

Miscellaneous Definitions

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caveat lector

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Introduction

I began to write my essays way back in the early or middle 1980s. I'd just barely begun to work on them when I realized that I'd need to include glossaries in at least some of them. After I'd put the first few definitions into the glossary of the first essay, it occurred to me that I'd probably need to use some of the same definitions again, in other essays. It also occurred to me that I'd probably use different definitions in different essays. Thus, as the number of essays grew, I expected that it would become difficult for me to find a particular definition when I needed it. I didn't want to have to type each definition into the computer over again from the dictionary every time that I needed it, so I started a file of definitions. Every time that I needed a definition for an essay, I typed it into the file first then copied it from there and pasted it into the essay. Over the years, every time that I've needed a definition that wasn't yet in the file, I've added it. Over the years, the file has become this document.

Early in the process of building this document, I realized that I needed to establish some conventions. I've modified those conventions over the years but, for now, this is the way that I'm doing it.

For every definition that I've shown in this collection, I've tried to preserve the formatting conventions of the cited source of that definition. Thus, the formatting conventions throughout this collection are not uniform. Rather, the formatting for each definition conforms (hopefully) to the formatting convention for the cited source of that definition.

I've added left brackets to the left of the words defined, for convenience. When you search for a word, add the left bracket in your search window. That way, you'll find the definition of the word rather than its occurrence in hundreds of other definitions. I've repeated the word defined, with its left bracket, at the end of its definition. That makes it a lot easier for you to know, when you're looking at the definition of a word, what word was previously defined. That can be useful because I've occasionally included several definitions of the same word, as explained below. You can find a section by searching for long dash, space, the letter of the alphabet, space, and long dash.

I've used ellipses to indicate text that I've omitted. Often, the omitted text was the etymological information, pronunciation, and so forth. My interest in the definitions of the words is only in their meanings. Also, the material that I've omitted usually contained special characters that I didn't try to duplicate. Except for those sorts of things, I've tried to make the transcriptions in this collection exactly accurate. I apologize for any errors.

I've often included a series of definitions for the same word, taken from different dictionaries of different ages. I did that because the meanings of words will sometimes change over time. That was sometimes relevant to my writing. I needed to look at definitions from different times. Hopefully, in every case I've presented the definitions in chronological order. However, I've been working on this collection for a long time so I don't remember exactly how I did things each and every time that I added definitions.

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I'll note here, just for the record, the very important and often overlooked fact that, properly, dictionaries don't define the meanings of words. Properly, dictionaries record the meanings of words as determined by custom and usage, that is, by the people. In that regard, I suggest that you read my essay [Raving Over Time](#). It's available on *Pharos*.

I'm still writing so I'm still adding definitions to this collection. I'll upload current versions occasionally, at my convenience.

My various essays are available on [Pharos](#).

Here's one final caveat. I'm well aware of the temptations that might lead to the injudicious revisions of previously published documents. For those of you who might not understand that, I recommend *1984*, by George Orwell. Pay particular attention to the work and purpose of the Ministry of Truth in that novel. Anyway, I've tried to keep printed copies of previous versions of my essays. I probably neglected to keep copies of every version, but I tried. I've always put a new date on each new version. I haven't kept printed copies of previous versions of this dictionary because it's too big. Printing every version is prohibitive. The best that I've been able to do is to keep copies of previous versions of the dictionary on CDs. They're home-made copies and I've been told that such copies have a limited life expectancy. However, for as long as they remain useable, I'm willing to send such electronic copies of earlier versions of this dictionary to people who want to see those previous versions. I don't want to be accused of trying to rewrite history, not even the history of my own work.

— A —

[**abet** *tr.v.*.... **1.** To approve, encourage, and support (an action or a plan of action); urge and help on. See Synonyms at **incite**. **2.** To urge, encourage, or help (a person): *abetted the thief in robbing the bank....*

—*The American Heritage Dictionary of the English Language*, 1992

[**abet**

[**Accomplice** One who knowingly, voluntarily and with common intent unites with the principal offender in the commission of a crime. *Smith v. State*, Tenn.Cr.App., 525 S.W.2d 674, 676; Model Penal Code, § 2.06(3). One who is in some way concerned or associated in commission of crime; partaker of guilt; one who aids or assists, or is an accessory. *McLendon v. U. S.*, C.C.A.Mo., 19 F.2d 465, 466. Equally concerned in the commission of crime. *Fryman v. Commonwealth*, 289 Ky. 540, 159 S.W.2d 426, 429. An “accomplice” is one who is guilty of complicity in crime charged, either by being present and aiding or abetting in it, or having advised and encouraged it, though absent from place when it was committed, though mere presence, acquiescence, or silence, in the absence of a duty to act, is not enough, no matter how reprehensible it may be, to constitute one an accomplice. One is liable as an accomplice to the crime of another if he gave assistance or encouragement or failed to perform a legal duty to prevent it with the intent thereby to promote or facilitate commission of the crime. See also **Abet**; **Aid and abet**; **Accessory**

—*Black’s Law Dictionary*, 1979

[**Accomplice**

[**advise** —*tr.* **1.** To offer advise to; counsel. **2.** To recommend; suggest; *advised patience*. **3.** *Usage Problem*. To inform; notify. —*intr.* **1.** To take counsel; consult: *She advised with her associates*. **2.** to offer advise.... .

SYNONYMS: *advise, counsel, recommend*. The central meaning shared by these verbs is “to give recommendations to someone about a decision or course of action”: *advised him to take advantage of the opportunity; will counsel her to be prudent; recommended that we wait*. See also Synonyms at **confer**.

USAGE NOTE: The use of *advise* in the sense of “inform, notify,” was found acceptable by a majority of the Usage Panel in a earlier survey, but many members would prefer that this usage be restricted to business correspondence and legal contexts. Thus one may say *The suspects were advised of their rights*, but it would be considered pretentious to say *You’d better advise your friends that the date of the picnic has been changed*.—*The American Heritage Dictionary of the English Language*, 1992

[**advise**

[**advocate** *tr.v.*.... .To speak, plead, or argue in favor of. See Synonyms at **support** —*The American Heritage Dictionary of the English Language*, 1992

[**advocate**

Miscellaneous Definitions

[AFFIDAVIT In Practice. A statement or declaration reduced to writing, and sworn or affirmed to before some officer who has authority to administer an oath or affirmation.

It differs from a deposition in this, that in the latter the opposite party has an opportunity to cross-examine the witness, whereas an affidavit is always taken *ex parte*; Gresley, Eq. Ev. 413; 3 Blatch. 456.

An affidavit includes the oath, and may show what facts the affiant swore to, and thus be available as an oath, although unavailable as an affidavit; 28 Wis. 460.

By general practice, affidavits are allowable to present evidence upon the hearing of a motion, although the motion may involve the very merits of the action; but they are not allowable to present evidence on the trial of an issue raised by the pleadings. Here the witnesses must be produced before the adverse party. They are generally required on all motions to open defaults or to grant delay in the proceedings and other applications by the defendant addressed to the favor of the court.

Formal parts.-An affidavit must intelligibly refer to the cause in which it is made. The strict rule of the common law is that it must contain the exact title of the cause. This, however, is not absolutely essential; 80 Ill. 307. The place where the affidavit is taken must be stated, to show that it was taken within the officer's jurisdiction; 1 Barb. Ch. Pr. 601. The deponent must sign the affidavit at the end; 11 Paige, Ch. 173. The jurat must be signed by the officer with the addition of his official title. In the case of some officers the statutes conferring authority to take affidavits require also his seal to be affixed.

In general, an affidavit must describe the deponent sufficiently to show that he is entitled to offer it; for example, that he is a party, or agent or attorney of a party, to the proceeding; 7 Hill, 177; 4 Denio, 71, 258; and this matter must be stated, not by way of recital or as mere description, but as an allegation in the affidavit; 3 N. Y. 41; 8 *id.* 158.

—*Bouvier's Law Dictionary*, 1889

[affidavit

[affidavit statement written down and sworn to be true. An affidavit is usually made before a judge or notary public.

—*Thorndike Century Senior Dictionary*, 1941

[affidavit

[affidavit a sworn statement in writing made esp. under oath or on affirmation before an authorized magistrate or officer.

—*Webster's New Collegiate Dictionary*, 1973

[affidavit

[Affidavit A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. State v. Knight, 219 Kan. 863, 549 P.2d 1397, 1401. See also **Certification; Jurat; Verification.** —*Black's Law Dictionary*, 1979

[Affidavit

[Agreement. A coming together of minds; a coming together in opinion or determination; the coming together in accord of two minds on a given proposition. In law, a concord of understanding and intention between two or more parties with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The consent of two or more persons concurring respecting the transmission of some property, right, or benefits, with the view of contracting an obligation, a mutual obligation.

The act of two or more persons, who unite in expressing a mutual and common purpose, with the view of altering their rights and obligations. The union of two or more minds in a thing done or to be done; a mutual assent to do a thing. A compact between parties who are thereby subjected to the obligation or to whom the contemplated right is thereby secured.

Although often used as synonymous with “contract”, agreement is a broader term; e.g. an agreement might lack an essential element of a contract. The bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. U.C.C. § 1-201(c); Uniform Consumer Credit Code, § 1.301 (3).

The writing or instrument which is evidence of an agreement.

See also Binding agreement; Compact; Consent; Contract; Covenant; International agreements; Meeting of minds.

Classification

Conditional agreements. The operation and effect of such depend upon the existence of a supposed state of facts, or the performance of a condition, or the happening of a contingency.

Executed agreements. Such have reference to past events, or which are at once closed and where nothing further remains to be done by the parties.

Executory agreements. Such agreements are to be performed in the future. They are commonly preliminary to other more formal or important contracts or deeds, and are usually evidenced by memoranda, parol promises, etc.

Express agreements. Those in which the terms and stipulations are specifically declared and avowed by the parties at the time of making the agreement.

Implied agreement. (1) Implied in fact. One inferred from the acts or conduct of the parties, instead of being expressed by them in written or spoken words.

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Baltimore Mail S. S. Co. v. U. S., C.C.A.Md., 76 F.2d 582, 585. (2) Implied in law; more aptly termed a constructive or quasi contract. One where, by fiction of law, a promise is imputed to perform a legal duty, as to repay money obtained by fraud or duress. Baltimore Mail S. S. Co. v. U. S., C.C.A.Md., 76 F.2d 582, 585. One inferred by the law where the conduct of the parties with reference to the subject-matter is such as to induce the belief that they intended to do that which their acts indicate they have done. Baltimore & O. R. Co. v. U. S., 261 U.S. 592, 43 S.Ct. 425, 67 L.Ed. 816

Parol agreements. At common law, such as are either by word of mouth or are committed to writing, but are not under seal. The common law draws only one great line, between things under seal and not under seal.

—*Black's Law Dictionary*, 1979

[**Agreement**

[**alienable** capable of being transferred to another owner.

—*Thorndike Century Senior Dictionary*, 1941

[**alienable**

[**all** *n.* (often approaching a pronominal use.)

1. the whole; the total; the actual aggregate or particulars or persons, or those involved in any particular consideration; everything or every one; often used with *of*; as, *all* that I aspired to be; *all* the parts assembled into an effective whole; *all* that thou seest is thine.

2. The whole, in a relative sense; one's entire property or interest; as, he was fighting for his *all* .

After all ; even after everything is considered; nevertheless.

All in all ; everything desired, everything together; as, thou shalt be *all in all* ; also, adverbially, everything considered, altogether; as, taking things *all in all* .

At all ; in any degree, to any extent, for any reason, under any circumstances; a phrase much used in negative and interrogative clauses; as, he has no time *at all* for recreation; would such a measure be considered *at all*?

For all ; for all time, finally; as, let me say once *for all* .

—*Webster's Universal Dictionary of the English Language*, 1910

[**all**

[**ALLEGIANCE** The tie which binds the citizen to the government, in return for the protection which the government affords him.

Acquired allegiance is that binding a citizen who was born an alien, but has been naturalized.

Local allegiance is that which is due from an alien while resident in a country, in return for the protection afforded by the government.

Natural allegiance is that which results from the birth of a person within the territory and under the obedience of the government; 2 Kent, 42.

At common law, in England and America, natural allegiance could not be renounced except by permission of the government to which it was due; 1 Bla. Com. 370, 371; 1 East, Pl. Cr. 81; 3 Pet. 99, 242; but see 8 Op. Att.-Gen. U.S. 139; 9 *id.* 356. Held to be the law of Great Britain in 1868; Cockb. Nationality. It was otherwise in the civil law and in most continental nations. After many negotiations between the two countries, the rule has been changed in the United States by Act of July 27, 1868, and in England by Act of May 10, 1870. Whether natural allegiance revives upon the return of the citizen to the country of his allegiance, is an open question; Whart. Confl. L. § 6. See Cockb. Nationality; Whart. Confl. L.; 18 Am. L. Reg. 595, 565; Lawrence's Wheat. Int. L., App.; NATURALIZATION; EXPATRIATION.

—*Bouvier's Law Dictionary*, 1889

[**allegiance**

[**Allegiance** Obligation of fidelity and obedience to government in consideration for protection that government gives. U. S. v. Kuhn, D.C.N.Y., 49 F.Supp. 407, 414. See also **Oath of allegiance**.

Acquired allegiance, is that binding a naturalized citizen.

Local or actual allegiance, is that measure of obedience due from a subject of one government to another government, within whose territory he is temporarily resident. From this are excepted foreign sovereigns and their representatives, naval and armed forces when permitted to remain in or pass through the country or its waters.

Natural allegiance. In English law, that kind of allegiance which is due from all men born within the king's dominions, immediately upon their birth, which is intrinsic and perpetual, and cannot be divested by any act of their own. In American law, the allegiance due from citizens of the United States to their native country, and also from naturalized citizens, and which cannot be renounced without the permission of government, to be declared by law. —*Black's Law Dictionary*, 1979

[**Allegiance**

[**Allodial**.... Free; not holden of any lord or superior; owned without obligation of vassalage or fealty; the opposite of feudal. —*Black's Law Dictionary*, 1979

[**Allodial**

[**ALLODIUM** (Sax. *a*, privative, and *lode* or *leude*, a vassal; that is, without vassalage).

An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof; 1 Washb. R. P. 16.

It is used in opposition to *feodum* or *fief*, which means property the use of which was bestowed upon another by the proprietor, on condition, that the grantee should perform certain services for the grantor, and upon the failure of which the property should revert to the original possessor.

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In the United States the title to land is essentially allodial, and every tenant in fee simple has an absolute and unqualified dominion over it; yet in technical language his estate is said to be in fee, a word which implies a feudal relation, although such a relation has ceased to exist in any form, while in several of the states the lands have been declared to be allodial; 44 Penn. 492; 2 *id.* 191; 10 Gill & J. 443; but see 7 Cush. 92; 2 Sharsw. Bla. Com. 77, n.; 1 Washb. R. P. 41, 42; Sharswood's Lecture on Feudal Law, 1870. In some states, the statutes have declared lands to be allodial. See also 28 Wis. 367.

In England there is no allodial tenure, for all land is held mediately or immediately of the king; but the words *tenancy in fee simple* are there properly used to express the most absolute dominion which a man can have over his property; 3 Kent, 390; Cruise, Prelim. Dis. c. 1, § 13; 2 Bla. Com. 45. —*Bouvier's Law Dictionary*, 1889

[ALLODIUM

[**Allodium**.... Land held absolutely in one's own right, and not of any lord or superior; land not subject to feudal duties or burdens. An estate held by absolute ownership, without recognizing any superior to whom any duty is due on account thereof. —*Black's Law Dictionary*, 1979

[Allodium

[**ambiguous** ... *adj.* 1. Open to more than one interpretation: *an ambiguous reply*. 2. Doubtful or uncertain: “*The theatrical status of her frequently derided but constantly revived plays remained ambiguous*” (Frank Rich)....

SYNONYMS: *ambiguous, equivocal, obscure, recondite, abstruse, vague, cryptic, enigmatic.* These adjectives mean lacking clarity of meaning. *Ambiguous* indicates the presence of two or more possible meanings: *Frustrated by ambiguous instructions, the parents were never able to assemble the new toy.* Something *equivocal* is unclear or misleading, sometimes as a result of a deliberate effort to avoid exposure of one's position: “*The polling had a complex and equivocal message for potential female candidates at all levels*” (David S. Broder). *Obscure* implies that meaning is hidden, either from lack of clarity of expression or from inherent difficulty of comprehension: *Those who do not appreciate Kafka's work say his style is obscure and too complex.* *Recondite* and *abstruse* connote the erudite obscurity of the scholar: “*some recondite problem in historiography*” (Walter Laqueur). *The Professor's lectures were so abstruse that students tended to avoid them.* What is *vague* is unclear because it is expressed in indefinite form or because it reflects imprecision of thought: “*Vague ... forms of speech ... have so long passed for mysteries of science*” (John Locke). *Cryptic* suggests a puzzling terseness that is often intended to discourage understanding: *The new insurance policy is written without cryptic or mysterious terms.* Something *enigmatic* is mysterious, puzzling, and often challenging: *I didn't grasp the meaning of the enigmatic comment until much later.*

—*The American Heritage Dictionary of the English Language*, 1992

[ambiguous

[**analogy**... *n., pl. -gies. Abbr. anal.* **1.a.** Similarity in some respects between things that are otherwise dissimilar. **b.** A comparison based on such similarity. See Synonyms at **likeness**. **2. Biology.** Correspondence in function or position between organs of dissimilar evolutionary origin or structure. **3.** A form of logical inference or an instance of it, based on the assumption that if two things are known to be alike in some respects, then they must be alike in other respects. **4. Linguistics.** **a.** The process by which words and morphemes are re-formed or created on the model of existing grammatical patterns in a language, as Modern English *name* : *names* for Old English *nama* : *naman* on the model of nouns like *stone* : *stones*. **b.** The process by which inflectional paradigms are made more regular by the replacement of an uncommon or irregular stem or affix by one that is common or regular, as *bit* in Modern English *bit*, *bitten* for Old English *bät*, *biten*....

—*The American Heritage Dictionary of the English Language*, 1992

[**analogy**

[**anthropomorphism** ... *n.* Attribution of human motivation, characteristics, or behavior to inanimate objects, animals, or natural phenomena.

—**anthropomorphic** *adj.* —**anthropomorphically** *adv.*

—*The American Heritage Dictionary of the English Language*, 1992

[**anthropomorphism**

[**Appearance.** A coming into court as party to a suit, either in person or by attorney, whether as plaintiff or defendant. The formal proceeding by which a defendant submits himself to the jurisdiction of the court. The voluntary submission to a court's jurisdiction.

In civil actions the parties do not normally actually appear in *person*, but rather through their attorneys. Also, at many stages of criminal proceedings, particularly involving minor offenses, the defendant's attorney appears on his behalf. See *e.g.* Fed.R.Crim.P. 43.

