (2) under EXPENSE.

Medicare. (1953) A federal program — established under the Social Security Act — that provides health insurance for the elderly and the disabled. Cf. MEDICAID; MEDIGAP INSURANCE. [Cases: Health ↻520–554.]

"The Medicare Program is really three programs, Parts A, B, and C. Part A, the Hospital Insurance program, covers inpatient hospital, skilled nursing, home health, and hospice services. . . . Part B (Supplemental Medical Insurance) benefits help pay for physician's services, outpatient hospital services, renal dialysis, speech and physical therapy, ambulatory surgery, home health services, durable medical equipment, rural health clinic services, comprehensive outpatient rehabilitation facility services, and some diagnostic tests. . . . Part C, the Medicare + Choice managed care program, was established by the Balanced Budget Act of 1997. Under the Medicare + Choice program, Medicare contracts with a wide variety of prepaid health plans on a risk basis to provide care to its beneficiaries." Barry R. Furrow et al., *Health Law* § 11-1, at 538 (2d ed. 2000).

medicolegal (*med-i-koh-lee-gəl*), *adj*. (1835) Involving the application of medical science to law <the coroner's medicolegal functions>. See FORENSIC MEDICINE.

medietas linguae (*mi-dī-ə-tas ling-gwee*), *n*. [Law Latin] *Hist.* Half-tongue. • The term was applied to a jury equally divided between natives and aliens. See DE MEDIETATE LINGUAE.

mediety. See MOIETY (1).

medigap insurance. (1975) *Slang*. A private insurance policy for Medicare patients to cover the costs not covered by Medicare. Cf. MEDICARE.

medio. See DE MEDIO.

medio tempore (*mee-dee-oh tem-pə-ree*). [Latin] *Hist.* In the meantime.

meditatio fugae (*med-i-tay-shee-oh fyoo-jee*). [Latin] *Scots law*. The intention of absconding.

"When a creditor is in circumstances to make oath or affirmation that his debtor, whether native or foreigner, is *in meditatione fugae*, in order to avoid the payment of his debt, or where he has reasonable ground for apprehending that the debtor has such an intention, it is competent for the creditor to apply to a magistrate, who, on inquiring into the circumstances, and finding reason to believe that the creditor's application is well founded, will grant a warrant for apprehending the debtor for examination; and may afterwards grant warrant to imprison him until he find caution *judicio sisti*." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 711–12 (George Watson ed., 7th ed. 1890).

medium concludendi (mee-dee-əm kon-kloo-den-dī). [Law Latin] *Hist.* The ground of action; the cause of action.

medium filum. See *filum aquae* under **FILUM**.

medium impedimentum (mee-dee-əm im-ped-ə-men-təm). [Law Latin “a mid-impediment”] *Hist.* An intervening circumstance that prevents a second event from occurring as a result of the first one.

medium of exchange. (18c) Anything generally accepted as payment in a transaction and recognized as a standard of value <money is a medium of exchange>. Cf. **EXCHANGE** (2); **CURRENCY**; **LEGAL TENDER**. [Cases: Payment ↷9–12.]

medium tempus (mee-dee-əm tem-pəs). [Latin “intermediate period”] *Hist.* See *mesne profits* under **PROFIT** (1).

medium work. See **WORK** (1).

medietum (med-lee-təm), *n.* [Law Latin fr. French *mesler* “to mingle”] *Hist.* 1. A mixing together of something. 2. An affray or sudden encounter; a melee. 3. Interference in a business matter.

medley (med-lee). An affray; sudden or casual fighting. Cf. **CHANCE-MEDLEY**.

med. mal. See *medical malpractice* under **MALPRACTICE**.

meer dreit (meer drayt or dreet). See **MERE RIGHT**.

meeting, *n.* (14c) *Parliamentary law.* The gathering of people to discuss or act on matters in which they have a common interest; esp. the convening of a deliberative assembly to transact business. • A deliberative assembly’s meeting begins with a call to order and continues until the assembly adjourns. See *call to order* under **CALL** (1); **ADJOURN** (2). Cf. **SESSION**. — **meet**, *vb.*

“The distinction should be noted between the *assembly* (that is, the body of people who assemble) and the *meeting* (which is the event of their being assembled to transact business).” Henry M. Robert, *Robert’s Rules of Order Newly Revised* § 1, at 2 (10th ed. 2000).

adjourned meeting. 1. See *continued meeting*. 2. A meeting that has adjourned. • These two senses are opposite in meaning, so the term “continued meeting” is preferable for sense 1.

annual meeting. A yearly meeting to elect or install officers or directors and to conduct other routine organizational business. • An organization’s governing documents usu. specify the time and place of such a meeting. [Cases: Corporations ↷193.]

business meeting. A formal meeting called for considering business, as opposed to a purely educational or social event. • A business meeting may fall within a program that also includes social and informational events. See **PROGRAM** (1).

called meeting. See *special meeting*.

continued meeting. A meeting that will be or has been resumed after a recess (or a so-called adjournment, which may last for several days but is still technically a recess, since it does not end the meeting). • A

continued meeting is technically not an “adjourned meeting,” and an “adjourned meeting” may also mean a meeting that has adjourned, so the term “continued meeting” is preferable. — Also loosely termed *adjourned meeting*. See **RECESS** (2).

creditors’ meeting. *Bankruptcy.* The first meeting of a debtor’s creditors and equity security holders, presided over by the U.S. Trustee and at which a bankruptcy trustee may be elected and the debtor may be examined under oath. 11 USCA § 341. — Also termed *meeting of creditors*; *341 meeting*; *first meeting of creditors*. [Cases: Bankruptcy ↷3024.]

mass meeting. A meeting of an unorganized body called to discuss a particular issue or to organize for a particular purpose and usu. open to anyone interested in that issue or purpose.

organizational meeting. 1. A mass meeting that establishes a permanent or ongoing organization. 2. A meeting that begins an ongoing organization’s proceedings under its regular order, such as adopting governing documents and electing officers, usu. following a mass meeting and an interval when the organization operates under provisional officers while its governing documents are drafted. • If the organizational meeting is for a corporation and the articles of incorporation name the initial directors, the directors hold the meeting. Otherwise, the incorporator holds the meeting. [Cases: Corporations ↷24.] 3. The first meeting after a dissolution, at which a newly reconstituted deliberative assembly — such as a legislative body or a convention whose members are assuming the seats to which they have been elected or re-elected for a new term — elects officers, adopts rules, and otherwise organizes for the new session.

regular meeting. A periodic meeting held at a time set in an organization’s governing documents or under a standing rule or schedule that the deliberative assembly has adopted. — Also termed *stated meeting*. Cf. *special meeting*.

special meeting. A meeting that is not a regular meeting; a meeting called for a particular purpose, usu. between regular meetings. — Also termed *called meeting*. Cf. *regular meeting*. [Cases: Corporations ↷194, 298(3).]

stated meeting. See *regular meeting*.

341 meeting. See *creditors’ meeting*.

meeting-competition defense. *Antitrust.* A defense to a charge of price discrimination whereby the defendant shows that the lower price was a good-faith attempt to match what it believed to be a competitor’s equally low offer.

meeting of creditors. See *creditors’ meeting* under **MEETING**.

meeting of the minds. (1830) *Contracts.* Actual assent by both parties to the formation of a contract, meaning that they agree on the same terms, conditions, and subject matter. • This was required under

the traditional subjective theory of assent, but modern contract doctrine requires only objective manifestations of assent. — Also termed *mutuality of assent*; *aggregatio mentium*; *assensio mentium*. See *mutual assent*. under ASSENT. [Cases: Contracts ↻15.]

megalopolis (meg-ə-lɒp-ə-lis). A heavily populated, continuous urban area that is one vast city or composed of several cities and towns.

Megan's law (meg-ənz or may-gənz). (1994) A statute that requires sex offenders who are released from prison to register with a local board and that provides the means to disseminate information about the registrants to the community in which they dwell. • Although many of these statutes were enacted in the late 1980s, they took their popular name from Megan Kanka of New Jersey, a seven-year-old who in 1994 was raped and murdered by a twice-convicted sex offender who lived across the street from her house. All states have these laws, but only some require community notification (as by publishing offenders' pictures in local newspapers); in others, people must call a state hotline or submit names of persons they suspect. The federal version of Megan's law may be found at 42 USCA § 14071. — Also termed *registration and community-notification law*; *community-notification law*. Cf. JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT. [Cases: Mental Health ↻452, 469.]

meigne (mayn), *n.* [Law French] *Hist.* See MEINY.

meindre age (min-dər əj or əz), *n.* [Law French] *Hist.* Lesser age; minority. See MINORITY (1).

meiny (may-nee), *n.* [Law French] *Hist.* A family, esp. a royal household. — Also spelled *meine*; *meinie*; *meigne*.

melior (mee-lee-ər), *adj.* [Latin] Better; the better, as in *melior res* ("the better thing or chattel").

meliorations (meel-yə-ray-shənz), 1. *Scots law.* Improvements — other than repairs — made to an estate by a tenant or liferenter. • The cost of meliorations is not recoverable from the landlord or fiar. 2. Lasting improvements.

melioribus damnis. See DE MELIORIBUS DAMNIS.

melius inquirendum (mee-lee-əs in-kwə-ren-dəm), *n.* [Law Latin "to be better inquired into"] *Hist.* A writ ordering the escheator to investigate a matter further, as by inquiring who is the next heir of a party who died seised of lands.

Melson formula. *Family law.* A method of calculating a noncustodial parent's child-support obligation to ensure that (1) neither parent falls below the poverty level in meeting child-support obligations, and (2) a child of a wealthier noncustodial parent shares in that parent's higher standard of living. • Named for Judge Elwood F. Melson of Delaware Family Court, the formula has been adopted in several states, such as Delaware, Hawaii, Montana, and West Virginia. The formula works as follows. A self-support reserve is first

deducted from the parent-obligor's net income. Next, a primary support amount per child is calculated at an established subsistence level, added to actual work-related child-care expenses, and allocated between the parents. After deducting the support obligor's self-support reserve and pro rata share of the child's adjusted primary support amount, a percentage of the obligor's remaining income is allocated to additional child support as a cost-of-living adjustment. Total child support is determined by adding together the noncustodial parent's share of primary support and the standard-of-living allowance. [Cases: Child Support ↻89, 90, 146.]

member. (14c) 1. *Parliamentary law.* One of the individuals of whom an organization or a deliberative assembly consists, and who enjoys the full rights of participating in the organization — including the rights of making, debating, and voting on motions — except to the extent that the organization reserves those rights to certain classes of membership.

charter member. A member who was a member when the charter was granted or adopted; a founder.

full member. See *voting member*.

informational member. See *nonvoting member*.

limited member. See *nonvoting member*.

member ex officio. A member who serves (on a board or committee) by virtue of holding an office, and whose membership will therefore pass with the office to his or her successor. — Also termed *ex officio member*. See EX OFFICIO.

nonvoting member. A member whose rights do not include the right of voting on the organization's or assembly's business. — Also termed *informational member*.

voting member. A fully enfranchised member, as distinguished from a nonvoting member. — Also termed *full member*.

2. *Military law.* A person assigned to a court-martial to determine guilt and punishment. [Cases: Military Justice ↻870–871, 879.]

member bank. See BANK.

member firm. *Securities.* A brokerage firm with at least one director, officer, or general partner who holds a seat in an organized securities exchange. — Also termed (if organized as a corporation) *member corporation*. [Cases: Exchanges ↻5–9.]

member of a crew. See SEAMAN.

member of Congress. An elected official who sits in either the U.S. Senate or the House of Representatives. • The official may be appointed to fill an unexpired term. — Abbr. MC. [Cases: United States ↻7.1.]

member of Parliament. A person with the right to sit in one of the two houses of Parliament. — Abbr. MP.

membership committee. See COMMITTEE.

members' scheme of arrangement. See SCHEME OF ARRANGEMENT.

membrana (mem-bray-nə), *n.* [Latin “parchment”] *Hist.* 1. A skin of parchment. 2. A notebook of leaves of parchment. • The English rolls were made of several types of parchment and the term *membrana* was used in referring to them.

membrum (mem-brəm), *n.* [Latin “limb”] A division of something, esp. a slip or small piece of land.

memdispo (mem-dis-poh). *Slang.* See *memorandum opinion* under *OPINION* (1).

memorandum. (15c) 1. An informal written note or record outlining the terms of a transaction or contract <the memorandum indicated the developer’s intent to buy the property at its appraised value>. • To satisfy the statute of frauds, a memorandum can be written in any form, but it must (1) identify the parties to the contract, (2) indicate the contract’s subject matter, (3) contain the contract’s essential terms, and (4) contain the signature of the party against whom enforcement is sought. — Also termed *memorial*; *note*. See *STATUTE OF FRAUDS*. [Cases: Contracts ⇨32; Frauds, Statute Of ⇨103, 105.] 2. An informal written communication used esp. in offices <the firm sent a memorandum reminding all lawyers to turn in their timesheets>. — Often shortened to *memo*. 3. A party’s written statement of its legal arguments presented to the court, usu. in the form of a brief <memorandum of law>. Pl. **memoranda**, **memorandums**.

analytical memorandum. See *research memorandum*.

closed memorandum. A memorandum prepared by a law student using only given facts and the materials, usu. a collection of cases, in a packet provided to the student. — Also termed *closed memo*; *closed-universe memo*.

open memorandum. A memorandum prepared by a law student based on a given set of facts and using any available resources for research. — Also termed *open memo*.

persuasive memorandum. A memorandum written to sway the reader to accept the writer’s position on a stated problem.

research memorandum. A memorandum whose purpose is analyze a legal issue and inform the reader about possible approaches and outcomes. • This type of memorandum is usu. an in-house document. — Also termed *analytical memorandum*.

memorandum articles. *Marine insurance.* Goods described in the memorandum clause. See *MEMORANDUM CLAUSE*. [Cases: Insurance ⇨2235, 2241.]

memorandum check. See *CHECK*.

memorandum clause. A marine-insurance clause protecting underwriters from liability for injury to goods that are particularly perishable, or for minor damages. [Cases: Insurance ⇨2235, 2241.]

“This clause was first introduced into the English [marine-insurance] policies about the year 1749. Before that time the insurer was liable for every injury, however small, that happened to the thing insured. . . . The memorandum

clause . . . usually declares that the enumerated articles, and any other articles that are perishable in their own nature, shall be free from average under a given rate, unless general, or the ship be stranded. In consequence of this exception, all small partial losses, however inconsiderable, are to be borne by a general average, provided they were incurred in a case proper for such an average. . . .” 3 James Kent, *Commentaries on American Law* *294-95 (George Comstock ed., 11th ed. 1866).

memorandum decision. See *memorandum opinion* under *OPINION* (1).

memorandum disposition. See *memorandum opinion* under *OPINION* (1).

memorandum in error. A document alleging a factual error, usu. accompanied by an affidavit of proof.

memorandum of alteration. *English law.* A patentee’s disclaimer of certain rights — such as rights to part of an invention that is not new and useful — to avoid losing the whole patent. • Until the mid-19th century, if a single patent was granted for two inventions, one of which was not new and useful, the entire patent would be defective.

memorandum of association. *English law.* A legal document setting up a corporation — either with or without limited liability — and including the company’s name, purpose, and duration. See *ARTICLES OF INCORPORATION*.

memorandum of intent. See *LETTER OF INTENT*.

memorandum of understanding. See *LETTER OF INTENT*. — Abbr. *MOU*.

memorandum opinion. See *OPINION* (1).

memorandum sale. See *SALE*.

memorial, n. (17c) 1. An abstract of a legal record, esp. a deed; *MEMORANDUM* (1). [Cases: Records ⇨1.] 2. A written statement of facts presented to a legislature or executive as a petition.

memoriter (mə-mor-ə-tər), *adv.* [Latin “with an accurate memory”] From memory; by recollection. • *Memoriter* proof of a written instrument is furnished by the recollection of a witness who knew the instrument.

menacing, n. (14c) An attempt to commit common-law assault. • The term is used esp. in jurisdictions that have defined assault to include battery. See *ASSAULT*. [Cases: Assault and Battery ⇨61; Extortion and Threats ⇨25.1.]

mendacity (men-das-ə-tee), *n.* (16c) 1. The quality of being untruthful. 2. A lie; falsehood. — **mendacious** (men-day-shəs), *adj.*

mendicatorie (men-di-kə-tor-ee-ee). [Law Latin] *Hist.* As a supplicant or beggar.

mend-the-hold doctrine. The principle that a non-performing party’s defense in a breach-of-contract action must be raised before the close of evidence. • A minority of courts limit a defendant to the first defense raised after litigation begins, unless the defendant can show a good-faith basis for a new defense. Most courts allow the defendant to raise several defenses as long as

each defense is based on the reason given for nonperformance when the breach occurred. The term comes from 19-century wrestling jargon, "mend the hold" meaning "get a better grip on your opponent." [Cases: Estoppel ↻68(2).]

men of straw. *Hist.* False witnesses who wandered around courts and were paid to give untrue testimony.

• They stuffed straw into their shoes so that advocates could recognize them. See STRAW MAN (4).

mens (menz), *n.* [Latin] Mind; intention; will.

mensa. See MANAGIUM.

mensa et thoro (men-sə et thor-oh). [Latin] Bed and board. See A MENSA ET THORO; *divorce a mensa et thoro* under DIVORCE.

mensalia (men-say-lee-ə), *n.* [fr. Latin *mensa* "a table"] Parsonages; spiritual livings. — Also termed *mensal benefices*.

mensis (men-sis), *n.* [Latin] *Roman law.* A month.

mens legis (menz lee-jis). [Latin "the mind of the law"] The spirit or purpose of a law.

mens legislatoris (menz lej-is-lə-tor-is). [Latin "the intention of the lawmaker"] Legislative intent.

mentor (men-sor), *n.* [fr. Latin *metiri* "to measure"] *Roman law.* A measurer of land; a surveyor.

mens rea (menz ree-ə). [Law Latin "guilty mind"] (1861) The state of mind that the prosecution, to secure a conviction, must prove that a defendant had when committing a crime; criminal intent or recklessness <the *mens rea* for theft is the intent to deprive the rightful owner of the property>. • *Mens rea* is the second of two essential elements of every crime at common law, the other being the *actus reus*. — Also termed *mental element*; *criminal intent*; *guilty mind*. Pl. *mentes reae* (men-teez ree-ee). Cf. ACTUS REUS. [Cases: Criminal Law ↻20.]

"There are only two states of mind which constitute *mens rea*, and they are *intention*, and *recklessness*." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 29-30 (16th ed. 1952).

"Most English lawyers would however now agree with Sir James Fitzjames Stephen that the expression *mens rea* is unfortunate, though too firmly established to be expelled, just because it misleadingly suggests that, in general, moral culpability is essential to a crime, and they would assent to the criticism expressed by a later judge that the true translation of *mens rea* is 'an intention to do the act which is made penal by statute or by the common law.' [Allard v. Selfridge, (1925) 1 K.B. at 137 (per Shearman, J).]" H.L.A. Hart, "Legal Responsibility and Excuses," in *Punishment and Responsibility* 28, 36 (1968).

"Some years ago the *mens-rea* doctrine was criticized on the ground that the Latin phrase is 'misleading.' If the words '*mens rea*' were to be regarded as self-explanatory they would be open to this objection, but they are to be considered merely as a convenient label which may be attached to any psychical fact sufficient for criminal guilt (in connection with socially harmful conduct). This includes a field too complex for any brief self-explanatory phrase, and since it is important to have some sort of dialectic shorthand to express the idea, this time-honored label will do as well as any." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 826-27 (3d ed. 1982).

mensularius (men-sə-lair-ee-əs), *n.* [fr. Latin *mensa* "a table"] *Roman law.* A dealer in money; a money-changer; a banker.

mensura (men-s[y]oor-ə), *n.* [Latin] *Hist.* A measure.

mensura domini regis (men-s[y]oor-ə dom-ə-ni ree-jis). [Law Latin "the measure of our lord the king"] *Hist.* The standard weights and measures established under Richard I, in his Parliament at Westminster in 1197.

"Thus, under king Richard I, in his parliament holden at Westminster, A.D. 1197, it was ordained that there shall be only one weight and one measure throughout the kingdom, and that the custody of the assise or standard of weights and measures shall be committed to certain persons in every city and borough In king John's time this ordinance of king Richard was frequently dispensed with for money which occasioned a provision to be made for enforcing it These original standards were called *pondus regis*, and *mensura domini regis*; and are directed by a variety of subsequent statutes to be kept in the exchequer, and all weights and measures to be made conformable thereto." 1 William Blackstone, *Commentaries on the Laws of England* 265-66 (1765).

mental abuse. See *emotional abuse* under ABUSE.

mental anguish. See EMOTIONAL DISTRESS.

mental capacity. See CAPACITY (3).

mental cruelty. See CRUELTY.

mental distress. See EMOTIONAL DISTRESS.

mental element. See MENS REA.

mental evaluation. 1. See INDEPENDENT MENTAL EVALUATION. 2. See PSYCHIATRIC EXAMINATION.

mental examination. See PSYCHIATRIC EXAMINATION.

mental illness. (1847) 1. A disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, or the ability to cope with the ordinary demands of life. [Cases: Mental Health ↻3.] 2. Mental disease that is severe enough to necessitate care and treatment for the afflicted person's own welfare or the welfare of others in the community.

mental incompetence. See INCOMPETENCY.

mental-process privilege. See DELIBERATIVE-PROCESS PRIVILEGE.

mental reservation. (17c) One party's silent understanding or exception to the meaning of a contractual provision. [Cases: Contracts ↻14, 15.]

mental shock. See SHOCK.

mental suffering. See EMOTIONAL DISTRESS.

mente captus (men-tee kap-təs). [Latin "captured in mind"] Persons who are habitually insane.

mentes reae (men-teez ree-ee). *pl.* MENS REA.

mentiri (men-ti-ri), *vb.* [Latin] To lie.

mentition (men-tish-ən), *n.* [fr. Latin *mentitio* "lying"] (17c) The act of lying.

mentor judge. See JUDGE.

MEPA. *abbr.* MULTIETHNIC-PLACEMENT ACT OF 1994.

mera facta quae in meris faciendi finibus consistunt (meer-ə fak-tə kwee in meer-is fay-shee-en-di fin-ə-

bæs kæn-sis-tənt). [Latin] *Hist.* Mere acts consisting in bare performance.

mera noctis (meer-ə nok-tis), *n.* [Latin “middle of the night”] Midnight.

mercantile (mər-kæn-teel or -tl or -til), *adj.* (17c) Of or relating to merchants or trading; commercial <the mercantile system>.

mercantile agent. See AGENT (2).

mercantile law. See COMMERCIAL LAW (1).

Mercantile Law Amendment Acts. The Mercantile Law Amendment Act of 1856 (19 & 20 Vict., chs. 60, 97) and the Mercantile Law Amendment Act (Scotland) of 1856, passed primarily to reconcile parts of the mercantile laws of England, Scotland, and Ireland.

mercantile paper. See *commercial paper* (1) under PAPER.

mercative (mər-kay-tiv), *adj.* [fr. Latin *mercatum* “a market”] *Scots law.* Belonging to trade.

mercatum (mər-kay-təm), *n.* [Law Latin] A market; a contract of sale; a bargain.

mercedary (mər-sə-der-ee), *n.* [Latin] An employer; one who hires.

mercenarius (mər-sə-nair-ee-əs), *n.* [Latin] 1. An employee; a servant. 2. A soldier of fortune. — Also spelled *mercennarius*.

mercenary (mər-sə-ner-ee). (14c) *Int'l law.* A professional soldier hired by someone other than his or her own government to fight in a foreign country.

mercenlage (mər-sən-law). [fr. Saxon *myrcnalag*] The law of the Mercians. • This was one of the three principal legal systems prevailing in England at the beginning of the 11th century. It was observed in many midland counties and those bordering on Wales. — Also spelled *merchenlage* (mər-shən-law). — Also termed *lex merciorum* (leks mər-shee-or-əm); *Mercian law* (mər-shee-ən or mər-shən). See DANELAW; WEST SAXON LAW.

[A]bout the beginning of the eleventh century there were three principal systems of laws prevailing in different districts . . . The *Mercen-Lage*, or Mercian laws, which were observed in many of the midland counties, and those bordering on the principality of Wales; the retreat of the ancient Britons; and therefore very probably intermixed with the British or Druidical customs.” 1 William Blackstone, *Commentaries on the Laws of England* 65 (1765).

merces (mər-seez), *n.* [Latin] *Roman law.* 1. An agreed payment for a thing or services specifically contracted for; rent, hire.

“There must be consent, a thing let, and an agreed payment (*merces*) . . . The *merces* must be certain and Justinian’s texts say that, as in sale, it must be money. But there is not the same difficulty here, and Gaius does not state such a rule. It is possible that it did not exist in classical law and, even under Justinian, some cases cannot be reconciled with the rule. The rent of land might be in produce and even a fraction of the crop. This last conflicts with the rule of Gaius that it must be certain: it is held by some writers that the text is interpolated, by others that the relation was not really *locatio conductio*, but *societas* (partnership). The *merces* was not usually a lump sum: more often it was

a series of periodical payments.” W.W. Buckland, *A Manual of Roman Private Law* 289–90 (2d ed. 1939).

2. A reward, esp. for a gratuitous service. Cf. HONORARIUM.

“A recompense paid for any kind of services, without a preceding agreement (e.g., for saving one’s life) is also called *merces*.” Adolf Berger, *Encyclopedic Dictionary of Roman Law* 581 (1953).

merchandise (mər-chən-dīz also -dīs). (13c) 1. In general, a movable object involved in trade or traffic; that which is passed from one person to another by purchase and sale. 2. In particular, that which is dealt in by merchants; an article of trading or the class of objects in which trade is carried on by physical transfer; collectively, mercantile goods, wares or commodities, or any subjects of regular trade, animate as well as inanimate. • This definition generally excludes real estate, ships, intangibles such as software, and the like, and does not apply to money, stocks, bonds, notes, or other mere representatives or measures of actual commodities or values. — Also termed (in senses 1 and 2) *article of merchandise*. 3. Purchase and sale; trade; traffic, dealing, or advantage from dealing.

merchandise broker. See BROKER.

Merchandise Marks Acts. *Hist.* An 1887 statute (50 & 51 Vict., ch. 28) making it a misdemeanor to fraudulently mark merchandise for sale or to sell merchandise so marked. • This statute was repealed in 1968.

merchant. (13c) One whose business is buying and selling goods for profit; esp. a person or entity that holds itself out as having expertise peculiar to the goods in which it deals and is therefore held by the law to a higher standard of expertise than that of a nonmerchant. • Because the term relates solely to goods, a supplier of services is not considered a merchant. [Cases: Sales ⇨ 15.1.]

“The definition of ‘merchant’ in [UCC] Section 2-104(1) identifies two separate but often interrelated criteria: Does the seller ‘deal in goods’ of that kind, or does the seller ‘otherwise by his occupation’ hold himself out as having special knowledge with respect to the goods? It should be emphasized that the drafters have placed these two criteria in the alternative by use of the word ‘or.’ Thus, the definition clearly catches all those who regularly sell inventory even though they may have no expertise regarding the particular product. This would include distributors, wholesalers, and retail dealers. Dealers who sell prepackaged goods containing a defect over which they have no control might be surprised to learn that they have given an implied warranty of merchantability with respect to the goods, but such is the law.” Barkley Clark & Christopher Smith, *The Law of Product Warranties* § 5.02[1], at 5-25 (1984).

merchantable (mər-chənt-ə-bəl), *adj.* (15c) Fit for sale in the usual course of trade at the usual selling prices; MARKETABLE. — Also termed *salable*. See *implied warranty of merchantability* under WARRANTY (2). [Cases: Sales ⇨ 272.] — **merchantability**, *n.*

merchantable title. See *marketable title* under TITLE (2).

merchant appraiser. An expert appointed by a customs officer to reexamine and revalue imported goods for

customs purposes. • The appraiser is usu. an experienced merchant who deals in or has dealt in goods of the character and quality of those at issue. An appraiser is appointed only when an importer requests one. [Cases: Customs Duties ↷59.]

merchant exception. (1973) *Contracts*. In a sale of goods, an exemption from the statute of frauds whereby a contract between merchants is enforceable if, within a reasonable time after they reach an oral agreement, a written confirmation of the terms is sent, to which the recipient does not object within ten days of receiving it. • The only effect of failing to object to the written confirmation is that the recipient will be precluded from relying on the statute of frauds — or the lack of a formal, written agreement — as a defense to a breach-of-contract claim. The party seeking to enforce an agreement must still prove that an agreement was reached. UCC § 2-201. [Cases: Frauds, Statute of ↷127.]

merchant lessee. See LESSEE.

merchantman. *Archaic.* A vessel employed in foreign or interstate commerce or in the merchant service.

merchant's accounts. Current, mutual accounts between merchants showing debits and credits for merchandise.

merchant's defense. (1972) The principle that a store owner will not be held liable for reasonably detaining a suspected shoplifter, to facilitate an investigation by a law-enforcement officer, if probable cause exists to suspect the detained person of wrongfully removing merchandise from the store. [Cases: False Imprisonment ↷11, 13.]

merchant seaman. See SEAMAN.

merchant's firm offer. See *irrevocable offer* under OFFER.

Merchant Shipping Acts. English statutes to improve shipping conditions by, among other things, vesting the supervision of merchant shipping in the board of trade.

merchet (mər-chet). See MARCHET.

mercheta. See MARCHET.

merchetum. See MARCHET.

merciament (mər-see-ə-mənt). *Archaic.* See AMERCEMENT.