An appearance may be either *general* or *special*; the former is a simple and unqualified or unrestricted submission to the jurisdiction of the court, the latter a submission to the jurisdiction for some specific purpose only, not for all the purposes of the suit. A special appearance is for the purpose of testing the sufficiency of service or the jurisdiction of the court; a general appearance is made where the defendant waives defects of service and submits to the jurisdiction. *Insurance Co. of North America v. Kunin*, 175 Neb. 260, 121 N.W.2d 372, 375, 376.

See also **General appearance**; **Notice to appear**.

Appearance by attorney. An act of an attorney in prosecuting an action on behalf of his client. Document filed in court in which attorney sets forth fact that he is representing a party to the action.

Appearance docket. A docket kept by the clerk of the court in which appearances are entered, containing also a brief abstract of all the proceedings in the cause.

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Common law classifications. At common law an appearance could be either *compulsory* or *voluntary*, the former where it was compelled by process served on the party, the latter where it was entered by his own will or consent, without the service of process, though process may be outstanding. Also, *optional* when entered by a person who intervened in the action to protect his own interests, though not joined as a party; *conditional*, when coupled with conditions as to its becoming or being taken as a general appearance; *gratis*, when made by a party to the action, but before the service of any process or legal notice to appear; *de bene esse*, when made provisionally or to remain good only upon a future contingency; or when designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it was finally determined that he had forever waived that right; *subsequent*, when made by a defendant after an appearance had already been entered for him by the plaintiff; *corporal*, when the person was physically present in court.

Initial appearance. A court proceeding for a defendant charged with a felony, during which the judge advises the defendant to the charges against him and of his right, decides upon bail and/or other conditions of release, and sets the date for a preliminary hearing. See *e.g.* Fed.R.Crim. P. 5.

Notice of appearance. A notice given by defendant to a plaintiff that he appears in the action in person or by attorney.

—*Black's Law Dictionary, 1979*

[Appearance

[**Apply.** To make a formal request or petition, usually in writing, to a court, officer, board, or company, for the granting of some favor, or of some rule or order, which is within his or their power or discretion. For example, to apply for an injunction, for a pardon, for a policy of insurance, or for a receiver. See **Application; Petition.**

To use or employ for a particular purpose; to appropriate and devote to a particular use, object, demand, or subject-matter. Thus, to apply payments to the reduction of interest. See **Appropriate.**

To put, use, or refer, as suitable or relative; to co-ordinate language with a particular subject-matter; as to apply the words of a statute to a particular state of facts.

The word “apply” is used in connection with statutes in two senses. When construing a statute, in describing the class of persons, things, or functions which are within its scope; as that the statute does not “apply” to transactions in interstate commerce. When discussing the use made of a statute, in referring to the process by which the statute is made operative; as where the jury is told to “apply” the statute of limitation if they find that the cause of action arose before a given date.

—*Black's Law Dictionary, 1979*

[Apply

[**assembly** **1.a.** The act of assembling. **b.** The state of being assembled. **2.** A group of persons gathered together for a common reason, as for a legislative,

religious, educational, or social purpose. **3. Assembly.** The lower house of the legislature in certain U.S. states. **4.a.** The putting together of manufactured parts to make a completed product, such as a machine or an electronic circuit. **b.** A set of parts so assembled. **5.** A signal by bugle or drum for troops to come together in formation. **6. Computer Science.** The automatic translation of symbolic code into machine code. —*The American Heritage Dictionary of the English Language, 1992*

[assembly

[**Assumpsit** He undertook; he promised.

A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but is not under seal. It is *express* if the promisor puts his engagement in distinct and definite language; it is *implied* where the law infers a promise (though no formal one has passed) from the conduct of the party or the circumstances of the case. *Dukes v. Rogers, 67 Ga.App. 661, 21 S.E.2d 295, 297.*

A common law form of action which lies for the recovery of damages for the non-performance of a parol or simple contract; or a contract that is neither of record nor under seal. A liberal and equitable action, applicable to almost every case where money has been received which in equity and good conscience ought to be refunded; express promise is not necessary to sustain action, but it may be maintained whenever anything is received or done from the circumstances of which the law implies a promise of compensation. The action of *assumpsit* differs from *trespass* and *trover*, which are founded on a tort, not upon a contract; from *covenant* and *debt*, which are appropriate where the ground of recovery is a sealed instrument, or special obligation to pay a fixed sum; and from *replevin*, which seeks the recovery of specific property, if attainable, rather than of damages.

Express assumpsit. See **Express assumpsit.**

General (common or indebitatus) assumpsit is an action of assumpsit brought upon the promise or contract implied by law in certain cases. It is founded upon what the law terms an implied promise on the part of defendant to pay what, in good conscience, he is bound to pay to plaintiff.

Special assumpsit is an action of assumpsit brought upon an express contract or promise.

—*Black's Law Dictionary, 1979*

[**Assumpsit**

[**assumption** ... *n.* **1.** The act of taking to or upon oneself: *assumption of an obligation.* **2.** The act of taking over: *assumption of command.* **3.** The act of taking for granted: *assumption of a false theory.* **4.** Something taken for granted or accepted as true without proof; a supposition: *a valid assumption.* **5.** Presumption; arrogance. **6. Logic.** A minor premise. **7. Assumption. a. Theology.** The bodily taking up of the Virgin Mary into heaven after her death. **b.** A Christian feast celebrating this event. **c.** August 15, the day on which this feast

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is observed.... —*The American Heritage Dictionary of the English Language*, 1992
[**assumption**]

[**attest** 1. give proof or evidence of. The child's good health attests his mother's care. 2. declare to be true or genuine; certify. A notary attested the signature. 4. testify; bear witness. The handwriting expert attested to the genuineness of the signature. 4. put on oath. —*Thorndike Century Senior Dictionary*, 1941
[**attest**]

[**Attest.** To bear witness to; to bear witness to a fact; to affirm to be true or genuine; to act as a witness to; to certify; to certify to the verity of a copy of a public document formally by signature; to make solemn declaration in words or writing to support a fact; to signify by subscription of his name that the signer has witnessed the execution of the particular instrument. *Lindsey v. Realty Trust Co.*, Tex.Civ.App., 75 S.W.2d 322, 324; *City Lumber Co. of Bridgeport v. Borsuk*, 131 Conn. 640, 41 A.2d 775, 778. Also the technical word by which, in the practice of many of the states, a certifying officer gives assurance of the genuineness and correctness of a copy. Thus, an "attested" copy of a document is one which has been examined and compared with the original, with a certificate or memorandum of its correctness, signed by the persons who have examined it. See **Affirmation; Jurat; Oath; Verification.** —*Black's Law Dictionary*, 1979
[**Attest**]

[**authoritarian** 1 : of, relating to, or favoring blind submission to authority <had ~ parents> 2 : of, relating to, or favoring a concentration of power in a leader or an elite not constitutionally responsible to the people
—*Webster's Ninth New Collegiate Dictionary*, 1987
[**authoritarian**]

[**Authority.** Permission. Right to exercise powers; to implement and enforce laws; to exact obedience; to command; to judge. Control over; jurisdiction. Often synonymous with power. The power delegated by a principal to his agent The lawful delegation of power by one person to another. Power of agent to affect legal relations of principal by acts done in accordance with principal's manifestations of consent to agent. See Restatement, Second, Agency § 7.

Refers to the precedential value to be accorded an opinion of a judicial or administrative body. A court's opinion is binding authority on other courts directly below it in the judicial hierarchy. Opinions of lower courts or of courts outside the hierarchy are governed by the degree to which it adheres to the doctrine of stare decisis. See **Stare decisis.**

Legal power; a right to command or to act; the right and power of public officers to require obedience to their orders lawfully issued in the scope of their public duties.

See also Actual authority; Apparent authority; Binding authority; Commission; competent authority; Control; Credentials; Implied authority; Power; Precedent; Scope of authority

Apparent authority. That which, though not actually granted, the principal knowingly permits the agent to exercise, or which he holds him out as possessing. The power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other's manifestations to such third persons. Restatement, Second, Agency, § 8. See *Authority by estoppel*.

Authority by estoppel. Not actual, but apparent only, being imposed on the principal because his conduct has been such as to mislead, so that it would be unjust to let him deny it. See *Apparent authority*.

Authority coupled with an interest. Authority given to an agent for a valuable consideration, or which forms part of a security.

Express authority. That given explicitly, either in writing or orally. See **Express Authority**.

General authority. That which authorizes the agent to do everything connected with a particular business. It empowers him to bind his principal by all acts within the scope of his employment; and it cannot be limited by any private direction not known to the party dealing with him.

Implied authority. Actual authority circumstantially proved. That which the principal intends his agent to possess, and which is implied from the principal's conduct. It includes only such acts as are incident and necessary to the exercise of the authority expressly granted.

Incidental authority. Such authority as is necessary to carry out authority which is actually or apparently given, e.g. authority to borrow money carries with it as an incidental authority the power to sign commercial paper to effectuate the borrowing.

Inferred authority. See *Incidental authority*, above.

Inherent authority. Such power as reposes in an agent by virtue of the agency itself.

Limited authority. Such authority as the agent has when he is bound by precise instructions.

Naked authority. That arising where the principal delegates the power to the agent wholly for the benefit of the former.

Ostensible authority. See *Apparent authority*, supra.

Presumptive authority. See *Implied authority*, supra.

Special authority. That which is confined to an individual transaction. Such an authority does not bind the principal, unless it is strictly pursued.

Unlimited authority. That possessed by an agent when he is left to pursue his own discretion.

—*Black's Law Dictionary*, 1979

[**Authority**]

Miscellaneous Definitions

[Authorize. To empower; to give a right or authority to act. To endow with authority or effective legal power, warrant, or right. *People v. Young*, 100 Ill.App.2d 20, 241 N.E.2d 587, 589 To permit a thing to be done in the future. It has a mandatory effect or meaning, implying a direction to act.

“Authorized” is sometimes construed as equivalent to “permitted”; or “directed”, or to similar mandatory language. Possessed of authority; that is, possessed of legal or rightful power, the synonym of which is “competency.” *Doherty v. Kansas City Star Co.*, 143 Kan. 802, 57 P.2d 43, 45. —*Black’s Law Dictionary*, 1979

[Authorize

[Avoid. To annul; cancel; make void; to destroy the efficacy of anything. To evade; escape. —*Black’s Law Dictionary*, 1979

[Avoid

[AVOIDANCE. A making void, useless, or empty.

In Ecclesiastical Law. It exists when benefice becomes vacant for want of an incumbent.

In Pleading. Repelling or excluding the conclusions or implications arising from the admission of the truth of the allegations of the opposite party. See CONFESSIO and AVOIDANCE. —*Bouvier’s Law Dictionary*, 1889

[AVOIDANCE

[Avoidance. A making void, useless, empty, or of no effect; annulling, cancelling; escaping or evading. See also **Evasion**.

In pleading, the allegation or statement of new matter, in opposition to a former pleading, which, admitting the facts alleged in such former pleading, shows cause why they should not have their ordinary legal effect. Fed.R. Civil P. 8(c). See also **Affirmative defense; Confession and avoidance**.

—*Black’s Law Dictionary*, 1979

[Avoidance

[avoidance *n.* **1.** The act of shunning or avoiding. **2.** *Law.* An annulment.

—*The American Heritage Dictionary of the English Language*, 1992

[avoidance

– B –

[bestiality *n., pl. -ties.* **1.** The quality or condition of being an animal or like an animal. **2.** Conduct or an action marked by depravity or brutality. **3.** Sexual relations between a human being and an animal.

–*The American Heritage Dictionary of the English Language*, 1992

[bestiality

[big bang *n.* The cosmic explosion that marked the origin of the universe according to the big bang theory.

–*The American Heritage Dictionary of the English Language*, 1992

[big bang

[big bang theory *n.* A cosmological theory holding that the universe originated approximately 20 billion years ago from the violent explosion of a very small agglomeration of matter of extremely high density and temperature.

–*The American Heritage Dictionary of the English Language*, 1992

[big bang theory

[Bill *Bill of rights.* A formal and emphatic legislative assertion and declaration of popular rights and liberties usually promulgated upon a change of government; *e.g.* the famous Bill of Rights in English history. Also the summary of the rights and liberties of the people, or of the principles of constitutional law deemed essential and fundamental, contained in many of the American state constitutions. *Hamill v. Hawks*, C.C.A.Okl., 58 F.2d 41, 47. That portion of Constitution guaranteeing rights and privileges to the individual; *i.e.* first ten Amendments of U.S. Constitution

–*Black's Law Dictionary*, 1979

[bill

[BIRTH CERTIFICATE no entry

–*Bouvier's Law Dictionary*, 1889

[birth certificate no entry

–*Thorndike Century Senior Dictionary*, 1941

[birth certificate a copy of an official record of a person's date and place of birth and parentage

–*Webster's New Collegiate Dictionary*, 1973

[birth certificate

[Birth certificate. A formal document which certifies as to the date and place of one's birth and a recitation of his or her parentage, as issued by an official in charge of such records. Furnishing of such is often required to prove one's age. See **Birth record.**

–*Black's Law Dictionary*, 1979

[Birth certificate

[BIRTH RECORD no entry.

–*Bouvier's Law Dictionary*, 1889

[birth record no entry.

–*Thorndike Century Senior Dictionary*, 1941

[Birth record. Official statistical data concerning dates and places of person's birth, as well as parentage, kept by local government officials. See **Birth certificate.**

–*Black's Law Dictionary*, 1979

[Birth record

Miscellaneous Definitions

[**birth record** no entry. —*Webster's Ninth New Collegiate Dictionary*, 1987

[**black hole** *n.* **1.** An extremely small region of space-time with a gravitational field so intense that nothing can escape, not even light. **2.** A great void; an abyss: *The government created a bureaucratic black hole that swallows up individual initiative.* —*The American Heritage Dictionary of the English Language*, 1992

[**black hole**

[**BREACH. In Contracts.** The violation of an obligation, engagement, or duty.

A *continuing* breach is one where the condition of things constituting a breach continues during a period of time, or where the acts constituting a breach are repeated at brief intervals; F. Moore, 242; 1 Leon. 62; 1 Salk. 141; Holt, 178; 2 Ld. Raym. 1125.

In Pleading. That part of the declaration in which the violation of the defendant's contract is stated.

It is usual in assumpsit to introduce the statement of the particular breach, with the allegation that the defendant, contriving and fraudulently intending craftily and subtilely to deceive and defraud the plaintiff, neglected and refused to perform, or performed, the particular act, contrary to the previous stipulation.

In debt, the breach or cause of action complained of must proceed only for the non-payment of money previously alleged to be payable; and such breach is very similar whether the action be in debt on simple contract, specialty, record, or statute, and is usually of the following form: "Yet the said defendant, although often requested so to do, hath not as yet paid the said sum of _____ dollars, above demanded, nor any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused so to do, to the damage of the said plaintiff _____ dollars, and therefore he brings suit," etc.

The breach must obviously be governed by the nature of the stipulation; it ought to be assigned in the words of the contract, either negatively or affirmatively, or in words which are coextensive with its import and effect; Comyns, Dig. *Pleader*, C, 45-49; 2 Wms. Saund. 181 *b, c*; 6 Cranch, 127. And see 5 Johns, 168; 8 *id.* 111; 7 *id.* 376; 4 Dali. 436; 2 Hen. & M. 446; Steph. P1. 307.

When the contract is in the disjunctive, as on a promise to deliver a horse by a particular day, or to pay a sum of money, the breach ought to be assigned that the defendant did not do the one act nor the other; 1 Sid. 440; Hardr. 320; Comyns, Dig. *Pleader*, C. —*Bouvier's Law Dictionary*, 1889

[**BREACH**

[**Breach.** The breaking or violating of a law, right, obligation, engagement, or duty, either by commission or omission. Exists where one party to contract fails to carry out term, promise, or condition of the contract. —*Black's Law Dictionary*, 1979

[**Breach**

[**breach** *n.* **1.a.** An opening, a tear, or a rupture. **b.** A gap or rift, especially in or as if in a solid structure such as a dike or fortification. **2.** A violation or infraction, as of a law, a legal obligation, or a promise. **3.** A breaking up or disruption of friendly relations; an estrangement. **4.** A leap of a whale from the water. **5.** The breaking of waves or surf. —**breach** *v.*... —*tr.* **1.** To make a hole or gap in; break through. **2.** To break or violate (an agreement, for example). —*intr.* To leap from the water: *waiting for the whale to breach*....

SYNONYMS: *breach, infraction, violation, transgression, trespass, infringement.* These nouns denote an act or instance of breaking a law or regulation or failing to fulfill a duty, obligation, or promise. *Breach* and *infraction* are the least specific: *Revealing the secret would be a breach of trust. Infractions of the rules will not be tolerated.* A *violation* is an infraction committed willfully and with complete lack of regard for legal, moral, or ethical considerations: *She failed to appear for the rehearsal, in flagrant violation of her contract. Transgression* refers most often to a violation of divine or moral law: *“The children shall not be punished for the father’s transgression.”* (Daniel Defoe). As it refers to the breaking of a statute, *trespass* implies willful intrusion on another’s rights, possessions, or person: *“In the limited and confined sense [trespass] signifies no more than an entry on another man’s ground without a lawful authority”* (William Blackstone). *Infringement* is most frequently used specifically to denote encroachment on another’s rights, such as those granted by a copyright: *“Necessity is the plea for every infringement of human freedom”* (William Pitt the Younger).

—*The American Heritage Dictionary of the English Language, 1992*

[**breach**

[**Breach of contract.** Failure, without legal excuse, to perform any promise which forms the whole or part of a contract. Prevention or hindrance by party to contract of any occurrence or performance requisite under the contract for the creation or continuance of a right in favor of the other party or the discharge of a duty by him. Unequivocal, distinct and absolute refusal to perform agreement.

Anticipatory breach. See **Anticipatory breach of contract.**

Constructive breach. Such breach takes place when the party bound to perform disables himself from performance by some act, or declares, before the time comes, that he will not perform. *The Adamello, D.C. Va., 19 F.2d 388, 389.*

Continuing breach. Such breach occurs where the state of affairs, or the specific act, constituting the breach, endures for a considerable period of time, or is repeated at short intervals.

Rights and remedies. Parts 6 and 7 of U.C.C. Article 2 cover rights and remedies of both buyer and seller on breach of contract by either. See also **Damages; Performance** (*Specific performance*). —*Black’s Law Dictionary, 1979*

[**Breach of contract**

Miscellaneous Definitions

[BREAKFAST,.... *n.* a break or breaking of a fast: the first meal of the day....

—*The American Dictionary of the English Language*, 1899

[BREAKFAST

[**breakfast**.... 1: the first meal of the day esp. when taken in the morning 2: the food prepared for a breakfast <eat your ~>....

—*Merriam-Webster's Collegiate Dictionary*, Eleventh Edition, 2011

– C –

[**Case law.** The aggregate of reported cases as forming a body of jurisprudence, or the law of a particular subject as evidenced or formed by the adjudged cases, in distinction to statutes and other sources of law. See **Common Law.**

– *Black's Law Dictionary*, 1979

[**Case law**

[**Cause, v.** To be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel. – *Black's Law Dictionary*, 1979

[**Cause**

[**Cause, n.** (Lat. *causa*.) Each separate antecedent of an event. Something that precedes and brings about an effect or a result. A reason for an action or condition. A ground of a legal action. An agent that brings something about. That which in some manner is accountable for condition that brings about an effect or that produces a cause for the resultant action or state. *State v. Fabritz*, 276 Md. 416, 348 A.2d 275, 280.

A suit, litigation, or action. Any question, civil or criminal, litigated or contested before a court of justice. See **Cause of action.**

See also *Causa*; *Causation*; *Concurrent causes*; *Contributing cause*; *Efficient cause*; *Efficient intervening cause*; *Good cause*; *Immediate cause*; *Intervening act*; *Intervening agency*; *Intervening cause*; *Legal cause*; *Natural and probable consequences*; **Negligence** (*Contributory negligence*); *Probable cause*; *Procuring cause*; *Producing cause*; *Proximate cause*; *Remote cause*; *Sole cause*; *Sufficient cause*.

Direct or immediate cause. See **Proximate cause.**

Dismissal for cause. See **For cause.**

Intervening cause. That occurrence which comes between the initial force or occurrence and the ultimate effect.

Superseding cause. That occurrence or force which not only intervenes, but which also breaks the chain of causation between the initial occurrence and the ultimate effect so as to render the initial force or occurrence causatively harmless.

See also **Concurrent causes**; **Efficient cause**; **Probable cause**; **Proximate cause.**

– *Black's Law Dictionary*, 1979

[**Cause**

[**CAUSE OF ACTION** **In Practice.** Matter for which an action may be brought.

A cause of action is said to accrue to any person when that person first comes to a right to bring an action. There is, however, an obvious distinction between a cause of action and a right, though a cause of action generally confers a right. Thus, statutes of limitation do not affect the cause of action, but take away the right.

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When a wrong has been committed, or a breach of duty has occurred, the cause of action has accrued, although the claimant may be ignorant of it; 3 B. & Ald. 288, 626; 5 B. & C. 259; 4 C. & P. 127. A cause of action does not accrue until the existence of such a state of things as will enable a person having the proper relations to the property or persons concerned to bring an action; 5 B. & C. 360; 4 D. & R. 346; 4 Bingh. 686.

—*Bouvier's Law Dictionary*, 1889

[**cause of action**

[**Cause of action.** The fact or facts which give a person a right to judicial relief. The legal effect of an occurrence in terms of redress to a party to the occurrence. A situation or state of facts which would entitle party to sustain action and give him right to seek a judicial remedy in his behalf. *Thompson v. Zurich Ins. Co.*, D.C.Minn., 309 F.Supp. 1178, 1181. Fact, or a state of facts, to which law sought to be enforced against a person or thing applies. Facts which give rise to one or more relations of right-duty between two or more persons. Failure to perform legal obligations to do, or refrain from performance of, some act. Matter for which action may be maintained. Unlawful violation or invasion of right. The right which a party has to institute a judicial proceeding. See also Case; Claim; Failure to state cause of action; Justiciable controversy; Severance of actions; Splitting cause of action; Suit.

—*Black's Law Dictionary*, 1979

[**Cause of action**

[**CERTIFICATE ... In Practice.** A writing made in any court, and properly authenticated, to give notice to another court of any thing done therein.

A writing by which testimony is given that a fact has or has not taken place.

Certificates are either *required by law*, as an insolvent's certificate of discharge, an alien's certificate of naturalization, which are evidence of the facts therein mentioned; or *voluntary*, which are given of the mere motion of the party giving them, and are in no case evidence. Comyns, Dig. *Chancery* (T. 5); 1 Greenl. Ev. § 498; 2 Willes, 549, 550.

There were anciently various modes of trial commenced by a certificate of various parties, which took the place of a writ in a common-law action. See Comyns, Dig. *Certificate*.

By statute, the certificates of various officers may be made evidence, in which case the effect cannot be extended by including facts other than those authorized; 1 Maule & S. 599; 3 Pet. 12, 29; 4 How. 522; 13 Pick. 172; 14 *id.* 442; 1 Dall. 406; 6 S. & R. 324; 3 Murph. 331; Rob. La. 307. See RETURN; NOTARY.

—*Bouvier's Law Dictionary*, 1889

[**certificate**

[**certificate** 1. written or printed statement that declares something to be a fact. A person's birth certificate gives the date and place of his birth and the names of his parents. 2. give a certificate to; authorize by a certificate.

—*Thorndike Century Senior Dictionary*, 1941

[**certificate**

[**certificate** **1:** a document containing a certified statement esp. as to the truth of something; *specif*: a document certifying that one has fulfilled the requirements of and may practice in a field **2:** something serving the same end as a certificate **3:** a document evidencing ownership or debt <a ~ of deposit>

—*Webster's New Collegiate Dictionary*, 1973

[**certificate**

[**Certificate** A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. A written assurance made or issuing from some court, and designed as a notice of things done therein, or as a warrant or authority, to some other court, judge, or officer. A statement of some fact in a writing signed by the party certifying. A declaration in writing. A “certificate” by a public officer is a statement written and signed, but not necessarily sworn to, which is by law made evidence of the truth of the facts stated for all or for certain purposes. A document certifying that one has fulfilled the requirements of and may practice in a field. See also **Affidavit; Birth certificate; License; Permit.** —*Black's Law Dictionary*, 1979

[**Certificate**

[**chattel**.... *n.* **1. Law.** An article of personal, movable property. **2.** A slave....

—*The American Heritage Dictionary of the English Language*, 1992

[**chattel**

[**CITIZEN. In English Law.** An inhabitant of a city. 1 Rolle, 138. The representative of a city, in parliament. 1 Bla. Com. 174.

In American Law. One who, under the constitution and laws of the United States, has a right to vote for representatives in congress, and other public officers, and who is qualified to fill offices in the gift of the people.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside; XIV. Amendment, U. S. Const.

One of the sovereign people. A constituent member of the sovereignty, synonymous with the people. 19 How. 404.

A member of the civil state entitled to all its privileges; Cooley, *Constit. Law*, 77. See

92 U. S. 542; 21 Wall. 162.

Citizens are either native-born or naturalized. Native citizens may fill any office; naturalized citizens may be elected or appointed to any office under the constitution of the United States, except the offices of president and vice-president. The constitution of the United States (art. 4, s. 2) provides that “the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.” These are privileges which in their nature are *fundamental*; which belong of right to the citizens of all free states, and which have, at all times, been enjoyed by the citizens of the several states; 4 Wash. C. C. 380. The supreme court will not

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define these, but will decide each case as it arises; 12 Wall. 418; 94 U. S. 39; 18 How. 591; see 37 N. J. 106; 55 Ill. 185; 16 Wall. 36, 130; 8 *id.* 168; 18 *id.* 129; 92 U. S. 542. The term citizen in the constitution applies only to natural persons; 8 Wall. 168; 1 Woods, 85.

Free persons of color, born in the United States, were always entitled to be regarded as citizens; 1 Abb. U. S. 28; but see 19 How. 393. Negroes born within the United States are citizens; 2 Bond, 389; Chase's Dec. 157 (but not before the 14th Amendment; 19 How. 393; 10 Bush, 681); but the child of a member of one of the Indian tribes within the United States is not a citizen, though born in the United States; 2 Sawy. 118; 1 Dill. 444; but *quære* if the parents had given up their tribal relations; Abb. L. Diet. *sub voce*. The fact that an unnaturalized person of foreign birth is enabled by a state statute to vote and hold office does not make him a citizen; 4 Dill. 425. A Chinaman is not entitled to become naturalized; 5 Sawy. 155.

The *age* of the person does not affect his citizenship, though it may his political rights; 1 Abb. L. Dict. 224; nor the *sex*; *ibid.*; 21 Wall. 162; 92 U. S. 214; 1 McArthur, 169; the right to vote and the right to hold office are not necessary constituents of citizenship; 21 Wall. 162; 43 Cal. 43.

All natives are not citizens of the United States: the descendants of the aborigines are not entitled to the rights of citizens; see *supra*. Anterior to the adoption of the constitution of the United States, each state had the right to make citizens of such persons as it pleased.

A citizen of the United States residing in any of the states of the Union is a citizen of that state; 6 Pet. 761; Paine, 594; 6 Rob. 33; 12 Blatch. 320; 1 Brock. 391; 1 Paige, Ch. 183.

The child of American parents born in a foreign country, on board an American ship of which his father was the captain, is a citizen of the United States; 5 Blatch. 18; and so is a child born abroad whose father was at the time a citizen of the United States residing abroad; 13 Op. Att.-Gen. 91; 45 Iowa, 99.

A person may be a citizen for commercial purposes and not for political purposes; 7 Md. 209.

Consult 3 Story, Const. § 1687; 2 Kent, 258; Bouvier, Inst.; Vattel, 1. 1, c. 19, § 212.

As to citizenship as acquired by naturalization, see ALLEGIANCE.

—*Bouvier's Law Dictionary*, 1889

[CITIZEN

[CITIZEN,....*n.* an inhabitant of a *city*: a member of a state: a townsman: a freeman. —*n.* CITIZENSHIP, the rights of a citizen....

—*The American Dictionary of the English Language*, 1899

[CITIZEN

[citizen.... **1.** person who by birth or by choice is a member of a state or nation. Many immigrants have become citizens of the United States. **2.** civilian; person who is not a soldier, policeman, etc. **3.** inhabitant of a city or town. *n.* **2.**

—*Thorndike Century Senior Dictionary*, 1941

[citizen

[Citizen. One who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. U.S. Const., 14th Amend.

The term may include or apply to children of alien parents born in United States, *Von Schwerdtner v. Piper*, D.C.Md., 23 F.2d 862, 863; *U. S. v. Minoru Yasui*, D.C.Or., 48 F.Supp., 40, 54; children of American citizens born outside United States, *Haaland v. Attorney General of United States*, D.C.Md., 42 F.Supp. 13, 22; Indians, *United States v. Hester*, C.C.A.Okl., 137 F.2d 145, 147; *State v. McAlhaney*, 220 N.C. 387, 17 S.E.2d 352, 354; national banks, *American Surety Co. v. Bank of California*, C.C.A.Or., 133 F.2d 160, 162; nonresident who has qualified as administratrix of estate of deceased resident, *Hunt v. Noll*, C.C.A.Tenn., 112 F.2d 288, 289. However, neither the United States nor a state is a citizen for purposes of diversity jurisdiction. *Skandia American Reinsurance Corp. v. Schenck*, 441 F.Supp. 715; *Jizemerjian v. Dept. of Air Force*, 457 F.Supp. 820. On the other hand, municipalities and other local governments are deemed to be citizens. *Rieser v. District of Columbia*, 563 F.2d 462. A corporation is not a citizen for purposes of privileges and immunities clause of the Fourteenth Amendment, *D. D. B. Realty Corp. v. Merrill*, 232 F.Supp. 629, 637.

“Citizens” are members of a political community who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights. *Herriott v. City of Seattle*, 81 Wash.2d 48, 500 P.2d 101, 109.

—*Black’s Law Dictionary*, 1979

[Citizen

[CIVIL *adj.* pertaining to the community: having the refinement of city-bred people: polite: commercial, not military: lay, not ecclesiastical. - **CIVIL ENGINEER**, one who plans railways, docks, etc., as opp. to a *military* engineer, or to a *mechanical* engineer, who makes machines, etc. - **CIVIL LIST**, now embraces only the expenses of the sovereign’s household. - **CIVIL SERVICE**, the paid service of the State, in so far as it is not military or naval. - **CIVIL-SUITED**, *suitied* or attired like a *civilian* or citizen, as opp. to the gay dresses of courtiers, etc. - **CIVIL WAR**, a war between citizens of the same state.

—*The American Dictionary of the English Language*, 1899

[civil

Miscellaneous Definitions

[**civil** *a* . [Fr. *civil* ; L. *civilis* , pertaining to a citizen, from *civis* , a citizen.]

1. Relating to the community, or to state policy and the government and rights of the citizen; as, *civil* rights; *civil* government; *civil* privileges; *civil* war; *civil* justice; opposed to *criminal* , and distinguished from *ecclesiastical* and *military* .
2. Reduced to order, rule, and government; under a regular administration; not savage or wild; as, *civil* life; *civil* society.
3. Civilized; courteous; complaisant; gentle and obliging; well-bred; affable; kind; having the manners of a citizen of a civilized community.

Where *civil* speech and soft persuasion hung.

-Prior.

Civil action ; any suit or action at law other than a criminal prosecution.

Civil architecture ; the architecture which is employed in constructing buildings for the purposes of civil life, in distinction from *military* and *naval architecture* .

Civil engineering ; see under *Engineering* .

Civil law ; see under *Law* .

Civil liberty ; the natural liberty of the individual, regulated by law only so far as may be necessary for the public good.

Civil list ; in England, formerly, a list of the entire expenses of the civil government; hence, in the United States, the officers of civil government, who are paid from the public treasury; also, the revenue appropriated to support the civil government. The *civil list* in England now embraces only the expenditures of the reigning monarch's household and the sovereign's allowances.

Civil remedy ; remedy obtainable by a civil action.

Civil rights ; the rights or privileges of citizenship.

Civil service ; (a) that branch of the public service relating to civil affairs, as distinguished from military; (b) the system of appointment and promotion by merit in the civil departments of public service.

Civil service reform ; a system of appointment to office under which government positions are subject to competitive examinations, and under which successful candidates receive appointments according to merit, which also is the ruling factor in future promotion.

Civil state ; the whole body of citizens not included under military, maritime, and ecclesiastical institutions.

Civil war ; a war between factions of the same nation, state, or city; opposed to *foreign war* .

Civil year ; the legal year, or annual period established by a government, as distinguished from the *natural year* .

Syn. - Courteous, obliging, well-bred, polite, affable, complaisant.

—*Webster's Universal Dictionary of the English Language*, 1910

[civil

[Code of Federal Regulations. The Code of Federal Regulations (CFR) is the annual cumulation of executive agency regulations published in the daily Federal Register, combined with regulations issued previously that are still in effect. Divided into 50 titles, each representing a broad subject area, individual volumes of the Code of Federal Regulations are revised at least once each calendar year and issued on a staggered quarterly basis. The CFR contains the general body of regulatory laws governing practice and procedure before federal administrative agencies.

—*Black's Law Dictionary*, 1979

[Code of Federal Regulations

[COERCION. Constraint; compulsion; force.

Direct or positive coercion takes place when a man is by physical force compelled to do an act contrary to his will: for example, when a man falls into the hands of the enemies of his country, and they compel him, by a just fear of death, to fight against it.

Implied coercion exists where a person is legally under subjection to another, and is induced, in consequence of such subjection, to do an act contrary to his will.

As will is necessary to the commission of a crime or the making of a contract, a person actually coerced into either has no will on the subject, and is not responsible; 1 East, Pl. Cr. 225; 5 Q. B. 279. The command of a superior to an inferior; 3 Wash. C. C. 209, 220; 12 Metc. 56; 1 Blatchf. 549; 13 How. 115; of a parent to a child; Broom, Max. 11; of a master to his servant, or a principal to his agent; 13 Mo. 246; 14 *id.* 137, 340; 3 Cush. 279; 11 Metc. 66; 5 Miss. 304; 14 Ala. 365; 22 Vt. 32; 14 Johns. 119; do not amount to coercion.

As to persons acting under the constraint of superior power, and, therefore, not criminally amenable, the principal case is that of married women, with respect to whom the law recognizes certain presumptions. Thus, if a wife commits a felony, other than treason or homicide, or, perhaps, highway robbery, in company with her husband, the law presumes that she acted under his coercion, and, consequently, without any guilty intent, unless the fact of non-coercion is distinctly proved. See 2 C. & K. 887, 903; Jebb. 93; 103 Mass. 71; 65 N. C. 398; 97 Mass. 547. This presumption appears on some occasions to have been considered conclusive, and is still practically regarded in no very different light, especially when the crime is of a flagrant character; but the better opinion seems to be that in every case the presumption may now be rebutted by positive proof that the woman acted as a free agent; and in one case that was much discussed, the Irish judges appear to have considered that such positive proof was not required, but that the question was always one to be determined by the jury on the evidence submitted to them; Jebb, 93; 1 Mood. 143. It seems that a married woman cannot be convicted under any

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circumstances as a receiver of stolen goods, when the property has been taken by her husband and given to her by him; 1 Dears. 184.

Husband and wife were jointly charged with felonious wounding with intent to disfigure and to do grievous bodily harm. The jury found that the wife acted under the coercion of the husband, and that she did not personally inflict any violence on the prosecutor. On this finding, the wife was held entitled to an acquittal; 1 Dears. & B. 553.

Whether the doctrine of coercion extends to any misdemeanor may admit of some doubt; but the better opinion seems to be that, provided the misdemeanor is of a serious nature, as, for instance, the uttering of base coin, the wife will be protected in like manner as in cases of felony; although it has been distinctly held that the protection does not extend to assaults and batteries or to the offence of keeping a brothel; 2 Lew. 229; 8 C. & P. 19, 541; 2 Mood. 384; 10 Mod. 63; 1 Metc. Mass. 151; 10 Mass. 152. Indeed, it is probable that in all inferior misdemeanors this presumption, if admitted at all, would be held liable to be defeated by far less stringent evidence of the wife's active co-operation than would suffice in cases of felony; 8 C. & P. 541; 2 Mood. 53; 1 Taylor, Ev. 152. The law upon responsibility of married women for crime is fully stated in 1 B. & H. Lead. Cr. Cas. 76-87.

—*Bouvier's Law Dictionary*, 1889

[**coercion**

[**Coercion** Compulsion; constraint; compelling by force or arms or threat. *General Motors v. Blevins*, D.C.Colo, 144 F.Supp. 381, 384. It may be actual, direct, or positive, as where physical force is used to compel act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse. As used in testamentary law, any pressure by which testator's action is restrained against his free will in the execution of his testament. "Coercion" that vitiates confession can be mental as well as physical, and question is whether accused was deprived of his free choice to admit, deny, or refuse to answer. *Garrity v. State of N. J.*, U.S.N.J., 385 U.S. 493, 87 S.Ct. 616, 618, 17 L.Ed.2d 562.