Mercian law. See MERCENLAGE.

Mercimoniatus Angliae (mər-sə-moh-nee-ay-təs ang-lee-ee). [Law Latin] *Hist.* English customs duties on merchandise brought into the country.

Mercosur. A common market of South American nations created to facilitate free trade among members. • The entity was created by the Treaty of Asunción in 1991. The charter nations were Argentina, Brazil, Paraguay, and Uruguay. — Also termed *Southern Common Market*.

mercy. (13c) Compassionate treatment, as of criminal offenders or of those in distress; esp. imprisonment,

rather than death, imposed as punishment for capital murder. See CLEMENCY.

mercy killing. See EUTHANASIA.

mercy rule. (1981) *Evidence*. The principle that a defendant is entitled to offer character evidence as a defense to a criminal charge. • This type of evidence is often offered by the defendant's friends and relatives. Fed. R. Evid. 404(a)(1). [Cases: Criminal Law ↷377.]

mere (mair or mer), *n.* [Law French] Mother, as in the phrase *en ventre sa mere* ("in its mother's womb").

mere-continuation doctrine. A principle under which a successor corporation will be held liable for the acts of a predecessor corporation, if only one corporation remains after the transfer of assets, and both corporations share an identity of stock, shareholders, and directors. — Also termed *continuity-of-entity doctrine*. Cf. SUBSTANTIAL-CONTINUITY DOCTRINE. [Cases: Corporations ↷445.1.]

mere-evidence rule. *Criminal procedure.* The former doctrine that a search warrant allows seizure of the instrumentalities of the crime (such as a murder weapon) or the fruits of the crime (such as stolen goods), but does not permit the seizure of items that have evidentiary value only (such as incriminating documents). • The Supreme Court has abolished this rule, and today warrants may be issued to search for and seize all evidence of a crime. *Warden v. Hayden*, 387 U.S. 294, 87 S.Ct. 1642 (1967); Fed. R. Crim. P. 41(b). [Cases: Searches and Seizures ↷102.]

mere license. See *bare license* under LICENSE.

mere licensee. See *bare licensee* under LICENSEE.

mere motu. See EX MERE MOTU.

mere right. An abstract right in property, without possession or even the right of possession. — Also termed *jus merum*; *merum jus*; *meer dreit*.

"The mere right of property, the *jus proprietatis*, without either possession or even the right of possession. This is frequently spoken of in our books under the name of the *mere right*, *jus merum*; and the estate of the owner is in such cases said to be totally divested, and *put to a right*. A person in this situation may have the true ultimate property of the lands in himself: but by the intervention of certain circumstances, either by his own negligence, the solemn act of his ancestor, or the determination of a court of justice, the presumptive evidence of that right is strongly in favour of his antagonist; who has thereby obtained the absolute right of possession . . . The heir therefore in this case has only a *mere right*, and must be strictly held to the proof of it, in order to recover the lands." 2 William Blackstone, *Commentaries on the Laws of England* 197-98 (1766).

merestone (meer-stohn). *Archaic.* A stone that marks land boundaries. — Also spelled *mearstone*.

meretricious (mer-ə-trish-əs), *adj.* (17c) 1. Involving prostitution <a meretricious encounter>. 2. (Of a romantic relationship) involving either unlawful sexual connection or lack of capacity on the part of one party <a meretricious marriage>. 3. Superficially attractive but fake nonetheless; alluring by false show <meretricious advertising claims>.

meretricious relationship. *Archaic.* A stable, marriage-like relationship in which the parties cohabit knowing that a lawful marriage between them does not exist. [Cases: Marriage ⇨ 54(1).]

mergee (mər-jee). A participant in a corporate merger.

merger. (18c) **1.** The act or an instance of combining or uniting. **2. Contracts.** The substitution of a superior form of contract for an inferior form, as when a written contract supersedes all oral agreements and prior understandings. See INTEGRATION (2). [Cases: Contracts ⇨ 245.]

"Where two parties have made a simple contract for any purpose, and afterwards have entered into an identical engagement by deed, the simple contract is *merged* in the deed and becomes extinct. This extinction of a lesser in a higher security, like the extinction of a lesser in a greater interest in lands, is called *merger*." William R. Anson, *Principles of the Law of Contract* 85 (Arthur L. Corbin ed., 3d Am. ed. 1919).

3. Contracts. The replacement of a contractual duty or of a duty to compensate with a new duty between the same parties, based on different operative facts, for the same performance or for a performance differing only in liquidating a duty that was previously unliquidated. **4. Property.** The absorption of a lesser estate into a greater estate when both become the same person's property. Cf. SURRENDER (3). [Cases: Estates in Property ⇨ 10.]

"[I]t would be absurd to allow a person to have two distinct estates, immediately expectant on each other, while one of them includes the time of both There would be an absolute incompatibility in a person filling, at the same time, the characters of tenant and reversioner in one and the same estate; and hence the reasonableness, and even necessity, of the doctrine of merger." 3 James Kent, *Commentaries on American Law* *99 (George Comstock ed., 11th ed. 1866).

5. Criminal law. The absorption of a lesser included offense into a more serious offense when a person is charged with both crimes, so that the person is not subject to double jeopardy. • For example, a defendant cannot be convicted of both attempt (or solicitation) and the completed crime — though merger does not apply to conspiracy and the completed crime. — Also termed *merger of offenses*. [Cases: Criminal Law ⇨ 30.] **6. Civil procedure.** The effect of a judgment for the plaintiff, which absorbs any claim that was the subject of the lawsuit into the judgment, so that the plaintiff's rights are confined to enforcing the judgment. Cf. BAR (5). [Cases: Judgment ⇨ 582.] **7.** The joining of the procedural aspects of law and equity. **8.** The absorption of one organization (esp. a corporation) that ceases to exist into another that retains its own name and identity and acquires the assets and liabilities of the former. • Corporate mergers must conform to statutory formalities and usu. must be approved by a majority of the outstanding shares. — Also termed *corporate merger*. Cf. CONSOLIDATION (4); BUYOUT. [Cases: Corporations ⇨ 581.]

bust-up merger. A merger in which the acquiring corporation sells off lines of business owned by the

target corporation to repay the loans used in the acquisition.

cash merger. A merger in which shareholders of the target company must accept cash for their shares. — Also termed *cash-out merger*; *freeze-out merger*. [Cases: Corporations ⇨ 584.]

conglomerate merger. A merger between unrelated businesses that are neither competitors nor customers or suppliers of each other. [Cases: Antitrust and Trade Regulation ⇨ 769.]

"A merger which is neither vertical nor horizontal is a conglomerate merger. A pure conglomerate merger is one in which there are no economic relationships between the acquiring and the acquired firm. Mixed conglomerate mergers involve horizontal or vertical relationships, such as the acquisition of a firm producing the same product as the acquirer but selling it in a different geographical market, which is not a horizontal merger because the merging companies are not competitors" 54 Am. Jur. 2d *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 169, at 226 (1996).

de facto merger (di fak-toh). A transaction that has the economic effect of a statutory merger but that is cast in the form of an acquisition or sale of assets or voting stock. • Although such a transaction does not meet the statutory requirements for a merger, a court will generally treat it as a statutory merger for purposes of the appraisal remedy. [Cases: Corporations ⇨ 445.1.]

downstream merger. A merger of a parent corporation into its subsidiary.

forward triangular merger. See *triangular merger*.

freeze-out merger. See *cash merger*.

horizontal merger. A merger between two or more businesses that are on the same market level because they manufacture similar products in the same geographic region; a merger of direct competitors. — Also termed *horizontal integration*.

product-extension merger. A merger in which the products of the acquired company are complementary to those of the acquiring company and may be produced with similar facilities, marketed through the same channels, and advertised by the same media.

reverse triangular merger. A merger in which the acquiring corporation's subsidiary is absorbed into the target corporation, which becomes a new subsidiary of the acquiring corporation. — Also termed *reverse subsidiary merger*.

short-form merger. A statutory merger that is less expensive and time-consuming than an ordinary statutory merger, usu. permitted when a subsidiary merges into a parent that already owns most of the subsidiary's shares. • Such a merger is generally accomplished when the parent adopts a merger resolution, mails a copy of the plan to the subsidiary's record shareholders, and files the executed articles of merger with the secretary of state, who issues a certificate of merger.

statutory merger. A merger provided by and conducted according to statutory requirements.

stock merger. A merger involving one company's purchase of another company's capital stock.

triangular merger. A merger in which the target corporation is absorbed into the acquiring corporation's subsidiary, with the target's shareholders receiving stock in the parent corporation. — Also termed *subsidiary merger*; *forward triangular merger*.

upstream merger. A merger of a subsidiary corporation into its parent.

vertical merger. A merger between businesses occupying different levels of operation for the same product, such as between a manufacturer and a retailer; a merger of buyer and seller.

9. The merger of rights and duties in the same person, resulting in the extinction of obligations; esp. the blending of the rights of a creditor and debtor, resulting in the extinguishment of the creditor's right to collect the debt. • As originally developed in Roman law, a merger resulted from the marriage of a debtor and creditor, or when a debtor became the creditor's heir. — Also termed *confusion*; *confusion of debts*; *confusion of rights*. Cf. CONFUSION OF TITLES. 10. The absorption of a contract into a court order, so that an agreement between the parties (often a marital agreement incident to a divorce or separation) loses its separate identity as an enforceable contract when it is incorporated into a court order.

merger clause. See INTEGRATION CLAUSE.

merger doctrine. 1. *Copyright.* The principle that since an idea cannot be copyrighted, neither can an expression that must inevitably be used in order to express the idea. • When the idea and expression are very difficult to separate, they are said to merge. For example, courts have refused copyright protection for business-ledger forms (*Baker v. Selden*, 101 U.S. 99 (1879)), and for contest rules that were copied almost verbatim (*Morrissey v. Procter & Gamble*, 379 F.2d 675 (1st Cir. 1967)). — Also termed *Baker v. Selden doctrine*. [Cases: Copyrights and Intellectual Property ↷4.5.] 2. *Hist. Family law.* The common-law principle that, upon marriage, the husband and wife combined to form one legal entity. — Often shortened to *merger*; *merger doctrine*. See SPOUSAL-UNITY DOCTRINE; LEGAL-UNITIES DOCTRINE.

merger of offenses. See MERGER (5).

meritorious (mer-ə-tor-ee-əs), *adj.* (15c) 1. (Of an act, etc.) meriting esteem or reward <meritorious trial performance>. 2. (Of a case, etc.) meriting a legal victory; having legal worth <meritorious claim>.

meritorious consideration. See *good consideration* under CONSIDERATION (1).

meritorious defense. See DEFENSE (1).

merit regulation. Under state blue-sky laws, the practice of requiring securities offerings not only to be accom-

panied by a full and adequate disclosure but also to be substantively fair, just, and equitable.

merits. (18c) 1. The elements or grounds of a claim or defense; the substantive considerations to be taken into account in deciding a case, as opposed to extraneous or technical points, esp. of procedure <trial on the merits>. 2. EQUITY (3) <on questions of euthanasia, the Supreme Court has begun to concern itself with the merits as well as the law>.

merits brief. See *brief on the merits* under BRIEF.

merits discovery. See DISCOVERY.

merit system. (1879) The practice of hiring and promoting employees, esp. government employees, based on their competence rather than political favoritism. Cf. SPOILS SYSTEM. [Cases: Officers and Public Employees ↷11.]

Merit Systems Protection Board. The independent federal agency that oversees personnel practices of the federal government and hears and decides appeals from adverse personnel actions taken against federal employees. • It has five regional offices and five field offices. Its functions were transferred from the former Civil Service Commission under Reorganization Plan No. 2 of 1978. — Abbr. MSPB. See CIVIL SERVICE COMMISSION. [Cases: Officers and Public Employees ↷72.20.]

MERP. *abbr.* Medical-expense reimbursement plan. See EMPLOYEE BENEFIT PLAN.

Merrill doctrine. The principle that the government cannot be estopped from disavowing an agent's unauthorized act. *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 68 S.Ct. 1 (1947). [Cases: Estoppel ↷62; United States ↷60.]

merum (meer-əm). [Latin] *Hist.* Mere; naked.

merum jus (meer-əm jās). See MERE RIGHT.

merx (mærks). [Latin] *Hist.* Trade articles; merchandise.

merx et pretium (mærks et pree-shee-əm). [Law Latin] *Roman & Scots law.* Goods and a price. • These components are two essential items for a sales contract.

mescreaunt (mes-kree-awnt or mis-kree-ənt). [Law French] *Hist.* MISCREANT. — Also termed *mescreoyant*.

mese (meez or mees), *n.* [Law French] *Hist.* A house. — Also spelled *mees*; *meas*.

mesnalty (meen-əl-tee), *n.* [fr. Law French and English mesné "middle"] *Hist.* 1. The estate or manor held by a mesne lord. 2. The right of the mesne; the tenure of the mesne lord. — Also spelled *mesnality*. See MESNE LORD.

mesne (meen), *adj.* (16c) 1. Occupying a middle position; intermediate or intervening, esp. in time of occurrence or performance <the mesne encumbrance has priority over the third mortgage, but is subordinate to the first mortgage>. 2. *Hist.* Of or relating to a lord who holds land of a superior while himself having a tenant.

mesne, writ of. See DE MEDIO.

mesne agreement. A transfer of intellectual-property rights through an intermediary, usu. an assignee, rather than directly from the property's creator.

mesne assignment. See ASSIGNMENT (2).

mesne conveyance. See CONVEYANCE.

mesne encumbrance. See ENCUMBRANCE.

mesne lord. *Hist.* A feudal lord who stood between a tenant and the chief lord, and held land from a superior lord. See LORD (3).

mesne process. See PROCESS.

mesne profits. See PROFIT (1).

mesonomic (mes-ə-nom-ik *also* mee-zə), *adj.* Of, relating to, or involving an act that, although it does not affect a person's physical freedom, has legal consequences in its evolution. • This term was coined by the philosopher Albert Kocourek in his book *Jural Relations* (1927). Cf. ZYGNOMIC.

message. (14c) A written or oral communication, often sent through a messenger or other agent, or electronically (e.g., through e-mail or voicemail).

annual message. A message from the President or a governor given at the opening of an annual legislative session.

Presidential message. A communication from the President to the U.S. Congress on matters pertaining to the state of the union, esp. of matters requiring legislative consideration. U.S. Const. art. II, § 3. — Also termed *State of the Union*. [Cases: United States ⇨ 26.]

special message. A message from the President or a governor relating to a particular matter.

veto message. See VETO MESSAGE.

message from the Crown. An official communication from the sovereign to Parliament.

messarius (mə-sair-ee-əs), *n.* [fr. Latin *messis*] *Hist.* A chief servant; a bailiff; an overseer of the harvest.

messenger. (14c) **1.** One who conveys a communication; esp. one employed to deliver telegrams or other communications. **2.** *Hist.* An officer who performs certain ministerial duties, such as taking temporary charge of assets of an insolvent estate.

messuage (mes-wij). (14c) A dwelling house together with the curtilage, including any outbuildings. See CURTILAGE.

meta (mee-tə), *n.* [Latin] **1.** *Roman law.* The mark where a racecourse ends or around which chariots turn; by extension, a limit in space or time. **2.** *Hist.* A boundary; a border.

metadata. Secondary data that organize, manage, and facilitate the use and understanding of primary data. • Metadata are evaluated when conducting and responding to electronic discovery. If privileged documents or final versions of computer files may contain metadata, they might be "scrubbed" before release. See Fed. R.

Civ. P. 26(b)(2)(B). [Cases: Federal Civil Procedure ⇨ 1581.]

metalaw (met-ə-law). (1956) A hypothetical set of legal principles based on the rules of existing legal systems and designed to provide a framework of agreement for these different systems.

"[T]he Constitution controls the deployment of governmental power and defines the rules for how such power may be structured and applied. The Constitution, therefore, is not a body of rules about ordinary private actions, but a collection of rules about the rules and uses of law: in a word, *metalaw*." Laurence H. Tribe, *Constitutional Choices* 246 (1985).

metallum (mə-tal-əm), *n.* *Roman law.* **1.** Metal; a mine. **2.** Labor in the mines as punishment for a crime. • This was one of the most severe punishments short of death.

metatag. A word or phrase in HTML computer code that usu. identifies the subject of a web page and acts as a hidden keyword for Internet search engines. • A person who uses a trademark as a metatag without permission may infringe on the trademark owner's rights.

metatus (mə-tay-təs), *n.* [Law Latin] *Hist.* A dwelling; quarters; a seat.

metayer system (me-tay-yər *or* met-ə-yay). An agricultural system in which land is divided into small farms among single families who pay a landlord a fixed portion — usu. half — of the produce and the landlord provides the stock. • The system was formerly prevalent in parts of France and Italy, and in the southern part of the United States. — Also written *métayer system*.

metecorn (meet-korn). *Archaic.* A portion of grain a lord pays a tenant for labor.

metegavel (meet-gav-əl). *Archaic.* A rent or tribute paid in supplies of food.

metelotage (me-te-loh-tahzh). [French] **1.** *French law.* The leasing of a ship. **2.** A seaman's wages.

mete out, vb. (bef. 15c) To dispense or measure out (justice, punishment, etc.) <shortly after the jury returned its verdict, the judge meted out an appropriate punishment>.

meter. **1.** A metric unit of length equal to 39.368 inches. **2.** An instrument of measurement used to measure use or consumption, esp. used by a utility company to measure utility consumption <a gas meter> <a water meter> <a parking meter>.

meter rate. A rate that a utility company applies to determine a charge for service <meter rate based on kilowatt-hours of electricity>.

metes and bounds (meets). (15c) The territorial limits of real property as measured by distances and angles from designated landmarks and in relation to adjoining properties. • Metes and bounds are usu. described in deeds and surveys to establish the boundary lines of land. — Also termed *running description*; *butts and bounds*; *lines and corners*. See CALL (5). [Cases: Boundaries ⇨ 6–8.]

metewand (meet-wahnd). *Archaic*. A measuring staff of varying lengths.

meteyard (meet-yahrd). *Archaic*. A metewand that is one yard long.

method. (15c) A mode of organizing, operating, or performing something, esp. to achieve a goal <method of election> <method of performing a job>.

method claim. See PATENT CLAIM.

method patent. See PATENT (3).

metric system. (1864) A decimal system for measuring length, weight, area, or volume, based on the meter as a unit length and the kilogram as a unit mass.

metropolitan, *adj.* (14c) Of or relating to a city or metropolis.

metropolitan, *n.* *Eccles. law*. An archbishop; the head of a province <the Archbishop of Canterbury is a metropolitan>.

metropolitan council. An official or quasi-official body appointed or elected by voters of a metropolitan area to provide for the unified administration of services (such as sewage disposal or public transportation) to the cities and towns within the metropolitan area. [Cases: Municipal Corporations ⇨39.]

metropolitan district. See DISTRICT.

metropolitan magistrate. See *metropolitan stipendiary magistrate* under MAGISTRATE.

metteshep (meet-shəp). *Hist.* **1.** An acknowledgment paid in a measure of corn. **2.** A penalty imposed on a tenant for neglect of duty, such as failing to cut the lord's corn. — Also spelled *mettenschep*.

metus (mee-təs), *n.* [Latin] *Roman law*. **1.** Fear of imminent danger; apprehension of serious danger, esp. in the form of duress to force a person to do something; the use of threats to bring about some end. • *Metus* was more comprehensive than duress is in Anglo-American law. It included fear of any evil that was serious enough to affect a reasonable person.

"Fear (metus) had the same effect as fraud as regards the avoidance of the contract. It might be set up by way of defence (exceptio metus) or be the ground of restitutio in integrum, or give rise to an action (actio metus) . . . It was not any kind of fear which grounded this action. The evil threatened must be of a serious character . . ." R.W. Lee, *The Elements of Roman Law* 352 (4th ed. 1956).

2. A threat that diminishes the value of another's property. • In both senses, a victim was allowed to seek fourfold damages against the perpetrator. Cf. DOLUS.

metus perjurii (mee-təs pər-juur-ee-i). [Law Latin] *Scots law*. The fear of perjury.

"On this ground the evidence of the parties to a cause, and that of their relatives, was formerly excluded. It was feared that their own, or their relatives', interest in the result of the cause might lead them to give false evidence, in order to bring about a favourable decision. This, however, is no longer law. The desire to obtain all the light possible on the facts in dispute, has overcome the *metus perjurii*." John Trayner, *Trayner's Latin Maxims* 353-54 (4th ed. 1894).

meubles (muu-bəl or myoo-blə), *n.* [Law French] Movables, such as household utensils. See MOVABLE.

Mexican divorce. See DIVORCE.

MFN. *abbr.* MOST FAVORED NATION.

MFN clause. See MOST-FAVORED-NATION CLAUSE.

MFN treatment. *abbr.* MOST-FAVORED-NATION TREATMENT.

Michaelmas. See *quarter day* under DAY.

Michaelmas sittings (mik-əl-məs). In England, a term of court running from November 2 to November 25. • Until 1875, this was also called the *Michaelmas term*. The division of the legal year into terms was abolished by the Judicature Act of 1873. — Also termed *Michaelmas term*. Cf. EASTER SITTINGS; HILARY SITTINGS; TRINITY SITTINGS.

miche (mich), *vb.* *Hist.* To hide; to sneak; to play truant. — Also spelled *mitch*.

michery (mich-ər-ee). *Hist.* Theft; cheating.

Midcal test. *Antitrust*. The doctrine that the anticompetitive acts of a private party will be considered state acts — and thereby protected from liability under the antitrust laws — if the acts are within a clearly articulated and affirmatively expressed policy of the state, and if the conduct is actively supervised by the state. *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 S.Ct. 937 (1980). See STATE-ACTION DOCTRINE; ACTIVE SUPERVISION. [Cases: Antitrust and Trade Regulation ⇨904.]

mid-channel. See MIDDLE LINE OF MAIN CHANNEL.

middle burden of proof. See BURDEN OF PROOF.

middle-level scrutiny. See INTERMEDIATE SCRUTINY.

middle line of main channel. The equidistant point in the main channel of the river between the well-defined banks on either shore; the middle thread of a river's current. — Also termed *mid-channel*; *middle of the river*.

middleman. (17c) An intermediary or agent between two parties; esp. a dealer (such as a wholesaler) who buys from producers and sells to retailers or consumers.

middle management. See MANAGEMENT.

middle of the river. See MIDDLE LINE OF MAIN CHANNEL.

middle-of-the-road test. See HYDRAFLOW TEST.

middle thread. The center line of something; esp. an imaginary line drawn lengthwise through the middle of a stream's current.

mid-level scrutiny. See INTERMEDIATE SCRUTINY.

midnight deadline. A time limit for doing something, ending at midnight on a particular day. • For a bank, the midnight deadline is midnight on the next banking day following the day on which the bank receives the relevant item or from which the time for taking action begins to run, whichever is later. UCC § 4-104(a)(10). [Cases: Banks and Banking ⇨140(3), 171(5).]

midnight judge. *Hist.* A federal judicial nominee appointed by President John Adams just before his term expired, in an effort to pack the judiciary with Federalist Party sympathizers. • The Judiciary Act of 1801, passed and signed into law a few weeks before Adams's term expired, led to the appointment of 84 federal judges and countless marshals, clerks, attorneys, registers of wills, and justices of the peace, all of whom were affiliated with the Federalists. The Senate approved nominations and granted commissions up until its final adjournment just before Thomas Jefferson's inauguration. More than half of the commissions had not been delivered by the end of inauguration day. Secretary of State James Madison, acting at Jefferson's direction, barred their delivery and treated them as void. This led William Marbury to seek a federal court order to compel Madison to deliver Marbury's commission as justice of the peace. *See Marbury v. Madison*, 5 U.S. 137 (1803).

midshipman. (17c) A naval cadet; a student at the U.S. Naval Academy. [Cases: Armed Services ↻16.]

Midsummer Day. *See quarter day* under DAY.

midway. *See THALWEG.*

Midwest Piping rule. *Labor law.* The doctrine that an employer may not recognize multiple unions during a period in which there are conflicting claims of representation. *Midwest Piping & Supply Co.*, 63 NLRB Dec. (CCH) 1060 (1945).

migrant worker. **1.** *Int'l law.* A person who works seasonally as an agricultural laborer in a foreign country, esp. in agricultural labor. [Cases: Labor and Employment ↻2700.] **2.** A person who works seasonally as a laborer in a different part of his or her own country.

migration. (17c) Movement (of people or animals) from one country or region to another.

migratory corporation. *See CORPORATION.*

migratory divorce. *See DIVORCE.*

Mike O'Connor rule. *Labor law.* The doctrine that unilateral changes that an employer makes after a union victory in an initial-representation election — but before the employer's objections have been resolved — are automatic violations of the National Labor Relations Act if the employer's objections are rejected. • If the employer's objections are sustained, any failure-to-bargain charge will be dismissed because the employer had no duty to bargain. But if the employer's objections are rejected, the employer is considered to have been under a duty to bargain as of the date of the election, which is why the unilateral changes are automatic violations of the Act. *Mike O'Connor Chevrolet-Buick-GMC Co.*, 209 NLRB Dec. (CCH) 701 (1974).

mild exigency. (1984) A circumstance that justifies a law-enforcement officer's departure from the knock-and-announce rule, such as the likelihood that the building's occupants will try to escape, resist arrest, or destroy evidence. *See KNOCK-AND-ANNOUNCE RULE.*

mile. (bef. 12c) **1.** A measure of distance equal to 5,280 feet. — Also termed *statute mile*. **2.** NAUTICAL MILE.

mileage. (18c) **1.** The distance in miles between two points. **2.** The distance a vehicle has traveled as reflected by an odometer. **3.** An allowance paid for travel expenses, as of a witness or public employee. [Cases: Witnesses ↻29.]

miles (mī-leez), *n.* [Latin] **1.** *Roman law.* A soldier. **2.** *Hist.* A knight.

militare (mil-ə-tair-ee), *vb.* [Latin] **1.** *Roman law.* To serve as a soldier. • This verb later referred to serving in public office, civil or military. **2.** *Hist.* To be knighted.

military, adj. (15c) **1.** Of or relating to the armed forces <military base>. **2.** Of or relating to war <military action>.

military, n. (18c) The armed forces.

military allotment. *Family law.* A child-support deduction from the salary of an obligor parent on active duty in the United States military and paid to the obligee parent. *See attachment of wages* under ATTACHMENT (1).

military board. A group of persons appointed to act as a fact-finding agency or as an advisory body to the appointing military authority.

military bounty land. Land offered to members of the military as a reward for services. *See donation land, bounty land* under LAND; BOUNTY-LAND WARRANT. [Cases: Bounties ↻1.]

military commission. A court, usu. composed of both civilians and military officers, that is modeled after a court-martial and that tries and decides cases concerning martial-law violations. *See COURT-MARTIAL.*

military-contract defense. *See GOVERNMENT-CONTRACTOR DEFENSE.*

military-contractor defense. *See GOVERNMENT-CONTRACTOR DEFENSE.*

military court. *See COURT.*

military court of inquiry. *See COURT.*

military draft. *See DRAFT* (2).

military government. *Int'l law.* The control of all or most public functions within a country, or the assumption and exercise of governmental functions, by military forces or individual members of those forces; government exercised by a military commander under the direction of the executive or sovereign, either externally during a foreign war or internally during a civil war. • A military government's actions supersede all local law. *See MARTIAL LAW.*

military judge. *See JUDGE.*

military judge alone. *Military law.* A court-martial presided over by a single judge with no other court-martial members present. [Cases: Military Justice ↻874.]

military jurisdiction. The three types of governmental power given the military by the U.S. Constitution — specifi., jurisdiction under military law, jurisdiction

under military government, and jurisdiction under martial law. [Cases: Armed Services ↷ 1-5, 44; Military Justice ↷ 514, 893.]

military justice. A structure of punitive measures designed to foster order, morale, and discipline within the military. See MILITARY LAW. [Cases: Armed Services ↷ 42; Military Justice ↷ 500-510.]

military law. The branch of public law governing military discipline and other rules regarding service in the armed forces. • It is exercised both in peacetime and in war, is recognized by civil courts, and includes rules far broader than for the punishment of offenders. — Also termed *military justice*. — Sometimes loosely termed *martial law*. Cf. MARTIAL LAW.

"Military Law . . . is largely, but not exclusively, statutory in character, and prescribes the rights of, and imposes duties and obligations upon, the several classes of persons composing its military establishment; it creates military tribunals, endows them with appropriate jurisdiction and regulates their procedure; it also defines military offenses and, by the imposition of adequate penalties, endeavors to prevent their occurrence." George B. Davis, *A Treatise on the Military Law of the United States* 1 (3d ed. 1915).

military leave. A policy contained in employment policies or collective-bargaining agreements allowing a long-term leave of absence — without an accompanying loss of benefits — for a person in active service in the U.S. armed forces.

military necessity. *Int'l law.* A principle of warfare allowing coercive force to achieve a desired end, as long as the force used is not more than is called for by the situation. • This principle dates from the Hague Convention on Laws and Customs of War on Land of October 18, 1907, which prohibits the destruction or seizure of enemy property "unless such destruction or seizure be imperatively demanded by the necessities of war." [Cases: War and National Emergency ↷ 9.]

military objective. *Int'l law.* An object that by its nature, location, or use contributes to military action, and is thus susceptible to attack. • Under Geneva Convention Protocol 1 (1977), only military — rather than civilian — objects are proper targets.

military offense. An offense, such as desertion, that lies within the jurisdiction of a military court. See COURT-MARTIAL. [Cases: Armed Services ↷ 35; Military Justice ↷ 550-789.]

military officer. See OFFICER (2).