A person is guilty of criminal coercion if, with purpose to unlawfully restrict another's freedom of action to his detriment, he threatens to: (a) commit any criminal offense; or (b) accuse anyone of a criminal offense; or (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or (d) take or withhold action as an official, or cause an official to take or withhold action. Model Penal code, § 212.5.

See also Duress; Threat.

—*Black's Law Dictionary*, 1979

[**coercion**

[**COHABIT** To live together in the same house, claiming to be married.

The word does not include in its signification, necessarily, the occupying the same bed; 1, Hagg. Cons. 144; 4 Paige, Ch. 425; though the word is popularly, and

sometimes in statutes, used in this latter sense; 20 Mo. 210; Bishop, Marr. & Div. § 506, n.

To live together in the same house.

Used without reference to the relation of the parties to each other as husband and wife, or otherwise. Used of sisters or other members of the same family, or of persons not members of the same family, occupying the same house; 2 Vern. 323; Bishop, Marr. & Div. 506, n.

—*Bouvier's Law Dictionary*, 1889

[**COHABIT**

[**cohabit** *intr.v.*... **1.** To live together as spouses. **2.** To live together in a sexual relationship when not legally married....

—*The American Heritage Dictionary of the English Language*, 1992

[**cohabit**

[**Cohabitation.** To live together as husband and wife. The mutual assumption of those marital rights, duties and obligations which are usually manifested by married people, including but not necessarily dependent on sexual relations. *Boyd v. Boyd*, 228 Cal.App. 374, 39 Cal. Rptr. 400, 404. See also **Notorious cohabitation; Palimony.**

—*Black's Law Dictionary*, 1979

[**Cohabitation**

[**Color.** An appearance, semblance, or *simulacrum*, as distinguished from that which is real. A *prima facie* or apparent right. Hence, a deceptive appearance; a plausible, assumed exterior, concealing a lack of reality; a disguise or pretext. See also **Colorable.**

In pleading, ground of action admitted to subsist in the opposite party by the pleading of one of the parties to an action, which is so set out as to be apparently valid, but which is in reality legally insufficient. A term of the ancient rhetoricians, and early adopted into the language of pleading. It was an apparent or *prima facie* right; and the meaning of the rule that pleadings in confession and avoidance should give color was that they should confess the matter adversely alleged, to such an extent, at least, as to admit some apparent right in the opposite party, which required to be encountered and avoided by the allegation of new matter. Color was either express, *i.e.* inserted in the pleading, or implied, which was naturally inherent in the structure of the pleading. *Wheeler v. Nickels*, 168 Or. 604, 126 P.2d 32, 36.

—*Black's Law Dictionary*, 1979

[**Color**

[**COLOR OF OFFICE.** A pretence of official right to do an act made by one who has no such right. 9 East, 364. See 41 N. Y. 464. —*Bouvier's Law Dictionary*, 1889

[**color of office**

[**Colorable.** That which is in appearance only, and not in reality, what it purports to be, hence counterfeit, feigned, having the appearance of truth. *Windle v. Flinn*, 196 Or. 654, 251 P.2d 136, 146.

—*Black's Law Dictionary*, 1979

[**Colorable**

Miscellaneous Definitions

[**Commander in chief.** One who holds supreme or highest command of armed forces. By Article II, § 2, of the Constitution it is declared that the President shall be commander in chief of the army and navy of the United States. The term implies supreme control of military operations not only with respect to strategy and tactics, but also in reference to the political and international aspects of the war.

—*Black's Law Dictionary*, 1979

[**Commander in chief**

[**COMMON LAW.** That system of law or form of the science of jurisprudence which has prevailed in England and in the United States of America, in contradistinction to other great systems, such as the Roman or Civil Law.

Those principles, usages, and rules of action applicable to the government and security of persons and of property, which do not rest for their authority upon any express and positive declaration of the will of the legislature. 1 Kent, 492.

The body of rules and remedies administered by courts of law, technically so called, in contradistinction to those of equity and to the canon law.

The law of any country, to denote that which is common to the whole country, in contradistinction to laws and customs of local application.

The most prominent characteristic which marks this contrast, and perhaps the source of the distinction, lies in the fact that in the common law neither the stiff rule of a long antiquity, on the one hand, nor, on the other, the sudden changes of a present arbitrary power, are allowed ascendancy, but, under the sanction of a constitutional government, each of these is set off against the other; so that the will of the people, as it is gathered both from long-established custom and from the expression of the legislative power, gradually forms a system—just, because it is the deliberate will of a free people—stable, because it is the growth of centuries—progressive, because it is amenable to the constant revision of the people. A full idea of the genius of the common law cannot be gathered without a survey of the philosophy of English and American history. Some of the elements will, however, appear in considering the various narrower senses in which the phrase “common law” is used.

Perhaps the most important of these narrower senses is that which it has when used in contradistinction to statute law, to designate unwritten as distinguished from written law. It is that law which derives its force and authority from the universal consent and immemorial practice of the people. It has never received the sanction of the legislature by an express act, which is the criterion by which it is distinguished from the statute law. When it is spoken of as the *lex non scripta*, it is meant that it is law not written by authority of law. The statutes are the expression of law in a written form, which form is essential to the statute. The decision of a court which established or declares a rule of law may be reduced to writing and published in the reports; but this report is not the law: it is but evidence of the law; it is but a written account of one application of a legal principle, which principle, in the theory of the common law, is still unwritten.

However artificial this distinction may appear, it is nevertheless of the utmost importance, and bears continually the most wholesome results. It is only by the legislative power that law can be bound by phraseology and by forms of expression. The common law eludes such bondage: its principles are not limited nor hampered by the mere forms in which they may have been expressed, and the reported adjudications declaring such principles are but the instances in which they have been applied. The principles themselves are still unwritten, and ready, with all the adaptability of truth, to meet every new and unexpected case. Hence it is said that the rules of the common law are flexible; 1 Gray, 263; 1 Swan, 42; 5 Cow. 587, 628, 632.

It naturally results from the inflexible form of the statute or written law, which has no self-contained power of adaptation to cases not foreseen by legislators, that every statute of importance becomes, in course of time, supplemented, explained, enlarged, or limited by a series of adjudications upon it, so that at last it may appear to be merely the foundation of a larger superstructure of unwritten law. It naturally follows, too, from the less definite and precise forms in which the doctrine of the unwritten law stands, and from the proper hesitation of courts to modify recognized doctrines in new exigencies, that the legislative power frequently intervenes to declare, to qualify, or to abrogate the doctrines of the common law. Thus, the written and the unwritten law, the statutes of the present and the traditions of the past, interlace and react upon each other. Historical evidence supports the view which these facts suggest, that many of the doctrines of the common law are but the common-law form of antique statutes, long since overgrown and imbedded in judicial decision. While this process is doubtless continually going on in some degree, the contrary process is also continually going on; and to a very considerable extent, particularly in the United States, the doctrines of the common law are being reduced to the statutory form, with such modifications, of course, as the legislature will choose to make. This subject is more fully considered under the title Code, which see.

In a still narrower sense, the expression “common law” is used to distinguish the body of rules and of remedies administered by courts of law, technically so called, in contradistinction to those of equity administered by courts of chancery, and to the canon law, administered by the ecclesiastical courts.

In England the phrase is more commonly used at the present day in the second of the three senses above mentioned.

In this country the common law of England has been adopted as the basis of our jurisprudence in all the states except Louisiana. Many of the most valued principles of the common law have been embodied in the constitution of the United States and the constitutions of the several states; and in many of the states the common law and the statutes of England in force in the colony at the time of our independence are by the state constitution declared to be the law of the state until repealed. See 1 Bishop, Crim. Law, § 15, note 4, §45, where the rules adopted by the several states in this respect are stated. Hence, where a question in the courts

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of one state turns upon the laws of a sister state, if no proof of such laws is offered, it is, in general, presumed that the common law as it existed at the time of the separation of this country from England prevails in such state; 4 Denio, 305; 29 Ind. 458; 11 Mich. 181; *contra*, in Pennsylvania, in cases where that state has changed from the common law; the presumption being that the law of the sister state has made the same change, if there is no proof to the contrary. The term common law as thus used may be deemed to include the doctrine of equity; 8 N.Y. 535; but the term is also used in the amendments to the constitution of the United States (art. 7) in contradistinction to equity, in the provision that "In suits at common law where the value in controversy shall not exceed twenty dollars, the right of trial by jury shall be preserved." The "common law" here mentioned is the common law of England, and not of any particular state; 1 Gall. 20; 1 Baldw. 554, 558; 3 Wheat. 223; 3 Pet. 446. The term is used in contradistinction to equity, admiralty, and maritime law; 3 Pet. 446; 1 Baldw. 554.

The common law of England is not in all respects to be taken as that of the United States or of the several states: its general principles are adopted only so far as they are applicable to our situation; 2 Pet. 144; 8 *id.* 659; 9 Cra. 333; 9 S. & R. 330; 1 Kirb. 117; 5 H. & J. 356; 2 Aik. 187; T. U. P. Charl. 172; 1 Ohio, 243. See 5 Cow. 628; 5 Pet. 241; 8 *id.* 658; 7 Cra. 32; 1 Wheat. 415; 3 *id.* 223; 1 Dall. 67; 2 *id.* 297, 384; 1 Mass. 61; 9 Pick. 532; 3 Me. 162; 6 *id.* 55; 3 G. & J. 62; Sampson's Discourse before the N. Y. Hist. Soc.; 1 Gall. 489; 3 Conn. 114; 33 *id.* 260; 28 Ind. 220; 5 W. Va. 1; 24 Miss. 343; 1 Nev. 40; 37 Barb. 15; 15 Cal. 226; 28 Ala. 704. In general, too, the statutes of England are not understood to be included, except so far as they have been recognized by colonial legislation, but the course pursued has been rather to re-enact such English statutes as were deemed applicable to our case. Especially not those passed since the settlement of the colony; if these were suitable to the condition of the colony they were usually accepted; Quincy, 72; 5 Pet. 280; 2 Gratt. 579. By reason of the modifications arising out of our different condition, and those established by American statutes and by the course of American adjudication, the common law of America differs widely in many details from the common law of England; but the fact that this difference has not been introduced by violent changes, but has grown up from the native vigor of the system, identifies the whole as one jurisprudence.

See works of Franklin, by Sparks, vol. 4, p. 271, as to the adoption of the common law in America; see also Cooley, Const. Lim. 28 *et seq.*

—*Bouvier's Law Dictionary*, 1889
[**common law**]

[**COMMON-LAW MARRIAGE** No entry.

—*Bouvier's Law Dictionary*, 1889
[**COMMON-LAW MARRIAGE**]

[**Common-law marriage.** One not solemnized in the ordinary way (*i.e.* non-ceremonial) but created by an agreement to marry, followed by cohabitation. A consummated agreement to marry, between persons legally capable of making marriage contract, *per verba de præsenti*, followed by cohabitation. Such marriage

requires a positive mutual agreement, permanent and exclusive of all others, to enter into a marriage relationship, cohabitation sufficient to warrant a fulfillment of necessary relationship of man and wife, and an assumption of marital duties and obligations. *Marshall v. State*, Okl.Cr., 537 P.2d 423, 429. Such marriages are invalid in many states; e.g. Missouri (after 1921), Indiana (after 1958), Maryland, Massachusetts, Nebraska (after 1939), Nevada, New Hampshire, New Jersey, New Mexico, New York (after 1933,) North Dakota, Oregon, South Dakota (after 1959), Virginia, Washington, W. Virginia, Wisconsin, Wyoming.

—*Black's Law Dictionary*, 1979

[Common-law marriage]

[common-law marriage *n.* A marriage existing by agreement between a man and a woman or the fact of their cohabitation, without a civil or religious ceremony.

—*The American Heritage Dictionary of the English Language*, 1992

[common-law marriage]

[competent 1. able; fit; as, a competent cook. 2. legally qualified. Two competent witnesses testified.

—*Thorndike Century Senior Dictionary*, 1941

[competent]

[Competent. Duly qualified; answering all requirements; having sufficient ability or authority; possessing the requisite natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit. A testator may be said to be “competent” if he or she understands (1) the general nature and extent of his property; (2) his relationship to the people named in the will and to any people he disinherits; (3) what a will is; and (4) the transaction of simple business affairs. See also **Capacity; Competency; Incompetency.**—*Black's Law Dictionary*, 1979

[Competent]

[Competent authority. As applied to courts and public officers, this term imports jurisdiction and due legal authority to deal with the particular matter in question.

—*Black's Law Dictionary*, 1979

[Competent authority]

[Comply. To yield; to accommodate, or to adapt oneself to; to act in accordance with; to accept.

—*Black's Law Dictionary*, 1979

[Comply]

[Compulsion. Constraint; objective necessity; duress. Forcible inducement to the commission of an act. The act of compelling or the state of being compelled; the act of driving or urging by force or by physical or moral constraint; subjection to force. The compulsion which will excuse a criminal act must be present, imminent and impending and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm. To constitute “compulsion” or “coercion” rendering payment involuntary, there must be some actual or threatened exercise of power possessed, or supposedly possessed, by payee over payer’s person or property, from which payer has no means of immediate relief except by advancing money. See **Coercion**

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Duress.

—*Black's Law Dictionary*, 1979

[**Compulsion**

[**concise**.... *adj.* Expressing much in few words; clear and succinct....

—*The American Heritage Dictionary of the English Language*, 1992

[**concise**

[**CONGRESS** The name of the legislative body of the United States, composed of the senate and house of representatives (*q.v.*). U.S. Const. art. 1, sec. 1

—*Bouvier's Law Dictionary*, 1889

[**congress**

[**consensual** *adj.* **1.** Of or expressing a consensus: *a consensual decision*. **2.a.** *Law.* Existing or entered into by mutual consent without formalization by document or ceremony: *a consensual marriage; a consensual contract*. **b.** Involving the willing participation of both or all parties, especially in an illegal transaction or practice: *the consensual crimes of prostitution, drug abuse, and illegal gambling*. **3. Physiology.** **a.** Of or relating to a reflexive response of one body structure following stimulation of another, such as the concurrent constriction of one pupil in response to light shined in the other. **b.** Of or relating to involuntary movement of a body part accompanying voluntary movement of another....

—*The American Heritage Dictionary of the English Language*, 1992

[**consensual**

[**CONSENSUAL MARRIAGE** No entry.

—*Bouvier's Law Dictionary*, 1889

[**CONSENSUAL MARRIAGE**

[**Consensual marriage** Marriage resting simply on consent per verba de praesenti, between competent parties. See also **Common-law marriage**.

—*Black's Law Dictionary*, 1979

[**Consensual marriage**

[**CONSIDERATION** The material cause which moves a contracting party to enter into a contract. 2. Bla. Com. 443.

The price, motive, or matter of inducement to a contract, whether it be the compensation which is paid, or the inconvenience which is suffered by the party from whom it proceeds. A compensation or equivalent. A cause or occasion meritorious, requiring mutual recompense in deed or in law. Viner, *Abr. Consideration* (A).

It is defined as “any act of the plaintiff from which the defendant or a stranger derives a benefit or advantage, or any labor, detriment, or inconvenience sustained by the plaintiff, however small, if such act is performed or inconvenience suffered by the plaintiff by the consent, express or implied, of the defendant;” Tindal, C. J., in 3 Scott, 250. See a full definition in L. R. 10 Ex. 162, and see 5 Pick. 380

Valuable considerations are those which confer some benefit upon the party by whom the promise is made, or upon a third party at his instance or request; or some detriment sustained, at the instance of the party promising, by the party in

whose favor the promise is made; Chitty, Contr. 7; Doct. & Stud. 179; 1 Selw. N. P. 39, 40; 2 Pet. 182; 5 Cra. 142, 150; 1 Litt. 183; 3 Johns. 100; 14 *id.* 466; 4 N.Y. 207; 6 Mass. 58; 2 Bibb, 30; 2 J. J. Marsh. 222; 2 N.H. 97; Wright, Ohio, 660, 5 W. & S. 427; 13 S. & R. 29; 12 Ga. 52; 24 Miss. 9; 4 Ill. 33; 5 Humphr. 19; 4 Blackf. 388; 3 C. B. 321; 4 East, 55.

“A valuable consideration may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other;” L. R. 10 Ex. 162. See 5 Pick. 380.

A valuable consideration is usually in some way pecuniary, or convertible into money; and a very slight consideration, provided it be valuable and free from fraud, will support a contract; 2 How. 426; 1 Metc. Mass. 84; 12 Mass. 365; 12 Vt. 259; 23 *id.* 532; 29 Ala. N.S. 188; 20 Penn. 303; 22 N.H. 246; 11 Ad. & E. 983; 6 *id.* 438, 456; 16 East, 372; 9 Ves. Ch. 246; 2 Cr. & M. 623; Ambl. 18; 2 Sch. & L. 395, n. a. These valuable considerations are divided by the civilians into four classes, which are given, with literal translations; *Do ut des* (I give that you may give), *Facio ut facias* (I do that you may do), *Facio ut des* (I do that you may give), *Do ut facias* (I give that you may do)... .
—*Bouvier’s Law Dictionary*, 1889

[consideration

[Consideration. The inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract. The reason or material cause of a contract. Some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other. *Richman v. Brookhaven Servicing Corp.*, 80 Misc.2d 563, 363 N.Y.S.2d 731, 733.

See also Adequate consideration; Failure of consideration; Fair and valuable consideration; Fair consideration; Good consideration; Inadequate consideration; Love and affection; Past consideration; Valuable consideration; Want of consideration.

Considerations are either *executed* or *executory*; *express* or *implied*; *good* or *valuable*. See definitions *infra*.

Concurrent consideration. One which arises at the same time or where the promises are simultaneous.

Continuing consideration. One consisting in acts or performances which must necessarily extend over a considerable period of time.

Equitable or moral considerations. Considerations which are devoid of efficacy in point of strict law, but are founded upon a moral duty, and may be made the basis of an express promise.

Executed or executory considerations. The former are acts done or values given before or at the time of making the contract; the latter are promises to give or do something in future.

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Express or implied considerations. The former are those which are specifically stated in a deed, contract, or other instrument; the latter are those inferred or supposed by the law from the acts or situation of the parties. Express consideration is a consideration which is distinctly and specifically named in the written contract or in the oral agreement of the parties.

Good consideration. Such as is founded on natural duty and affection, or on a strong moral obligation. A consideration for love and affection entertained by and for one within degree recognized by law. Motives of natural duty, generosity, and prudence come under this class. The term is sometimes used in the sense of a consideration valid in point of law, and it then includes a valuable or sufficient as well as a meritorious consideration. Generally, however, *good* is used in antithesis to *valuable consideration (q.v.)*.

Gratuitous consideration. One which is not founded upon any such loss, injury, or inconvenience to the party to whom it moves as to make it valid in law.

Illegal consideration. An act which if done, or a promise which if enforced, would be prejudicial to the public interest or contrary to law.

Implied considerations. See *Express or implied considerations, supra*.

Impossible consideration. One which cannot be performed.

Legal consideration. One recognized or permitted by the law as valid and lawful; as distinguished from such as are illegal or immoral. The term is also sometimes used as equivalent to "good" or "sufficient" consideration.

Meritorious consideration. See *Good consideration, supra*.

Moral considerations. See *Equitable or moral considerations, supra*.

Nominal consideration. One bearing no relation to the real value of the contract or article, as where a parcel of land is described in a deed as being sold for "one dollar," no actual consideration passing, or the real consideration being concealed. This term is also sometimes used as descriptive of an inflated or exaggerated value placed upon property for the purpose of an exchange.

Past consideration. An act done before the contract is made, which is ordinarily by itself no consideration for a promise. As to time, considerations may be of the past, present, or future. Those which are present or future will support a contract not void for other reasons.

Pecuniary consideration. A consideration for an act of forbearance which consists either in money presently passing or in money to be paid in the future, including a promise to pay a debt in full which otherwise would be released or diminished by bankruptcy or insolvency proceedings.

Sufficient consideration. One deemed by the law of sufficient value to support an ordinary contract between parties, or one sufficient to support the particular transaction.

—*Black's Law Dictionary, 1979*

[**Consideration**

[**CONSTITUTION** The fundamental law of a state, directing the principles upon which the government is founded, and regulating the exercise of the sovereign powers, directing to what bodies or persons those powers shall be confided and the manner of their exercise.

Constitution, in the former law of the European continent, signified as much as decree, -a decree of importance, especially ecclesiastical decrees. The decrees of the Roman emperors referring to the *jus circa sacra*, contained in the Code of Justinian, have been repeatedly collected and called the Constitutions. The famous bull *Unigenitus* was usually called in France the Constitution. Comprehensive laws or decrees have been called constitutions; thus, the *Constitutio Criminalis Carolina*, which is the penal code decreed by Charles V. for Germany, the Constitutions of Clarendon (*q.v.*). In political law the word constitution came to be used more and more for the fundamentals of a government, - the laws and usages which give it its characteristic feature. We find, thus, former English writers speak of the constitution of the Turkish empire. These fundamental laws and customs appeared to our race especially important where they limited the power and action of the different branches of government; and it came thus to pass that by constitution was meant especially the fundamental law of a state in which the citizen enjoys a high degree of civil liberty; and, as it is equally necessary to guard against the power of the executive in monarchies, a period arrived - namely, the first half of the present century - when Europe, and especially on the continent, the term constitutional government came to be used in contradistinction to absolutism.

We now mean by the term constitution, in common parlance, the fundamental law of a free country, which characterizes the organism of the country and secures the rights of the citizen and determines his main duties as a freeman. Sometimes, indeed, the word constitution has been used in recent times for what otherwise is generally called an organic law. Napoleon I. styled himself Emperor of the French by the Grace of God and the Constitutions of the Empire.

Constitutions were generally divided into written and non-written constitutions, analogous to *leges scriptæ* and *non scriptæ*. These terms do not indicate the distinguishing principle; Lieber, therefore, divides political constitutions into accumulated or cumulative constitutions and enacted constitutions. The constitution of ancient Rome and that of England belong to the first class. The latter consists of the customs, statutes, common laws, and decisions of fundamental importance. The Reform act is considered by the English a portion of the constitution as much as the trial by jury or the representative system, which have never been enacted, but correspond to what Cicero calls *leges natæ*. Our constitutions are enacted; that is to say, they were, on a certain day and by a certain authority, enacted as a fundamental law of the body politic. In many cases enacted constitutions cannot be dispensed with, and they have certain advantages which cumulative constitutions must forego; while the latter have some advantages which the former cannot obtain. It has been thought, in many periods, by modern nations, that enacted constitutions and statutory law alone are firm guarantees of

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rights and liberties. This error has been exposed in Lieber's Civil Liberty. Nor can enacted constitutions dispense with the "grown law" (*lex nata*). For the meaning of much that an enacted constitution establishes can only be found by the grown law on which it is founded, just as the British Bill of Rights (an enacted portion of the English constitution) rests on the common law.

Enacted constitutions may be either *octroyed*, that is, granted by the presumed full authority of the grantor, the monarch; or they may be enacted by a sovereign people prescribing high rules of action and fundamental laws for its political society, such as ours is; or they may rest on contracts between contracting parties, - for instance, between the people and a dynasty, or between several states. We cannot enter here into the interesting inquiry concerning the points on which all modern constitutions agree, and regarding which they differ, - one of the most instructive inquiries for the publicist and jurist. See Hallam's Constitutional History of England; Story on the Constitution; Sheppard's Constitutional Text-Book; Elliot's Debates on the Constitution, etc.; Lieber's article (Constitution), in the Encyclopædia Americana; Rotteck's article Constitution, in the Staats-Lexicon, 2d ed.

—*Bouvier's Law Dictionary*, 1889

[**constitution**

[CONSTITUTION OF THE UNITED STATES OF AMERICA. The supreme law of the United States.

It was framed by a convention of delegates from all of the original thirteen states (except Rhode Island), which assembled at Philadelphia on the 14th of May, 1787. On September 17, 1787, by the unanimous consent of the states present, a form of constitution was agreed upon, and on September 28th was submitted to the congress of the confederation, with recommendations as to the method of its adoption by the states. In accordance with these recommendations, it was transmitted by the congress to the several state legislatures, in order to be submitted to conventions of delegates chosen in each state by the people thereof. The several states accordingly called conventions, which ratified the constitution upon the following dates: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June, 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

Under the terms of the constitution (art. vii.), its ratification by nine states was sufficient to establish it between the states so ratifying it. Accordingly, when, on July 2, 1788, the ratification by the ninth state was read to congress, a committee was appointed to prepare an act for putting the constitution into effect; and on September 13, 1788 — in accordance with the recommendations made by the convention in reporting the constitution — congress appointed days for choosing electors, etc., and resolved that the first Wednesday in March then next (March 4, 1789) should be the time, and the then seat of congress (New York) the place, for

commencing government under the new constitution. Proceedings were had in accordance with these directions, and on March 4, 1789, congress met, but, owing to the want of a quorum, the house did not organize until April 1st, nor the senate until April 6th. Washington took the oath of office on April 30th. The constitution became the law of the land on March 4, 1789. 5 Wheat.420.

The preamble of the constitution declares that the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to themselves and their posterity, do ordain and establish this constitution for the United States of America.

The first article is divided into ten sections. By the *first* the legislative power is vested in congress. The *second* regulates the formation of the house of representatives, and declares who shall be electors. The *third* provides for the organization of the senate, and bestows on it the power to try impeachments. The *fourth* directs the time of meeting of congress, and who may regulate the times, places, and manner of holding elections for senators and representatives. The *fifth* determines the power of the respective houses. The *sixth* provides for a compensation to members of congress, and for their safety from arrests, and disqualifies them from holding certain offices. The *seventh* directs the manner of passing bills. The *eighth* defines the powers vested in congress. The *ninth* contains the following provisions: 1st. That the migration or importation of certain classes of persons shall not be prohibited prior to the year 1808. 2d. That the writ of *habeas corpus* shall not be suspended, except in particular cases. 3d. That no bill of attainder or *ex post facto* law shall be passed. 4th. The manner of levying taxes. 5th. The manner of drawing money out of the treasury. 6th. That no title of nobility shall be granted. 7th. That no officer shall receive a present from a foreign government. The *tenth* forbids the respective states to exercise certain powers there enumerated.

The second article is divided into four sections. The *first* vests the executive power in the president of the United States, and (as amended) provides for his election and that of the vice president. The *second* section confers various powers on the president. The *third* defines his duties. The *fourth* provides for the impeachment of the president, vice-president, and all civil officers of the United States.

The third article contains three sections. The *first* vests the judicial power in sundry courts, provides for the tenure of office by the judges, and for their compensation. The *second* provides for the extent of the judicial power, vests in the supreme court original jurisdiction in certain cases, and directs the manner of trying crimes. The *third* defines treason, and vests in congress the power to declare its punishment.

The fourth article is composed of four sections. The *first* relates to the faith which state records, etc., shall have in other states. The *second* secures the rights of citizens in the several states, — the delivery of fugitives from justice or from labor.

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The *third* provides for the admission of new states, and the government of the territories. The *fourth* guarantees to every state in the union a republican form of government, and protection from invasion or domestic violence.

The *fifth article* provides for amendments to the constitution.

The *sixth article* declares that the debts due under the confederation shall be valid against the United States; that the constitution and treaties made under its powers shall be the supreme law of the land; that public officers shall be required by oath or affirmation to support the constitution of the United States; and that no religious test shall be required as a qualification for office.

The *seventh article* directs what shall be a sufficient ratification of this constitution by the states.

In pursuance of the fifth article of the constitution, articles in addition to, and amendment of, the constitution, were proposed by congress, and ratified by the legislatures of the several states. There additional articles are to the following import (the first ten were proposed at the first session of the first congress, in accordance with the recommendations of various states in ratifying the constitution, and were adopted in 1791. The dates of the adoption of the subsequent amendments are given below):—

The *first* relates to religious freedom; the liberty of the press; and the right of the people to assemble and to petition for redress of grievances.

The *second* secures to the people the right to bear arms.

The *third* prohibits the quartering of soldiers except in the manner therein specified.

The *fourth* regulates the right of search, and the manner of arrest on criminal charges.

The *fifth* directs the manner of being held to answer for crimes, and provides for the security of the life, liberty, and property of the citizens.

The *sixth* secures to the accused the right to a fair trial by jury.

The *seventh* provides for a trial by jury in civil cases.

The *eighth* directs that excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

The *ninth* secures to the people the rights retained by them.

The *tenth* secures to the states respectively, or to the people, the rights they have not granted.

The *eleventh* (1798) limits the powers of the federal courts as to suits against one of the United States.

The *twelfth* (1804) provides for the mode of electing president and vice-president.

The *thirteenth* (1865) abolishes slavery and involuntary servitude, except as a punishment for crimes.

The *fourteenth* (1868) is composed of five sections. The first defines citizenship and limits the power of the states over citizens of the United States. The second regulates representation; the third disqualification. The fourth provides for the validity of the public debt, and prohibits the United States or any state from assuming certain debts. The fifth gives congress power to enforce this article.

The *fifteenth* (1870) contains certain regulations as to the elective franchise, and gives congress power to enforce this article. —*Bouvier's Law Dictionary*, 1889

[CONSTITUTION OF THE UNITED STATES OF AMERICA

[**Construction.** The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision. Drawing conclusions respecting subjects that lie beyond the direct expression of the term.

The process of bringing together and correlating a number of independent entities, so as to form a definite entity.

The creation of something new, as distinguished from the repair or improvement of something already existing. The act of fitting an object for use or occupation in the usual way, and for some distinct purpose. See **Construct**.

See also Broad interpretation; Comparative interpretation; Four corners rule; Interpretation; Last antecedent rule; Literal construction; Statutory construction; Strict consideration.

Equitable construction. A construction of a law, rule, or remedy which has regard more to the equities of the particular transaction or state of affairs involved than to the strict application of the rule or remedy; that is, a liberal and extensive construction, as opposed to a literal and restrictive. See also *Liberal construction* below.

Strict and liberal construction. Strict (or literal) construction is construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications.

Liberal (or equitable) construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used. It resolves all reasonable doubts in favor of the applicability of the statute to the particular case. It means, not that the words should be forced out of their natural meaning, but simply that they should receive a fair and reasonable interpretation with respect to the objects and purposes

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of the instrument. See also *Equitable construction* above.

—*Black's Law Dictionary*, 1979

[**Construction**

[**Construe**. To put together; to arrange or marshal the words of an instrument. To ascertain the meaning of language by a process of arrangement and inference. See

Construction.

—*Black's Law Dictionary*, 1979

[**Construe**

[**CONSUMMATE**. Complete; finished; entire.

A marriage is said to be consummate. A right of dower is *inchoate* when coverture and seisin concur, *consummate* upon the husband's death. 1 Washb. R. P. 250, 251. A tenancy by the curtesy is *initiate* upon the birth of issue, and consummate upon the death of the wife. 1 Washb. R. P. 140; 13 Conn. 83; 2 Me. 400; 2 Bla. Com. 128.

A contract is said to be consummated when every thing to be done in relation to it has been accomplished. It is frequently of great importance to know when a contract has been consummated, in order to ascertain the rights of the parties, particularly in the contract of sale. See DELIVERY, where the subject is more fully examined. It is also sometimes of consequence to ascertain where the consummation of the contract took place, in order to decide by what law it is to be governed. See CONFLICT OF LAWS; LEX LOCI.

—*Bouvier's Law Dictionary*, 1889

[**CONSUMMATE**

[**Consummate** *adj.* Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 Bl.Comm. 126, 128.

—*Black's Law Dictionary*, 1979

[**Consummate**

[**Consummate** *v.* To finish by completing what was intended; bring or carry to utmost point or degree; carry or bring to completion; finish; perfect; fulfill; achieve. See also **Consummation**.

—*Black's Law Dictionary*, 1979

[**Consummate**

[**consummate** *tr.v....* **1.a.** to bring to completion or fruition; conclude: *consummate a business transaction*. **b.** To realize or achieve; fulfill: *a dream that was finally consummated with the publication of her first book*. **2.a.** To complete (a marriage) with the first act of sexual intercourse after the ceremony. **b.** To fulfill (a sexual desire or attraction) especially by intercourse.... *adj.* **1.** Complete or perfect in every respect: *consummate happiness*. See Synonyms at **perfect**. **2.** Supremely accomplished or skilled: "*Sargent was now a consummate master of brushwork*" (Robert Smith). **3.** Complete; utter; *a consummate bore*....

—*The American Heritage Dictionary of the English Language*, 1992

[**consummate**

[**Consummation** The completion of a thing; the completion of a marriage by cohabitation (*i.e.* sexual intercourse) between spouses.

—*Black's Law Dictionary*, 1979

[**Consummation**

[**consummation** *n.* **1.** The act of consummating; a fulfillment. **2.** An ultimate goal or end. —*The American Heritage Dictionary of the English Language*, 1992

[**consummation**

[**CONTRACT** An agreement between two or more parties to do or not to do a particular thing. Taney, C. J., 11 Pet. 420, 572. An agreement in which a party undertakes to do or not to do a particular thing. Marshall, C. J., 4 Wheat. 197. An agreement between two or more parties for the doing or not doing of some specified thing. 1 Pars. Com. 5.

It has been variously defined, as follows: A compact between two or more parties. 6 Cranch, 87, 136. An agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises. Encyc. Amer.; Webster. A contract or agreement is where a promise is made on one side and assented to on the other; or where two or more persons enter into an engagement with each other by a promise on either side. 2 Steph. Com. 108, 109.

An agreement upon sufficient consideration to do or not to do a particular thing. 2 Bla. Com. 446; 2 Kent, 449.

A covenant or agreement between two parties with a lawful consideration or cause. West, Symbol, Lib. 1, § 10; Cowel: Blount.

A deliberate engagement between competent parties upon a legal consideration to do or to abstain from doing some act. Story, Contr. § 1.

A mutual promise upon lawful consideration or cause which binds the parties to a performance. The writing which contains the agreement of parties with the terms and conditions, and which serves as a proof of the obligation. The last is a distinct signification. 2 Hill, N. Y. 551.

A voluntary and lawful agreement by competent parties, for a good consideration, to do or not to do a specified thing. 9 Cal. 83.

An agreement enforceable at law, made between two or more persons, by which rights are acquired by one or both to acts or forbearances on the part of the other. Anson, Contr. 9.

The consideration is not properly included in the definition of contract, because it does not seem to be essential to a contract, although it may be necessary to its enforcement. See CONSIDERATION. 1 Pars. Contr. 7. Mr. Stephen, whose definition of contract is given above, thus criticizes the definition of Blackstone, which has been adopted by Chancellor Kent and other high authorities. *First*, that the word *agreement* itself requires definition as much as contract. *Second*, that the

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existence of a consideration, though essential to the validity of a parol contract, forms properly no part of the idea. *Third*, that the definition takes no sufficient notice of the mutuality which properly distinguishes a contract from a promise. 2 Steph. Com. 109.

The use of the word *agreement* (*aggregatio mentium*) seems to have the authority of the best writers in ancient and modern times (see above) as a part of the definition of contract. It is probably a translation of the civil-law *conventio* (*con* and *venio*), a coming together, to which (being derived from *ad* and *grex*) it seems nearly equivalent. We do not think the objection that it is a synonym (or nearly so) a valid one. Some word of the kind is necessary as a basis of the definition. No two synonyms convey precisely the same idea. "Most of them have minute distinctions," says Reid. If two are entirely equivalent, it will soon be determined by accident which shall remain in use and which become obsolete. To one who has no knowledge of a language, it is impossible to define any abstract idea. But to one who understands a language, an abstraction is defined by a synonym properly qualified. By pointing out distinctions and the mutual relations between synonyms, the object of definition is answered. Hence we do not think Blackstone's definition open to the first objection.

As to the idea of consideration, Mr. Stephen seems correct and to have the authority of some of the first legal minds of modern times. Consideration, however, may be necessary to enforce a contract, though not essential to the idea. Even in that class of contracts (by specialty) in which no consideration is in fact required, one is always presumed by law, - the form of the instrument being held to import a consideration. 2 Kent, 450, note.

A contract without consideration is called a *nudum pactum* (nude pact), but it is still a *pactum*; and this implies that consideration is not an essential. The third objection of Mr. Stephen to the definition of Blackstone does not seem one to which it is fairly open.

There is an idea of mutuality in *con* and *traho*, to draw together, but we think that mutuality is implied in agreement as well. An *aggregatio mentium* seems impossible without mutuality. Blackstone in his analysis appears to have regarded agreement as implying mutuality; for he defines it (2 Bla. Com. 442) "a mutual bargain or convention." In the above definition, however, all ambiguity is avoided by the use of the words "between two or more parties" following agreement.

In its widest sense, "contract" includes records and specialties; but this use as a general term for all sorts of obligations, though of too great authority to be now doubted, seems to be an undue extension of the proper meaning of the term, which is much more nearly equivalent to "agreement," which is never applied to specialties. Mutuality is of the very essence of both, - not only mutuality of assent, but of act. As expressed by Lord Coke, *Actus contra actum*; 2 Co. 15; 7 M. & G. 998, argum. and note.