Military Rules of Evidence. The rules of evidence applicable to military law and courts-martial. — Abbr. MRE. [Cases: Military Justice ↷ 1020-1152.]

military tenure. See TENURE.

military testament. See *soldier's will* under WILL.

militate (mil-ə-tayt), *vb.* (16c) To exert a strong influence <the evidence of police impropriety militates against a conviction>. Cf. MITIGATE.

milites (mil-ə-teez), *n.* 1. *Roman law.* Members of the military; soldiers. 2. *Hist.* Knights who are part of the royal army, by virtue of feudal tenure.

"[Knights] are also called in our law *milites*, because they formed a part of the royal army, in virtue of their feudal tenures; one condition of which was, that every one who held a knight's fee immediately under the crown . . . was obliged to be knighted and attend the king in his wars, or fine for his non-compliance." 1 William Blackstone, *Commentaries on the Laws of England* 404 (1765).

3. *Scots law.* Freeholders holding estates from barons for military service.

militia (mə-lish-ə), *n.* (16c) 1. A body of citizens armed and trained, esp. by a state, for military service apart from the regular armed forces. • The Constitution recognizes a state's right to form a "well-regulated militia" but also grants Congress the power to activate, organize, and govern a federal militia. U.S. Const. amend. II; U.S. Const. art. I, § 8, cl. 15-16. See NATIONAL GUARD. [Cases: Militia ↷ 1-3; Weapons ↷ 1.]

reserve militia. All persons who are not exempt from military service and not actively serving in the armed forces or national guard.

2. *Roman law.* Military service.

Militia Clause. (1918) One of two clauses of the U.S. Constitution giving Congress the power to call forth, arm, and maintain a military force to enforce compliance with its laws, suppress insurrections, and repel invasions. U.S. Const. art. I, § 8, cls. 15 and 16. [Cases: Armed Services ↷ 1, 5; Militia ↷ 1.]

mill. (bef. 12c) 1. A machine that grinds corn, grain, or other substances, esp. using a wheel and circular motion. • The substance ground in a mill is sometimes called grist, esp. when it is a grain. Courts sometimes refer to the grinding process as a metaphor for the judicial process <suits to collect on promissory notes are grist for the summary-judgment mill because the material facts in such cases are often undisputed>. [Cases: Manufactures ↷ 2.] 2. The building in which the grinding is performed, along with the site, dam, or other items connected with the mill. 3. A monetary unit equal to one-tenth of a cent. • Mills are a money of account used in the United States and Canada, esp. to reckon tax rates.

millage rate. See MILL RATE.

Miller Act. A federal law requiring the posting of performance and payment bonds before an award is made for a contract for construction, alteration, or repair of a public work or building. 40 USCA §§ 270a-270d-1. [Cases: United States ↷ 67.]

Miller trust. See TRUST.

Miller-Tydings Act. A federal law, enacted in 1937 as an amendment to the Sherman Act, exempting fair-trade laws from the application of the Sherman Act and legalizing resale-price-maintenance agreements between producers and retailers of products. • The Act was repealed by the Consumer Goods Pricing Act of 1975.

Miller v. Shugart agreement. A settlement in which an insured consents to a judgment in favor of the plaintiff, on the condition that the plaintiff will satisfy the

judgment only out of proceeds from the insured's policy, and will not seek recovery against the insured personally. • Although the phrase takes its name from a Minnesota case, it is used in other jurisdictions as well. *Miller v. Shugart*, 316 N.W.2d 729 (Minn. 1982). [Cases: Insurance ↷3366.]

milling in transit. An arrangement in which a shipment is temporarily detained at an intermediate point, usu. for the application of some manufacturing process, with or without an increase of a freight charge by the carrier. [Cases: Carriers ↷12(2), 13(2).]

mill power. A unit of water power used in defining quantities and weights of water available to a lessee. [Cases: Waters and Water Courses ↷285.]

mill privilege. The right of a mill-site owner to construct a mill and to use power from a stream to operate it, with due regard to the rights of other owners along the stream's path. [Cases: Manufactures ↷2.]

mill rate. A tax applied to real property whereby each mill represents \$1 of tax assessment per \$1,000 of the property's assessed value <the mill rate for taxes in this county is 10 mills, so for a home valued at \$100,000, the owner will pay \$1,000 in property taxes>. — Also termed *millage rate*. [Cases: Taxation ↷2428.]

mill site. 1. A small tract of land on or contiguous to a watercourse, suitable for the erection and operation of a mill. [Cases: Manufactures ↷2.] 2. *Mining law.* A small parcel of nonmineral public land (not exceeding five acres) claimed and occupied by an owner of a mining claim because the extra space is needed for mining or ore-reduction operations. 30 USCA § 42.

Mimms order. (1993) A police officer's command for a motorist to get out of the vehicle. • A *Mimms* order need not be independently justified if the initial stop was lawful. *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977). [Cases: Automobiles ↷349(16).]

mina (mī-nə), *n.* [Law Latin] *Hist.* A measure of grain or corn.

minage (mī-nij), *n.* [Law French] *Hist.* A toll for selling grain or corn by the *mina*.

minare (mī-nair-ee), *vb.* [Law Latin] *Hist.* To mine.

mind. (bef. 12c) 1. The source of thought and intellect; the seat of mental faculties. 2. The ability to will, direct, or assent. — Also termed *sound mind*. 3. Memory.

mind and memory. *Archaic.* A testator's mental capacity to make a will <she argued that her uncle was not of sound mind and memory when executing the will because he had Alzheimer's disease>. • This phrase was generally used as part of the phrase *of sound mind and memory*, referring to the capacity of a testator to make a will. See BONA MEMORIA; CAPACITY (2).

mine. (14c) 1. An underground excavation used to obtain minerals, ores, or other substances. 2. A mineral deposit; a place containing a mineral deposit.

mineral, *n.* (15c) 1. Any natural inorganic matter that has a definite chemical composition and specific physical properties that give it value <most minerals

are crystalline solids>. [Cases: Mines and Minerals ↷48.] 2. A subsurface material that is explored for, mined, and exploited for its useful properties and commercial value. 3. Any natural material that is defined as a mineral by statute or caselaw.

mineral acre. *Oil & gas.* The full mineral interest in one acre of land. [Cases: Mines and Minerals ↷47.]

mineral deed. See DEED.

mineral district. See DISTRICT.

mineral easement. See EASEMENT.

mineral entry. (1882) The right of entry on public land to mine valuable mineral deposits. [Cases: Mines and Minerals ↷9–38.]

"It is the policy of the United States, as expressed in Acts of Congress, to make public lands available to the people for the purpose of mining valuable mineral deposits, and to encourage exploration for, and development of, mineral resources on public lands. Accordingly, the United States has reserved all lands 'valuable for minerals' . . . from disposition under the nonmineral statutes, and has made them open to entry for mining purposes, under regulations prescribed by law . . . In other words . . . where statute authorizes the Federal Government to acquire lands, without indicating that lands are to be acquired for a particular purpose, lands so acquired are public lands subject to mineral entry." 53A Am. Jur. 2d *Mines and Minerals* § 23, at 274 (1996).

mineral interest. *Oil & gas.* The right to search for, develop, and remove minerals from land or to receive a royalty based on the production of minerals. • Mineral interests are granted by an oil-and-gas lease. — Also termed *mineral right*. See FEE INTEREST; SUBSURFACE INTEREST; SURFACE INTEREST. [Cases: Mines and Minerals ↷47, 62.1, 73.1.]

mineral land. See LAND.

mineral lease. See LEASE.

mineral lode. (1870) A mineral bed of rock with definite boundaries in a general mass of a mountain; any belt of mineralized rock lying within boundaries that clearly separate it from neighboring rock. — Also termed *lode*.

"Typically, a lode is a concentration of valuable mineral with boundaries sufficiently distinct to import such a definite trend, continuity, and apartness to the formation that it can be traced through the enclosing mass of rock." 1 *American Law of Mining* § 32.02(2), at 32-7 (2d ed. 1998).

mineral right. See MINERAL INTEREST.

mineral royalty. See ROYALTY (2).

mineral servitude. See SERVITUDE (2).

Minerals Management Service. A unit in the U.S. Department of the Interior responsible for entering into and managing leases for the recovery of minerals on the outer continental shelf and for collecting and distributing royalty and other payments due the U.S. and Indian tribes from mineral production. [Cases: Mines and Minerals ↷5.1(1).]

minerator (mīn-ər-ay-tər). [Law Latin] A miner.

miner's inch. A measurement of water discharge, equaling nine-gallons per minute from a one-inch

square pipe. • The precise measurement of a miner's inch varies in different localities.

Mine Safety and Health Administration. A unit in the U.S. Department of Labor responsible for preventing mine accidents and occupational diseases in the nation's mining industry. • It sets mandatory safety and health standards, assesses fines for their violation, and investigates mine accidents. Its programs are operated through regional administrators located in the nation's mining regions. — Abbr. MSHA. [Cases: Labor and Employment ↷2634.]

minimal contacts. See MINIMUM CONTACTS.

minimalist retributivism. See RETRIBUTIVISM.

minimal participant. (1987) *Criminal law.* Under the federal sentencing guidelines, a defendant who is among the least culpable of a group of criminal actors, as when the defendant does not understand the scope or structure of the criminal enterprise or the actions of the other members of the group. • The offense level for a crime of a minimal participant can be decreased by four levels. U.S. Sentencing Guidelines Manual § 3B1.2(a). Cf. MINOR PARTICIPANT. [Cases: Sentencing and Punishment ↷764.]

minimal scrutiny. See RATIONAL-BASIS TEST.

mini-maxi, n. An underwriting arrangement for a securities transaction, whereby a broker is required to sell the minimum number of securities on an all-or-none basis and the balance on a best-efforts basis. See UNDERWRITING (2).

miniment (min-ə-mənt). See MUNIMENT.

mini-Miranda requirement. *Debtor-creditor law.* A debt collector's obligation when communicating with a debtor to inform the debtor that (1) the communication is from a debt collector seeking to collect a debt and (2) any information received will be used for that purpose. • This disclosure is required by the Fair Debt Collection Practices Act. [Cases: Antitrust and Trade Regulation ↷214.]

minimization requirement. (1972) *Criminal law.* The mandate that police officers acting under an eavesdropping warrant must use the wiretap in a way that will intercept the fewest possible conversations that are not subject to the warrant. [Cases: Telecommunications ↷1473.]

minimum, adj. (17c) Of, relating to, or constituting the smallest acceptable or possible quantity in a given case <minimum charge to a customer of a public utility>.

minimum contacts. (1945) A nonresident defendant's forum-state connections, such as business activity or actions foreseeably leading to business activity, that are substantial enough to bring the defendant within the forum-state court's personal jurisdiction without offending traditional notions of fair play and substantial justice. *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S.Ct. 154 (1945). — Also termed *minimal contacts*. [Cases: Corporations ↷665(1); Courts ↷12(2.5); Federal Courts ↷76.5, 79.]

minimum-fee schedule. *Hist.* A list of the lowest fees that a lawyer may charge, set by a state bar association.

• The courts held that minimum-fee schedules, now defunct, violated antitrust laws.

minimum lot. See LOT (1).

minimum-royalty clause. *Patents.* A royalty-agreement provision that prescribes a fixed payment by the licensee to the patentee, regardless of whether the invention is actually used. [Cases: Patents ↷218(1), (5).]

minimum sale. See EXHIBITION VALUE.

minimum scrutiny. See RATIONAL-BASIS TEST.

minimum sentence. See SENTENCE.

minimum tax. See *alternative minimum tax* under TAX.

minimum wage. See WAGE.

mining. The process of extracting ore or minerals from the ground; the working of a mine. • This term also encompasses oil and gas drilling.

mining claim. A parcel of land that contains precious metal in its soil or rock and that is appropriated by a person according to established rules and customs known as the process of *location*. See LOCATION (4), (5). [Cases: Mines and Minerals ↷13, 28.]

lode claim. A mining claim (on public land) to a well-defined vein embedded in rock; a mining claim to a mineral lode. [Cases: Mines and Minerals ↷16, 28.]

placer claim. A mining claim that is not a lode claim; a claim where the minerals are not located in veins or lodes within rock, but are usu. in softer ground near the earth's surface. [Cases: Mines and Minerals ↷16, 28.]

"It has long been recognized that the distinction between lode and placer claims must be tempered by scientific findings as to the nature of the mineral deposits under consideration, and the practicalities of modern mining methods, which may permit the use of surface mining methods to remove certain lodes or veins of minerals previously only reached by underground methods." 53A Am. Jur. 2d *Mines and Minerals* § 21, at 273 (1996).

mining lease. See LEASE.

mining location. 1. See LOCATION (4). 2. See LOCATION (5).

mining partnership. An association of persons to jointly share a mining business, including the profits, expenses, and losses. • The partnership has features of both a tenancy in common and an ordinary commercial partnership. [Cases: Mines and Minerals ↷96.]

"It has generally been held that the law governing ordinary commercial or trading partnerships applies, with a few exceptions, to mining partnerships. The principal exception and the main distinction between mining partnerships and commercial partnerships generally is based on the fact that the principle of *delectus personae*, meaning the right of a partner to exercise choice and preference as to the admission of any new members to the firm, and as to the persons to be so admitted, does not apply to mining partnerships . . ." 58 C.J.S. *Mines and Minerals* § 387, at 380 (1998).

mining rent. Consideration given for a mining lease, whether the lease creates a tenancy, conveys a fee, or grants a mere license or incorporeal right. [Cases: Mines and Minerals ⇨70, 79.]

minister, n. (14c) **1.** A person acting under another's authority; an agent. **2.** A prominent government officer appointed to manage an executive or administrative department. **3.** A diplomatic representative, esp. one ranking below an ambassador. [Cases: Ambassadors and Consuls ⇨1-5.]

foreign minister. **1.** A minister of foreign affairs, who in many countries is equivalent to the U.S. Secretary of State. **2.** An ambassador, minister, or envoy from a foreign government. [Cases: Ambassadors and Consuls ⇨1-5.]

minister plenipotentiary (plen-ə-pə-ten-shee-er-ee). A minister ranking below an ambassador but possessing full power and authority as a governmental representative, esp. as an envoy of a sovereign ruler. • This officer is often regarded as the personal representative of a head of state.

public minister. A high diplomatic representative such as an ambassador, envoy, or resident, but not including a commercial representative such as a consul. [Cases: Ambassadors and Consuls ⇨4.]

4. A person authorized by a Christian church to perform religious functions. [Cases: Religious Societies ⇨27.]

ministerial, adj. (16c) Of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill <the court clerk's ministerial duties include recording judgments on the docket>. [Cases: Judges ⇨33.]

ministerial act. See ACT.

ministerial duty. **1.** See *ministerial act* under ACT. **2.** See DUTY (2).

ministerial-function test. (1990) The principle that the First Amendment bars judicial resolution of a Title VII employment-discrimination claim based on a religious preference, if the employee's responsibilities are religious in nature, as in spreading faith, supervising a religious order, and the like. 42 USCA § 2000e-1(a). See TITLE VII OF THE CIVIL RIGHTS ACT OF 1964. [Cases: Civil Rights ⇨1114, 1163.]

ministerial office. See OFFICE.

ministerial officer. See OFFICER (1).

ministerial trust. See *passive trust* under TRUST.

minister plenipotentiary. See MINISTER.

ministrant (min-ə-strənt). **1.** One who ministers; a dispenser. **2.** *Hist. Eccles. law.* A party who cross-examines a witness.

ministri regis (mi-nis-tri ree-jis). [Latin] *Hist.* Ministers of the king. • This term was applied to judges and ministerial officers.

minitrial. (1990) A private, voluntary, and informal form of dispute resolution in which each party's attorney

presents an abbreviated version of its case to a neutral third party and to the opponent's representatives, who have settlement authority. • The third party may render an advisory opinion on the anticipated outcome of litigation. Cf. *summary jury trial* under TRIAL.

"The idea behind the minitrial is that the parties can resolve a dispute on their own more efficiently if litigant representatives with settling authority are educated about the strengths and weaknesses of each side, giving summary presentations of their best cases under the eye of a jointly selected neutral advisor. After each case is presented, the parties meet privately to negotiate an agreement. The minitrial is confidential and nonbinding. Usually, no transcript is made of the proceeding. Minitrials have had some success in saving both time and money." Alfred C. Aman Jr. & William T. Mayton, *Administrative Law* 291 (2d ed. 2001).

minor, n. (16c) **1.** A person who has not reached full legal age; a child or juvenile. — Also termed *infant*. Cf. ADULT. [Cases: Infants ⇨1.]

emancipated minor. (1817) A minor who is self-supporting and independent of parental control, usu. as a result of a court order. See EMANCIPATION. [Cases: Child Support ⇨389; Parent and Child ⇨16.]

minor in need of supervision. See *child in need of supervision* under CHILD. — Abbr. MINS.

2. *Roman law.* A person who is past puberty but less than 25 years old. — Also termed *minor quam 25 annis*.

minor aetas (mi-nər ee-tas). [Latin] *Hist.* Lesser age; minority; infancy.

minora regalia (mi-nor-ə ri-gay-lee-ə). See *regalia minora* under REGALIA.

minor crime. See MISDEMEANOR.

minor dispute. See DISPUTE.

minor fact. See FACT.

minority. (15c) **1.** The state or condition of being under legal age. • In Scots law, legal minority begins at the end of puberty; until then, a person is a *pupil*. — Also termed *infancy*; *nonage*; *immaturity*. Cf. MAJORITY (1). [Cases: Infants ⇨1.] **2.** A group having fewer than a controlling number of votes. Cf. MAJORITY (2). [Cases: Corporations ⇨182.3.] **3.** A group that is different in some respect (such as race or religious belief) from the majority and that is sometimes treated differently as a result; a member of such a group. • Some courts have held that the term *minority*, in this sense, is not limited to a group that is outnumbered. It may also be applied to a group that has been traditionally discriminated against or socially suppressed, even if its members are in the numerical majority in an area. [Cases: Civil Rights ⇨1007.]

Minority Business Development Agency. A unit in the U.S. Department of Commerce responsible for developing and coordinating a national program for minority business enterprise. — Abbr. MBDA.

minority discount. A reduction in the value of a closely held business's shares that are owned by someone who has only a minority interest in the business. • The

concept underlying a minority discount is recognition that controlling shares — those owned by someone who can control the business — are worth more in the market than noncontrolling shares. But when dissenting shareholders object to a corporate act, such as a merger, and become entitled to have their shares appraised and bought by the corporation, many courts hold that incorporating a minority discount into the valuation of the dissenters' shares is inequitable and is not permitted. See APPRAISAL REMEDY. [Cases: Corporations ⇨ 182.4(5), 584.]

minority opinion. See *dissenting opinion* under OPINION (1).

minority report. See REPORT (1).

minority shareholder. See SHAREHOLDER.

minor participant. (1960) *Criminal law.* Under the federal sentencing guidelines, a defendant who is less culpable for a crime than the other members of the group committing the crime, but who has more culpability than a minimal participant. • A defendant who is a minor participant can have the offense level for the crime decreased by two levels. U.S. Sentencing Guidelines Manual § 3B1.2(b). Cf. MINIMAL PARTICIPANT. [Cases: Sentencing and Punishment ⇨ 764.]

minor quam 25 annis (mī-nər kwam 25 an-is). [Latin]. See MINOR (2).

minor's estate. See ESTATE (1).

minor's trust. See 2503(c) *trust* under TRUST.

MINS. *abbr.* Minor in need of supervision. See *child in need of supervision* under CHILD.

mint, n. (15c) **1.** A government-authorized place for coining money. [Cases: United States ⇨ 34.] **2.** A large supply, esp. of money.

mintage. (16c) **1.** The mint's charge for coining money. **2.** The product of minting; money.

mint-mark. An authorized mark on a coin showing where it was minted.

minuend (mīn-yoo-end). (18c) In a mathematical equation, the number from which another number (the subtrahend) is subtracted to arrive at a remainder or balance. • The term is used in law in a variety of accounting and mathematical contexts. Cf. SUBTRAHEND.

minus (mī-nəs), *adj.* & *adv.* [Latin] *Roman law.* Less; less than; not at all. • A debt remaining wholly unpaid was called *minus solutum*.

minus Latium. See LATIUM MINUS.

minute book. (16c) **1.** A book in which a court clerk enters minutes of court proceedings. [Cases: Clerks of Courts ⇨ 67.] **2.** A record of the subjects discussed and actions taken at a corporate directors' or shareholders' meeting. — Also termed *minutes book*.

minute entry. See *minute order* (1) under ORDER (2).

minute order. See ORDER (2).

minutes. (15c) **1.** Memoranda or notes of a transaction, proceeding, or meeting. **2.** *Parliamentary law.* The formal record of a deliberative assembly's proceedings, approved (as corrected, if necessary) by the assembly. — Also termed *journal*; *records*; *report*. See DISPENSE WITH THE READING OF THE MINUTES; SPREAD UPON THE MINUTES.

"The *minutes* of an organization include a record of all official actions taken, the presiding officer, the presence of a quorum, and information showing that the meeting was duly called and thus legal. The other contents of the minutes will depend upon the degree of detail desired. . . . The minutes should be an *official record of actions taken* by the organization, not a transcript of what individuals say in meetings." Ray E. Keeseey, *Modern Parliamentary Procedure* 84 (1994).

"The record of the proceedings of a deliberative assembly is usually called the *minutes*, or sometimes — particularly in legislative bodies — the *journal*. In an ordinary society, unless the minutes are to be published, they should contain mainly a record of what was *done* at the meeting, not what was *said* by the members. The minutes should never reflect the secretary's opinion, favorable or otherwise, on anything said or done." Henry M. Robert, *Robert's Rules of Order Newly Revised* § 48, at 451 (10th ed. 2000).

3. Scots law. Written forms for preserving evidence.

"When it is necessary to preserve evidence of any incidental judicial act or statement, this is done in the Court of Session, and also in the inferior courts, by a minute. Thus, where the pursuer restricts his libel, or makes a reference to the defender's oath . . . this is done by a minute. Strictly speaking, those minutes ought to be prepared by the clerk of court, as their form imports. They commence with the name of the counsel . . . and purport to be a statement made by him . . ." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 721 (George Watson ed., 7th ed. 1890).

minutes book. See MINUTE BOOK.

minutio (mī-n[y]oo-shee-oh), *n.* [Latin] *Roman law.* A lessening or reduction. See DEMINUTIO.

Miranda hearing (mə-ran-də). (1966) A pretrial proceeding held to determine whether the *Miranda* rule has been followed and thus whether the prosecutor may introduce into evidence the defendant's statements to the police made after arrest. See MIRANDA RULE. [Cases: Criminal Law ⇨ 414.]

Miranda rule. (1966) The doctrine that a criminal suspect in police custody must be informed of certain constitutional rights before being interrogated. • The suspect must be advised of the right to remain silent, the right to have an attorney present during questioning, and the right to have an attorney appointed if the suspect cannot afford one. If the suspect is not advised of these rights or does not validly waive them, any evidence obtained during the interrogation cannot be used against the suspect at trial (except for impeachment purposes). *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966). [Cases: Criminal Law ⇨ 412.2(3), 517.2(3), 518.]

Miranda warning. See MIRANDA RULE.

Mirandize (mə-ran-dīz), *vb.* (1971) *Slang.* To read or recite (to an arrestee) rights under the *Miranda* rule <the suspect was arrested, Mirandized, and

interrogated>. See MIRANDA RULE. [Cases: Criminal Law ↷412.2(3), 517.2(3), 518.]

mirror-image rule. (1972) *Contracts*. The doctrine that the acceptance of a contractual offer must be positive, unconditional, unequivocal, and unambiguous, and must not change, add to, or qualify the terms of the offer; the common-law principle that for a contract to be formed, the terms of an acceptance must correspond exactly with those of the offer. • In modern commercial contexts, the mirror-image rule has been replaced by a UCC provision that allows parties to enforce their agreement despite minor discrepancies between the offer and the acceptance. The rule still applies to international sales contracts governed by the UN Convention on Contracts for the International Sales of Goods (article 19). — Also termed *ribbon-matching rule*. See BATTLE OF THE FORMS. [Cases: Contracts ↷24.]

"If an offeree purports to accept an offer but in doing so adds various conditions and qualifications of his own, is the acceptance binding on the offeror, at least in part? Generally speaking, the answer is no: the common law rule, reflected in Restatement Section 59, is that a statement of acceptance is effective only if it is a mirror image of the offer and expresses unconditional assent to all of the terms and conditions imposed by the offeror." Marvin A. Chirelstein, *Concepts and Case Analysis in the Law of Contracts* 54 (1990).

misa (mi-zə). [Law Latin] *Hist.* 1. The issue in a writ of right; a mise. 2. An agreement; a compromise.

misadministration. See MALADMINISTRATION.

misadventure. (13c) 1. A mishap or misfortune. 2. Homicide committed accidentally by a person doing a lawful act and having no intent to injure; ACCIDENTAL KILLING. [Cases: Homicide ↷762.]

misallege, vb. To erroneously assert (a fact, a claim, etc.).

misapplication, n. (17c) The improper or illegal use of funds or property lawfully held. — **misapply, vb.**

misappropriation, n. (18c) 1. The application of another's property or money dishonestly to one's own use. See EMBEZZLEMENT. Cf. APPROPRIATION; EXPROPRIATION (1). 2. *Intellectual property.* The common-law tort of using the noncopyrightable information or ideas that an organization collects and disseminates for a profit to compete unfairly against that organization, or copying a work whose creator has not yet claimed or been granted exclusive rights in the work. *Int'l News Serv. v. Associated Press*, 248 U.S. 215, 29 S.Ct. 68 (1918). • The elements of misappropriation are: (1) the plaintiff must have invested time, money, or effort to extract the information, (2) the defendant must have taken the information with no similar investment, and (3) the plaintiff must have suffered a competitive injury because of the taking. [Cases: Copyrights and Intellectual Property ↷108.] 3. The doctrine giving rise to such a tort claim. — **misappropriate, vb.**

"The doctrine of 'misappropriation,' which is a distinct branch of unfair competition, . . . has been applied to a variety of situations in which the courts have sensed that one party was dealing 'unfairly' with another, but which were not covered by the three established statutory

systems protecting intellectual property: copyright, patent, and trademark/deception as to origin." *U.S. Golf Ass'n v. St. Andrews Systems, Data-Max, Inc.* 749 F.2d 1028, 1034-35 (3d Cir. 1984) (Becker, J.).

misappropriation theory. *Securities.* The doctrine that a person who wrongfully uses confidential information to buy or sell securities in violation of a duty owed to the one who is the information source is guilty of securities fraud. [Cases: Securities Regulation ↷60.28(2.1).]

misbehavior in office. See *official misconduct* under MISCONDUCT.

misbranding, n. The act or an instance of labeling one's product falsely or in a misleading way. • Misbranding is prohibited by federal and state law. [Cases: Food ↷15; Health ↷311; Products Liability ↷225.] — **misbrand, vb.**

miscarriage. (16c) Spontaneous and involuntary premature expulsion of a nonviable fetus. — Also termed *spontaneous abortion*.

criminal miscarriage. *Hist.* See ABORTION (1).

miscarriage of justice. (1862) A grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of the crime. — Also termed *failure of justice*.

miscegenation (mi-sej-ə-nay-shən). (1863) A marriage between persons of different races, formerly considered illegal in some jurisdictions. • In 1967, the U.S. Supreme Court held that laws banning interracial marriages are unconstitutional. *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817 (1967). But for years, such laws technically remained on the books in some states. The last remaining state-law ban on interracial marriages was a provision in the Alabama constitution. The Alabama legislature voted to repeal the ban, subject to a vote of the state's citizens, in 1999; the repeal became effective in 2000. — Also termed *mixed marriage*; *interracial marriage*. [Cases: Criminal Law ↷45.45.]

miscellaneous itemized deduction. See DEDUCTION.

mischarge. (1939) An erroneous jury instruction that may be grounds for reversing a verdict. — Also termed *misdirection*.

mischievous (mis-chəf). (14c) 1. A condition in which a person suffers a wrong or is under some hardship, esp. one that a statute seeks to remove or for which equity provides a remedy <this legislation seeks to eliminate the mischief of racially restrictive deed covenants>. 2. Injury or damage caused by a specific person or thing <the vandals were convicted of criminal mischief>. 3. The act causing such injury or damage <their mischief damaged the abbey>.

mischief rule. (1974) In statutory construction, the doctrine that a statute should be interpreted by first identifying the problem (or "mischief") that the statute was designed to remedy and then adopting a construction that will suppress the problem and advance the remedy. — Also termed *rule in Heydon's Case*; *purpose approach*. Cf. GOLDEN RULE; PLAIN-MEANING RULE;

EQUITY-OF-THE-STATUTE RULE. [Cases: Statutes ↷ 184.]

misconduct (mis-kon-dəkt). (17c) **1.** A dereliction of duty; unlawful or improper behavior.

affirmative misconduct. (1897) **1.** An affirmative act of misrepresentation or concealment of a material fact; intentional wrongful behavior. • Some courts hold that there must be an ongoing pattern of misrepresentation or false promises, as opposed to an isolated act of providing misinformation. **2.** With respect to a claim of estoppel against the federal government, a misrepresentation or concealment of a material fact by a government employee — beyond a merely innocent or negligent misrepresentation. [Cases: Estoppel ↷ 62.2(3, 4).]

juror misconduct. (1954) A juror's violation of the court's charge or the law, committed either during trial or in deliberations after trial, such as (1) communicating about the case with outsiders, witnesses, attorneys, bailiffs, or judges, (2) bringing into the jury room information relating to the case but not in evidence, and (3) conducting experiments regarding theories of the case outside the court's presence. [Cases: Criminal Law ↷ 855; Federal Courts ↷ 1974; Trial ↷ 304–311.]

misconduct in office. See *official misconduct*.

official misconduct. (1830) A public officer's corrupt violation of assigned duties by malfeasance, misfeasance, or nonfeasance. — Also termed *misconduct in office; misbehavior in office; malconduct in office; misdemeanor in office; corruption in office; official corruption; political corruption*. [Cases: Officers and Public Employees ↷ 121.]

wanton misconduct. (1844) An act, or a failure to act when there is a duty to do so, in reckless disregard of another's rights, coupled with the knowledge that injury will probably result. — Also termed *wanton and reckless misconduct*. [Cases: Negligence ↷ 275.]

willful and wanton misconduct. (1866) Conduct committed with an intentional or reckless disregard for the safety of others, as by failing to exercise ordinary care to prevent a known danger or to discover a danger. — Also termed *willful indifference to the safety of others*. [Cases: Automobiles ↷ 181(1); Negligence ↷ 275.]

willful misconduct. (1804) Misconduct committed voluntarily and intentionally. [Cases: Carriers ↷ 307(6.1); Negligence ↷ 275; Unemployment Compensation ↷ 65.]