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This is illustrated in contracts of sale, bailment, hire, as well as partnership and marriage; and no other engagements but those with this kind of mutuality would seem properly to come under the head of contracts. In a bond there is none of this mutuality, - no act to be done by the obligee to make the instrument binding. In a judgment there is no mutuality either of act or of assent. It is *judicium redditum in invitum*. It may properly be denied to be a contract, though Blackstone insists that one is implied. *Per Mansfield*, 3 Burr. 1545; 1 Cow. 316; *per Story*, J., 1 Mas. 288. Chitty uses "obligation" as an alternative word of description when speaking of bonds and judgments. Chit. Con. 2, 4. An act of legislature may be a contract; so may a legislative grant with exemption from taxes. 5 Ohio St. 361. So a charter is a contract between a state and a corporation within the meaning of the constitution of the United States, art. 1, § 10, clause 1. 27 Miss. 417. See IMPAIRING THE OBLIGATION OF CONTRACTS.

At common law, contracts have been divided ordinarily into contracts of record, contracts by specialty, and simple or parol contracts. The latter may be either written (not sealed) or verbal; and they may also be express or implied. Implied contracts may be either implied in law or implied in fact. "The only difference between an express contract and one implied in fact is in the mode of substantiating it. An express agreement is proved by express words, written or spoken * * * ; an implied agreement is proved by circumstantial evidence showing that the parties intended to contract;" Leake, Contr. 11; 1 B. & Ad. 415; 1 Aust. Jur. 356, 377

Accessory contracts are those made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledges. Louis. Code, art. 1764; Poth. Obl. pt. 1, c. 1, s. 1, art. 2, n. 14.

Contracts of beneficence are those by which only one of the contracting parties is benefited: as, loans, deposit, and mandate. Louis. Code, art. 1767.

Certain Contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated.

Commutative contracts are those in which what is done, given, or promised by one part is considered as an equivalent to or in consideration of what is done, given, or promised by the other. Louis. Code, art. 1761.

Consensual contracts were contracts of agency, partnership, sale, and hiring in the Roman law, in which a contract arose from the mere consensus of the parties, without other formalities; Maine, Anc. Law, 243.

Entire contracts are those the consideration of which is entire on both sides.

Executed contracts are those in which nothing remains to be done by either party, and where the transaction has been completed, or was completed at the time the contract or agreement was made: as, where an article is sold and delivered and payment therefore is made on the spot.

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Executory contracts are those in which some act remains to be done: as, when an agreement is made to build a house in six months; to do an act before some future day; to lend money upon a certain interest payable at a future time; 6 Cranch, 87, 136.

A contract *executed* (which differs in nothing from a grant) conveys a chose in possession; a contract *executory* conveys a chose in action. 2 Bla. Com. 443. As to the importance of grants considered as contracts, see IMPAIRING THE OBLIGATION OF CONTRACTS.

Express contracts are those in which the terms of the contract or agreement are openly and fully uttered and avowed at the time of making: as, to pay a stated price for certain specified goods; to deliver an ox, etc. 2 Bla. Com. 443.

Gratuitous contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceed either from gratitude for a benefit before received or from the hope of receiving one hereafter, although such benefit be of a pecuniary nature. Louis. Code, 1766. Gratuitous promises are not binding at common law unless executed with certain formalities, vis., by execution under seal.

Hazardous contracts are those in which the performance of that which is one of its objects depends on an uncertain event. Louis. Code, art. 1769.

Implied contracts may be either implied *in law* or *in fact*. A contract implied *in law* arises where some pecuniary inequality exists in one party relatively to the other which justice requires should be compensated, and upon which the law operates by creating a debt to the amount of the required compensation; Leake, Contr. 38. See 2 Burr. 1005; 11 L. J. C. P. 99; 8 C. B. 541. The case of the defendant obtaining the plaintiff's money or goods by fraud, or duress, shows an implied contract to pay the money or the value of the goods.

A contract implied *in fact* arises where there was not an express contract, but there is circumstantial evidence showing that the parties did intend to make a contract; for instance, if one orders goods of a tradesman or employs a man to work for him, without stipulating the price or wages, the law raises an implied contract (*in fact*) to pay the real value of the goods or services. In the former class, the implied contract is a pure fiction, having no real existence; in the latter, it is inferred as an actual fact. See Leake, Contr.

Independent contracts are those in which the mutual acts or promises have no relation to each other either as equivalents or as considerations. Louis. Code, art. 1762.

Mixed contracts are those by which one of the parties confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge.

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Contracts of mutual interest are such as are entered into for the reciprocal interest and utility of each of the parties: as sales, exchange, partnership, and the like.

Onerous contracts are those in which something is given or promised as a consideration for the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value.

Oral Contracts are simple contracts.

Principal contracts are those entered into by both parties on their own accounts, or in the several qualities or characters they assume.

Real contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit, or pledge, which, from their nature, require a delivery of the thing (*res*).

Reciprocal contracts are those by which the parties expressly enter into mutual engagements, such as sale, hire, and the like.

Contracts of record are those which are evidenced by matter of record, such as judgments, recognizances, and statutes staple.

These are the highest class of contracts. Statutes merchant and staple, and other securities of the like nature, are confined to England. They are contracts entered into by the intervention of some public authority, and are witnessed by the highest kind of evidence, viz., matter of record. 4 Bla. Com. 465.

Severable (or separable) contracts are those the considerations of which are by their terms susceptible of apportionment or division on either side, so as to correspond to the several parts or portions of the consideration on the other side.

A contract to pay a person the worth of his services as long as he will do certain work, or so much per week as long as he shall work, or to give a certain price per bushel for every bushel of so much corn as corresponds to a sample, would be a severable contract. If the part to be performed by one party consists of several distinct and separate items, and the price to be paid by the other is apportioned to each item to be performed, or is left to be implied by law, such a contract will generally be held to be severable. So when the price to be paid is clearly and distinctly apportioned to different parts of what is to be performed, although the latter is in its nature single and entire. But the mere fact of sale by weight or measure - *i. e.* so much per pound or bushel - does not make a contract severable.

Simple contracts are those not of specialty or record.

They are the lowest class of express contracts, and answer most nearly to our general definition of contract.

To constitute a sufficient parol agreement to be binding in law, there must be that reciprocal and mutual assent which is necessary to all contracts. They are by parol (which includes both oral and written). The only distinction between oral and written contracts is in their mode of proof. And it is inaccurate to distinguish *verbal*

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from *written*; for contracts are equally *verbal* whether the words are *written* or spoken, - the meaning of verbal being - *expressed in words*. See 3 Burr. 1670; 7 Term, 350, note; 11 Mass. 27, 30; 5 *id.* 299, 301; 7 Conn. 57; 1 Caines, 386.

Specialties are those which are under seal: as, deeds and bonds.

Specialties are sometimes said to include also contracts of record, 1 Pars. Con. 7; in which case there would be but two classes at common law, viz., specialties and simple contracts. The term specialty is always used substantively.

They are the second kind of express contracts under the ordinary common-law division. They are not merely written, but *signed*, *sealed*, and *delivered* by the party bound. The solemnities connected with these acts, and the formalities of witnessing, gave in early times an importance and character to this class of contracts which implied so much caution and deliberation (consideration) that it was unnecessary to prove the consideration even in a court of equity. Plowd. 305; 7 Term, 477; 4 B. & Ad. 652; 3 Bingham. 111; 1 Fonb. Eq. 342, note. Though little of real solemnity now remains, and a scroll is substituted in most of the states for the seal, the distinction with regard to specialties has still been preserved intact except when abolished by statute. In 13 Cal. 33, it is said that the distinction is now unmeaning and not sustained by reason. See CONSIDERATION.

When a contract by specialty is changed by a parol agreement, the whole contract becomes parol. 2 Watts, 451; 9 Pick. 298; 13 Wend. 71.

Unilateral contracts are those in which the party to whom the engagement is made makes no express agreement on his part.

They are so called even in cases where the law attaches certain obligations to his acceptance. Louis. Code, art. 1758. A loan for use and a loan of money are of this kind. Poth. Obl. pt. 1, c. 1, s. 1, art. 2.

Verbal contracts are simple contracts.

Written contracts are those evidenced by writing.

Pothier's treatise on Obligations, taken in connection with the Civil Code of Louisiana, gives an idea of the divisions of the civil law. Poth. Obl. pt. 1. c. 1, s. 1. art. 2, makes the five following classes: *reciprocal* and *unilateral*; *consensual* and *real*; *those of mutual interest*, *of beneficence* and *mixed*; *principal* and *accessory*; *those which* are subjected by the civil law to certain rules and forms, and *those which* are regulated by mere natural justice.

It is true that almost all the rights of personal property do in great measure depend upon contracts of one kind or other, or at least might be reduced under some of them; which is the method taken by the civil law; it has referred the greatest part of the duties and rights of which it treats to the head of obligations *ex contractu* or *quasi ex contractu*. Inst. 3. 14. 2; 2 Bla. Com. 443.

Qualities of. Every agreement should be so complete as to give either party his action upon it; both parties must assent to all its terms; Peak. 227; 3 Term, 653; 1

B. & Ald. 681; 1 Pick. 278. To the rule that the contract must be obligatory on both parties there are some exceptions: as the case of an infant, who may sue, though he cannot be sued, on his contract; Stra. 937. See other instances, 6 East, 307; 3 Taunt. 169; 5 *id.* 788; 3 B. & C. 232. There must be a good and valid consideration (*q.v.*), which must be proved though the contract be in writing; 7 Term, 350, note (a); 2 Bla. Com. 444; Fonb. Eq. 335, n. (a); Chitty, Bills, 68. There is an exception to this rule in the case of bills and notes, which are of themselves *primâ facie* evidence of consideration. And in other contracts (written) when consideration is acknowledged, it is *primâ facie* evidence thereof, but open to contradiction by parol testimony. There must be a thing to be done which is not forbidden by law, or one to be omitted which is not enjoined by law. Fraudulent, immoral, or forbidden contracts are void. A contract is also void if against public policy or the statutes, even though the statute be not prohibitory but merely affixes a penalty. Chitty, Com. L. 215, 217, 222, 228, 250; 1 Binn. 110, 118; 4 Dall. 269, 298; 4 Yeates, 24, 84; 28 Ala. 514; 7 Ind. 132; 4 Minn. 278; 30 N.H. 540; 2 Sandf. 146. But see 5 Ala. 250. As to contracts which cannot be enforced from non-compliance with the statute of frauds, see FRAUDS, STATUTE OF.

Construction and interpretation in reference to contracts. The intention of the parties is the pole-star of construction; but their intention must be found expressed in the contract and be consistent with rules of law. The court will not make a new contract for the parties, nor will words be forced from their real signification.

The subject-matter of the contract and the situation of the parties are to be fully considered with regard to the sense in which language is used.

The legality of the contract is presumed and is favored by construction.

Words are to be taken, if possible, in their comprehensive and common sense.

The whole contract is to be considered with relation to the meaning of any of its parts.

The contract will be supported rather than defeated: *ut res magis valeat quam pereat*.

All parts will be construed, if possible, so as to have effect.

Construction is generally against the grantor - *contra proferentem* - except in the case of the sovereign.

This rule of construction is not of great importance, except in the analogous case of penal statutes; for the law favors and supposes innocence.

Construction is against claims or contracts which are in themselves against common right or common law.

Neither false English nor bad Latin invalidates a contract ("which perhaps a classical critic may think no unnecessary caution"). 2 Bla. Com. 379; 6 Co. 59.

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Parties. There is no contract unless the *parties* assent thereto; and where such assent is impossible from the want, immaturity, or incapacity of mind of one of the parties, there can be no perfect contract. See PARTIES.

Remedy. The foundation of the common law of contracts may be said to be the giving of damages for the breach of contracts. When the thing to be done is the payment of money, damages paid in money are entirely adequate. When, however, the contract is for any thing else than the payment of money, the common law knows no other than a money remedy: it has no power to enforce a specific performance of the contract.

The injustice of measuring all rights and wrongs by a money standard, which as a remedy is often inadequate, led to the establishment of the equity power of decreeing specific performance when the remedy has failed at law. For example: contracts for the sale of real estate will be specifically enforced in equity; performance will be decreed, and conveyances compelled.

See, generally, as to contracts, Bouv. Inst. Index; Parson, Chitty, Comyns, Leake, Anson, and Story, on Contracts; Com. Dig. *Abatement* (E, 12) (F, 8), *Admiralty* (E, 10, 11), *Action on Case on Assumpsit, Agreement, Bargain and Sale, Baron et Feme* (2), *Condition, Debt* (A, 8, 9), *Enfant* (B, 5), *Idiot* (D, 1), *Merchant* (E, 1), *Pleader* (2 W, 11, 43), *Trade* (D, 3), *War* (B, 2); Bac. Abr. *Agreement, Assumpsit, Condition, Obligation*; Vin. Abr. *Condition, Contract and Agreements, Covenant, Vendor, Vendee*; 2 Belt, Sup. Ves. 260, 295, 376, 441; Yelv. 47; 4 Ves. 497, 671; Arch. Civ. Pl. 22; La. Civ. Code, 3, tit. 3-18; Poth. Obl.; Maine, Anc. Law; Austin, Jurisp.; Sugd. Ven. & P.; Long, Sales (Rand. ed.), and Benj. Sales; Jones, Story, and Edwards, on Bailment; Toull. *Dr. Civ.* tom. 6, 7; Hamm. Part. c. 1; Calv. Par.; Chitty, Prac, Index.

Each subject included in the law of contracts will be found discussed in the separate articles of this Dictionary. See AGREEMENT; APPORTIONMENT; APPROPRIATION; ASSENT; ASSIGNMENT; ASSUMPSIT; ATTESTATION; BAILMENT; BARGAIN AND SALE; BIDDER; BILATERAL CONTRACT; BILL OF EXCHANGE; BUYER; COMMODATE; CONDITION; CONSENSUAL; CONJUNCTIVE; CONSUMMATION; CONSTRUCTION; COVENANT; DEBT; DEED; DELEGATION; DELIVERY; DISCHARGE OF A CONTRACT; DISJUNCTIVE; EQUITY OF REDEMPTION; EXCHANGE; GUARANTY; IMPAIRING THE OBLIGATION OF CONTRACTS; INSURANCE; INTEREST; INTERESTED CONTRACTS; ITEM; MISREPRESENTATION; MORTGAGE; NEGOCIORUM GESTOR; NOVATION; OBLIGATION; PACTUM CONSTITUTÆ PECUNIÆ; PARTIES; PARTNERS; PARTNERSHIP; PAYMENT; PLEDGE; PROMISE; PURCHASER; QUASI CONTRACTUS; REPRESENTATION; SALE; SELLER; SETTLEMENT; SUBROGATION; TITLE.

—*Bouvier's Law Dictionary*, 1889

[CONTRACT

[Contract. An agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. *Lamoureux v. Burrillville Racing Ass'n*, 91 R.I. 94, 161 A.2d 213, 215. Under U.C.C., term refers to total legal obligation which results from parties' agreement as affected by the Code. Section 1-201(11). As to sales, "contract" and "agreement" are limited to those relating to present or future sales of goods, and "contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. U.C.C. § 2-106(1).

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation.

Contracts may be classified on several different methods, according to the element in them which is brought into prominence. The usual classifications are as follows:

Certain and hazardous. Certain contracts are those in which the thing to be done is supposed to depend on the will of the party, or when, in the usual course of events, it must happen in the manner stipulated. Hazardous contracts are those in which the performance of that which is one of its objects depends on an uncertain event.

Commutative and independent. Commutative contracts are those in which what is done, given, or promised by one party is considered as an equivalent to or in consideration of what is done, given, or promised by the other. Independent contracts are those in which the mutual acts or promises have no relation to each other, either as equivalents or as considerations.

Conditional contract. An executory contract the performance of which depends upon a condition. It is not simply an executory contract, since the latter may be an absolute agreement to do or not to do something, but it is a contract whose very existence and performance depend upon a contingency.

Consensual and real. Consensual contracts are such as are founded upon and completed by the mere agreement of the contracting parties, without any external formality or symbolic act to fix the obligation. Real contracts are those in which it is necessary that there should be something more than mere consent, such as a loan of money, deposit or pledge, which, from their nature, require a delivery of the thing (*res*). In the common law a contract respecting real property (such as a lease of land for years) is called a "real" contract.

Constructive contract. See **Constructive contract**; also *Express and implied*; *Quasi contract, infra*.

Cost-plus contract. See **Costs**.

Divisible and indivisible. The effect of the breach of a contract depends in a large degree upon whether it is to be regarded as indivisible or divisible; *i.e.* whether it forms a whole, the performance of every part of which is a condition precedent to bind the other party, or is composed of several independent parts, the performance of any one of which will bind the other party *pro tanto*. The only test is whether the

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whole quantity of the things concerned, or the sum of the acts to be done, is of the essence of the contract. It depends, therefore, in the last resort, simply upon the intention of the parties. *Integrity Flooring v. Zandon Corporation*, 130 N.J.L. 244, 32 A.2d 507, 509.

When a consideration is entire and indivisible, and it is against law, the contract is void *in toto*. When the consideration is divisible, and part of it is illegal, the contract is void only *pro tanto*. *Gelpcke v. Dubuque*, 68 U.S. (1 Wall.) 220, 17 L.Ed. 530.

Entire and severable. An *entire* contract is one the consideration of which is entire on both sides. The entire fulfillment of the promise by either is a condition precedent to the fulfillment of any part of the promise by the other. Whenever, therefore, there is a contract to pay the gross sum for a certain and definite consideration, the contract is entire. A *severable* contract is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample.

Where a contract consists of many parts, which may be considered as parts of one whole, the contract is entire. When the parts may be considered as so many distinct contracts, entered into at one time, and expressed in the same instrument, but not thereby made one contract, the contract is a separable contract. But, if the consideration of the contract is single and entire, the contract must be held to be entire, although the subject of the contract may consist of several distinct and wholly independent items.

Entire contract clause. A provision in the insurance contract stating that the entire agreement between the insured and insurer is contained in the contract, including the application (if attached), declarations, insuring agreement, exclusions, conditions, and endorsements.

Exclusive contract. See *Requirements contract*; *Tying contract, infra*.

Executed and executory. Contracts are also divided into executed and executory; *executed*, where nothing remains to be done by either party, and where the transaction is completed at the moment that the arrangement is made, as where an article is sold and delivered, and payment therefor is made on the spot; *executory*, where some future act is to be done, as where an agreement is made to build a house in six months, or to do an act on or before some future day, or to lend money upon a certain interest, payable at a future time.

Express and implied. An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.

An implied contract is one not created or evidenced by the explicit agreement of the parties, but inferred by the law, as a matter of reason and justice from their acts or

conduct, the circumstances surrounding the transaction making it a reasonable, or even a necessary, assumption that a contract existed between them by tacit understanding.

Implied contracts are sometimes subdivided into those “implied in fact” and those “implied in law,” the former being covered by the definition just given, while the latter are obligations imposed upon a person by the law, not in pursuance of his intention and agreement, either expressed or implied, but even against his will and design, because the circumstances between the parties are such as to render it just that the one should have a right, and the other a corresponding liability, similar to those which would arise from a contract between them. This kind of obligation therefore rests on the principle that whatsoever it is certain a man ought to do that the law will suppose him to have promised to do. And hence it is said that, while the liability of a party to an express contract arises directly from the contract, it is just the reverse in the case of a contract “implied in law,” the contract there being implied or arising from the liability. *Bliss v. Hoyt*, 70 Vt. 534, 41 A. 1026; *Kellum v. Browning’s Adm’r*, 231 Ky. 308, 21 S.W.2d 459, 465. But obligations of this kind are not properly contracts at all, and should not be so denominated. There can be no true contract without a mutual and concurrent intention of the parties. Such obligations are more properly described as “quasi contracts.” See **Constructive contract**; also *Quasi contract, infra*.

Gratuitous and onerous. Gratuitous contracts are those of which the object is the benefit of the person with whom it is made, without any profit or advantage received or promised as a consideration for it. It is not, however, the less gratuitous if it proceed either from gratitude for a benefit before received or from the hope of receiving one thereafter, although such benefit be of a pecuniary nature. Onerous contracts are those in which something is given or promised as a consideration for the engagement or gift, or some service, interest, or condition is imposed on what is given or promised, although unequal to it in value. A gratuitous contract is sometimes called a contract of beneficence.

Investment contract. A contract in which one party invests money or property expecting a return on his investment. See also **Investment contract**; **Security**.

Joint and several. A joint contract is one made by two or more promisors, who are jointly bound to fulfill its obligations, or made to two or more promisees, who are jointly entitled to require performance of the same. A contract may be “several” as to any one of several promisors or promisees, if he has a legal right (either from the terms of the agreement or the nature of the undertaking) to enforce his individual interest separately from the other parties. Generally all contracts are joint where the interest of the parties for whose benefit they are created is joint, and separate where that interest is separate.

Mutual interest, mixed, etc. Contracts of “mutual interest” are such as are entered into for the reciprocal interest and utility of each of the parties; as sales, exchange, partnership, and the like. “Mixed” contracts are those by which one of the parties

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confers a benefit on the other, receiving something of inferior value in return, such as a donation subject to a charge. Contracts “of beneficence” are those by which only one of the contracting parties is benefited; as loans, deposit and mandate.

Open end contract. Contract (normally sales contract) in which certain terms (e.g. order amount) are deliberately left open.

Output contract. A contract in which one party agrees to sell his entire output and the other agrees to buy it; it is not illusory, though it may be indefinite. See also *Requirements contract, infra.*

Parol contract. A contract not in writing, or partially in writing. At common law, a contract, though it may be in writing, not under seal. See **Parol evidence rule.**

Personal contract. A contract relating to personal property, or one which so far involves the element of personal knowledge or skill or personal confidence that it can be performed only by the person with whom made, and therefore is not binding on his executor.

Pre-contract. An obligation growing out of a contract or contractual relation, of such a nature that it debars the party from legally entering into a similar contract at a later time with any other person.

Principal and accessory. A principal contract is one entered into by both parties on their own account or in the several qualities they assume. It is one which stands by itself, justifies its own existence, and is not subordinate or auxiliary to any other. Accessory contracts are those made for assuring the performance of a prior contract, either by the same parties or by others, such as suretyship, mortgage, and pledge. Civ.Code La. art. 1771.

Quasi contract. Legal fiction invented by common law courts to permit recovery by contractual remedy in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise. It is not based on intention or consent of the parties, but is founded on considerations of justice and equity, and on doctrine of unjust enrichment. It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it. It is what was formerly known as the contract implied in law; it has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of their intention. See also **Constructive contract.**

In the civil law, a contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. The lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties. Civ.Code La. art. 2293.

Record, specialty, simple. Contracts of record are such as are declared and adjudicated by courts of competent jurisdiction, or entered on their records, including judgments, recognizances, and statutes staple. These are not properly speaking contracts at all, though they may be enforced by action like contracts. Specialties, or special contracts, are contracts under seal, such as deeds and bonds. All others are included in the description “simple” contracts; that is, a simple contract is one that is not a contract of record and not under seal; it may be either written or oral, in either case, it is called a “parol” contract, the distinguishing feature being the lack of a seal.

Requirements contract. A contract in which one party agrees to purchase his total requirements from the other party and hence it is binding and not illusory. See also *Output contract, supra*.

Shipment contract. A contract calling for shipment of goods and in which shipment is excused if ship is lost. *Texas Co. v. Hogarth Shipping Co.*, 256 U.S. 619, 41 S.Ct. 612, 65 L.Ed. 1123.

Special contract. A contract under seal; a specialty; as distinguished from one merely oral or in writing not sealed. But in common usage this term is often used to denote an express or explicit contract, one which clearly defines and settles the reciprocal rights and obligations of the parties, as distinguished from one which must be made out, and its terms ascertained, by the inference of the law from the nature and circumstances of the transaction. A special contract may rest in parol, and does not mean a contract by specialty; it is defined as one with peculiar provisions not found in the ordinary contracts relating to the same subject-matter.

Subcontract. A contract subordinate to another contract, made or intended to be made between the contracting parties, on one part, or some of them, and a third party (*i.e.* subcontractor). One made under a prior contract.

Where a person has contracted for the performance of certain work (*e.g.*, to build a house), and he in turn engages a third party to perform the whole or a part of that which is included in the original contract (*e.g.*, to do the carpenter work), his agreement with such third person is called a “subcontract,” and such person is called a “subcontractor.” The term “subcontractor” means one who has contracted with the original contractor for the performance of all or a part of the work or services which such contractor has himself contracted to perform.

Tying contract. See **Tying arrangement**.

Unconscionable contract. One which no sensible man not under delusion, duress, or in distress would make, and such as no honest and fair man would accept. *Franklin Fire Ins. Co. v. Noll*, 115 Ind.App. 289, 58 N.E.2d 947, 949, 950. A contract the terms of which are excessively unreasonable, overreaching and one-sided. See **Unconscionability**.

Unilateral and bilateral. A unilateral contract is one in which one party makes an express engagement or undertakes a performance, without receiving in return any

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express engagement or promise of performance from the other. Bilateral (or reciprocal) contracts are those by which the parties expressly enter into mutual engagements, such as sale or hire. *Kling Bros. Engineering Works v. Whiting Corporation*, 320 Ill.App. 630, 51 N.E.2d 1004, 1007. When the party to whom an engagement is made makes no express agreement on his part, the contract is called unilateral, even in cases where the law attaches certain obligations to his acceptance. A contract is also said to be “unilateral” when there is a promise on one side only, the consideration on the other side being executed.

Usurious contract. See **Usurious contract.**

Voidable contract. See **Voidable contract.**

Void contract. See **Void contract.**

Written contract. A “written contract” is one which in all its terms is in writing. Commonly referred to as a formal contract.

See also Adhesion contract; Agreement; Aleatory contract; Alteration of contract; Bilateral contract; Bottom hole contract; Breach of contract; Collateral contract; Compact; Constructive contract; Contingency contract; Entire output contract; Executory contract; Formal contract; Futures contract; Indemnity contract; Innominate contracts; Installment contract; Integrated contract; Investment contract; Letter contract; Letter of intent; Literal contract; Marketing contract; Novation; Oral contract; Parol evidence rule; **Privity** (Privity of contract); Procurement contract; Severable contract; Simulated contract; Specialty. For “liberty of contract”, see **Liberty**.
—*Black’s Law Dictionary*, 1979

[**Contract**

[**contract** *n.*.... **1.a.** An agreement between two or more parties, especially one that is written and enforceable by law. **b.** The writing or document containing such an agreement. **2.** The branch of law dealing with formal agreements between parties. **3.** Marriage as a formal agreement; betrothal. **4. Games.** **a.** The last and highest bid of one hand in bridge. **b.** The number of tricks thus bid. **c.** Contract bridge. **5.** A paid assignment to murder someone: *put out a contract on the mobster’s life....* —*tr.* **1.** To enter into by contract; establish or settle by formal agreement: *contract a marriage.* **2.** To acquire or incur: *contract obligations; contract a serious illness.* **3.a.** To reduce in size by drawing together; shrink. **b.** To pull together; wrinkle. **4. Grammar.** To shorten (a word or words) by omitting or combining some of the letters or sounds. —*intr.* **1.** To enter into or make an agreement: *contract for garbage collection.* **2.** To become reduced in size by or as if by being drawn together: *The pupils of the patient’s eyes contracted....*

SYNONYMS: *contract, condense, compress, constrict, shrink.* These verbs mean to decrease in size or content. To *contract* is to draw together, especially by an internal force, with a resultant reduction in size, extent, or volume: *The bodybuilders contracted their biceps in unison. The pupil of the eye dilates and contracts in response to light.* *Condense* refers to a reduction in volume and in increase in compactness: *“To produce snow requires both heat and cold; the first to*

evaporate, the second to condense" (John Lubbock). *The chairman condensed all the suggestions put forward into a single plan of action.* *Compress* applies to increased compactness brought about by pressing or squeezing; the term implies reduction in volume and change of form or shape: *compress dough into a circle with a rolling pin; sat on the lid of the suitcase to compress the clothes; trying to compress my thoughts into a few words.* To *constrict* is to make smaller or narrower, usually by binding or compression: *An accumulation of silt constricted the entrance to the harbor. Tight shoes constrict the feet.* *Shrink* refers to contraction that produces reduction in length, size, volume, or extent: *Wool jersey should be shrunk before being cut and stitched. Many once prosperous northern mill towns have shrunk as industry has moved to the South. His capital shrunk as his business foundered.* See also Synonyms at **bargain**.

—*The American Heritage Dictionary of the English Language*, 1992

[**contract**

[**contradistinguish**... *tr.v.* **-guished. -guish•ing, -guish•es.** To distinguish by contrasting qualities.

—*The American Heritage Dictionary of the English Language*, 1992

[**contradistinguish**

[**convalesce**.... *vi.*.... to recover health and strength gradually after sickness or weakness —**convalescence**..... *n* —**convalescent**....*adj* or *n*

—*Webster's Ninth New Collegiate Dictionary*, 1987

[**convalesce**

[**convalescence**.... *n.* **1.** Gradual return to health and strength after illness. **2.** The period needed for returning to health after illness. —**convalescent** *adj* & *n.*

—*The American Heritage Dictionary of the English Language*, 1992

[**convalescence**

[**COPYRIGHT.** The exclusive privilege, secured according to certain legal forms, of printing, publishing, and vending, copies of certain literary or artistic productions; it extends to books, maps, charts, dramatic or musical compositions, engravings, cuts, prints, or photographs thereof or of paintings, drawings, chromos, statues, statuary, or of models or designs intended to be perfected as works of the fine arts; to the public representatives of dramatic compositions; and to the right of authors to dramatize or translate their own works; see Burrill, Worcester, Dic.

The intellectual productions to which the law extends protection are of three classes. *First*, writings or drawings capable of being multiplied by the arts of printing or engraving. *Second*, designs of form or configuration capable of being reproduced upon the surface or in the shape of bodies. *Third*, inventions in what are called the useful arts. To the first class belong books, maps, charts, music, prints, and engravings; to the second class belong statuary, bas-reliefs, designs for ornamenting any surface, and configurations of bodies; the third class comprehends machinery, tools, manufactures, compositions of matter, and processes or methods in the arts. According to the practice of legislation in England and America, the term *copyright* is confined to the exclusive right secured to the author or proprietor

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of a writing or drawing, which may be multiplied by the arts of printing in any of its branches. Property in the other classes of intellectual objects is usually secured by letters-patent, and the interest is called a *patent-right*. But the distinction is arbitrary and conventional.

The foundation of all rights of this description is the natural dominion which every one has over his own ideas, the enjoyment of which, although they are embodied in visible forms or characters, he may, if he chooses, confine to himself or impart to others. But, as it would be impracticable in civil society to prevent others from copying such characters or forms without the intervention of positive law, and as such intervention is highly expedient, because it tends to the increase of human culture, knowledge, and convenience, it has been the practice of all civilized nations in modern times to secure and regulate the otherwise insecure and imperfect right which, according to the principles of natural justice, belongs to the author of new ideas.

This has been done by securing an exclusive right of multiplying copies for a limited period, as far as the municipal law of the particular country extends. But, inasmuch as the original right, founded in the principles of natural justice, is of an imperfect character, and requires, in order to be valuable, the intervention of municipal law, the law of nations has not taken notice of it as it has of some other rights of property; and therefore all copyright is the result of some municipal regulation, and exists only in the limits of the country by whose legislation it is established. The international copyright which is established in consequence of a convention between any two countries is not an exception to this principle; because the municipal authority of each nation making such convention either speaks directly to its own subjects through the treaty itself, or is exerted in its own limits by some enactment made in pursuance of the international engagement.

It was formerly doubtful in England whether copyright, as applied to books, existed at common law, and whether the first statute (8 Anne, c. 19) which undertook to regulate this species of incorporeal property had taken away the unlimited duration which must have existed at common law if that law recognized any right whatever.

The better opinion seems to be that the common law of England, before the statute of Anne, was supposed to admit the exclusive right of an author to multiply copies of his work by printing, and also his capacity to assign that right; for injunctions were granted in equity to protect it. See, on this subject, 4 Burr. 2303, 2408; 2 Brown, P. C. 145; 1 W. Bl. 301; 3 Swans. 673; 2 Ed. Ch. 327; 4 Hou. L. 815; 4 Exch. 145. But it has long been settled that, whatever the common-law right may have been before the statute, it was taken away by the statute, and that copyright exists only by force of some statutory provision; *Id.*; 8 Pet. 591; 17 How. 454; Drone, Copyright, 1.

In America, before the establishment of the constitution of the United States, it is doubtful whether there was any copyright at common law in any of the states; 8 Pet. 591. But some of the states had passed laws to secure the rights of authors,

and the power to do so was one of their original branches of sovereignty, afterwards ceded to congress. By art. 1, sect. 8, of the federal constitution, power was given to congress “to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.” Under this authority, an act of May 31, 1790, secured a copyright in maps, charts, and books; and an act of April 29, 1802, gave a similar protection to engravings.

The present statutes on this subject are, Rev. St. §§ 4948-4971.

The persons entitled to secure a copyright, and what may be protected. Any citizen of the United States, or resident therein, who shall be the author, inventor, proprietor, or designer of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, or of models and designs intended to be perfected as works of the fine arts, or the assigns of such person, may secure the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing, and vending the same; and, in the case of a dramatic composition, of performing or representing it, etc-; R. S. § 4952. The printing, publishing, importation, or sale of any book, map, chart, dramatic or musical composition, print, cut, engraving, photograph, written, composed, or made by any person not a citizen of the United States, nor resident therein, is not to be taken as prohibited by anything in the act; *id.* § 4971. The section does not mention paintings, drawings, chromos, statues, statuary, models, or designs; there appears to be nothing to prevent a resident owner of any of these productions from securing a valid copyright therein, though it be the work of a foreigner; Drone, Copyright, 232.

The term for which a copyright may be obtained is the period of twenty-eight years from the time of recording the title; and at the expiration of that period the author, inventor, or designer, if living and a citizen of the United States, or a resident thereof, or his widow and children, if he be dead, may re-enter for an additional or renewed term of fourteen years; *id.* §§ 4953, 4954.

The formalities requisite to the securing of the original term are: 1. The deposit of a printed copy of the title of the book, map, chart, musical composition, print, cut, or engraving, in the office of the Librarian of Congress, or in the mail addressed to the Librarian, etc.; or a description of the painting, etc.; or a model or design of the work of the fine arts; and the delivery at said office, or in the mail addressed to the Librarian, within ten days after publication, of a copy, etc. 2. The recording of that title by the Librarian of Congress. 3. The deposit of two copies of the best edition of the book, etc., with the Librarian within ten days of the time of publication. 4. The printing of a notice that a copyright has been secured, on the title-page of every copy, or the page immediately following, if it be a book, or on the face, if it be a map, chart, musical composition, print, cut, or engraving, or on the title or frontispiece, if it be a volume of maps, charts, music, or engravings, in the following words:-

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“Entered according to Act of Congress, in the year , by A B, in the office of the Librarian of Congress, at Washington.” In England the name of the author need not appear on the title-page; 7 Term, 620.

Prior to the act of congress “providing for keeping and distributing all public documents,” approved February 5, 1859, the law provided that one copy of each book or other production should be sent to the librarians of the Smithsonian Institution, and one to the Librarian of the Congressional Library. This provision is now repealed; and while in existence it was questionable whether a compliance with its conditions was essential to a valid copyright; 1 Blatchf. 618.

As to what will constitute a sufficient *publication* to deprive an author of his copyright: The public performance of a play is not such publication; 2 Biss. 34; the private circulation of even printed copies of a book is not; 5 McLean, 32; 9 Am. L. Reg. 33; 1 Macn. & G. 25; the deposit of a chart with the secretary of the navy with an express agreement that it was not to be published, is not; 2 Paine, 393; see generally, 7 Am. Rep. 488.

The remedy for an infringement of copyright is threefold. By an action of debt for certain penalties and forfeitures given by the statute. By an action on the case at common law for damages, founded on the legal right and the injury caused by the infringement. The action must be case, and not trespass; 2 Blatchf. 39. By a bill in equity for an injunction to restrain the further infringement, as an incident to which an account of the profits made by the infringer may be ordered by the court; 6 Ves. 705; 8 *id.* 323; 9 *id.* 341; 1 Russ. & M. 73, 159; 1 Y. & C. 197; 2 Hare, 560; though it cannot embrace penalties; 2 Curt. C. C. 200; 2 Blatchf. 39. The complainant in a bill in equity must show a *primâ facie* legal title; although a strictly legal title is not indispensable to relief. It is sufficient if there be clear color of title founded on long possession; 6 Ves. 689; 8 *id.* 215; 17 *id.* 422; Jac. 314, 471; 2 Russ. 385; 2 Phill. 154. As to the objections that may be taken by general demurrer, see 2 Blatchf. 39. The injunction may go against an entire work or a part; 2 Russ. 393; 3 Stor. 768; 17 Ves. 422; 3 M. & C. 737; 11 Sim. 31; 2 Beav. 6; 2 Brown, Ch. 80; though the court will not interfere where the extracts are trifling; 2 Swanst. 428; 1 Russ. & M. 73; 2 *id.* 247. Original jurisdiction in respect to all these remedies is vested in the circuit courts of the United States; Rev. Stat. § 629, cl. 9. Rev. Stat. § 4968 limits the action for the penalties and forfeitures to the period of two years after the cause of action arose. The remedy for an unauthorized printing or publishing of any manuscript is by a special action on the case, or by a bill in equity for an injunction. Original jurisdiction in these cases is likewise vested in the circuit courts.