"This term of art [*willful misconduct*] has defied definition, but it is clear that it means something more than negligence. Two classic examples of misconduct which will defeat the seaman's claim are intoxication and venereal disease." Frank L. Maraist, *Admiralty in a Nutshell* 185–86 (3d ed. 1996).

willful misconduct of an employee. (1884) The deliberate disregard by an employee of the employer's interests, including its work rules and standards of

conduct, justifying a denial of unemployment compensation if the employee is terminated for the misconduct. [Cases: Unemployment Compensation ↷ 65.]

2. An attorney's dishonesty or attempt to persuade a court or jury by using deceptive or reprehensible methods. [Cases: Criminal Law ↷ 1980–2210; Federal Civil Procedure ↷ 1970; Trial ↷ 113.]

miscontinuance. (16c) A continuance erroneously ordered by a court.

miscreant (mis-kree-ənt). (14c) **1.** A wrongdoer. **2.** An apostate; an unbeliever.

misdate. (16c) To erroneously date (a document, etc.).

misdelivery. (1867) Delivery not according to contractual specifications; esp. delivery to the wrong person or delivery of goods in a damaged condition. • This concept applies to contracts of carriage and contracts of sale, lease, etc., requiring delivery in some form. [Cases: Carriers ↷ 93; Shipping ↷ 117.]

misdemeanant (mis-də-mee-nənt), *n.* (1819) A person who has been convicted of a misdemeanor.

misdemeanor (mis-di-mee-nər). (16c) **1.** A crime that is less serious than a felony and is usu. punishable by fine, penalty, forfeiture, or confinement (usu. for a brief term) in a place other than prison (such as a county jail). — Also termed *minor crime; summary offense*. Cf. FELONY (1). [Cases: Criminal Law ↷ 27.]

"'Misdemeanor' was the label ultimately adopted to apply to all offenses other than treason or felony. The term included a wide variety of wrongs and misprisions. Many of the substantive legal principles and procedures applicable to felonies were not applied in the case of misdemeanors. The difference in treatment between felonies and misdemeanors has carried over from common law to current practice, and today misdemeanors are often treated differently than felonies [in] the procedures employed in trying such cases as well as [in] the consequences of a conviction. The traditional distinction between felonies and misdemeanors has been abolished in England." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 15 (3d ed. 1982).

gross misdemeanor. (18c) A serious misdemeanor, though not a felony. — Also termed *high misdemeanor*.

high misdemeanor. 1. *Hist. English law.* A crime that ranked just below high treason in seriousness. • In English law, the term was essentially synonymous with crime. Examples of crimes called high misdemeanors are riot and conspiracy. In early American law, the term had the same meaning as in English law and was used in defining crimes such as sedition. **2.** See *gross misdemeanor*. **3.** See *serious misdemeanor*.

serious misdemeanor. (1893) One of a class of misdemeanors having more severe penalties than most other misdemeanors. • Conduct rising to the level of a serious misdemeanor can, in some jurisdictions, be charged as either a felony or a misdemeanor. — Also termed *high misdemeanor; indictable misdemeanor; penitentiary misdemeanor; aggravated misdemeanor*.

treasonable misdemeanor. See TREASONABLE MISDEMEANOR.

2. *Archaic.* Any crime, including a felony.

"A crime, or misdemeanor, is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms: though, in common usage, the word, 'crimes,' is made to denote such offences as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler names of 'misdemeanors' only." 4 William Blackstone, *Commentaries on the Laws of England* 5 (1769).

misdemeanor in office. See *official misconduct* under MISCONDUCT.

misdemeanor manslaughter. See MANSLAUGHTER.

misdemeanor-manslaughter rule. (1967) The doctrine that a death occurring during the commission of a misdemeanor (or sometimes a nondangerous felony) is involuntary manslaughter. • Many states and the Model Penal Code have abolished this rule. Cf. FELONY-MURDER RULE. [Cases: Homicide ⇨620–652.]

"Companion to the felony-murder rule is the so-called misdemeanor-manslaughter rule[...] Homicide resulting from the perpetration or attempted perpetration of an unlawful act, less than a dangerous felony, is manslaughter if the unlawful act is *malum in se*." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 108 (3d ed. 1982).

misdescription. (1848) 1. A contractual error or falsity that deceives, injures, or materially misleads one of the contracting parties. 2. A bailee's inaccurate identification, in a document of title, of goods received from the bailor. 3. An inaccurate legal description of land in a deed. [Cases: Deeds ⇨37.]

misdirection. See MISCHARGE.

mise (meez or miz), *n.* [Law French] *Hist.* 1. Expenses incurred in litigation. 2. The general issue in a writ of right. • When a tenant pleads superior title to the plaintiff, the tenant is said to join the *mise* on the mere right. 3. A settlement; a compromise, as in the *Mise of Lewes* between Henry III and the rebelling barons.

mise money. *Hist.* Money paid by contract to purchase a privilege.

miserabile depositum (miz-ə-rab-ə-lee di-poz-ə-təm). [Law Latin "a pitiful deposit"] *Civil law.* A deposit or bailment made in an emergency, as in a shipwreck, fire, or insurrection.

miserere (miz-ə-reer-ee). [Latin] *Hist.* Have mercy. • This is the first phrase of the 51st psalm, used to test a person claiming benefit of clergy. See NECK VERSE.

misericordia (miz-ə-ri-kor-dee-ə). [Law Latin] *Hist.* 1. Mercy. 2. An arbitrary fine as a punishment. 3. An exemption from a fine.

misericordia communis (miz-ə-ri-kor-dee-ə kə-myoo-nis). [Law Latin] *Hist.* A fine levied on a whole county.

misfeasance (mis-fee-zənts), *n.* (16c) 1. A lawful act performed in a wrongful manner. [Cases: Negligence ⇨200.] 2. More broadly, a transgression or trespass;

MALFEASANCE. Cf. NONFEASANCE. — **misfeasant**, *adj.* — **misfeasor**, *n.*

misfeasance in public office. (1880) The tort of excessive, malicious, or negligent exercise of statutory powers by a public officer. — Also termed *malfeasance*. [Cases: Officers and Public Employees ⇨116.]

mishering. See MISKERING.

mishersing. See MISKERING.

misjoinder (mis-joyn-dər). (18c) 1. The improper union of parties in a civil case. See JOINDER. Cf. DISJOINDER; NONJOINDER. [Cases: Federal Civil Procedure ⇨387; Parties ⇨85, 89.] 2. The improper union of offenses in a criminal case. [Cases: Indictment and Information ⇨126.]

miskenning (mis-ken-ing). [fr. French *misw* "wrong" + Saxon *cennan* "to declare"] 1. A wrongful summons. 2. A pleading mistake or irregularity.

"But every defeated plaintiff could be amerced 'for a false claim.' Incidentally too any falsehood . . . that is, any fraudulent misuse of the machinery of the law, would be punished by imprisonment. Then again every default in appearance brought an amercement on the defaulter and his pledges. Every mistake in pleading, every *miskenning* . . . brought an amercement on the pleader if the mistake was to be retrieved. A litigant who hoped to get to the end of his suit without an amercement must have been a sanguine man; for he was playing a game of forfeits." 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 519 (2d ed. 1899).

miskering (mis-kər-ing). *Hist.* Freedom or immunity from amercement. — Also termed *abishering*; *abishersing*; *mishering*; *mishersing*.

mislaid property. See PROPERTY.

mislay, *vb.* (15c) To deposit (property, etc.) in a place not afterwards recollected; to lose (property, etc.) by forgetting where it was placed. See *mislaid property* under PROPERTY.

misleading, *adj.* (16c) (Of an instruction, direction, etc.) delusive; calculated to be misunderstood. [Cases: Fraud ⇨13(1).]

misnomer (mis-noh-mər). (15c) A mistake in naming a person, place, or thing, esp. in a legal instrument. • In federal pleading — as well as in most states — misnomer of a party can be corrected by an amendment, which will relate back to the date of the original pleading. Fed. R. Civ. P. 15(c)(3). [Cases: Federal Civil Procedure ⇨382; Limitation of Actions ⇨121(2); Parties ⇨94, 95(3).]

misperformance. (17c) A faulty attempt to discharge an obligation (esp. a contractual one). Cf. PERFORMANCE; NONPERFORMANCE.

mispleading. (16c) Pleading incorrectly. • A party who realizes that its pleading is incorrect can usu. amend the pleading, as a matter of right, within a certain period, and can thereafter amend with the court's permission.

misprision (mis-prizh-ən). (15c) 1. Concealment or non-disclosure of a serious crime by one who did not par-

ticipate in the crime. [Cases: Compounding Offenses ↷1.]

clerical misprison. (18c) A court clerk's mistake or fraud that is apparent from the record.

misprison of felony. (16c) Concealment or nondisclosure of someone else's felony. See 18 USCA § 4. [Cases: Compounding Offenses ↷1.1.]

"In fact, whatever the law may be, it is not the general custom to prosecute for misprison of felony, even where a person who knows of a felony is questioned by the police and refuses to make a statement. Indeed, Stephen, writing in the nineteenth century, regarded the offence as 'practically obsolete'; and American courts have refused to recognise it as subsisting. But there have been four successful prosecutions in England during the last quarter-century . . ." Glanville Williams, *Criminal Law* 424 (2d ed. 1961).

misprison of treason. (16c) Concealment or nondisclosure of someone else's treason. [Cases: Treason ↷8.]

negative misprison. (18c) The wrongful concealment of something that should be revealed <misprison of treason>.

positive misprison. (18c) The active commission of a wrongful act <seditionary conduct against the government is positive misprison>.

2. Seditious conduct against the government. 3. An official's failure to perform the duties of public office. [Cases: Officers and Public Employees ↷121.] 4. Misunderstanding; mistake.

"The word 'misprison' has been employed with different meanings. While Blackstone thought of it as referring to a grave misdemeanor, it seems to have been used earlier to indicate the entire field of crime below the grade of treason or felony before the word 'misdemeanor' became the generally accepted label for this purpose. More recently it has been said: 'Misprison is nothing more than a word used to describe a misdemeanor which does not possess a specific name.' [United States v. Perlstein, 126 F.2d 789, 798 (3d Cir. 1942).] It has been associated with two specific offenses, and only these, from the earliest times. They are misprison of treason and misprison of felony, which consist of the criminal default of one in regard to the crime of another." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 572 (3d ed. 1982).

misprisor (mis-**pri**-zər). One who commits misprison of felony.

misreading. An act of fraud in which a person incorrectly reads the contents of an instrument to an illiterate or blind person with the intent to deceitfully obtain that person's signature. [Cases: Fraud ↷4.5.]

misrecital. (16c) An incorrect statement of a factual matter in a contract, deed, pleading, or other instrument.

misrepresentation, n. (17c) 1. The act of making a false or misleading assertion about something, usu. with the intent to deceive. • The word denotes not just written or spoken words but also any other conduct that amounts to a false assertion. [Cases: Fraud ↷9.] 2. The assertion so made; an assertion that does not accord with the facts. — Also termed *false representation*; (redun-

dantly) *false misrepresentation*. Cf. REPRESENTATION (1). — **misrepresent, vb.**

"A misrepresentation, being a false assertion of fact, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may fairly be inferred from them. An assertion may also be inferred from conduct other than words. Concealment or even non-disclosure may have the effect of a misrepresentation . . . [A]n assertion need not be fraudulent to be a misrepresentation. Thus a statement intended to be truthful may be a misrepresentation because of ignorance or carelessness, as when the word 'not' is inadvertently omitted or when inaccurate language is used. But a misrepresentation that is not fraudulent has no consequences . . . unless it is material." Restatement (Second) of Contracts § 159 cmt. a (1979).

fraudulent misrepresentation. (18c) A false statement that is known to be false or is made recklessly — without knowing or caring whether it is true or false — and that is intended to induce a party to detrimentally rely on it. — Also termed *fraudulent representation*; *deceit*. [Cases: Fraud ↷8.]

"A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker (a) knows or believes that the assertion is not in accord with the facts, or (b) does not have the confidence that he states or implies in the truth of the assertion, or (c) knows that he does not have the basis that he states or implies for the assertion." Restatement (Second) of Contracts § 162(1) (1979).

innocent misrepresentation. (1809) A false statement that the speaker or writer does not know is false; a misrepresentation that, though false, was not made fraudulently. [Cases: Fraud ↷13(2).]

material misrepresentation. (18c) 1. *Contracts.* A false statement that is likely to induce a reasonable person to assent or that the maker knows is likely to induce the recipient to assent. [Cases: Contracts ↷94.] 2. *Torts.* A false statement to which a reasonable person would attach importance in deciding how to act in the transaction in question or to which the maker knows or has reason to know that the recipient attaches some importance. See Restatement (Second) of Torts § 538 (1979). [Cases: Fraud ↷18.]

"The materiality of a misrepresentation is determined from the viewpoint of the maker, while the justification of reliance is determined from the viewpoint of the recipient. . . . The requirement of materiality may be met in either of two ways. First, a misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent. Second, it is material if the maker knows that for some special reason it is likely to induce the particular recipient to manifest his assent. There may be personal considerations that the recipient regards as important even though they would not be expected to affect others in his situation, and if the maker is aware of this the misrepresentation may be material even though it would not be expected to induce a reasonable person to make the proposed contract. One who preys upon another's known idiosyncrasies cannot complain if the contract is held voidable when he succeeds in what he is endeavoring to accomplish. . . . Although a nonfraudulent misrepresentation that is not material does not make the contract voidable under the rules stated in this Chapter, the recipient may have a claim to relief under other rules, such as those relating to breach of warranty." Restatement (Second) of Contracts § 162 cmt. c (1979).

misrepresentation of source. See **PASSING OFF**.

negligent misrepresentation. (1888) A careless or inadvertent false statement in circumstances where care should have been taken. [Cases: Fraud ⇨ 13(3).]

misrepresentee. A person to whom a fact has been misrepresented.

misrepresenter. A person who misrepresents a fact to another. — Also spelled *misrepresentor*.

Missile Defense Agency. A unit in the U.S. Department of Defense responsible for developing and deploying a missile-defense system capable of protecting the United States, its armed forces, and others from missile attack. — Abbr. MDA.

missilia (mi-sī-lee-ə), *n. pl.* [fr. Latin *mittere* “to throw”] *Roman law.* Money that the praetors, consuls, or wealthy individuals throw as gifts to people on the street; largesse.

missing-evidence rule. (1981) The doctrine that, when a party fails at trial to present evidence that the party controls and that would have been proper to present, the jury is entitled to infer that the evidence would have been unfavorable to that party. [Cases: Evidence ⇨ 74.]

missing person. **1.** Someone whose whereabouts are unknown and, after a reasonable time, seem to be unascertainable. **2.** Someone whose continuous and unexplained absence entitles the heirs to petition a court to declare the person dead and to divide up the person's property. See **SEVEN-YEARS'-ABSENCE RULE**. Cf. **DISAPPEARED PERSON**. [Cases: Death ⇨ 2.]

missing ship. *Maritime law.* A vessel that has been gone for an unreasonably long time, leading to the presumption that it is lost at sea; esp. a vessel that has been gone longer than the average time it takes a vessel to make a similar voyage in the same season.

missing-witness rule. (1961) The doctrine that, when a party fails at trial to present a witness who is available only to that party and whose testimony would have been admissible, the jury is entitled to infer that the witness's testimony would have been unfavorable to that party. [Cases: Criminal Law ⇨ 317; Evidence ⇨ 77; Trial ⇨ 211.]

missio in bona (mis[h]-ee-oh in boh-nə). [Latin] *Roman law.* **1.** A praetor's grant to a creditor of individual items of the judgment debtor's property already in the creditor's possession. **2.** A praetor's grant to a creditor in possession of the debtor's whole estate, as a form of execution of judgment.

missio in possessionem (mis[h]-ee-oh in pə-zes[h]-ee-oh-nəm). [Latin] *Roman law.* A praetor's grant to a creditor of the debtor's entire estate as a form of execution of judgment.

mistake, n. (17c) **1.** An error, misconception, or misunderstanding; an erroneous belief. See **ERROR**. **2.** *Contracts.* The situation in which either (1) the parties to a contract did not mean the same thing, or (2) at least one party had a belief that did not correspond to the

facts or law. • As a result, the contract may be voidable. [Cases: Contracts ⇨ 93.]

“In this Restatement the word ‘mistake’ is used to refer to an erroneous belief. A party's erroneous belief is therefore said to be a ‘mistake’ of that party. The belief need not be an articulated one, and a party may have a belief as to a fact when he merely makes an assumption with respect to it, without being aware of alternatives. The word ‘mistake’ is not used here, as it is sometimes used in common speech, to refer to an improvident act, including the making of a contract, that is the result of such an erroneous belief. This usage is avoided here for the sake of clarity and consistency. Furthermore, the erroneous belief must relate to the facts as they exist at the time of the making of the contract. A party's prediction or judgment as to events to occur in the future, even if erroneous, is not a ‘mistake’ as that word is defined here. An erroneous belief as to the contents or effect of a writing that expresses the agreement is, however, a mistake. Mistake alone, in the sense in which the word is used here, has no legal consequences. The legal consequences of mistake in connection with the creation of contractual liability are determined by [substantive rules].” Restatement (Second) of Contracts § 151 cmt. a (1979).

“The word *mistake* is generally used in the law of contracts to refer to an erroneous belief — ‘a belief that is not in accord with the facts.’ To avoid confusion, it should not be used, as it sometimes is in common speech, to refer to an improvident act, such as the making of a contract, that results from such an erroneous belief. Nor should it be used, as it sometimes is by courts and writers, to refer to what is more properly called a misunderstanding, a situation in which two parties attach different meanings to their language.” E. Allan Farnsworth, *Contracts* § 9.2, at 619 (3d ed. 1999) (quoting Restatement (Second) of Contracts § 151 (3d ed. 1979)).

basic mistake. A mistake of fact or of law constituting the basis on which a transaction rests.

bilateral mistake. See *mutual mistake* (1).

collateral mistake. See *unessential mistake*.

common mistake. See *mutual mistake* (2).

essential mistake. (1818) *Contracts.* A mistake serious enough that no real consent could have existed, so that there was no real agreement. [Cases: Contracts ⇨ 93.]

inessential mistake. See *unessential mistake*.

mistake of fact. (1808) **1.** A mistake about a fact that is material to a transaction; any mistake other than a mistake of law. — Also termed *error in fact*; *error of fact*. [Cases: Contracts ⇨ 93.] **2.** The defense asserting that a criminal defendant acted from an innocent misunderstanding of fact rather than from a criminal purpose.

mistake of law. (18c) **1.** A mistake about the legal effect of a known fact or situation. — Also termed *error in law*; *error of law*. [Cases: Contracts ⇨ 93(4).] **2.** The defense asserting that a defendant did not understand the criminal consequences of certain conduct. • This defense is generally not as effective as a mistake of fact.

mutual mistake. (18c) **1.** A mistake in which each party misunderstands the other's intent. — Also termed *bilateral mistake*. [Cases: Contracts ⇨ 93(5).] **2.** A mistake that is shared and relied on by both parties

to a contract. • A court will often revise or nullify a contract based on a mutual mistake about a material term. — Also termed (in sense 2) *common mistake*. [Cases: Contracts ⇨ 93(5); Reformation of Instruments ⇨ 19.]

"The term 'common mistake' is more usually, but less grammatically, referred to as 'mutual mistake'. Cheshire and Fifoot on *Contract* have made a heroic effort to introduce and establish the more correct term, and it does seem to be gaining ground. However, the beginner is warned that the term 'mutual mistake' is nearly always used by the Courts to mean what we here call 'common mistake'." P.S. Atiyah, *An Introduction to the Law of Contract* 190 n.7 (3d ed. 1981).

nonessential mistake. See *unessential mistake*.

unessential mistake. (1928) *Contracts*. A mistake that does not relate to the nature of the contents of an agreement, but only to some external circumstance, so that the mistake has no effect on the validity of the agreement. — Also termed *inessential mistake*; *nonessential mistake*; *collateral mistake*. [Cases: Contracts ⇨ 93.]

unilateral mistake. (1885) A mistake by only one party to a contract. • A unilateral mistake is generally not as likely to be a ground for voiding the contract as is a mutual mistake. [Cases: Contracts ⇨ 93.]

mistakenly induced revocation. See DEPENDENT RELATIVE REVOCATION.

mistery (*mis-tər-ee*). *Hist.* A business; a trade. — Also spelled *mystery*.

mistrial. (17c) **1.** A trial that the judge brings to an end, without a determination on the merits, because of a procedural error or serious misconduct occurring during the proceedings. [Cases: Criminal Law ⇨ 867; Federal Civil Procedure ⇨ 1951; Trial ⇨ 18, 133.1, 304.] **2.** A trial that ends inconclusively because the jury cannot agree on a verdict. — Also termed *abortive trial*. [Cases: Criminal Law ⇨ 867.]

misunderstanding. (13c) **1.** A flawed interpretation of meaning or significance. **2.** A situation in which the words or acts of two people suggest assent, but one or both of them in fact intend something different from what the words or acts express. **3.** A quarrel; an instance of usual, mild wrangling.

misuse, n. (14c) **1.** *Products liability.* A defense alleging that the plaintiff used the product in an improper, unintended, or unforeseeable manner. [Cases: Products Liability ⇨ 182.] **2.** *Patents.* The use of a patent either to improperly extend the granted monopoly to non-patented goods or to violate antitrust laws. [Cases: Patents ⇨ 283(1).]

misuser. (17c) An abuse of a right or office, as a result of which the person having the right might lose it <it is an act of misuser to accept a bribe>. Cf. USER. [Cases: Officers and Public Employees ⇨ 64.]

mitigate (*mit-ə-gayt*), *vb.* (15c) To make less severe or intense <the fired employee mitigated her damages for wrongful termination by accepting a new job>. Cf.

MILITATE. — **mitigation, n.** — **mitigatory** (*mit-ə-gə-tor-ee*), *adj.*

mitigating circumstance. See CIRCUMSTANCE.

mitigation cost. See COST (1).

mitigation-of-damages doctrine. (1978) The principle requiring a plaintiff, after an injury or breach of contract, to make reasonable efforts to alleviate the effects of the injury or breach. • If the defendant can show that the plaintiff failed to mitigate damages, the plaintiff's recovery may be reduced. — Also termed *avoidable-consequences doctrine*. Cf. DOCTRINE OF CONSTRUCTIVE SERVICE (2). [Cases: Damages ⇨ 62.]

mitigation of punishment. (18c) *Criminal law.* A reduction in punishment due to mitigating circumstances that reduce the criminal's level of culpability, such as the existence of no prior convictions. See *mitigating circumstance* under CIRCUMSTANCE.

mitigator. A factor tending to show that a criminal defendant, though guilty, is less culpable than the act alone would indicate <the fact that he was coerced into taking part in the robbery may have been a mitigator in the minds of the jurors>. Cf. AGGRAVATOR. [Cases: Sentencing and Punishment ⇨ 54.]

mitiori sensu. See IN MITIORI SENSU.

mitter avant (*mit-ər ə-vant*), *vb.* [Law French] *Hist.* To present or produce (evidence, etc.) to a court.

mittimus (*mit-ə-məs*). [Law Latin "we send"] *Hist.* **1.** A court order or warrant directing a jailer to detain a person until ordered otherwise; COMMITMENT (4). [Cases: Sentencing and Punishment ⇨ 462, 463.] **2.** A certified transcript of a prisoner's conviction or sentencing proceedings. **3.** A writ directing the transfer of records from one court to another. Pl. **mittimuses**.

mixed action. See ACTION (4).

mixed blood. See BLOOD.

mixed cognation. See COGNATION.

mixed condition. See CONDITION (2).

mixed contract. See CONTRACT.

mixed cost. See COST (1).

mixed government. See GOVERNMENT.

mixed insurance company. See INSURANCE COMPANY.

mixed interpretation. See *liberal interpretation* under INTERPRETATION.

mixed jury. See JURY.

mixed larceny. See LARCENY.

mixed law. A law concerning both persons and property.

mixed marriage. See MISCEGENATION.

mixed-motive doctrine. *Employment law.* The principle that, when the evidence in an employment-discrimination case shows that the complained-of employment action was based in part on a nondiscriminatory reason and in part on a discriminatory reason, the plaintiff must show that discrimination was a motivating factor

for the employment action and, if the plaintiff makes that showing, then the defendant must show that it would have taken the same action without regard to the discriminatory reason. [Cases: Civil Rights ↻1137.]

mixed nuisance. See NUISANCE.

mixed policy. See INSURANCE POLICY.

mixed presumption. See PRESUMPTION.

mixed property. See PROPERTY.

mixed question. (18c) **1.** MIXED QUESTION OF LAW AND FACT. **2.** An issue involving conflicts of foreign and domestic law.

mixed question of law and fact. (1805) An issue that is neither a pure question of fact nor a pure question of law. • Mixed questions of law and fact are typically resolved by juries. — Often shortened to *mixed question*. — Also termed *mixed question of fact and law*. [Cases: Administrative Law and Procedure ↻781; Appeal and Error ↻842(9); Criminal Law ↻735; Federal Courts ↻754; Trial ↻137.]

"Many issues in a lawsuit involve elements of both law and fact. Whether these be referred to as mixed questions of law and fact, or legal inferences from the facts, or the application of law to the facts, there is substantial authority that they are not protected by the 'clearly erroneous' rule and are freely reviewable. This principle has been applied to antitrust violations, bankruptcy, contracts, copyright, taxation, and to other areas of the law." 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2589, at 608-11 (2d ed. 1995).

mixed tithes. See TITHE.

mixed treaty. See TREATY (1).

mixed trust. See TRUST.

mixed war. See WAR.

mixtion (miks-chən). *Archaic.* **1.** The process of mixing products together so that they can no longer be separated. **2.** The product of mixing.

mixtum imperium (miks-təm im-peer-ee-əm). [Latin] *Hist.* Mixed authority; mixed jurisdiction. • This term refers to the power of subordinate civil magistrates.

MJOA. *abbr.* MOTION FOR JUDGMENT OF ACQUITTAL.

MLA. *abbr.* MOTION FOR LEAVE TO APPEAL.

MMBtu. *Abbr.* Oil & gas. One million British thermal units, one of the standard units for measuring natural gas.

MMI. *abbr.* MAXIMUM MEDICAL IMPROVEMENT.

M'Naghten rules. See MCNAGHTEN RULES.

M'Naughten rules. See MCNAGHTEN RULES.

M.O. *abbr.* MODUS OPERANDI.

mobile goods. See GOODS.

Mobile-Sierra doctrine. The principle that the Federal Energy Regulatory Commission may not grant a rate increase to a natural-gas producer unless the producer's contract authorizes a rate increase, or unless the existing rate is so low that it may adversely affect the public interest (as by threatening the continued viability of the public utility to continue its service). *United*

Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332, 76 S.Ct. 373 (1956); *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348, 76 S.Ct. 368 (1956). — Also termed *Sierra-Mobile doctrine*. [Cases: Gas ↻14.4(1).]

mobilia (moh-bil-ee-ə), *n. pl.* [Latin "movables"] *Roman law.* Movable things. • The term primarily refers to inanimate objects but sometimes also refers to slaves and animals.

mobilia sequuntur personam (moh-bil-ee-ə si-kwən-tər pər-sōh-nəm). [Latin] *Int'l law.* Movables follow the person — i.e., the law of the person. • This is the general principle that rights of ownership and transfer of movable property are determined by the law of the owner's domicile. [Cases: Property ↻6; Taxation ↻2211.]

"The maxim *mobilia sequuntur personam* is the exception rather than the rule, and is probably to be confined to certain special classes of general assignments such as marriage settlements and devolutions on death and bankruptcy." *Handel v. Slatford*, 1953 Q.B. 248, 257 (Eng. C.A.).

"Under the influence of Savigny many Continental systems in the mid-nineteenth century led the way for Anglo-American law in limiting the operation of the doctrine of *mobilia sequuntur personam* to universal assignments of movables, adopting for particular assignments the single principle of the *lex situs* of the movable." R.H. Graveson, *Conflict of Laws* 457 (7th ed. 1974).

mock trial. (18c) **1.** A fictitious trial organized to allow law students, or sometimes lawyers, to practice the techniques of trial advocacy. **2.** A fictitious trial, arranged by a litigant's attorney, to assess trial strategy, to estimate the case's value or risk, and to evaluate the case's strengths and weaknesses. • In this procedure, people from the relevant jury pool are hired to sit as mock jurors who, after a condensed presentation of both sides, deliberate and reach a verdict (often while being observed by the participants behind a one-way glass). The jurors may later be asked specific questions about various arguments, techniques, and other issues. Because the mock jurors usu. do not know which side has hired them, their candid views are thought to be helpful in formulating trial strategies. Cf. MOOT COURT.

modal legacy. See LEGACY.

mode. (17c) A manner of doing something <mode of proceeding> <mode of process>.

model act. (1931) A statute drafted by the National Conference of Commissioners on Uniform State Laws and proposed as guideline legislation for the states to borrow from or adapt to suit their individual needs. • Examples of model acts include the Model Employment Termination Act and the Model Punitive Damages Act. Cf. UNIFORM LAW; UNIFORM ACT.

Model Code of Professional Responsibility. A set of guidelines for lawyers, organized in the form of canons, disciplinary rules, and ethical considerations. • Published by the ABA in 1969, this code has been replaced in most states by the Model Rules of Professional

Conduct as the ethical standards by which lawyers are regulated and disciplined, although the Model Code continues to be used to interpret and apply the Model Rules. [Cases: Attorney and Client ↷ 32(2).]

model jury charge. See *model jury instruction* under JURY INSTRUCTION.

model jury instruction. See JURY INSTRUCTION.

Model Marriage and Divorce Act. See UNIFORM MARRIAGE AND DIVORCE ACT.

Model Penal Code. A proposed criminal code drafted by the American Law Institute and used as the basis for criminal-law revision by many states. — Abbr. MPC.

Model Penal Code test. See SUBSTANTIAL-CAPACITY TEST.

Model Putative Fathers Act. See UNIFORM PUTATIVE AND UNKNOWN FATHERS ACT.

Model Rules of Professional Conduct. A set of ethical guidelines for lawyers, organized in the form of 52 rules — some mandatory, some discretionary — together with explanatory comments. • Published by the ABA in 1983, these rules have generally replaced the Model Code of Professional Responsibility and have been adopted as law, sometimes with modifications, by most states. The Model Code of Professional Responsibility is sometimes used to interpret and apply the Model Rules. [Cases: Attorney and Client ↷ 32(2).]

Model State Trademark Bill. A proposed statute intended to standardize trademark laws among the states. • The bill was first promulgated by the International Trademark Association (then called the United States Trademark Association) in 1949. — Abbr. MSTB.

model statute. See *uniform statute* under STATUTE.

moderamen inculpatæ tutelæ (moh-də-ray-mən in-kəl-pay-tee t[y]oo-tee-lee). 1. [Law Latin] *Hist.* The degree of force justified in self-defense. 2. A plea of justifiable self-defense. — Also termed *inculpatæ tutelæ moderatio* (mod-ə-ray-shee-oh).

moderate castigavit (mod-ə-ray-tee kas-tə-gay-vit). [Latin “he moderately chastised”] *Hist.* A plea justifying a trespass because it is really a chastisement that the defendant is legally entitled to inflict on the plaintiff because of their relationship.

moderate force. See *nondeadly force* under FORCE.

moderator. (16c) 1. One who presides at a meeting or assembly. See CHAIR (1). 2. *Scots law.* The person who presides in a public assembly; specif., the elected chair of the General Assembly of the Church of Scotland or another Presbyterian church, of a presbytery, or of a kirk session.

modiatio (moh-dee-ay-shee-oh), *n.* [Latin] *Hist.* A duty paid for every tierce of wine. See PRISAGE.

modica differentia (mod-i-kə dif-ə-ren-shee-ə). [Latin] *Scots law.* A moderate difference, esp. in price.

modification. (17c) 1. A change to something; an alteration <a contract modification>. [Cases: Contracts ↷ 236.] 2. A qualification or limitation of something <a

modification of drinking habits>. 3. *Parliamentary law.* A change in a motion that its mover initiates or accepts, usu. before the chair has stated the motion.

• The mover controls a motion only until the chair states the question, after which the motion belongs to the assembly and the mover cannot modify it without the assembly’s permission. See *request for permission to modify a motion* under REQUEST.

modification order. *Family law.* A post-divorce order that changes the terms of child support, custody, visitation, or alimony. • A modification order may be agreed to by the parties or may be ordered by the court. The party wishing to modify an existing order must show a material change in circumstances from the time when the order sought to be modified was entered. See CHANGE IN CIRCUMSTANCES. [Cases: Child Custody ↷ 661; Child Support ↷ 342; Divorce ↷ 245(3).]

Modified Accelerated Cost Recovery System. See ACCELERATED COST RECOVERY SYSTEM.

modified-comparative-negligence doctrine. See 50-PERCENT RULE.

modius (moh-dee-əs), *n.* [Latin “a measure”] *Hist.* 1. A bushel. 2. An uncertain measure, as of land.

modo et forma (moh-doh et for-mə). [Latin] In manner and form. • In common-law pleading, this phrase began the conclusion of a traverse. Its object was to put the burden on the party whose pleading was being traversed not only to prove the allegations of fact but also to establish as correct the manner and form of the pleading. — Also termed *manner and form*.

modus (moh-dəs), *n.* [Latin “mode”] 1. *Criminal procedure.* The part of a charging instrument describing the manner in which an offense was committed. 2. *Roman & civil law.* Mode; manner; consideration, esp. the manner in which a gift, bequest, servitude, etc. is to be employed. 3. *Eccles. law.* See DE MODO DECIMANDI. Cf. MODUS OPERANDI.

modus decimandi (moh-dəs des-ə-man-dī). See DE MODO DECIMANDI.

modus de non decimando (moh-dəs dee non des-ə-man-doh). See DE NON DECIMANDO.

modus habilis (moh-dəs hab-ə-lis). [Latin] A valid manner (in proving a debt, etc.).

modus operandi (moh-dəs op-ə-ran-dī or -dee). [Latin “a manner of operating”] (17c) A method of operating or a manner of procedure; esp. a pattern of criminal behavior so distinctive that investigators attribute it to the work of the same person <staging a fight at the train station was part of the pickpocket’s modus operandi>. — Abbr. M.O. Pl. **modi operandi**.

modus tenendi (moh-dəs tə-nen-dī). [Latin] *Hist.* The manner of holding. • This phrase referred to the different types of tenures by which estates were held.

Modus Tenendi Parliamentum (moh-dəs tə-nen-dī pahr-lə-men-təm). [Law Latin “the manner of holding Parliament”] *Hist.* A 14th-century writing on the

powers of Parliament, translated in the 17th century and edited by T.D. Hardy in 1846.

modus transferendi (moh-dəs trans-fə-ren-dī). [Law Latin] *Hist.* The manner of transferring. — Also spelled *modus transferendi*. Cf. TITULUS TRANSFERENDI.

modus vacandi (moh-dəs vā-kan-dī). [Law Latin] *Hist.* The manner of vacating. • This term was often used in determining the circumstances under which a vassal surrendered an estate to a lord.

modus vivendi (moh-dəs vi-ven-dī or -dee). [Latin “means of living (together)”] *Int’l law.* A temporary, provisional arrangement concluded between subjects of international law and giving rise to binding obligations on the parties.

“[Modus vivendi] is an instrument of toleration looking towards a settlement, by preparing for or laying down the basis of a method of living together with a problem or by bridging over some difficulty pending a permanent settlement. Normally it is used for provisional and interim arrangements which ultimately are to be replaced by a formal agreement of a more permanent and detailed character. There is no clear distinction of a *modus vivendi* from other treaties. The most distinguishing feature is its provisional character; nevertheless a *modus vivendi* may be exercised for an indefinite period of time if it is prolonged *sine die* or if a definitive solution to the problem cannot be reached by treaty. Some ‘temporary’ arrangements have actually turned out to be quite durable.” Walter Rudolf, “Modus Vivendi,” in 3 *Encyclopedia of Public International Law* 443 (1997).

meuble (myoo-bəl), *adj.* [Law French] *Hist.* Movable, as in the phrase *biens meubles* (“movable goods”).

moiety (moy-ə-tee). (15c) **1.** A half of something (such as an estate). — Also termed *mediety*. **2.** A portion less than half; a small segment. **3.** In federal customs law, a payment made to an informant who assists in the seizure of contraband, the payment being no more than 25% of the contraband’s net value (up to a maximum of \$250,000). 19 USCA § 1619.

moiety act. (1875) *Criminal law.* A law providing that a portion (such as half) of an imposed fine will inure to the benefit of the informant. [Cases: Fines ⇨ 21.]

mole. (1922) A person who uses a long affiliation with an organization to gain access to and betray confidential information.

molestation. (15c) **1.** The persecution or harassment of someone <molestation of a witness>. **2.** The act of making unwanted and indecent advances to or on someone, esp. for sexual gratification <sexual molestation>. — **molest**, *vb.* — **molester**, *n.*

child molestation. (1951) Any indecent or sexual activity on, involving, or surrounding a child, usu. under the age of 14. See Fed. R. Evid. 414(d). [Cases: Infants ⇨ 13.]

Molineux rule. *New York law.* The principle that evidence of prior crimes is inadmissible when offered to prove the defendant’s bad character and to show that the defendant is therefore more likely than not to have committed the crime charged. • The evidence is admissible if offered to prove something other than

criminal propensity, such as motive, identity, absence of mistake or accident, intent, or the existence of a common scheme or plan. The rule was first handed down in *People v. Molineux*, 61 N.E. 286 (N.Y. 1901). [Cases: Criminal Law ⇨ 369, 371.]

moliturae (mol-i-t[y]uur-ee or -chuur-ee). [Law Latin] *Scots law.* Tolls for grinding grain; multures. See CUM ASTRICITIS MULTURIS.

molliter manus imposuit (mol-ə-tər man-əs im-poz-[y]ə-wit). [Latin] *Hist.* He gently laid hands upon. • This phrase was used in actions of trespass and assault to justify a defendant’s use of force as reasonable, as when it was necessary to keep the peace.

monarchy. (14c) A government in which a single person rules, with powers varying from absolute dictatorship to the merely ceremonial.

limited monarchy. A monarchical form of government in which the monarch’s power is subject to constitutional or other restraints. — Also termed *constitutional monarchy*.

moneta (mə-nee-tə), *n.* [Latin] Money.

monetarium (mon-ə-tay-jee-əm), *n.* [Law Latin “mintage”] *Hist.* **1.** The right to coin money; mintage. **2.** A tribute paid by a tenant to persuade a lord not to change coinage.

monetarism (mon-i-tə-riz-əm). An economic theory claiming that the money supply is the basic influence on the economy. • The theory was originated by Milton Friedman in the late 1960s.

monetary, adj. **1.** Of or relating to money <monetary value> <monetary damages>. **2.** Financial <monetary services> <monetary investments>.

monetary bequest. See *pecuniary bequest* under BEQUEST.

money. (14c) **1.** The medium of exchange authorized or adopted by a government as part of its currency; esp. domestic currency <coins and currency are money>. UCC § 1-201(24). **2.** Assets that can be easily converted to cash <demand deposits are money>. **3.** Capital that is invested or traded as a commodity <the money market>. **4.** (*pl.*) Funds; sums of money <investment moneys>. — Also spelled (in sense 4) *monies*. See MEDIUM OF EXCHANGE; LEGAL TENDER.

current money. Money that circulates throughout a country; currency.

e-money. Money or a money substitute that is transformed into information stored on a computer or computer chip so that it can be transferred over information systems such as the Internet. Cf. *e-check* under CHECK. — Also termed *digital cash*; *electronic cash*; *electronic currency*; *Internet scrip*; *on-line scrip*.

fiat money. Paper currency not backed by gold or silver. — Also termed *flat money*.

hard money. **1.** Coined money, in contrast to paper currency. **2.** Cash.

- lawful money.** Money that is legal tender for the payment of debts.
- paper money.** Paper documents that circulate as currency; bills drawn by a government against its own credit.
- real money.** 1. Money that has metallic or other intrinsic value, as distinguished from paper currency, checks, and drafts. 2. Current cash, as opposed to money on account.
- money bequest.** See *pecuniary bequest* under BEQUEST.
- money bill.** See *revenue bill* under BILL (3).
- money broker.** See BROKER.
- money changer.** One whose primary business is exchanging currencies.
- money claim.** *Hist.* Under the English Judicature Act of 1875, money claimed as damages, as for breaches of contract and rent arrearages.
- money count.** See COUNT.
- money demand.** (1821) A claim for a fixed, liquidated sum, as opposed to a damage claim that must be assessed by a jury. [Cases: Damages ⇨ 200.]
- moneyed capital.** See CAPITAL.
- moneyed corporation.** See CORPORATION.
- money had and received.** See *action for money had and received* under ACTION (4).
- money judgment.** See JUDGMENT.
- money land.** Money held in a trust providing for its conversion into land.
- money-laundering, n.** (1974) The act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced. • Money-laundering is a federal crime. 18 USCA § 1956. It is also addressed by state governments, e.g., through the Uniform Money Services Act. Because some money-laundering is conducted across national borders, enforcement of money-laundering laws often requires international cooperation, fostered by organizations such as Interpol. [Cases: United States ⇨ 34.]
- money made.** A sheriff's return on a writ of execution signifying that the sum stated on the writ was collected. [Cases: Execution ⇨ 335.]
- money market.** See MARKET.
- money-market account.** An interest-bearing account at a bank or other financial institution. • Such an account usu. pays interest competitive with money-market funds but allows a limited number of transactions per month. See *money market* under MARKET.
- money-market fund.** See MUTUAL FUND.
- money order.** (1802) A negotiable draft issued by an authorized entity (such as a bank, telegraph company, post office, etc.) to a purchaser, in lieu of a check to be used to pay a debt or otherwise transmit funds upon the credit of the issuer. [Cases: Postal Service ⇨ 18.]
- money paid.** See *action for money paid* under ACTION (4).
- money-purchase plan.** See EMPLOYEE BENEFIT PLAN.
- money scrivener.** A money broker; one who obtains money for mortgages or other loans.
- money service business, n.** A nonbank entity that provides mechanisms for people to make payments or to obtain currency or cash in exchange for payment instruments. • Money service businesses do not accept deposits or make loans. They include money transmitters, payment instrument sellers, stored-value providers, check cashers, and currency exchangers. — Also termed *nonbank financial institution; nondepository provider of financial services*.
- money supply.** The total amount of money in circulation in the economy. See M1; M2; M3.
- monger (mɒŋ-gər).** *Archaic.* A seller of goods; a dealer <moneymonger>.
- monier (moh-nyair or mən-ee-ər), n.** [fr. Law Latin *monetarius* "a moneyer"] *Hist.* 1. A minister of the mint. 2. A banker; a dealer in money. — Also spelled *moneyer*.
- monies.** See MONEY (4).
- moniment.** *Archaic.* A memorial; a monument.
- monition (mə-nish-ən), n.** (14c) 1. Generally, a warning or caution; ADMONITION. 2. *Civil & maritime law.* A summons to appear in court as a defendant or to answer contempt charges. [Cases: Admiralty ⇨ 44, 46; Contempt ⇨ 55.] 3. *Eccles. law.* A formal notice from a bishop demanding that an offense within the clergy be corrected or avoided. — **monish (mon-ish), vb.** — **monitory (mon-ə-tor-ee), adj.**
- monitory letter.** *Eccles. law.* Admonitory communications sent from an ecclesiastical judge to staff members in response to reported abuses or scandals.
- monocracy (mə-nok-rə-see).** A government by one person.
- monocrat (mon-ə-krat).** A monarch who governs alone.
- monogamy (mə-nog-ə-mee), n.** (18c) 1. The custom prevalent in most modern cultures restricting a person to one spouse at a time. 2. The fact of being married to only one spouse. Cf. BIGAMY; POLYGAMY. — **monogamous, adj.** — **monogamist, n.**
- monomachy (mə-nom-ə-kee).** *Hist.* See DUEL (2).
- monomania (mon-ə-may-nee-ə).** (1823) Insanity about some particular subject or class of subjects, usu. manifested by a single insane delusion. • A will made by someone suffering from this condition is usu. held valid unless the evidence shows that particular provisions in the will were influenced by the insane delusion. [Cases: Mental Health ⇨ 3.1.] — **monomaniacal, adj.** — **monomaniac, n.**
- monopolist (mə-nop-ə-list), n.** 1. One who has a monopoly; specif., a seller or combination of sellers who can alter the price of a product in the market by changing the quantity sold. • By reducing output, a

monopolist can raise the price above the cost of supplying the market. **2.** A proponent of a monopoly.

monopolium (mon-ə-poh-lee-əm). [Latin fr. Greek *monopolion* "a selling alone"] *Hist.* The sole power of sale; a monopoly.

monopolization, n. (18c) The act or process of obtaining a monopoly. • In federal antitrust law, monopolization is an offense with two elements: (1) the possession of monopoly power — that is, the power to fix prices and exclude competitors — within the relevant market, and (2) the willful acquisition or maintenance of that power, as distinguished from growth or development as a consequence of a superior product, business acumen, or historical accident. *United States v. Grinnell Corp.*, 384 U.S. 563, 86 S.Ct. 1698 (1966). [Cases: Antitrust and Trade Regulation ↻619.] — **monopolize, vb.**

attempted monopolization. The effort to monopolize any part of interstate or foreign commerce, consisting in (1) a specific intent to control prices or destroy competition in the relevant market, (2) predatory or anticompetitive conduct, and (3) a "dangerous probability" of success in achieving monopoly in the relevant market.

monopoly, n. (16c) **1.** Control or advantage obtained by one supplier or producer over the commercial market within a given region. Cf. OLIGOPOLY. **2.** The market condition existing when only one economic entity produces a particular product or provides a particular service. • The term is now commonly applied also to situations that approach but do not strictly meet this definition. [Cases: Antitrust and Trade Regulation ↻619.] — **monopolistic, adj.** — **monopolist, n.**

"[Ninety per cent] is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four per cent is enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 424 (2d Cir. 1945) (Hand, J.).

"In the modern sense, a monopoly exists when all, or so nearly all, of an article of trade or commerce within a community or district, is brought within the hands of one person or set of persons, as practically to bring the handling or production of the commodity or thing within such single control to the exclusion of competition or free traffic therein. A monopoly is created when, as the result of efforts to that end, previously competing businesses are so concentrated in the hands of a single person or corporation, or a few persons or corporations acting together, that they have power, for all practical purposes, to control the prices of a commodity and thus to suppress competition. In brief, a monopoly is the practical suppression of effective business competition which thereby creates a power to control prices to the public harm." 54A Am. Jur. 2d *Monopolies, Restraints of Trade, and Unfair Trade Practices* § 781, at 107 (1996).

bilateral monopoly. A hypothetical market condition in which there is only one buyer and one seller, resulting in transactional delays because either party can hold out for a better deal without fearing that the other party will turn to a third party.

legal monopoly. The exclusive right granted by government to business to provide utility services that are,

in turn, regulated by the government. [Cases: Public Utilities ↻113.]

natural monopoly. A monopoly resulting from a circumstance over which the monopolist has no power, as when the market for a product is so limited that only one plant is needed to meet demand.

3. Patents. The exclusive right of a patentee to make, use, sell, offer for sale, or import an invention for a certain period of time, subject to the rights of the owners of other patents that would be infringed. [Cases: Patents ↻185.]

"[T]he statute of monopolies, 21 Jac. 1. c. 3, allows a royal patent of privilege to be granted for fourteen years to any inventor of a new manufacture, for the sole working or making of the same; by virtue whereof a temporary property becomes vested in the patentee." William Blackstone, 2 *Commentaries on the Laws of England* 407 (1766).

monopoly leveraging. A theory of liability holding that a party violates the antitrust laws when it exploits its monopoly power in one market to gain a competitive advantage in another market.

monopoly power. The power to control prices or to exclude competition. • The size of the market share is a primary determinant of whether monopoly power exists. [Cases: Antitrust and Trade Regulation ↻641.]

monopsony (mə-nop-sə-nee), *n.* (1933) A market situation in which one buyer controls the market. [Cases: Antitrust and Trade Regulation ↻641.] — **monopsonistic, adj.**

"Monopsony is often thought of as the flip side of monopoly. A monopolist is a seller with no rivals; a monopsonist is a buyer with no rivals. A monopolist has power over price exercised by limiting output. A monopsonist also has power over price, but this power is exercised by limiting aggregate purchases. Monopsony injures efficient allocation by reducing the quantity of the input product or service below the efficient level." Lawrence A. Sullivan & Warren S. Grimes, *The Law of Antitrust: An Integrated Handbook* 137-38 (2000).

Monroe Doctrine. The principle that the United States will allow no intervention or domination in the Western Hemisphere by any non-American nation. • This principle, which has some recognition in international law (though not as a formal doctrine), was first announced by President James Monroe in 1823.

"The Monroe doctrine is a policy which the United States has followed in her own interest more or less consistently for more than a century, and in itself is not contrary to international law, though possible applications of it might easily be so. But it certainly is not a *rule* of international law. It is comparable to policies such as the 'balance of power' in Europe, or the British policies of maintaining the independence of Belgium or the security of our sea-routes to the East, or the former Japanese claim to something like a paramount influence over developments in the Far East. Apart from other objections, it is impossible to regard as a rule of law a doctrine which the United States claims the sole right to interpret, which she interprets in different senses at different times, and which she applies only as and when she chooses. Nor is the doctrine, as Article 21 of the Covenant described it, a 'regional understanding', for the other states of the region concerned, that is to say, the Continent of America, have never been parties to it

and indeed have often resented it." J.L. Brierly, *The Law of Nations* 314 (5th ed. 1955).

monstrans de droit (mon-strənz də droyt). [Law French] *Hist.* A manifestation of right as a method of obtaining restitution from the Crown. • It was replaced by the writ of right. Currently, restitution is obtained by an ordinary action against the government.

monstrans de faits (mon-strənz də fay[ts]). [Law French] *Hist.* A showing of deeds; a profert.

monstraverunt (mon-strə-veer-ənt). [Latin "they have showed"] *Hist.* A writ of relief for tenants of ancient demesne who were distrained by their lord to do more than the tenure required. — Also termed *writ of monstraverunt*.

"The little writ serves the turn of a man who claims land according to the custom of the manor; but the tenants of whom we are speaking are protected, and protected collectively, against any increase of their services. This is very plain when the manor is in the hands of a mesne lord. If he attempts to increase the customary services, some of the tenants, acting on behalf of all, will go to the royal chancery and obtain a writ against him. Such a writ begins with the word *Monstraverunt*. The king addresses the lord: — 'A, B and C, men of your manor of X, which is of the ancient demesne of the crown of England, have shown us that you exact from them other customs and services than those which they owe, and which their ancestors did in the time when that manor was in the hands of our predecessors, kings of England; therefore we command you to cease from such exactions, otherwise we shall order our sheriff to interfere.'" 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 388 (2d ed. 1898).

montes pietatis (mon-teez pi-ə-tay-tis). [Latin "mountains of piety"] *Hist.* Institutions established to lend money upon pledges of goods.

Montevideo Treaty. *Copyright.* An 1889 copyright treaty among Western Hemisphere nations, based on the Berne Convention but affording less copyright protection.

month. (18c) (bef. 12c) 1. One of the twelve periods of time in which the calendar is divided <the month of March>. — Also termed *calendar month*; *civil month*. [Cases: Time ↻5.] 2. Any time period approximating 30 days <due one month from today>. 3. At common law, a period of 28 days; the period of one revolution of the moon <a lunar month>. — Also termed *lunar month*. 4. One-twelfth of a tropical year; the time it takes the sun to pass through one sign of the zodiac, usu. approximating 30 days <a solar month> — Also termed *solar month*.

month-to-month lease. See LEASE.

month-to-month tenancy. See *periodic tenancy* under TENANCY.

Montreal Agreement. A private agreement, signed by most international airlines, waiving both the Warsaw Convention's limitation on liability for death and personal-injury cases (currently about \$20,000) and the airline's due-care defenses, raising the liability limit per passenger to \$75,000, and providing for absolute liability on the part of the carrier (in the absence

of passenger negligence) for all flights originating, stopping, or terminating in the United States. • The Montreal Agreement was the result of negotiations in 1965 and 1966 following the United States' denunciation of the Warsaw Convention, based primarily on its low liability limits. — Also termed *Agreement Relating to Liability Limitation of the Warsaw Convention and the Hague Protocol*. [Cases: Carriers ↻307; Treaties ↻8.]

monument, n. (15c) 1. A written document or record, esp. a legal one. 2. Any natural or artificial object that is fixed permanently in land and referred to in a legal description of the land. [Cases: Boundaries ↻4, 5.] — **monumental, adj.**

mural monument. A monument set into or otherwise made part of a wall.

natural monument. A nonartificial permanent thing on land, such as a tree, river, or beach. — Also termed *natural object*. [Cases: Boundaries ↻4.]

Moody's Investor's Service. An investment-analysis and advisory service. • Moody's rates the financial strength of businesses from Aaa (strongest) to Aa, A, Baa, and so on to C. The grade may also be modified with a 1, 2, or 3 according to the business's relative strength among similar companies. — Often shortened to *Moody's*.

moonlighting. (1957) The fact or practice of working at a second job after the hours of a regular job. — Also termed *dual employment*; *multiple job-holding*.

moonshine. (18c) *Slang.* A distilled alcoholic beverage, esp. whiskey, that is illegally manufactured. [Cases: Intoxicating Liquors ↻137.]

moorage. 1. An act of mooring a vessel at a wharf. 2. A mooring charge. [Cases: Wharves ↻15.]

moored in safety. *Marine insurance.* (Of a vessel) located in a usual place for landing or loading cargo, free from any imminent peril insured against. [Cases: Insurance ↻2214.]

moot, adj. (16c) 1. *Archaic.* Open to argument; debatable. 2. Having no practical significance; hypothetical or academic <the question on appeal became moot once the parties settled their case>. — **mootness, n.**

moot, vb. (bef. 12c) 1. *Archaic.* To raise or bring forward (a point or question) for discussion. 2. To render (a question) moot or of no practical significance.

moot case. A matter in which a controversy no longer exists; a case that presents only an abstract question that does not arise from existing facts or rights. [Cases: Action ↻6; Federal Courts ↻12.1.]

moot court. (18c) 1. A fictitious court held usu. in law schools to argue moot or hypothetical cases, esp. at the appellate level. 2. A practice session for an appellate argument in which a lawyer presents the argument to other lawyers, who first act as judges by asking questions and who later provide criticism on the argument. — Also termed *practice court*. Cf. MOCK TRIAL.

moot man. *Hist.* A person who argued cases in the Inns of Court.

mootness doctrine. (1963) The principle that American courts will not decide moot cases — that is, cases in which there is no longer any actual controversy. Cf. RIPENESS. [Cases: Action ⇨ 6; Appeal and Error ⇨ 781; Federal Courts ⇨ 12.1.]

mop fair. See STATUTE FAIR.

mora (mor-ə), *n.* [Latin] *Roman law.* Willful delay or default in fulfilling a legal obligation. • A creditor or debtor in *mora* could be required to pay interest on any money owed.

"The word *mora* means delay or default. In its technical sense it means a culpable delay in making or accepting performance. . . . The definition includes both *mora debitoris* and *mora creditoris*. In French law and other civil law systems *mora debitoris* seems (sometimes, if not always) to occur as a mean term between failure to perform a duty timeously and liability for breach. . . . *Mora* usually attaches to a debtor, but it may also attach to a creditor who fails to accept performance duly tendered. . . ." R.W. Lee, *An Introduction to Roman-Dutch Law* 445 (4th ed. 1946).

"*Mora.* This was wrongful failure to discharge a legal obligation on demand made at a fitting time and place. It must be wilful: failure to appear, by mistake, or in a *bona fide* belief that there was no *obligatio*, or doubt about it, or by mishap, did not suffice to put a debtor *in mora*." W.W. Buckland, *A Manual of Roman Private Law* 338 (2d ed. 1939).

mora (mor-ə), *n.* [Law Latin] *Hist.* A moor; unprofitable ground.

moral absolutism. The view that a person's action can always properly be seen as right or wrong, regardless of the situation or the consequences. — Also termed *ethical absolutism*; *objective ethics*. Cf. MORAL RELATIVISM.

moral certainty. (17c) Absolute certainty. • Moral certainty is not required to sustain a criminal conviction. See REASONABLE DOUBT; *proof beyond a reasonable doubt* under PROOF. [Cases: Criminal Law ⇨ 561(1).]

moral coercion. See UNDUE INFLUENCE (1).

moral consideration. See *good consideration* (1) under CONSIDERATION (1).

moral depravity. See MORAL TURPITUDE (1).

moral duress. See DURESS.

moral duty. See DUTY (1).

moral evidence. See EVIDENCE.

moral fraud. See *actual fraud* under FRAUD.

moral hazard. See HAZARD (2).

morality. (14c) 1. Conformity with recognized rules of correct conduct. 2. The character of being virtuous, esp. in sexual matters.

"[T]he terms 'morality' and 'immorality' . . . are understood to have a sexual connotation. In fact, the terms 'ethics' and 'morals' are no longer interchangeable in everyday speech. A governmental official arraigned on a 'morals charge' will be accused of something quite different from one accused of an 'ethics violation.'" William P. Golding, *Philosophy of Law* 55 (1975).

3. A system of duties; ethics.

private morality. (18c) A person's ideals, character, and private conduct, which are not valid governmental concerns if the individual is to be considered sovereign over body and mind and if the need to protect the individual's physical or moral well-being is insufficient to justify governmental intrusion. • In his essay *On Liberty* (1859), John Stuart Mill distinguished between conduct or ideals that affect only the individual from conduct that may do harm to others. Mill argued that governmental intrusion is justified only to prevent harm to others, not to influence a person's private morality.

public morality. (18c) 1. The ideals or general moral beliefs of a society. 2. The ideals or actions of an individual to the extent that they affect others.

moral law. (15c) A collection of principles defining right and wrong conduct; a standard to which an action must conform to be right or virtuous.

"It quite often happens that the moral law disapproves of something which the secular permits as a concession to human frailty." Patrick Devlin, *The Enforcement of Morals* 78 (1968).

moral necessity. See NECESSITY.

moral obligation. See OBLIGATION.

moral person. See *artificial person* under PERSON (3).

moral relativism. The view that there are no absolute or constant standards of right and wrong. — Also termed *ethical relativism*; *subjective ethics*. Cf. MORAL ABSOLUTISM.

moral right. (*usu. pl.*) *Copyright.* The right of an author or artist, based on natural-law principles, to guarantee the integrity of a creation despite any copyright or property-law right of its owner. • Moral rights include rights of (1) attribution (also termed "paternity"): the right to be given credit and to claim credit for a work, and to deny credit if the work is changed; (2) integrity: the right to ensure that the work is not changed without the artist's consent; (3) publication: the right not to reveal a work before its creator is satisfied with it; and (4) retraction: the right to renounce a work and withdraw it from sale or display. Moral rights are recognized by law in much of Europe. Limited moral rights are recognized in the United States in 17 USCA § 106A. Cf. INTEGRITY RIGHT; ATTRIBUTION RIGHT. [Cases: Copyrights and Intellectual Property ⇨ 101.]

"The recognition of moral rights is founded in the notion that works of art belong to their creators in a way that transcends the sale or transfer of the work to a new owner, because the artist has imbued the work with her personality." Eric M. Brooks, "Titled" Justice: *Site-Specific Art and Moral Rights After U.S. Adherence to the Berne Convention*, 77 Cal. L. Rev. 1431, 1434 (1989).

"Moral rights protect an author's non-pecuniary or non-economic interests. The 1988 [Copyright] Act provides authors and directors with the right to be named when a work is copied or communicated (the right of attribution), the right *not* to be named as the author of a work which one did not create (the right to object against false attribution), and the right to control the form of the work (the right of integrity)." Lionel Bently & Brad Sherman, *Intellectual Property Law* 233 (2001).

moral suasion. The act or effort of persuading by appeal to principles of morality.

moral turpitude. (17c) **1.** Conduct that is contrary to justice, honesty, or morality. • In the area of legal ethics, offenses involving moral turpitude — such as fraud or breach of trust — traditionally make a person unfit to practice law. — Also termed *moral depravity*. **2. Military law.** Any conduct for which the applicable punishment is a dishonorable discharge or confinement not less than one year.

“Moral turpitude means, in general, shameful wickedness — so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.” 50 Am. Jur. 2d *Libel and Slander* § 165, at 454 (1995).

moral wrong. See **WRONG**.

moral-wrong doctrine. (1962) The doctrine that if a wrongdoer acts on a mistaken understanding of the facts, the law will not exempt the wrongdoer from culpability when, if the facts had been as the actor believed them to be, his or her conduct would nevertheless be immoral. [Cases: Criminal Law ↷33.]

morandae solutionis causa (mə-ran-dee sə-loo-shee-oh-nis kaw-zə). [Latin] *Hist.* For the purpose of delaying payment.

moratorium (mɔr-ə-tor-ee-əm). (1875) **1.** An authorized postponement, usu. a lengthy one, in the deadline for paying a debt or performing an obligation. **2.** The period of this delay. **3.** The suspension of a specific activity. Pl. **moratoriums, moratoria.**

moratory (mɔr-ə-tor-ee), *adj.* (1891) Of or relating to a delay; esp. of or relating to a moratorium.

moratory damages. See **DAMAGES**.

moratory interest. See *prejudgment interest* under **INTEREST** (3).

more burgi (mɔr-ee bər-jī). [Law Latin] *Hist.* According to the custom in burgage-tenure. See **BURGAGE-TENURE** (2).

more or less. (Of a quantity) larger or smaller. • This phrase often appears in deeds <the property contains 120 acres, more or less> and sometimes in contracts <seller's wheat field will produce 50 bushels per acre, more or less>. It qualifies a good-faith representation of quantity. By using the phrase, the parties mutually acknowledge that the true circumstances may differ from what the parties believe they are when the contract is made, and accept a risk that the true quantity will be slightly different. When the qualifying phrase is present, neither party can recover for a surplus or deficiency. [Cases: Deeds ↷38(1); Sales ↷71; Vendor and Purchaser ↷65.]

morganatic marriage. See **MARRIAGE** (1).

morgangiva (mɔr-gan-jə-və), *n.* [Law Latin “morning gift” from Old Norse] *Hist.* A gift made to the bride on

the morning after the wedding; a type of dowry. — Also spelled *morgangina*.

Morgan Nick Alert. See **AMBER ALERT**.

Morgan presumption. (1948) A presumption that shifts the burden of proof by requiring the person against whom it operates to produce sufficient evidence to outweigh the evidence that supports the presumed fact, as in requiring a criminal defendant who was arrested while in possession of an illegal substance — and is thereby presumed to have knowingly possessed it — to produce sufficient evidence to entitle the jury to find that the defendant's evidence outweighs the evidence of knowing possession. See Edmund M. Morgan, *Instructing the Jury Upon Presumptions and Burdens of Proof*, 47 Harv. L. Rev. 59, 82–83 (1933). Cf. **THAYER PRESUMPTION**. [Cases: Controlled Substances ↷68; Criminal Law ↷324; Evidence ↷85.]

mors (morz), *n.* [Latin “death”] *Roman law.* **1.** Death. **2.** The punishment of death.

morsellum terrae (mɔr-sel-əm ter-ee). [Law Latin “a morsel of earth”] *Hist.* A small parcel of land.

morsel of execration. See *ordeal of the morsel* under **ORDEAL**.

mors naturalis (mɔrz nach-ə-ray-lis). See *natural death* under **DEATH**.

mortality factor. *Insurance.* In life-insurance ratemaking, an estimate of the average number of deaths that will occur each year at each specific age, calculated by using an actuarial table. • The mortality factor is one element that a life insurer uses to calculate premium rates. See **ACTUARIAL TABLE**; **PREMIUM RATE**. Cf. **INTEREST FACTOR**; **RISK FACTOR**. [Cases: Insurance ↷1542(1).]

mortality table. See **ACTUARIAL TABLE**.

mort civile (mɔr[t] see-veel). [Law French] See **CIVIL DEATH** (1).

mort d'ancestor (mɔr[t] dan-ses-tər). [Law French “death of an ancestor”] *Hist.* An assize founded on the death of an ancestor. — Also termed (in Scots law) *brieve of mortancestry*.

“Another of the petty assizes was that of mort d'ancestor, founded on the Assize of Northampton 1176. The question in this assize was whether the plaintiff's father (or other close ancestor) had been seised in fee — that is, of an inheritable estate — on the day he died, and whether the plaintiff was his next heir; if both questions were answered in the affirmative, the plaintiff was entitled to be put in seisin.” J.H. Baker, *An Introduction to English Legal History* 267–68 (3d ed. 1990).

mortgage (mɔr-gij), *n.* (15c) **1.** A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms. — Also termed (archaically) *dead pledge*. [Cases: Mortgages ↷1.] **2.** A lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms. [Cases: Mortgages ↷145.] **3.** An instrument (such as a deed

or contract) specifying the terms of such a transaction. 4. Loosely, the loan on which such a transaction is based. 5. The mortgagee's rights conferred by such a transaction. 6. Loosely, any real-property security transaction, including a deed of trust. — Abbr. M. — **mortgage**, *vb*.

"The chief distinction between a mortgage and a pledge is that by a mortgage the general title is transferred to the mortgagee, subject to be revested by performance of the condition; while by a pledge the pledgor retains the general title in himself, and parts with the possession for a special purpose. By a mortgage the title is transferred; by a pledge, the possession." Leonard A. Jones, *A Treatise on the Law of Mortgages* § 4, at 5-6 (5th ed. 1908).

adjustable-rate mortgage. A mortgage in which the lender can periodically adjust the mortgage's interest rate in accordance with fluctuations in some external market index. — Abbr. ARM. — Also termed *variable-rate mortgage*; *flexible-rate mortgage*. Cf. *exploding adjustable-rate mortgage*.

all-inclusive mortgage. See *wraparound mortgage*.

amortized mortgage. A mortgage in which the mortgagor pays the interest as well as a portion of the principal in the periodic payment. • At maturity, the periodic payments will have completely repaid the loan. — Also termed *self-liquidating mortgage*. See AMORTIZATION (1). Cf. *straight mortgage*.

balloon-payment mortgage. A mortgage requiring periodic payments for a specified time and a lump-sum payment of the outstanding balance at maturity.

blanket mortgage. A mortgage covering two or more properties that are pledged to support a debt.

bulk mortgage. 1. A mortgage of personal property in bulk; a pledge of an aggregate of goods in one location. 2. A mortgage of more than one real-estate parcel.

chattel mortgage (*chat-əl*). A mortgage on goods purchased on installment, whereby the seller transfers title to the buyer but retains a lien securing the unpaid balance. • Chattel mortgages have generally been replaced by security agreements, which are governed by Article 9 of the UCC. Cf. *retail installment contract* under CONTRACT. [Cases: Chattel Mortgages ↪ 1.]

closed-end mortgage. A mortgage that does not permit either prepayment or additional borrowing against the collateral. Cf. *open-end mortgage*. — Also termed *closed mortgage*.

closed mortgage. See *closed-end mortgage*.

collateral mortgage. *Civil law*. A mortgage securing a promissory note pledged as collateral security for a principal obligation.

common-law mortgage. See *deed of trust* under DEED.

consolidated mortgage. A mortgage created by combining two or more mortgages.

construction mortgage. A mortgage used to finance a construction project.

contingent-interest mortgage. A mortgage whose interest rate is directly related to the economic performance of the pledged property.

conventional mortgage. A mortgage, not backed by government insurance, by which the borrower transfers a lien or title to the lending bank or other financial institution. • These mortgages, which feature a fixed periodic payment of principal and interest throughout the mortgage term, are typically used for home financing. — Also termed *conventional loan*.

direct-reduction mortgage. An amortized mortgage in which the principal and interest payments are paid at the same time — usu. monthly in equal amounts — with interest being computed on the remaining balance. — Abbr. DRM.

dry mortgage. A mortgage that creates a lien on property but does not impose on the mortgagor any personal liability for any amount that exceeds the value of the premises.

equitable mortgage. A transaction that has the intent but not the form of a mortgage, and that a court of equity will treat as a mortgage. Cf. *technical mortgage*.

"Courts of equity are not governed by the same principles as courts of law in determining whether a mortgage has been created, and generally, whenever a transaction resolves itself into a security, or an offer or attempt to pledge land as security for a debtor liability, equity will treat it as a mortgage, without regard to the form it may assume, or the name the parties may choose to give it. The threshold issue in an action seeking imposition of an equitable mortgage is whether the plaintiff has an adequate remedy at law. In applying the doctrine of equitable mortgages doubts are resolved in favor of the transaction being a mortgage." 59 C.J.S. *Mortgages* § 12, at 62 (1998).

exploding adjustable-rate mortgage. An adjustable-rate mortgage for which the lender resets the interest rate so high that the borrower can no longer make payments. — Sometimes shortened to *exploding ARM*. Cf. *adjustable-rate mortgage*.

extended first mortgage. See *wraparound mortgage*.

FHA mortgage. A mortgage that is insured fully or partially by the Federal Housing Administration.

first mortgage. A mortgage that is senior to all other mortgages on the same property. [Cases: Mortgages ↪ 151.]

fixed-rate mortgage. A mortgage with an interest rate that remains the same over the life of the mortgage regardless of market conditions. — Abbr. FRM.

flexible-rate mortgage. 1. See *adjustable-rate mortgage*. 2. See *renegotiable-rate mortgage*.

flip mortgage. A graduated-payment mortgage allowing the borrower to place all or some of the down payment in a savings account and to use the principal and interest to supplement lower mortgage payments in the loan's early years.

future-advances mortgage. A mortgage in which part of the loan proceeds will not be paid until a future date. [Cases: Mortgages ↪ 16, 116.]

general mortgage. *Civil law.* A blanket mortgage against all the mortgagor's present and future property. La. Civ. Code art. 3285.

graduated mortgage. See *graduated-payment mortgage*.

graduated-payment adjustable-rate mortgage. A mortgage combining features of the graduated-payment mortgage and the adjustable-rate mortgage. — Abbr. GPARM. — Also termed *graduated mortgage*.

graduated-payment mortgage. A mortgage whose initial payments are lower than its later payments. ● The payments are intended to gradually increase, as the borrower's income increases over time.

growing-equity mortgage. A mortgage that is fully amortized over a significantly shorter term than the traditional 25- to 30-year mortgage, with increasing payments each year. — Abbr. GEM.

indemnity mortgage. See *deed of trust* under DEED.

interest-only mortgage. A balloon-payment mortgage on which the borrower must at first make only interest payments, but must make a lump-sum payment of the full principal at maturity. — Abbr. IO mortgage. — Also termed *standing mortgage*; *straight-term mortgage*.

joint mortgage. A mortgage given to two or more mortgagees jointly.

judicial mortgage. *Civil law.* A judgment lien created by a recorded legal judgment. [Cases: Judgment ⇨ 752-766.]

jumbo mortgage. A mortgage loan in a principal amount that exceeds the dollar limits for a government guarantee.

junior mortgage. A mortgage that is subordinate to another mortgage on the same property. — Also termed *puisne mortgage*. [Cases: Mortgages ⇨ 151.]

leasehold mortgage. A mortgage secured by a lessee's leasehold interest.

legal mortgage. *Civil law.* A creditor's mortgage arising by operation of law on the debtor's property. — Also termed *tacit mortgage*.

open-end mortgage. A mortgage that allows the mortgagor to borrow additional funds against the same property. Cf. *closed-end mortgage*.

package mortgage. A mortgage that includes both real and incidental personal property, such as a refrigerator or stove.

participation mortgage. 1. A mortgage that permits the lender to receive profits of the venture in addition to the normal interest payments. 2. A mortgage held by more than one lender.

price-level-adjusted mortgage. A mortgage with a fixed interest rate but the principal balance of which is adjusted to reflect inflation. — Abbr. PLAM.

puisne mortgage. See *junior mortgage*.

purchase-money mortgage. A mortgage that a buyer gives the seller, when the property is conveyed, to secure the unpaid balance of the purchase price. — Abbr. PMM. See SECURITY AGREEMENT. [Cases: Mortgages ⇨ 1, 115.]

renegotiable-rate mortgage. A government-sponsored mortgage that requires the mortgagee to renegotiate its terms every three to five years, based on market conditions. — Also termed *flexible-rate mortgage*; *rollover mortgage*.

reverse annuity mortgage. A mortgage in which the lender disburses money over a long period to provide regular income to the (usu. elderly) borrower, and in which the loan is repaid in a lump sum when the borrower dies or when the property is sold. — Abbr. RAM. — Also termed *reverse mortgage*.

rollover mortgage. See *renegotiable-rate mortgage*.

second mortgage. A mortgage that is junior to a first mortgage on the same property, but that is senior to any later mortgage. [Cases: Mortgages ⇨ 151.]

"A landowner who already holds land subject to a mortgage may wish to hypothecate his equity. He does this by taking out a 'second mortgage.' Should the mortgagee default in his obligation on the first mortgage, the first mortgagee may foreclose. If there is a deficiency upon sale, the second mortgagee loses his security in the equity because there is no equity. If the mortgagee does not default on the first mortgage, but does on the second, the second mortgagee can foreclose on the mortgagor's equity. Such a foreclosure would not affect the first mortgagee's rights." Edward H. Rabin, *Fundamentals of Modern Real Property Law* 1087 (1974).

self-liquidating mortgage. See *amortized mortgage*.

senior mortgage. A mortgage that has priority over another mortgage (a junior mortgage) on the same property. [Cases: Mortgages ⇨ 151.]

shared-appreciation mortgage. A mortgage giving the lender the right to recover (as contingent interest) an agreed percentage of the property's appreciation in value when it is sold or at some other specified, future date. — Abbr. SAM.

shared-equity mortgage. A mortgage in which the lender shares in the profits from the property's resale. ● The lender must usu. first purchase a portion of the property's equity by providing a portion of the down payment.

special mortgage. *Civil law.* A mortgage burdening only particular, specified property of the mortgagor. La. Civ. Code art. 3285.

standing mortgage. See *interest-only mortgage*.

straight mortgage. A mortgage in which the mortgagor is obligated to pay interest during the mortgage term along with a final payment of principal at the end of the term. Cf. *amortized mortgage*.

straight-term mortgage. See *interest-only mortgage*.

submortgage. A mortgage created when a person holding a mortgage as security for a loan procures another loan from a third party and pledges the mortgage as security; a loan to a mortgagee who

puts up the mortgage as collateral or security for the loan.

tacit mortgage. See *legal mortgage*.

technical mortgage. A traditional, formal mortgage, as distinguished from an instrument having the character of an equitable mortgage. Cf. *equitable mortgage*.

VA mortgage. A veteran's mortgage that is guaranteed by the Veterans Administration.

variable-rate mortgage. See *adjustable-rate mortgage*.

Welsh mortgage. A type of mortgage, formerly common in Wales and Ireland, by which the mortgagor, without promising to pay the debt, transfers title and possession of the property to the mortgagee, who takes the rents and profits and applies them to the interest, often with a stipulation that any surplus will reduce the principal. • The mortgagee cannot compel the mortgagor to redeem, and cannot foreclose the right to redeem, because no time is fixed for payment. The mortgagor is never in default, but may redeem at any time.

wraparound mortgage. A second mortgage issued when a lender assumes the payments on the borrower's low-interest first mortgage (usu. issued through a different lender) and lends additional funds. • Such a mortgage covers both the outstanding balance of the first mortgage and the additional funds loaned. 12 CFR § 226.17 cmt. 6. — Also termed *extended first mortgage*; *all-inclusive mortgage*.

zero-rate mortgage. A mortgage with a large down payment but no interest payments, with the balance paid in equal installments.

mortgage-backed security. See *SECURITY*.

mortgage banker. An individual or organization that originates real-estate loans for a fee, resells them to other parties, and services the monthly payments.

mortgage bond. See *BOND* (3).

mortgage broker. See *BROKER*.

mortgage certificate. (1843) A document evidencing part ownership of a mortgage.

mortgage clause. An insurance-policy provision that protects the rights of a mortgagee when the insured property is subject to a mortgage. • Such a clause usu. provides that any insurance proceeds must be allocated between the named insured and the mortgagee "as their interests may appear." — Also termed *mortgagee clause*. See *LOSS-PAYABLE CLAUSE*; *ATIMA*. [Cases: Mortgages ⇨ 201.]

open mortgage clause. A mortgage clause that does not protect the mortgagee if the insured mortgagor does something to invalidate the policy (such as committing fraud). • This type of clause has been largely superseded by the mortgage-loss clause, which affords the mortgagee more protection. — Also termed *simple mortgage clause*. Cf. *MORTGAGE-LOSS CLAUSE*.

standard mortgage clause. A mortgage clause that protects the mortgagee's interest even if the insured mortgagor does something to invalidate the policy. • In effect, this clause creates a separate contract between the insurer and the mortgagee. — Also termed *union mortgage clause*.

mortgage commitment. (1939) A lender's written agreement with a borrower stating the terms on which it will lend money for the purchase of specified real property, usu. with a time limitation. [Cases: Mortgages ⇨ 211.]

mortgage company. A company that makes mortgage loans and then sells or assigns them to investors.

mortgage-contingency clause. (1965) A real-estate-sale provision that conditions the buyer's performance on obtaining a mortgage loan. [Cases: Vendor and Purchaser ⇨ 79.]

mortgage deed. See *DEED*.

mortgage discount. (1928) The difference between the mortgage principal and the amount the mortgage actually sells for; the up-front charge by a lender at a real-estate closing for the costs of financing. • Although usu. paid by the buyer, the discount is sometimes paid by the seller when required by law, as with a VA mortgage. — Also termed *point*; *mortgage point*; *loan-brokerage fee*; *new-loan fee*.

mortgagee (mor-gə-jeĕ). (16c) One to whom property is mortgaged; the mortgage creditor, or lender. — Also termed *mortgage-holder*. [Cases: Mortgages ⇨ 23.]

mortgagee in possession. (18c) A mortgagee who takes control of mortgaged land by agreement with the mortgagor, usu. upon default of the loan secured by the mortgage. [Cases: Mortgages ⇨ 187.]

mortgagee clause. See *MORTGAGE CLAUSE*.

mortgagee policy. A title-insurance policy that covers only the mortgagee's title and not the owner's title. Cf. *OWNER'S POLICY*. [Cases: Mortgages ⇨ 201.]

mortgage foreclosure. See *FORECLOSURE*.

mortgage-guarantee insurance. Insurance provided by the Mortgage Guarantee Insurance Company to mortgage lenders that grant mortgages to parties having less than a 20% down payment. • The cost of the insurance is included in the closing costs. [Cases: Mortgages ⇨ 201.]

mortgage-holder. See *MORTGAGEE*.

mortgage insurance. See *INSURANCE*.

mortgage lien. See *LIEN*.

mortgage loan. See *LOAN*.

mortgage-loss clause. A mortgage clause providing that title insurance will not be invalidated by the mortgagor's acts. • Thus, even if the mortgagor does an act that would otherwise make the policy void, the act merely voids the policy as against the mortgagor, but it remains in full force for the benefit of the mortgagee. — Also termed *New York standard clause*; *union-loss clause*. Cf.

open mortgage clause under MORTGAGE CLAUSE. [Cases: Mortgages ↻201.]

mortgage market. The conditions that provide the demand for new mortgage loans and the later resale of those loans in the secondary mortgage market.

primary mortgage market. The national market in which mortgages are originated.

secondary mortgage market. The national market in which existing mortgages are bought and sold, usu. on a package basis.

mortgage note. See NOTE (1).

mortgage point. 1. See POINT (3). 2. See MORTGAGE DISCOUNT.

mortgager. See MORTGAGOR.

mortgage servicing. The administration of a mortgage loan, including the collection of payments, release of liens, and payment of property insurance and taxes. • Servicing is usu. performed by the lender or the lender's agent, for a fee. [Cases: Mortgages ↻211.]

mortgage warehousing. An arrangement in which a mortgage company holds loans for later resale at a discount.

mortgaging out. The purchase of real property by financing 100% of the purchase price.

mortgagor (mor-gə-jor or mor-gə-jər). One who mortgages property; the mortgage-debtor, or borrower. — Also spelled *mortgager*; *mortgageor*. [Cases: Mortgages ↻23.]

mortification. (14c) The act of disposing of or contributing property for religious, charitable, or public purposes.

mortis causa (mor-tis kaw-zə). See *gift causa mortis* under GIFT.

mortmain (mort-mayn). [French “deadhand”] (15c) The condition of lands or tenements held in perpetuity by an ecclesiastical or other corporation. • Land alienated in mortmain is not inalienable, but it will never escheat or pass by inheritance (and thus no inheritance taxes will ever be paid) because a corporation does not die. See AMORTIZE (3); DEADHAND CONTROL. [Cases: Corporations ↻435; Religious Societies ↻15.]

mortmain statute. (1839) A law that limits gifts and other dispositions of land to corporations (esp. charitable ones) and that prohibits corporations from holding land in perpetuity. • In England, laws such as the Provisions of Westminster and Magna Carta essentially required the Crown's authorization before land could vest in a corporation. The object was to prevent lands from being held by religious corporations in perpetuity. Although this type of restriction was not generally part of the common law in the United States, it influenced the enactment of certain state laws restricting the amount of property that a corporation could hold for religious or charitable purposes. — Also termed *mortmain act*; *statute of mortmain*. [Cases: Corporations ↻434.]

mortua manus. See DEADHAND CONTROL.

mortuary. (16c) 1. A place where cadavers are prepared for burial; a place where dead bodies are held before burial. [Cases: Dead Bodies ↻2.] 2. A burial place. 3. *Hist.* A customary gift left by a deceased to a parish church for past tithes owed. — Also termed (in sense 3) *soul scot*.

mortuary table. See ACTUARIAL TABLE.

mortuum vadium (mor-choo-əm vay-dee-əm). See *vadium mortuum* under VADIUM.

mortuus (mor-choo-əs), *adj.* [Latin] *Hist.* 1. Dead. 2. A sheriff's return that the named party is dead.

mortuus civiliter (mor-choo-əs sə-vil-ə-tər). [Latin “civilly dead”] A person civilly dead, deprived of civil rights. See *civil death* under DEATH.

mortuus sine prole (mor-choo-əs si-nee proh-lee). [Latin] Dead without issue. — Abbr. *m.s.p.*

most favorable light. See LIGHT MOST FAVORABLE.

most favored nation. A treaty status granted to a nation, usu. in international trade, allowing it to enjoy the privileges that the other party accords to other nations under similar circumstances. • The primary effect of most-favored-nation status is lower trade tariffs. — Sometimes shortened to *favored nation*. Abbr. MFN. — Also termed *most-favored-nation status*. [Cases: Treaties ↻8.]

most-favored-nation clause. 1. A clause in an agreement between two nations providing that each will treat the other as well as it treats any other nation that is given preferential treatment. [Cases: Treaties ↻8.] 2. By extension, such a clause in any contract, but esp. an oil-and-gas contract. — Often shortened to *favored-nation clause*; *MFN clause*. — Also termed *most-favored-nations clause*. Cf. *preferential tariff* under TARIFF (2).

most-favored-nation status. See MOST FAVORED NATION.

most-favored-nation treatment. *Intellectual property.* The practice or policy of automatically and unconditionally granting any intellectual-property protection, advantage, favor, privilege, or immunity that by treaty is extended to nationals of any member country to the nationals of all member countries. • This treatment is incorporated into the TRIPs agreement. — Abbr. MFN treatment.

most-favored-tenant clause. (1962) A commercial-lease provision ensuring that the tenant will be given the benefit of any negotiating concessions given to other tenants.

most-significant-contacts test. See MOST-SIGNIFICANT-RELATIONSHIPS TEST.

most-significant-relationship test. (1968) *Conflict of laws.* The doctrine that, to determine the state law to apply to a dispute, the court should determine which state has the most substantial connection to the occurrence and the parties. • For example, in a tort case, the court should consider where the injury occurred, where

the conduct that caused the injury occurred, the residence, place of business, or place of incorporation of the parties, and the place where the relationship between the parties, if any, is centered. Restatement (Second) of Conflict of Laws § 145 (1971). In a case involving a contract, the court should consider where the contract was made, where the contract was negotiated, where the contract was to be performed, and the domicile, place of business, or place of incorporation of the parties. *Id.* § 188. — Also termed *most-significant-contacts test*. [Cases: Action ↷17.]

most suitable use. See *highest and best use* under USE (1).

most-suitable-use value. See *optimal-use value* under VALUE (2).

moteer (moh-ter). *Hist.* A customary payment or service made at the lord's court.

mother. (bef. 12c) A woman who has given birth to, provided the egg for, or legally adopted a child. • The term is sometimes interpreted as including a pregnant woman who has not yet given birth. [Cases: Parent and Child ↷1.]

adoptive mother. See *adoptive parent* under PARENT.

biological mother. (1965) The woman who provides the egg that develops into an embryo. • With today's genetic-engineering techniques, the biological mother may not be the birth mother, but she is usu. the legal mother. — Also termed *genetic mother*; *natural mother*. [Cases: Children Out-of-Wedlock ↷1.]

birth mother. (1958) The woman who carries an embryo during the gestational period and who delivers the child. • When a child is conceived through artificial insemination, the birth mother may not be the genetic or biological mother. And she may not be the legal mother. — Also termed *gestational mother*. See *surrogate mother*; *natural mother*; *biological mother*. [Cases: Child Custody ↷274.5; Child Support ↷63; Children Out-of-Wedlock ↷15; Parent and Child ↷20.]

de facto mother. See *de facto parent* under PARENT.

foster mother. See *foster parent* under PARENT.

genetic mother. See *biological mother*.

gestational mother. See *birth mother*.

godmother. See GODPARENT.

intentional mother. See *intentional parent* under PARENT.

natural mother. 1. See *birth mother*. 2. See *biological mother*.

psychological mother. See *psychological parent* under PARENT.

stepmother. (bef. 12c) The wife of one's father by a later marriage. [Cases: Child Custody ↷272; Parent and Child ↷14.]

surrogate mother. (1914) 1. A woman who carries out the gestational function and gives birth to a child

for another; esp. a woman who agrees to provide her uterus to carry an embryo throughout pregnancy, typically on behalf of an infertile couple, and who relinquishes any parental rights she may have upon the birth of the child. • A surrogate mother may or may not be the genetic mother of a child. — Often shortened to *surrogate*. — Also termed *surrogate parent*; *gestational surrogate*; *gestational carrier*; *surrogate carrier*. [Cases: Child Custody ↷274.5; Child Support ↷63; Children Out-of-Wedlock ↷15; Parent and Child ↷20.] 2. A person who performs the role of a mother. [Cases: Parent and Child ↷15.]

mother country. A colonizing nation; a colonial power. See COLONY.

Mother Hubbard clause. (1939) 1. A clause stating that a mortgage secures all the debts that the mortgagor may at any time owe to the mortgagee. — Also termed *anaconda clause*; *dragnet clause*. [Cases: Mortgages ↷14, 114, 121.] 2. *Oil & gas.* A provision in an oil-and-gas lease protecting the lessee against errors in the description of the property by providing that the lease covers all the land owned by the lessor in the area. • A Mother Hubbard clause is sometimes combined with an after-acquired-title clause. — Also termed *cover-all clause*. 3. A court's written declaration that any relief not expressly granted in a specific ruling or judgment is denied. [Cases: Mines and Minerals ↷55, 73.1.]

mother-in-law. (14c) The mother of a person's spouse.

motion. (18c) 1. A written or oral application requesting a court to make a specified ruling or order. [Cases: Federal Civil Procedure ↷921–928; Motions ↷1.]

calendar motion. (1930) A motion relating to the time of a court appearance • Examples include motions to continue, motions to advance, and motions to reset. [Cases: Trial ↷9–16.]

contradictory motion. *Civil law.* A motion that is likely to be contested or that the nonmoving side should have an opportunity to contest. Cf. *contradictory judgment* under JUDGMENT.

cross-motion. A competing request for relief or orders similar to that requested by another party against the cross-moving party, such as a motion for summary judgment or for sanctions.

dilatory motion (dil-ə-tor-ee). (18c) 1. A motion made solely for the purpose of delay or obstruction. 2. A motion that delays the proceedings.

enumerated motion. *Archaic.* A motion directly related to the proceeding or the merits of the case.

ex parte motion (eks pahr-tee). (1831) A motion made to the court without notice to the adverse party; a motion that a court considers and rules on without hearing from all sides. — Also termed *ex parte application*. [Cases: Federal Civil Procedure ↷921; Motions ↷19.]

motion for reduction. *Family law.* A motion to lessen the amount of child-support payments. • This is a

type of motion to modify. [Cases: Child Support ↷ 331, 331.]

motion for resettlement. A request to clarify or correct the form of an order or judgment that does not correctly state the court's decision. • The motion cannot be used to request a substantial change to or amplification of the court's decision. [Cases: Motions ↷ 49.]

motion of course. A party's request that the court may grant as a matter of routine, without investigating or inquiring further. [Cases: Motions ↷ 19, 36.]

motion to modify. A post-final-decree motion asking the court to change one of its earlier orders; esp. a request to change child support or visitation. — Also termed *complaint for modification*; *motion for modification*. [Cases: Child Custody ↷ 609; Child Support ↷ 331; Divorce ↷ 245; Federal Civil Procedure ↷ 921; Motions ↷ 58.]

omnibus motion. (1889) A motion that makes several requests or asks for multiple forms of relief. [Cases: Motions ↷ 5.]

posttrial motion. (1889) A motion made after judgment is entered, such as a motion for new trial. [Cases: Federal Civil Procedure ↷ 2368, 2605; New Trial ↷ 124.]

show-cause motion. A motion filed with the court requesting that a litigant be required to appear and explain why that litigant has failed to comply with a legal requirement.

speaking motion. (1935) A motion that addresses matters not raised in the pleadings. [Cases: Federal Civil Procedure ↷ 1834; Motions ↷ 1, 2.]

special motion. (16c) A motion specifically requiring the court's discretion upon hearing, as distinguished from one granted as a matter of course. [Cases: Motions ↷ 36.]

2. Parliamentary law. A proposal made in a meeting, in a form suitable for its consideration and action, that the meeting (or the organization for which the meeting is acting) take a certain action or view. • A motion may be a *main motion* or a *secondary motion*. A motion technically becomes a "question" when the chair states it for the meeting's consideration. But for most purposes, the parliamentary terms "motion" and "question" are interchangeable. Cf. REQUEST.

coexisting motion. *Parliamentary law.* A main motion, such as one raising a question of privilege, that is pending at the same time as another main motion of lower precedence.

immediately pending motion. The pending motion directly under consideration; the pending motion last stated by the chair and next in line for a vote. See *pending motion*; PRECEDENCE (4).

improper motion. A motion that is out of order. See OUT OF ORDER.

incidental main motion. A main motion that relates to a procedural rather than a substantive matter; an

otherwise secondary motion, made when no main motion is pending.— Also termed *procedural main motion*; *quasi-main motion*; *specific main motion*. See *main motion*. Cf. *original main motion*.

incidental motion. A secondary motion that relates to the procedure under which other business is considered. See *secondary motion*.

main motion. A motion that brings business before a meeting. • A main motion may be an *original main motion* or an *incidental main motion*. — Also termed *principal motion*; *proposition*.

ordinary main motion. See *original main motion*.

original main motion. A main motion that relates to a substantive rather than a procedural matter; a main motion that is not an incidental main motion. — Also termed *ordinary main motion*; *substantive main motion*; *substantive motion*. See *main motion*. Cf. *incidental main motion*.

parliamentary motion. **1.** Any motion that is not an original main motion — that is, any motion that is either a secondary motion or an incidental main motion. **2.** A motion under parliamentary law; MOTION (2).

pending motion. A motion under consideration, even though other pending motions of higher rank may have taken precedence over it. Cf. *immediately pending motion*.

principal motion. See *main motion*.

privileged motion. A secondary motion that does not relate to other business, but rather to the organization, the meeting, its members, and their rights and privileges, and is thus entitled to prompt attention in preference over other pending business. See *secondary motion*; PRIVILEGE (6).

procedural main motion. See *incidental main motion*.

procedural motion. A motion that relates to the manner in which a meeting conducts its business, rather than to the business itself. • A procedural motion may be either an *incidental motion* (including an *incidental main motion*) or a *privileged motion*.

quasi-main motion. See *incidental main motion*.

restorative motion. A motion that renews consideration of a question already disposed of. — Also termed *restoratory motion*.

restoratory motion. See *restorative motion*.

secondary motion. A motion that does not itself bring business before the meeting, and is therefore in order when a main motion is pending. • A secondary motion may be either an *incidental motion* (although not an *incidental main motion*), a *privileged motion*, or a *subsidiary motion*. Cf. *main motion*.

specific main motion. See *incidental main motion*.

subsidiary motion. A secondary motion that directly affects the main motion's form or consideration. See *secondary motion*.

substantive main motion. See *original main motion*.

substantive motion. See *original main motion*.

motion for a directed verdict. See MOTION FOR DIRECTED VERDICT.

motion for a more definite statement. See MOTION FOR MORE DEFINITE STATEMENT.

motion for a new trial. See MOTION FOR NEW TRIAL.

motion for a protective order. See MOTION FOR PROTECTIVE ORDER.

motion for directed verdict. (1904) A party's request that the court enter judgment in its favor before submitting the case to the jury because there is no legally sufficient evidentiary foundation on which a reasonable jury could find for the other party. • Under the Federal Rules of Civil Procedure, the equivalent court paper is known as a motion for judgment as a matter of law. — Abbr. MDV. — Also termed *motion for a directed verdict*. See MOTION FOR JUDGMENT AS A MATTER OF LAW; *directed verdict* under VERDICT. [Cases: Federal Civil Procedure ↻2121; Trial ↻167.]

motion for j.n.o.v. See MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

motion for judgment as a matter of law. (1956) A party's request that the court enter a judgment in its favor before the case is submitted to the jury, or after a contrary jury verdict, because there is no legally sufficient evidentiary basis on which a jury could find for the other party. • Under the Federal Rules of Civil Procedure, a party may move for judgment as a matter of law anytime before the case has been submitted to the jury. This kind of motion was formerly known as a *motion for directed verdict* (and still is in many jurisdictions). If the motion is denied and the case is submitted to the jury, resulting in an unfavorable verdict, the motion may be renewed within ten days after entry of the judgment. This aspect of the motion replaces the court paper formerly known as a *motion for judgment notwithstanding the verdict*. Fed. R. Civ. P. 50. [Cases: Federal Civil Procedure ↻2121, 2605; Judgment ↻199; Trial ↻167.]

motion for judgment notwithstanding the verdict. (1822) A party's request that the court enter a judgment in its favor despite the jury's contrary verdict because there is no legally sufficient evidentiary basis for a jury to find for the other party. • Under the Federal Rules of Civil Procedure, this procedure has been replaced by the provision for a motion for judgment as a matter of law, which must be presented before the case has been submitted to the jury but can be reasserted if it is denied and the jury returns an unfavorable verdict. Fed. R. Civ. P. 50. — Also termed *motion for j.n.o.v.* See MOTION FOR JUDGMENT AS A MATTER OF LAW. [Cases: Federal Civil Procedure ↻2605; Judgment ↻199.]

motion for judgment of acquittal. (1923) A criminal defendant's request, at the close of the government's case or the close of all evidence, to be acquitted because there is no legally sufficient evidentiary basis on which

a reasonable jury could return a guilty verdict. • If the motion is granted, the government has no right of appeal. Fed. R. Crim. P. 29(a). — Abbr. MJOA. [Cases: Criminal Law ↻753.2.]

motion for judgment on the pleadings. (1923) A party's request that the court rule in its favor based on the pleadings on file, without accepting evidence, as when the outcome of the case rests on the court's interpretation of the law. Fed. R. Civ. P. 12(c). [Cases: Federal Civil Procedure ↻1052; Pleading ↻342.]

motion for leave to appeal. (1874) A request that an appellate court review an interlocutory order that meets the standards of the collateral-order doctrine. — Abbr. MLA. See COLLATERAL-ORDER DOCTRINE. [Cases: Appeal and Error ↻358; Federal Courts ↻660.30.]

motion for modification. See *motion to modify* under MOTION (1).

motion for more definite statement. (1904) A party's request that the court require an opponent to amend a vague or ambiguous pleading to which the party cannot reasonably be required to respond. Fed. R. Civ. P. 12(e). — Also termed *motion for a more definite statement*. [Cases: Federal Civil Procedure ↻957; Pleading ↻367.]

"Another disfavored motion is the motion for a more definite statement. By a 1948 amendment to the rules, the old bill of particulars was abolished. The motion for more definite statement, which serves much the same function, is to be granted only where a pleading to which a responsive pleading is permitted is so vague or ambiguous that the party cannot reasonably be required to frame a responsive pleading. If the pleading is sufficiently definite that the opponent can reply to it, the motion for more definite statement should be denied and any particulars that the opponent needs to prepare for trial obtained by depositions, interrogatories, and similar discovery procedures. The motion is never proper where no responsive pleading is permitted, nor should it be used to force the plaintiff to include additional particulars that may make the complaint vulnerable to a motion to dismiss." Charles Alan Wright, *The Law of Federal Courts* § 66, at 461-62 (5th ed. 1994).

motion for new trial. (18c) A party's postjudgment request that the court vacate the judgment and order a new trial for such reasons as factually insufficient evidence, newly discovered evidence, and jury misconduct. • In many jurisdictions, this motion is required before a party can raise such a matter on appeal. — Also termed *motion for a new trial*. [Cases: Criminal Law ↻948; Federal Civil Procedure ↻2368; New Trial ↻124(1).]

motion for protective order. (1948) A party's request that the court protect it from potentially abusive action by the other party, usu. relating to discovery, as when one party seeks discovery of the other party's trade secrets. • A court will sometimes craft a protective order to protect one party's trade secrets by ordering that any secret information exchanged in discovery be used only for purposes of the pending suit and not be publicized. — Also termed *motion for a protective*

order. [Cases: Federal Civil Procedure ↷1271; Pretrial Procedure ↷41.]

motion for reduction. See MOTION (1).

motion for relief from stay. See MOTION TO LIFT THE STAY.

motion for relief from the judgment. (1867) A party's request that the court correct a clerical mistake in the judgment — that is, a mistake that results in the judgment's incorrectly reflecting the court's intentions — or relieve the party from the judgment because of such matters as (1) inadvertence, surprise, or excusable neglect, (2) newly discovered evidence that could not have been discovered through diligence in time for a motion for new trial, (3) the judgment's being the result of fraud, misrepresentation, or misconduct by the other party, or (4) the judgment's being void or having been satisfied or released. Fed. R. Civ. P. 60. Cf. MOTION TO ALTER OR AMEND THE JUDGMENT. [Cases: Federal Civil Procedure ↷2659; Judgment ↷336–402.]

motion for repleader. (18c) *Common-law pleading.* An unsuccessful party's posttrial motion asking that the pleadings begin anew because the issue was joined on an immaterial point. • The court never awards a repleader to the party who tendered the immaterial issue. Cf. REPLEADER. [Cases: Pleading ↷286.]

motion for resettlement. See MOTION (1).

motion for summary judgment. (1842) A request that the court enter judgment without a trial because there is no genuine issue of material fact to be decided by a factfinder — that is, because the evidence is legally insufficient to support a verdict in the nonmovant's favor. • In federal court and in most state courts, the movant-defendant must point out in its motion the absence of evidence on an essential element of the plaintiff's claim, after which the burden shifts to the nonmovant-plaintiff to produce evidence raising a genuine fact issue. But if a party moves for summary judgment on its own claim or defense, then it must establish each element of the claim or defense as a matter of law. Fed. R. Civ. P. 56. — Abbr. MSJ. — Also termed *summary-judgment motion*; *motion for summary disposition*. See SUMMARY JUDGMENT. [Cases: Federal Civil Procedure ↷2533; Judgment ↷181(2), 183.]

motion in arrest of judgment. (17c) **1.** A defendant's motion claiming that a substantial error appearing on the face of the record vitiates the whole proceeding and the judgment. **2.** A postjudgment motion in a criminal case claiming that the indictment is insufficient to sustain a judgment or that the verdict is somehow insufficient. [Cases: Criminal Law ↷966–976.]

motion in limine (in *lim-ə-nee*). (18c) A pretrial request that certain inadmissible evidence not be referred to or offered at trial. • Typically, a party makes this motion when it believes that mere mention of the evidence during trial would be highly prejudicial and could not be remedied by an instruction to disregard. If, after the motion is granted, the opposing party mentions or attempts to offer the evidence in the jury's presence, a

mistrial may be ordered. A ruling on a motion in limine does not always preserve evidentiary error for appellate purposes. To raise such an error on appeal, a party may be required to formally object when the evidence is actually admitted or excluded during trial. [Cases: Criminal Law ↷632(4); Federal Civil Procedure ↷927.5; Pretrial Procedure ↷3.]

motion of course. See MOTION (1).

motion to alter or amend the judgment. (1950) A party's request that the court correct a substantive error in the judgment, such as a manifest error of law or fact. • Under the Federal Rules of Civil Procedure, a motion to alter or amend the judgment must be filed within ten days after the judgment is entered. It should not ordinarily be used to correct clerical errors in a judgment. Those types of errors — that is, errors that result in the judgment not reflecting the court's intention — may be brought in a motion for relief from the judgment, which does not have the ten-day deadline. A motion to alter or amend the judgment is usu. directed to substantive issues regarding the judgment, such as an intervening change in the law or newly discovered evidence that was not available at trial. Fed. R. Civ. P. 59(e). Cf. MOTION FOR RELIEF FROM THE JUDGMENT. [Cases: Federal Civil Procedure ↷2659; Judgment ↷294–333.]

motion to compel discovery. (1960) A party's request that the court force the party's opponent to respond to the party's discovery request (as to answer interrogatories or produce documents). Fed. R. Civ. P. 37(a). — Often shortened to *motion to compel*. — Also termed *motion to enforce discovery*. [Cases: Federal Civil Procedure ↷1278; Pretrial Procedure ↷44, 310, 434.]

motion to correct inventorship. *Patents.* A request in an interference proceeding to add one or more unnamed coinventors to the patent application. • The motion will be granted unless the unnamed coinventor acted with the intent to deceive. [Cases: Patents ↷106(1).]

motion to dismiss. (18c) A request that the court dismiss the case because of settlement, voluntary withdrawal, or a procedural defect. • Under the Federal Rules of Civil Procedure, a plaintiff may voluntarily dismiss the case (under Rule 41(a)) or the defendant may ask the court to dismiss the case, usu. based on one of the defenses listed in Rule 12(b). These defenses include lack of personal or subject-matter jurisdiction, improper venue, insufficiency of process, the plaintiff's failure to state a claim on which relief can be granted, and the failure to join an indispensable party. A defendant will frequently file a motion to dismiss for failure to state a claim, which is governed by Rule 12(b)(6), claiming that even if all the plaintiff's allegations are true, they would not be legally sufficient to state a claim on which relief might be granted. — Abbr. MTD. See DEMURRER. [Cases: Criminal Law ↷303.5–303.35; Federal Civil Procedure ↷1707, 1825; Pretrial Procedure ↷511, 675.]

motion to dissolve interference. *Patents.* A request by the senior party to dismiss challenges to its priority as the first inventor. [Cases: Patents ↷106(5).]

motion to enforce discovery. See MOTION TO COMPEL DISCOVERY.

motion to lift the stay. (1969) *Bankruptcy*. A party's request that the bankruptcy court alter the automatic bankruptcy stay to allow the movant to act against the debtor or the debtor's property, as when a creditor seeks permission to foreclose on a lien because its security interest is not adequately protected. — Also termed *motion for relief from stay*; *motion to modify the stay*. [Cases: Bankruptcy ⇨ 2435.]

motion to modify. See MOTION (1).

motion to modify the stay. See MOTION TO LIFT THE STAY.

motion to quash (kwahsh). (18c) A party's request that the court nullify process or an act instituted by the other party, as in seeking to nullify a subpoena. [Cases: Witnesses ⇨ 9, 16.]

motion to remand. (1816) In a case that has been removed from state court to federal court, a party's request that the federal court return the case to state court, usu. because the federal court lacks jurisdiction or because the procedures for removal were not properly followed. 28 USCA § 1447(c). [Cases: Removal of Cases ⇨ 107.]

motion to strike. (1806) **1. Civil procedure.** A party's request that the court delete insufficient defenses or immaterial, redundant, impertinent, or scandalous statements from an opponent's pleading. Fed. R. Civ. P. 12(f). [Cases: Federal Civil Procedure ⇨ 1144; Pleading ⇨ 351, 361.] **2. Evidence.** A request that inadmissible evidence be deleted from the record and that the jury be instructed to disregard it. [Cases: Federal Civil Procedure ⇨ 2018; Trial ⇨ 88.]

motion to suppress. (18c) A request that the court prohibit the introduction of illegally obtained evidence at a criminal trial. [Cases: Criminal Law ⇨ 394.6.]

motion to transfer venue. (1934) A request that the court transfer the case to another district or county, usu. because the original venue is improper under the applicable venue rules or because of local prejudice. See VENUE; CHANGE OF VENUE. [Cases: Criminal Law ⇨ 115–144; Federal Courts ⇨ 141; Venue ⇨ 58.]

motion to withdraw. **1.** An attorney's request for a court's permission to cease representing a client in a lawsuit. **2.** A defendant's formal request for a court's permission to change the defendant's plea or strike an admission. — Also termed (in sense 2) *motion to withdraw a plea*. [Cases: Attorney and Client ⇨ 76(1); Criminal Law ⇨ 1831.]

motion to withdraw a plea. See MOTION TO WITHDRAW (2).

motive. (14c) Something, esp. willful desire, that leads one to act. — Also termed *ulterior intent*. Cf. INTENT.

"The term 'motive' is unfortunately ambiguous. That feeling which internally urges or pushes a person to do or refrain from doing an act is an emotion, and is of course evidential towards his doing or not doing the act. But when that evidential fact comes in turn to be evidenced, we must

rely on two sorts of data, (a) the person's own expressions of that emotion, e.g., 'I hate M,' or 'I wish I owned that necklace'; and (b) external circumstances likely in human experience to arouse the emotion, e.g., a slander on D may be evidence that D became angry; a purse of money left in sight of D may be evidence that D's desire to have it was aroused. Now this second sort of evidential circumstance (b) is loosely referred to as 'motive,' — though in reality it is only evidential of the emotion, which itself is evidential of the act." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 76 (1935).

bad motive. (18c) A person's knowledge that an act is wrongful while the person commits the act.

malicious motive. (18c) A motive for bringing a prosecution, other than to do justice. [Cases: Malicious Prosecution ⇨ 30.]

Motor Carrier Act. A federal statute, originally enacted in 1935 (49 USCA §§ 502–507), subjecting commercial motor carriers of freight and passengers in interstate commerce to the regulations of the Interstate Commerce Commission, now the U.S. Department of Transportation. • The Act was repealed in the 1980s. [Cases: Automobiles ⇨ 60.]

MOU. *abbr.* MEMORANDUM OF UNDERSTANDING.

movable, n. (usu. pl.) (15c) **1.** Property that can be moved or displaced, such as personal goods; a tangible or intangible thing in which an interest constitutes personal property; specif., anything that is not so attached to land as to be regarded as a part of it as determined by local law. — Also termed *movable property*; *movable thing*. [Cases: Property ⇨ 4.]

"Movables and immovables. The main distinction drawn in later Roman law and modern systems based thereon between kinds of things subject to ownership and possession. While basically the distinction corresponds to everyday conceptions, assigning animals and vehicles to the former and land and buildings to the latter category, particular things may be assigned to one category rather than the other for reasons of convenience. Thus, in French law, farm implements and animals are immovables. The distinction is also important in international private law, more so than that between real and personal . . . Thus, land held on lease is personal property by English law for historical reason, but in international private law it is a right in immovable property." David M. Walker, *The Oxford Companion to Law* 858 (1980).

intangible movable. A physical thing that can be moved but that cannot be touched in the usual sense.

• Examples are light and electricity.

"'Intangible movables' is a term of art in the common law which has been applied more widely than its meaning literally justifies, which is merely to those things that have physical existence and can be moved, though cannot be touched in the normal sense, such as light, electricity and radioactive waves. In English law the term has been generally applied to interests created by law which have only a legal, not a physical, existence, and are accordingly capable only of legal, not physical, movement. It is convenient, however, to retain a term which is generally accepted and understood in this special legal meaning." R.H. Graveson, *Conflict of Laws* 470 (7th ed. 1974).

2. Scots law. A nonhereditary right. — Also spelled (in BrE) *moveable*. Cf. IMMOVABLE. — **movable, adj.**

"Moveables are, in the phraseology of the law of Scotland, opposed to heritage; so that every species of property,

and every right a person can hold, is by that law either heritable or moveable. Hence, moveables are not merely corporeal subjects capable of being moved, but every species of property, corporeal or incorporeal, which does not descend to the heir in heritage." William Bell, *Bell's Dictionary and Digest of the Law of Scotland* 662 (George Watson ed., 1882).

movable estate. See *personal property* (1) under PROPERTY.

movable fixture. See *tenant's fixture* under FIXTURE.

movable freehold. See FREEHOLD.

movable property. See MOVABLE (1).

movable thing. See MOVABLE (1).

movant (moov-ənt). (1875) One who makes a motion to the court or a deliberative body. — Formerly also spelled *movent*. — Also termed *moving party*; *mover*. — Also termed *moving party*; *mover*. [Cases: Federal Civil Procedure ⇨ 921; Motions ⇨ 11.]

move, *vb.* (15c) **1.** To make an application (to a court) for a ruling, order, or some other judicial action <the appellant moved the court for a new trial>. [Cases: Federal Civil Procedure ⇨ 921; Motions ⇨ 1.] **2.** To make a motion <the senator moved that a vote be taken>. See MOTION (2).

moveable. See MOVABLE.

movent. See MOVANT.

mover, *n.* **1.** *Slang.* A stock that experiences spectacular market price changes; a very unstable stock. **2.** MOVANT.

moving expense. See EXPENSE.

moving papers. The papers that constitute or support a motion in a court proceeding. — Also termed *motion papers*. [Cases: Federal Civil Procedure ⇨ 921; Motions ⇨ 25.]

moving part. *Patents.* A separate component of an apparatus that works together with another to produce the intended useful result. • Moving parts and a rule of operation generally distinguish an apparatus from an article of manufacture.

moving party. See MOVANT.

moving violation. (1954) An infraction of a traffic law while the vehicle is in motion. [Cases: Automobiles ⇨ 144.1(3), 349.]

Mozilla public license. See LICENSE.

MP. *abbr.* Member of Parliament. See PARLIAMENT.

MPC. *abbr.* MODEL PENAL CODE.

MPC test. See SUBSTANTIAL-CAPACITY TEST.

MPEP. *abbr.* MANUAL OF PATENT EXAMINING PROCEDURE.

MPL. *abbr.* Mozilla public license. See *Mozilla public license* under LICENSE.

Mr. Denman's Act. See DENMAN'S ACT (2).

MRE. *abbr.* MILITARY RULES OF EVIDENCE.

MSA. *abbr.* See *mediated settlement agreement* under SETTLEMENT (2).

MSHA. *abbr.* MINE SAFETY AND HEALTH ADMINISTRATION.

MSJ. *abbr.* MOTION FOR SUMMARY JUDGMENT.

m.s.p. *abbr.* MORTUUS SINE PROLE.

MSPB. *abbr.* MERIT SYSTEMS PROTECTION BOARD.

MSTB. *abbr.* MODEL STATE TRADEMARK BILL.

MTD. *abbr.* MOTION TO DISMISS.

MUD. *abbr.* See *municipal utility district* under DISTRICT.

mug book. (1947) A collection of mug shots of criminal suspects maintained by law-enforcement agencies (such as the FBI and police departments) to be used in identifying criminal offenders.

mug shot. (1950) A photograph of a person's face taken after the person has been arrested and booked.

mulct (mækt), *n.* (16c) A fine or penalty.

mulct, *vb.* (17c) **1.** To punish by a fine. **2.** To deprive or divest of, esp. fraudulently.

mulct law. *Hist.* An Iowa law that allowed some saloons to pay the state a sum of money and continue to operate despite a statewide prohibition against alcohol sales. • While the money paid was called a mulct, it was effectively a licensing tax rather than a criminal penalty because continuing violations of the liquor law were not prosecuted.

mule. *Slang.* A person hired to smuggle contraband, esp. a controlled substance, and deliver it to the distributor at a destination point. • For example, a drug mule might carry cocaine through a security checkpoint by concealing it beneath a suitcase's false bottom.

mulier (myoo-lee-ər), *n.* [Latin] **1.** *Roman law.* A woman. • This term at various times referred to a marriageable virgin, a woman not a virgin, a wife, or a mistress. **2.** *Hist. & Scots law.* A legitimate son; the son of a mulier ("lawful wife").

mulieratus filius (myoo-lee-ər-ə-tas fil-ee-əs), *Hist. & Scots law.* A legitimate son or daughter; the son of a mulier ("lawful wife").

mulier puisne (myoo-lee-ər pyoo-nee), [Law Latin] *Hist.* The younger lawful son, usu. distinguished from the *bastard eigné* ("the elder bastard son").

"The common law developed one exception to its harsh doctrine of bastardy. Where the eldest son was born out of wedlock (the *bastard eigné*) and the next son was born to the same parents after the marriage (the *mulier puisné*), and upon the ancestor's death the *bastard eigné* entered as heir and remained in undisturbed possession until his own death, the *bastard eigné* was treated as if he had been legitimate with respect to the inheritance of that land. The reason given by Littleton was that a person who was legitimate by the Canon law could not be bastardised posthumously, when he no longer had the opportunity to contest the issue." J.H. Baker, *An Introduction to English Legal History* 559 (3d ed. 1990).

mulierty (myoo-lee-ər-tee), *Hist.* The condition of a legitimate child, as distinguished from a bastard.

multa (məl-tə), *n.* [Latin "a fine"] *Hist. Eccles. law.* A fine the bishops paid to the king so that they could make and probate wills and administer estates. — Also termed *multura episcopi* (məl-t[y]oor-ə i-pis-kə-pi).

multicraft union. See UNION.

multidisciplinary practice. A fee-sharing association of lawyers and nonlawyers in a firm that delivers both legal and nonlegal services. • Rule 5.4 of the Model Rules of Professional Conduct effectively bars multidisciplinary practice. Under this rule, a lawyer cannot (1) share legal fees with nonlawyers, (2) form a partnership involving the practice of law with nonlawyers, (3) form a law firm in which a nonlawyer has an interest, or (4) allow a nonlawyer to direct the lawyer's professional judgment. — Abbr. MDP. — Sometimes termed *multidisciplinary practice of law*. [Cases: Attorney and Client ⇨ 10.]

multidistrict litigation. (1966) *Civil procedure.* Federal-court litigation in which civil actions pending in different districts and involving common fact questions are transferred to a single district for coordinated pretrial proceedings, after which the actions are returned to their original districts for trial. • Multidistrict litigation is governed by the Judicial Panel on Multidistrict Litigation, which is composed of seven circuit and district judges appointed by the Chief Justice of the United States. 28 USCA § 1407. — Abbr. MDL. [Cases: Federal Civil Procedure ⇨ 9; Federal Courts ⇨ 151–157.]

Multiethnic Placement Act of 1994. A model statute intended to (1) decrease the length of time that a child awaits adoption, (2) identify and recruit adoptive and foster parents who can meet the needs of available children, and (3) eliminate adoption discrimination based on race, color, or national origin of the child or the adoptive parents. — Abbr. MEPA.

multifarious (məl-tə-fair-ee-əs), *adj.* (16c) 1. (Of a single pleading) improperly joining distinct matters or causes of action, and thereby confounding them. [Cases: Federal Civil Procedure ⇨ 676; Pleading ⇨ 50, 64.] 2. Improperly joining parties in a lawsuit. 3. Diverse; many and various. — **multifariousness**, *n.*

multifarious issue. See ISSUE (1).

multilateral, *adj.* (1827) Involving more than two parties <a multilateral agreement>.

multilateral advance pricing agreement. See ADVANCE PRICING AGREEMENT.

multilevel-distribution program. See PYRAMID SCHEME.

multimaturity bond. See *put bond* under BOND (3).

multimodal shipping. The transportation of freight using more means of carriage and usu. more than one carrier. • For example, a cargo may be carried first by air or sea, then by rail or truck to its destination. — Also termed *intermodal transport*; *multimodal carriage*.

multinational corporation. See CORPORATION.

multipartite, *adj.* (17c) (Of a document, etc.) divided into many parts.

multiperil policy. See INSURANCE POLICY.

multiple access. See ACCESS (4).

multiple admissibility. See ADMISSIBILITY.

multiple-class application. See *combined application* under TRADEMARK APPLICATION.

multiple counts. See COUNT.

multiple damages. See DAMAGES.

multiple-dependent claim. See PATENT CLAIM.

multiple evidence. See EVIDENCE.

multiple hearsay. See *double hearsay* under HEARSAY.

multiple interest. See INTEREST (2).

multiple job-holding. See MOONLIGHTING.

multiple listing. See LISTING (1).

multiple offense. See OFFENSE (1).

multiple-party account. See ACCOUNT.

multiple sentences. See SENTENCE.

multiplicity (məl-tə-plis-i-tee), *n.* *Criminal procedure.* The improper charging of the same offense in more than one count of a single indictment or information. • Multiplicity violates the Fifth Amendment protection against double jeopardy. [Cases: Indictment and Information ⇨ 126.] — **multiplicitous** (məl-tə-plis-i-təs), *adj.*

multiplicity of actions. (17c) The existence of two or more lawsuits litigating the same issue against the same defendant. — Also termed *multiplicity of suits*; *multiplicity of proceedings*. See PIECEMEAL LITIGATION. [Cases: Action ⇨ 53.]

multiplicity of claims. See AGGREGATION OF CLAIMS.

multiplied damages. See *multiple damages* under DAMAGES.

Multistate Bar Examination. See BAR EXAMINATION.

multistate corporation. See CORPORATION.

multital (məl-ti-təl), *adj.* (1917) 1. Of or relating to legal relations that exist among three or more people, esp. a multitude of people. Cf. UNITAL.

"Tort and breach of contract are alike breaches of duty, but in the case of tort the pre-existing duty of the wrongdoer was one that was shared by every other member of society; and the injured party whose right was violated had not merely one right, he had a multitude of rights. His rights and the correlative duties of others were 'multital.' The secondary right and duty, however, arising from the tort, are relations that exist between the two persons only. They are 'unital.' In the case of a breach of contract, both the primary right and duty and the secondary right and duty are 'unital.'" William R. Anson, *Principles of the Law of Contract* 11 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. *Rare.* See IN REM.

multura episcopi. See MULTA.

multure. *Hist.* 1. A quantity of grain that was paid to a mill's owner or tenant in exchange for grinding the

remaining grain. **2.** A miller's right to payment in grain for milling services rendered.

Munchausen syndrome by proxy (mən-chow-zən). A condition in which a caregiver, usu. a parent, fabricates or induces a child's medical condition and seeks medical treatment for the child on the basis of the fabrications or induced condition. • This syndrome is a kind of child abuse, esp. when the victim is subjected to repeated medical examinations and treatment, often of an invasive nature, and sometimes even to physical injuries that induce symptoms consistent with the falsified medical condition. The parent is usu. emotionally deprived and fabricates or causes the child's illness or medical condition as an attention-getting device. [Cases: Infants ↻156, 158.]

mund (mænd or muund). [Old English "hand"] *Hist.* A right to protection or guardianship; a guardian. Cf. MANUS (1).

"Once more we see prerogative rights growing, while feudal claims fall into the background; and in the case of lunacy we see a guardianship, a *mund*, which is not profitable to the guardian, and this at present is a novel and noteworthy thing." 1 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 481 (2d ed. 1898).

mundium (mən-dee-əm). [Law Latin] The legal protection and representation granted to a person who is socially and physically weak.

"In a society of persons in which the authority to maintain the law was in the hands of its members, and of which the membership rested on the ability to bear arms and defend oneself ('weer'), those who, for want of strength or some other reason, were unable to do so, could not play an active part, and were necessarily placed under the authority of those whose protection they needed. Originally, *mundium* was not limited to family law. Gradually it lost its wider meaning, and in its restricted sense it received different applications, as family relations became classified into separate groups, and the conception of *mundium* appeared under different forms, with special rules and special names — e.g., marital power, parental power, guardianship, and curatorship." Alexander Wood Renton & George Grenville Phillimore, *The Comparative Law of Marriage and Divorce* 10 (1910).

munera (myoo-nər-ə), *n.* [Law Latin "graces"] *Hist.* Tenancies at will; tenancies made at the grantor's pleasure.

munera publica (myoo-nər-ə pəb-li-kə). [Latin] *Roman law.* Public duties, such as performing the offices of tutor and curator, and of *index privatus*. Sing. *munus publicum*.

"Among the Romans there were certain offices regarded as public duties, which no citizen (unless he could plead certain specified excuses) could refuse to accept of and fulfil; and among these were included the offices of tutor and curator. These offices are voluntary by the law of Scotland, and their acceptance, as well as the performance of the attendant duties, cannot be imposed upon any one against his own wish. But if the office has been once accepted and acted upon, the tutor or curator cannot resign it. He must perform the duties of his office until it expires through the death, attainment of minority or majority, as the case may be, or it may be through the marriage of the ward, and he will be liable for the consequences of his neglect, as well as the consequences of his

actings and intromissions." John Trayner, *Trayner's Latin Maxims* 364 (4th ed. 1894).

muni (myoo-nee), *n.* See *municipal bond* under BOND (3).

municeps (myoo-nə-seps), *n.* [fr. Latin *munus* "office" + *capere* "to take"] *Roman law.* **1.** A citizen of a municipality (*municipium*). **2.** A member of the council of a *municipium*. Pl. **municipes** (myoo-ni-sip-eez).

municipal, *adj.* (16c) **1.** Of or relating to a city, town, or local governmental unit. **2.** Of or relating to the internal government of a state or nation (as contrasted with *international*).

municipal, *n.* See *municipal bond* under BOND (3).

municipal action. Any authorized exercise of governmental power by a municipal officer, board, agency, or other municipal body. [Cases: Municipal Corporations ↻61.]

municipal affairs. The matters relating to the local government of a municipality. [Cases: Municipal Corporations ↻65.]

municipal aid. Financial or other assistance provided by a municipality to a private business, usu. to encourage it to relocate to the municipality. [Cases: Municipal Corporations ↻872.]

municipal attorney. See CITY ATTORNEY.

municipal bond. See BOND (3).

municipal charter. See CHARTER (2).

municipal corporation. A city, town, or other local political entity formed by charter from the state and having the autonomous authority to administer the state's local affairs; esp., a public corporation created for political purposes and endowed with political powers to be exercised for the public good in the administration of local civil government. — Also termed *municipality*. Cf. *quasi-corporation* under CORPORATION. [Cases: Municipal Corporations ↻1.1.]

municipal corporation de facto. A corporation recognized to exist, although it has not fully complied with statutory requirements, when there is (1) a valid law authorizing its incorporation, (2) a colorable and bona fide attempt to organize under that law, and (3) an assumption of powers conferred under that law. [Cases: Municipal Corporations ↻17.]

municipal court. See COURT.

municipal domicile. See DOMICILE.

municipal election. See ELECTION (3).

municipal function. The duties and responsibilities that a municipality owes its members.

municipal government. See *local government* under GOVERNMENT.

municipality. (18c) **1.** MUNICIPAL CORPORATION. **2.** The governing body of a municipal corporation.

municipal judge. See JUDGE.

municipal law. **1.** The ordinances and other laws applicable within a city, town, or other local governmental

entity. [Cases: Municipal Corporations ⇨ 105.] **2.** The internal law of a nation, as opposed to international law.

municipal lien. See LIEN.

municipal officer. See OFFICER (1).

municipal ordinance. See ORDINANCE.

municipal security. See *municipal bond* under BOND (3).

municipal utility district. See DISTRICT.

municipal warrant. See WARRANT (2).

municipium (myoo-nə-sip-ee-əm), *n.* [Latin "free town"] *Roman law.* A self-governing town; specif., any community allied with or conquered by Rome and allowed to maintain certain privileges (such as maintaining separate laws called *leges municipales*). • The members of a *municipium* were also Roman citizens. Pl. *municipia* (myoo-ni-sip-ee-ə).

muniment (myoo-nə-mənt). (15c) A document (such as a deed or charter) evidencing the rights or privileges of a person, family, or corporation. — Also termed (archaically) *miniment*. [Cases: Corporations ⇨ 94.]

muniment house. *Hist.* A place (such as a room in a castle or cathedral) where titles, deeds, and other evidences of title are stored.

muniment of title. (1806) Documentary evidence of title, such as a deed or a judgment regarding the ownership of property. — Also termed *common assurance*. See CHAIN OF TITLE. [Cases: Property ⇨ 9.]

mural monument. See MONUMENT.

murder, *n.* (bef. 12c) The killing of a human being with malice aforethought. • At common law, the crime of murder was not subdivided, but many state statutes have adopted the degree structure outlined below, though the Model Penal Code has not. Model Penal Code § 210.2. See MALICE AFORETHOUGHT. Cf. MANSLAUGHTER. [Cases: Homicide ⇨ 520.] — **murder**, *vb.* — **murderous**, *adj.*

"The word 'murder' has . . . had a devious history. Its original sense is the particularly heinous crime of secret slaying. After the conquest it was observed that Normans were frequently found dead under mysterious circumstances, and so William I enacted that if anyone were found slain and the slayer were not caught, then the hundred should pay a fine; this fine is a *murdrum*. The practice soon grew up to taking inquests and if it were presented that the dead man was English, then the fine was not due. In 1267 it was enacted that accidental deaths should not give rise to *murdrum*, and finally in 1340 presentment of Englishry and *murdrum* were abolished. Henceforth the word slowly tends to get linked up with 'malice aforethought' and so we get the classical formulae describing the crime of murder." Theodore F.T. Plucknett, *A Concise History of the Common Law* 445 (5th ed. 1956).

constructive murder. See *felony murder*.

depraved-heart murder. (1975) A murder resulting from an act so reckless and careless of the safety of others that it demonstrates the perpetrator's complete lack of regard for human life. — Also termed

depraved-indifference murder; unintentional murder. [Cases: Homicide ⇨ 533.]

felony murder. (1926) Murder that occurs during the commission of a dangerous felony (often limited to rape, kidnapping, robbery, burglary, and arson). — Also termed *unintentional murder*; (in English law) *constructive murder*. See FELONY-MURDER RULE. [Cases: Homicide ⇨ 580.]

first-degree murder. (1895) Murder that is willful, deliberate, or premeditated, or that is committed during the course of another dangerous felony. • All murder perpetrated by poisoning or by lying in wait is considered first-degree murder. All types of murder not involving willful, deliberate, and premeditated killing are usu. considered second-degree murder. — Also termed *murder of the first degree; murder one*. [Cases: Homicide ⇨ 539.]

mass murder. (1917) A murderous act or series of acts by which a criminal kills many victims at or near the same time, usu. as part of one act or plan. Cf. *serial murder*.

murder by torture. (1901) A murder preceded by the intentional infliction of pain and suffering on the victim.

"In some jurisdictions, a murder by torture may constitute murder in the first degree. It occurs when a defendant intentionally inflicts pain and suffering upon his victim for the purpose of revenge, extortion, or persuasion." 2 Charles E. Torcia, *Wharton's Criminal Law* § 144, at 281 (15th ed. 1994).

murder of the first degree. See *first-degree murder*.

murder of the second degree. See *second-degree murder*.

murder of the third degree. See *third-degree murder*.

murder one. See *first-degree murder*.

murder three. See *third-degree murder*.

murder two. See *second-degree murder*.

second-degree murder. (1909) Murder that is not aggravated by any of the circumstances of first-degree murder. — Also termed *murder of the second degree; murder two*. [Cases: Homicide ⇨ 544.]

serial murder. (1977) A murder in which a criminal kills one of many victims over time, often as part of a pattern in which the criminal targets victims who have some similar characteristics. Cf. *mass murder*.

third-degree murder. (1933) A wrong that did not constitute murder at common law. • Only a few states have added to their murder statutes a third degree of murder. The other states classify all murders in two degrees. Manslaughter is not a degree of the crime of murder, but instead is a distinct offense. — Also termed *murder of the third degree; murder three*. [Cases: Homicide ⇨ 548.]

unintentional murder. 1. A killing for which malice is implied because the person acted with intent to cause serious physical injury or knew that the conduct was substantially certain to cause death or serious

physical injury. • In some jurisdictions, this term is applied generally to several grades of killings without express intent. 2. See *depraved-heart murder*. 3. See *felony murder*. 4. See *voluntary manslaughter* under MANSLAUGHTER.

willful murder. (16c) The unlawful and intentional killing of another without excuse or mitigating circumstances.

murder clause. A contract provision that imposes onerous — often unreasonable — obligations on one party. • Murder clauses are usu. found in construction contracts.

murdrum (mər-drəm). [Law Latin] *Hist.* 1. The secret killing of someone. 2. A fine against the tithing where the secret and unsolved homicide took place.

"The readiness with which the Norman administrators seized on this Anglo-Saxon system was probably due to its effectiveness in collecting the *murdrum*, the murder fine. In ordinary cases of homicide, the whole district — except the kin of the suspect — would be zealous to bring the malefactor to justice. But we can readily see that, if the person killed was a Norman, every effort would be made to shield the murderer. The Norman rulers had recourse to the device . . . of imposing a group responsibility. The tithing within which the murdered Norman was found was compelled to pay a fine or to discover and surrender the homicide. The word *murdrum* is a word of uncertain etymology, and has given us our term for willful homicide." Max Radin, *Handbook of Anglo-American Legal History* 175-76 (1936).

3. Murder; specif., murder with malice aforethought. See MALICE AFORETHOUGHT.

murorum operatio (myuur-ør-əm op-ə-ray-shee-oh). [Latin] *Hist.* Repair work to the fortifications of buildings, cities, or castles, performed by their inhabitants.

muster, vb. (14c) *Military law.* 1. To assemble together (troops) for inspection or service. 2. To assemble together (potential troops) for enlistment. [Cases: Armed Services ⇨18.]

muster roll. *Maritime law.* A shipmaster's account listing the name, age, national character, and quality of every employee on the ship. • In wartime, it is used in ascertaining a ship's neutrality. [Cases: Shipping ⇨67.]

must-pass bill. See BILL (3).

mutation, n. A significant and basic alteration; esp. in property law, the alteration of a thing's status, such as from separate property to community property. — **mutate, vb.** — **mutational, adj.**

mutation of libel. *Maritime law.* An amendment to a complaint. See LIBEL (3).

mutatio nominis (myoo-tay-shee-oh nom-ə-nis). [Latin] *Roman law.* Change of name. • It was allowed provided that no prejudice was thereby caused to others. The related phrase *mutato nomine* (myoo-tay-toh nom-ə-nee) means "the name having been changed."

mutatis mutandis (myoo-tay-tis myoo-tan-dis). [Latin] (16c) All necessary changes having been made; with the necessary changes <what was said regarding the first

contract applies *mutatis mutandis* to all later ones>. [Cases: Contracts ⇨159.]

mute, n. (17c) 1. A person who cannot speak. [Cases: Witnesses ⇨229.] 2. A person (esp. a prisoner) who stands silent when required to answer or plead. • Formerly, if a prisoner stood mute, a jury was empaneled to determine whether the prisoner was intentionally mute or mute by an act of God. By the Criminal Law Act of 1827 (7 & 8 Geo. 4, ch. 28), if a prisoner was mute by malice, the officer automatically entered a plea of not guilty and the trial proceeded. If adjudicated to be insane, the prisoner was kept in custody until the Crown determined what should be done. — Also termed (in sense 2) *standing mute*.

mutilation, n. (16c) 1. The act or an instance of rendering a document legally ineffective by subtracting or altering — but not completely destroying — an essential part through cutting, tearing, burning, or erasing. [Cases: Alteration of Instruments ⇨2.] 2. *Criminal law.* The act of cutting off or permanently damaging a body part, esp. an essential one. [Cases: Mayhem ⇨1.] See MAYHEM. — **mutilate, vb.** — **mutilator, n.**

mutiny (myoo-tə-nee), *n.* (16c) 1. An insubordination or insurrection of armed forces, esp. sailors, against the authority of their commanders; a forcible revolt by members of the military against constituted authority, usu. their commanding officers. [Cases: Armed Services ⇨37; Military Justice ⇨680, 790.]

"Both mutiny and failure to prevent, suppress, or report a mutiny are capital offenses. . . . The elements of mutiny are (1) creation of any violence or disturbance or acting in concert with others to refuse to obey orders (2) with the intent to usurp or override lawful military authority. One fails to prevent, suppress, or report mutiny when he does not take all reasonable means to overcome or report mutiny. Concert of action is not required for mutiny when the accused creates violence or disturbance." Charles A. Shanor & L. Lynn Hogue, *Military Law in a Nutshell* 197-98 (2d ed. 1996).

2. Loosely, any uprising against authority. — Also termed (in both senses) *inciting revolt*. — **mutinous, adj.**

Mutiny Act. *Hist.* An English statute enacted annually from 1689 to 1879 to provide for a standing army and to punish mutiny, desertion, and other military offenses. • It was merged into the Army Discipline and Regulation Act of 1879 (ch. 33).

mutual, adj. (16c) 1. Generally, directed by each toward the other or others; reciprocal. [Cases: Contracts ⇨55.] 2. (Of a condition, credit covenant, promise, etc.) reciprocally given, received, or exchanged. 3. (Of a right, etc.) belonging to two parties; common. [Cases: Contracts ⇨10.] — **mutuality, n.**

mutual account. See ACCOUNT.

mutual affray. See MUTUAL COMBAT.

mutual-agreement program. (1978) A prisoner-rehabilitation plan in which the prisoner agrees to take part in certain self-improvement activities to receive a definite parole date.

mutual assent. See ASSENT.

mutual association. A mutually owned, cooperative savings and loan association, with the deposits being shares of the association. ● A mutual association is not allowed to issue stock and is usu. regulated by the Office of Thrift Supervision, an agency of the U.S. Treasury Department. — See SAVINGS-AND-LOAN ASSOCIATION. [Cases: Building and Loan Associations ⇨ 1.]

mutual-benefit association. A fraternal or social organization that provides benefits for its members, usu. on an assessment basis. [Cases: Beneficial Associations ⇨ 1; Insurance ⇨ 1237.]

"In the absence of . . . statutory definition, the question of the extent to which mutual benefit, fraternal beneficiary, and like associations or societies, are within the meaning of the insurance laws must depend upon the terms of the different statutes, and the various circumstances of each particular case Broadly speaking, when a company, society, or association, either voluntary or incorporated, and whether known as a relief, benevolent, or benefit society, or by some similar name, contracts for a consideration to pay a sum of money upon the happening of a certain contingency, and the prevalent purpose and nature of the organization is that of insurance, it will be regarded as an insurance company and its contracts as insurance contracts . . ." 2A George J. Couch, *Couch on Insurance* § 20:2, at 11 (rev. 2d ed. 1984).

mutual-benefit insurance. Benefits provided by a mutual-benefit association upon the occurrence of a loss. [Cases: Insurance ⇨ 1001, 1237.]

mutual combat. (17c) A consensual fight on equal terms — arising from a moment of passion but not in self-defense — between two persons armed with deadly weapons. ● A murder charge may be reduced to voluntary manslaughter if death occurred by mutual combat. — Also termed *mutual affray*. Cf. DUEL. [Cases: Criminal Law ⇨ 45.15; Homicide ⇨ 537.]

mutual company. See COMPANY.

mutual contract. See *bilateral contract* under CONTRACT.

mutual debts. See DEBT.

mutual demands. (17c) Countering demands between two parties at the same time <a claim and counterclaim in a lawsuit are mutual demands>. [Cases: Set-off and Counterclaim ⇨ 41.]

mutual fund. (1934) 1. An investment company that invests its shareholders' money in a usu. diversified selection of securities. — Often shortened to *fund*. 2. Loosely, a share in such a company.

balanced fund. A mutual fund that maintains a balanced investment in stocks and bonds, investing a certain percentage in senior securities.

bond fund. A mutual fund that invests primarily in specialized corporate bonds or municipal bonds.

closed-end fund. A mutual fund having a fixed number of shares that are traded on a major securities exchange or an over-the-counter market.

common-stock fund. A mutual fund that invests only in common stock.

dual fund. A closed-end mutual fund that invests in two classes of stock — stock that pays dividends and stock that increases in investment value without dividends. ● A dual fund combines characteristics of an income fund and a growth fund. — Also termed *dual-purpose fund*; *leverage fund*; *split fund*.

fully managed fund. A mutual fund whose policy allows reasonable discretion in trading securities in combination or quantity.

global fund. A mutual fund that invests in stocks and bonds throughout the world, including the U.S. — Also termed *world fund*. Cf. *single-country fund*; *international fund*.

growth fund. A mutual fund that typically invests in well-established companies whose earnings are expected to increase. ● Growth funds usu. pay small dividends but offer the potential for large share-price increases.

hedge fund. See HEDGE FUND.

income fund. A mutual fund that typically invests in securities that consistently produce a steady income, such as bonds or dividend-paying stocks.

index fund. A mutual fund that invests in the stock of companies constituting a specific market index, such as Standard & Poor's 500 stocks, and thereby tracks the stock average.

international fund. A mutual fund that invests in stocks and bonds of companies outside the U.S., but not those within. Cf. *global fund*; *single-country fund*.

leverage fund. See *dual fund*.

load fund. A mutual fund that charges a commission, usu. ranging from 4 to 9%, either when shares are purchased (a *front-end load*) or when they are redeemed (a *back-end load*).

money-market fund. A mutual fund that invests in low-risk government securities and short-term notes.

no-load fund. A mutual fund that does not charge any sales commission (although it may charge fees to cover operating costs).

open-end fund. A mutual fund that continually offers new shares and buys back existing shares on demand. ● An open-end fund will continue to grow as more shareholders invest because it does not have a fixed number of shares outstanding.

performance fund. A mutual fund characterized by an aggressive purchase of stocks expected to show near-term growth.

regional fund. A mutual fund that concentrates its investments in a specific geographic area or a particular economic area.

single-country fund. A mutual fund that invests in an individual nation outside the U.S. Cf. *global fund*; *international fund*.

split fund. See *dual fund*.

utility fund. A mutual fund that invests only in public-utility securities.

value fund. A mutual fund that invests in stocks that its manager believes to be priced below their true market value.

vulture fund. An investment company that purchases bankrupt or insolvent companies to reorganize them in hopes of reselling them at a profit.

world fund. See *global fund*.

mutual-fund wrap account. See ACCOUNT.

mutual insurance. See INSURANCE.

mutual insurance company. See INSURANCE COMPANY.

mutuality. (16c) The state of sharing or exchanging something; a reciprocation; an interchange <mutuality of obligation>. [Cases: Contracts ⇨10.]

mutuality doctrine. (1926) The collateral-estoppel requirement that, to bar a party from relitigating an issue determined against that party in an earlier action, both parties must have been in privity with one another in the earlier proceeding. — Also termed *mutuality of parties*. [Cases: Judgment ⇨666, 678.]

mutuality of assent. See MEETING OF THE MINDS.

mutuality of benefits. See RECIPROCITY (2).

mutuality of contract. See MUTUALITY OF OBLIGATION.

mutuality of debts. *Bankruptcy.* For purposes of setoff, the condition in which debts are owed between parties acting in the same capacity, even though the debts are not of the same character and did not arise out of the same transaction. [Cases: Bankruptcy ⇨2674.]

mutuality of estoppel. (1852) The collateral-estoppel principle that a judgment is not conclusively in favor of someone unless the opposite decision would also be conclusively against that person. [Cases: Judgment ⇨625, 666.]

mutuality of obligation. (1838) The agreement of both parties to a contract to be bound in some way. — Also termed *mutuality of contract*. See *mutual assent* under ASSENT. [Cases: Contracts ⇨10.]

"[The] so-called doctrine of 'mutuality of obligation' in bilateral contracts . . . unfortunately has been the cause of no little confusion. This confusion is evident from the fact that, while it is commonly admitted there is such a doctrine, there is a lack of unanimity, both in the statement of it and in regard to its application. The most common mode of statement is: 'In a bilateral agreement both promises must be binding or neither is binding.' This statement is obviously ambiguous, since it does not indicate in what sense the promises must be binding. The fact is that it has been variously interpreted and applied by the courts with results that have sometimes been inconsistent with other well settled principles of the law of consideration. Usually it has been held to mean that a promise that is not legally obligatory cannot be consideration in spite of the fact that it may satisfy all the usual requirements of consideration. However, at times it has in effect been held to involve the requirement that the undertaking of the promise relied upon as a consideration must be reasonably commensurate with, or equivalent to, the undertaking of the promise which it supports, before it can constitute

consideration — a kind of doctrine of mutuality of undertaking." John Edward Murray Jr., *Murray on Contracts* § 90, at 190-91 (2d ed. 1974).

"The doctrine of mutuality of obligation is commonly expressed in the phrase that in a bilateral contract 'both parties must be bound or neither is bound.' But this phrase is over-generalization because the doctrine is not one of mutuality of obligation but rather one of mutuality of consideration. Phrasing the rule in terms of mutuality of obligation rather than in terms of consideration has led to so-called exceptions and judicial circumventions . . . It has been suggested that the term 'mutuality of obligation' should be abandoned and we must agree in the light of the confusion that this term has engendered." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 4-12, at 226 (3d ed. 1987).

mutuality of parties. See MUTUALITY DOCTRINE.

mutuality of remedy. (1819) The availability of a remedy, esp. equitable relief, to both parties to a transaction, sometimes required before either party can be granted specific performance. See SPECIFIC PERFORMANCE. [Cases: Specific Performance ⇨6.]

mutual mistake. See MISTAKE.

mutual promises. See PROMISE.

mutual release. See RELEASE.

mutual rescission. See RESCISSION (2).

mutual savings bank. See BANK.

mutual testament. See *mutual will* under WILL.

mutual will. See WILL.

mutuant (*myoo-choo-ənt*). The provider of property in a mutuum. See MUTUUM. Cf. MUTUARY.

mutua petitio (*myoo-choo-ə pə-tish-ee-oh*). [Latin] *Scots law.* A counterclaim. See COUNTERCLAIM. Pl. *mutuae petitiones*.

mutuari (*myoo-choo-air-i*), *vb.* [Latin] To borrow.

mutuary (*myoo-choo-er-ee*). (1839) The recipient of property in a mutuum. See MUTUUM. Cf. MUTUANT. [Cases: Bailment ⇨2, 7.]

mutuatus (*myoo-choo-ay-təs*), *n.* [Latin] A borrowing; a loan of money.

mutui datio (*myoo-choo-i day-shee-oh*). [Latin] *Roman law.* The lending of objects that could be weighed, measured, or counted (such as bullion, corn, wine, oil, and coined money), on the understanding that the borrower would repay by restoring an equal amount of the object borrowed. See MUTUUM (2).

mutus et surdus (*myoo-təs et sər-dəs*). [Latin] *Hist.* Deaf and dumb.

mutuum (*myoo-choo-əm*), *n.* (15c) 1. A transaction (sometimes referred to as a bailment) in which goods are delivered but, instead of being returned, are replaced by other goods of the same kind. • At common law such a transaction is regarded as a sale or exchange, not as a bailment, because the particular goods are not returned. [Cases: Bailment ⇨2, 7.] 2. *Roman law.* A real contract in which money or fungible goods were delivered from the lender to the borrower, who was strictly liable to return an equivalent amount.

● Because the contract was gratuitous, any interest had to be demanded by stipulation. This was one of the real contracts, along with the loan for use (*commodatum* (kom-ə-**day**-təm)) and deposit and pledge (*pignoratīo* (pig-nə-**ray**-shee-oh)). See MUTUI DATIO.

mysterious disappearance. A loss of property under unknown or baffling circumstances that are difficult to understand or explain. ● The term is used in insurance policies covering theft. [Cases: Insurance ↪ 2152.]

"Under a policy insuring against loss of property by 'mysterious disappearance' recovery is generally allowed

where the article disappears from the place the insured left it, while recovery is ordinarily disallowed where the insured has no recollection of when he last had possession of the article and cannot say when or from what place it disappeared. Thus the addition of the words 'mysterious disappearance' to a theft policy does not transform it to an 'all loss' policy covering lost or mislaid articles, but it remains a theft policy." 43 Am. Jur. 2d *Insurance* § 501, at 575-76 (1982).

mystic testament. See *mystic will* under WILL.

mystic will. See WILL.