Infringement. The statute provides that any person who shall print, publish, or import, or cause to be printed, published, or imported, any *copy* of a book which is under the protection of a copyright, without the consent of the proprietor of the copyright first obtained in writing, signed in the presence of two or more witnesses, or who shall, knowing the same to be so printed or imported, publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any *copy* of such book,

without such consent in writing, shall forfeit every copy of such book to the said proprietor, and shall also forfeit and pay such damages as may be recovered in a civil action brought by the proprietor, etc. In case of infringement of the copyright on maps, charts, and the objects other than books, paintings, statues, or statuary within consent, etc., as above, the infringer shall forfeit to the proprietor all the plates on which the same was copied, and every sheet thereof, and one dollar for every sheet in his possession; in case of paintings, statues, or statuary the infringer shall forfeit ten dollars for every copy; one-half to the proprietor, and one-half to the United States; Rev. Stat. §§ 4964, 4965. The act is confined to the sheets in the possession of the party who prints or exposes them to sale; 7 How 798. It has been held to be necessary to the recovery of these statutory penalties and forfeitures that the whole of the book should be reprinted; 23 Bost. Law Rep. 397.

But in order to sustain an action at common law for damages, or a bill in equity for an infringement of copyright, an exact reprint is not necessary. There may be a piracy. 1st. By *reprinting* the whole or part of a book *verbatim*. The mere quantity of matter taken from a book is not of itself a test of piracy; 3 M. & C. 737. Extracts and quotations fairly made, and not furnishing a substitute for the book itself, or operating to the injury of the author, are allowable; 17 Ves. 422; 17 Law Jour. 142; 1 Campb. 94; Ambl. 694; 2 Swanst. 428; 2 Stor. 100; 2 Russ. 383; 1 Am. Jur. 212; 2 Beav. 6; 11 Sim. 31. A “fair use” of a book, by way of quotation or otherwise, is allowable; 4 Clifford, 1; L. R. 8 Ex. 1; 31 L. T. N. S. 775; L. R. 18 Eq. 444; L. R. 5 Ch. 251; it may be for purposes of criticism, but so as not to supersede the work itself; 4 Clifford, 1; L. R. 8 Ex. 1; or in a later work to the extent of fair quotation; 11 Sim. 31; 31 L. T. N. S. 775; 2 Stor. 100; in compiling a directory, but not so as to save the compiler all independent labor; L. P. 1 Eq. 697; 7 *id.* 34; *id.* 5 Ch. 279; a descriptive catalogue of fruit, etc.; L. R. 18 Eq. 444; a book on Ethnology; L. R. 5 Ch. 251; a dictionary, provided the new book may fairly be considered a new work; 31 L. T. R. 16; the test in all cases is said to be “substantial identity;” Drone, Copyright, 408. 2d. By *imitating* or copying with colorable alterations and disguises, assuming the appearance of a new work. Where the resemblance does not amount to identity of parallel passages, the criterion is whether there is such similitude and conformity between the two books that the person who wrote the one must have used the other as a model, and must have copied or imitated it; see 5 Ves. 24; 8 *id.* 215; 12 *id.* 270; 16 *id.* 269, 422; 5 Swanst. 672; 2 Brown, Ch. 80; 2 Russ. 385; 2 S. & S. 6; 3 V. & B. 77; 1 Campb. 94; 1 East, 361; 4 Esp. 169; 1 Stor. 11; 3 *id.* 768; 2 W. & M. 497; 2 Paine, 393, which was the case of a chart. A fair and *bonâ fide* abridgment has in some cases been held to be no infringement of the copyright; 2 Atk. 141; Amb. 403; Lofft, 775; 1 Brown, Ch. 451; 5 Ves. 709; 2 Am. Jur. 491; 3 *id.* 215; 4 *id.* 456, 479; 4 Clifford, 1; 1 Y. & C. 298; 4 McLean, 306; 2 Stor. 105; 2 Kent, 382; see 3 Am. L. Reg. 129. But Mr Drone (Copyright, 440) maintains the contrary doctrine on principle. A translation has been held not to be a violation of the copyright of the original; 2 Wall. Jr. 547; S. C. 2 Am. L. Reg. 231. The correctness of this decision is questioned by Mr. Drone (Copyright, 455).

Miscellaneous Definitions

The title to a copyright is made assignable by that provision of the statute which authorizes it be taken out by the “legal assigns” of the author. An assignment may therefore be made before the entry for copyright; but, as the statute makes a written instrument, signed by the author, etc., and attested by two credible witnesses, necessary to a lawful authority in another to print, publish, and sell, a valid assignment or license, whether before or after the copyright is obtained by entry, must be so made. Whether a general assignment of the first term by the author will carry the interest in the additional or renewed term, see 2 Brown, Ch. 80; Jac. 315; 2 W. & M. 23.

The sole right of publicly performing or representing dramatic compositions, which have been entered for copyright under the act of 1831, by a supplemental act, passed August 18, 1856, is now added to the sole right of printing and publishing, and is vested in the author or proprietor, his heirs or assigns, during the whole period of the copyright; and authors may reserve the right to dramatize or translate their own works. These new rights, being made incident to the copyright, follow the latter whenever the formalities for obtaining it have been complied with. For an unlawful representation, the statute gives an action of damages, to be assessed at a sum not less than one hundred dollars for the first and at fifty dollars for every subsequent performance, as to the court shall seem just. The author’s remedy in equity is also saved. The statute does not apply to cases where the right of representation has been acquired before the composition has been made the subject of copyright. For a discussion of these acts, and of the nature and incidents of dramatic literary property, see 9 Am. Law Reg. 33, and 23 Bost. Law Rep. 397. On the general subject, see Curtis; Drone; Copyright; 1 Am. L. Reg. 45; 2 *id.* 129; 4 Clifford, 1.

—*Bouvier’s Law Dictionary*, 1889

[copyright

[Copyright. The right of literary property as recognized and sanctioned by positive law. An intangible, incorporeal right granted by statute to the author or originator of certain literary or artistic productions, whereby he is invested, for a limited period, with the sole and exclusive privilege of multiplying copies of the same and publishing and selling them.

Copyright protection subsists in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; and (7) sound recordings. In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work. Copyright Act, § 102.

“Common law copyright” is that right which author has in his unpublished literary creations, a kind of property right whose extent is to give him control over first publication of his work or to prevent its publication. *Hemingway’s Estate v. Random House, Inc.*, 53 Misc.2d 462, 279 N.Y.S.2d 51, 54. See **Common-law copyright**.

See also Fair use doctrine; First sale rule; Infringement; Limited publication; Literary property; Literary work.

—*Black’s Law Dictionary*, 1979

[**Copyright**

[**Copyright notice**. A necessary notice in the form required by law which is placed in each published copy of the work copyrighted. Copyright Act, § 401.

—*Black’s Law Dictionary*, 1979

[**Copyright notice**

[**Corporate alter ego, doctrine of**. Means that courts ignoring forms and looking to substance will regard stockholders as owners of corporation’s property, or as the real parties in interest whenever it is necessary to do so to prevent fraud which might otherwise be perpetrated, to redress a wrong which might otherwise go without redress, or to do justice which might otherwise fail. See **Piercing corporate veil**.

—*Black’s Law Dictionary*, 1979

[**Corporate alter ego, doctrine of**

[**CORPORATION** (Lat. *corpus*, a body). A body, consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by a succession of members.

It is this last characteristic of a corporation, sometimes called its immortality, prolonging its existence beyond the term of natural life, and thereby enabling a long-continued effort and concentration of means to the end which it was designed to answer, that constitutes its principal utility. A corporation is modelled upon a state or nation, and is to this day called a body *politic* as well as corporate, -thereby indicating its origin and derivation. Its earliest form was, probably, the municipality or city, which necessity exacted for the control or local police of the marts and crowded places of the state or empire. The combination of the commonalty in this form for local government became the earliest bulwark against despotic power: and a late philosophical historian traces to the remains and remembrance of the Roman *municipia* the formation of those elective governments of towns and cities in modern Europe, which, after the fall of the Roman empire, contributed so largely to the preservation of order and to the protection of the rights of life and property as to become the foundation of modern liberty. McIntosh, *Hist. of Eng.* pp. 31, 32.

Aggregate corporations are those which are composed of two or more members at the same time.

Civil corporations are those which are created to facilitate the transaction of business.

Miscellaneous Definitions

Ecclesiastical corporations are those which are created to secure the public worship of God.

Eleemosynary corporations are those which are created for the purposes of charities, such as schools, hospitals, and the like.

Lay corporations are those which exist for secular purposes.

Private corporations are those which are created wholly or in part for purposes of private emolument. 4 Wheat. 668; 9 *id.* 907.

Public corporations are those which are exclusively instruments of the public interest.

Sole corporations are those which by law consist of but one member at any one time.

By both the civil and the common law, the *sovereign* authority only can create a corporation, -a corporation by prescription, or so old that the license or charter which created it is lost, being presumed, from the long-continued exercise of corporate powers, to have been entitled to them by sovereign grant. In England, corporations are created by royal charter or parliamentary act; in the United States, by legislative act of any state, or of the congress of the United States, - congress having power to create a corporation, as, for instance, a national bank, when such a body is an appropriate instrument for the exercise of its constitutional powers; 4 Wheat. 424.

All corporations, of whatever kind, are moulded and controlled, both as to what they may do and the manner in which they may do it, by their charters or acts of incorporation, which to them are the laws of their being, which they can neither dispense with nor alter. Subject, however, to such limitations as these, or general statute or constitutional law, may impose, every coporation (sic) aggregate has, by virtue of incorporation and as incidental thereto, *first*, the power of perpetual succession, including the admission, and, except in the case of mere stock corporations, the removal for cause, of members; *second*, the power to sue and be sued, to grant and to receive grants, and to do all acts which it may do at all, in its corporate name; *third*, to purchase, receive, and to hold lands and other property, and to transmit them in succession; *fourth*, to have a common seal, and to break, alter, and renew it at pleasure; and, *fifth*, to make by-laws for its government, so that they be consistent with its charter and with law. Indeed, at this day, it may be laid down as a general rule that a corporation may, within the limits of its charter or act of incorporation express or implied, lawfully do all acts and enter into all contracts that a natural person may do or enter into, so that the same be appropriate as means to the end for which the corporation was created.

A corporation may be dissolved, if of limited duration, by the expiration of the term of its existence, fixed by charter or general law; by the loss of all its members, or of an integral part of the corporation, by death or otherwise, if the charter or act of incorporation provide no mode by which such loss may be supplied; by the surrender of its corporate franchise to, and the acceptance of the surrender by, the

sovereign authority; and, lastly, by the forfeiture of its charter by the neglect of the duties imposed or abuse of the privileges conferred by it; the forfeiture being enforced by proper legal process.

In England, a private as well as a public corporation may be dissolved by act of parliament; but in the United States, although the charter of a public corporation may be altered or repealed at pleasure, the charter of a private corporation, whether granted by the king of Great Britain previous to the revolution, or by the legislature of any of the states since, is, unless in the latter case express power be for that purpose reserved, within the protection of that clause of the constitution of the United States which, among other things, forbids a state from passing any "law impairing the obligation of contracts." Const. U.S. art. 1, sect. 10; 4 Wheat. 518. Under this clause of the constitution it has been settled that the charter of a private corporation, whether civil or eleemosynary, is an executed contract between the government and the corporation, and that the legislature cannot repeal, impair, or alter it against the consent or without the default of the corporation, judicially ascertained and declared. *Ibid.*

A corporate franchise, however, as to build and maintain a toll-bridge, may, by virtue of the power of eminent domain, be condemned by a state to public uses, upon just compensation, like any other private property; 6 How. 507.

—*Bouvier's Law Dictionary*, 1889

[corporation

[corporation 1. group of persons who obtain a charter giving them as a group certain legal rights and privileges distinct from those of the individual members of the group. A corporation can buy and sell, own property, etc., as if its members were a single person. 2. group of persons with authority to act as a single person. The mayor and aldermen of a city are a corporation. 3. prominent abdomen.

—*Thorndike Century Senior Dictionary*, 1941

[corporation

[corporation a fictitious person created by law, and endowed with many of the functions of a human being. In Roman law the most common word for expressing this idea was *universitas*. A *universitas* might either be *personarum* or *rerum*, that is to say, might consist either of an aggregate of persons or of things. The highest example of a *universitas personarum* was the Roman state itself: others were municipalities and private societies, on which the law had expressly conferred corporate privileges. It was, and still is, a fundamental principle that no corporation can be created simply by the act of private individuals. A corporation aggregate in Anglo-American law is governed by practically the same rules as a *universitas personarum* in Roman law. The chief of these are that the body has an existence independent of its members: they may die or resign, others taking their place, but it never changes. Also, it may possess common property and a common purse, distinct from those of its members. Debts, therefore, due to or by the corporation are not debts due to or by the individual composing it.

Miscellaneous Definitions

Corporations in the United States may be created either by a special act or charter of the State legislature, or, more commonly, by a charter granted by the executive (or occasionally by the judiciary) in pursuance of constitutional or statutory powers, or in virtue of a general act laying down conditions, compliance with which entitles anybody to corporate privileges. The special act or charter, or the original deed framed and registered in terms of a general act, forms the “constitution of the corporation. Within the limits laid down, the latter may make regulations and bylaws for the management of its affairs and carry on business; but any act which goes beyond these limits is null and void as being *ultra vires* (i.e. beyond its powers). However, the present tendency is to disregard the plea of *ultra vires* in controversies between a corporation and parties who are not stockholders of the corporation.

The chief advantage of an incorporated over an unincorporated body is that the members of the former are not, while those of the latter are, liable for its debts. All that the members of a corporation can be compelled to do is to pay to the common fund the full nominal value of the shares allotted to them (see COMPANY). Another advantage is that a corporation can sue and be sued in its registered name alone. A corporation can be both criminally prosecuted and civilly sued. It can not, or course, be imprisoned, but only fined, or in extreme cases dissolved. In the United States a body incorporated in one State can not claim equal rights in other States as ordinary citizens can; its right to do business in another State is subject to the regulation of the other State. By means of “general welfare clauses” inserted in incorporating charters, all States retain ample powers to interfere in the management of corporate bodies in the public interest. See CHARTER; STOCK; TRUST.

— *Funk & Wagnalls Standard Reference Encyclopedia*, 1963

[corporation

[Corporation. An artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals. Such entity subsists as a body politic under a special denomination, which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, irrespective of changes in its membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 518, 636, 657, 4 L.Ed. 629; *U.S. v. Trinidad Coal Co.*, 137 U.S. 160, 11 S.Ct. 57, 34 L.Ed. 640.

As defined in the Bankruptcy Act, “corporation” includes association having a power or privilege that a private corporation, but not an individual or a partnership, possesses; partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association; joint-stock

company; unincorporated company or association; or business trust; but does not include limited partnerships. Bankruptcy Act, §101(8).

See also Affiliate company; Brother-sister corporation; Charitable corporation; Charitable organizations; Clearing corporation; Collapsible corporation; Cooperative corporation; Domestic corporation; Dormant corporation; Foreign corporation; Municipal corporation; Non-profit corporation; Non-stock corporation; Parent company; Person; Public corporations; Subchapter S corporation; Thin corporation.

Classification

According to the accepted definitions and rules, corporations are classified as follows:

Public and private. A public corporation is one created by the state for political purposes and to act as an agency in the administration of civil government, generally within a particular territory or subdivision of the state, and usually invested, for that purpose, with subordinate and local powers of legislation; such as a county, city, town, or school district. These are also sometimes called “political corporations.” See **Municipal corporation**.

Private corporations are those founded by and composed of private individuals, for private purposes, as distinguished from governmental purposes, and having no political or governmental franchises or duties.

The true distinction between public and private corporations is that the former are organized for governmental purposes, the latter not. The term “public” has sometimes been applied to corporations of which the government owned the entire stock, as in the case of a state bank. But bearing in mind that “public” is here equivalent to “political,” it will be apparent that this is a misnomer. Again the fact that the business or operations of a corporation may directly and very extensively affect the general public (as in the case of a railroad company or a bank or an insurance company) is no reason for calling it a public corporation. If organized by private persons for their own advantage, -or even if organized for the benefit of the public generally, as in the case of a free public hospital or other charitable institution, -it is none the less a private corporation if it does not possess governmental powers or functions. The uses may in a sense be called “public,” but the corporation is “private,” as much so as if the franchises were vested in a single person. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 562, 4 L.Ed. 629. It is to be observed, however, that those corporations which serve the public or contribute to the comfort and convenience of the general public, though owned and managed by private interests, are now denominated “public-service corporations.” See *infra*. Another distinction between public and private corporations is that the former are not voluntary associations (as the latter are) and that there is no contractual relation between the government and a public corporation or between the individuals who compose it.

Miscellaneous Definitions

While the above are strict distinctions between “public” and “private” corporations, in common usage the term “public” corporation is frequently used to distinguish (sic) a business corporation whose shares are traded to and among the general public as opposed to a “private” (or “close” corporation) whose shares are not so traded.

Ecclesiastical and lay. In the English law, all corporations private are divided into ecclesiastical and lay, the former being such corporations as are composed exclusively of ecclesiastics organized for spiritual purposes, or for administering property held for religious uses, such as bishops and certain other dignitaries of the church and (formerly) abbeys and monasteries. 1 Bl.Comm. 470. Lay corporations are those composed of laymen, and existing for secular or business purposes. This distinction is not recognized in American law. Corporations formed for the purpose of maintaining or propagating religion or of supporting public religious services, according to the rights of particular denominations, and incidentally owning and administering real and personal property for religious uses, are called “religious corporations,” as distinguished from business corporations; but they are “lay” corporations, and not “ecclesiastical” in the sense of the English law.

Aggregate and sole. A corporation sole is one consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar.

A corporation aggregate is one composed of a number of individuals vested with corporate powers; and a “corporation,” as the word is used in general popular and legal speech, and as defined at the head of this title, means a “corporation aggregate.”

Domestic and foreign. With reference to the laws and the courts of any given state, a “domestic” corporation is one created by, or organized under, the laws of that state; a “foreign” corporation is one created by or under the laws of another state, government, or country.

Subsidiary and parent. Subsidiary corporation is one in which another corporation (called parent corporation) owns as least a majority of the shares, and thus has control.

Other Compound and Descriptive Terms

Business corporation. One formed for the purpose of transacting business in the widest sense of that term, including not only trade and commerce, but manufacturing, mining, banking, insurance, transportation, and practically every form of commercial or industrial activity where the purpose of the organization is pecuniary profit; contrasted with religious, charitable, educational, and other like

organizations, which are sometimes grouped in the statutory law of a state under the general designation of “corporations not for profit.”

Brother-sister corporation. See that title.

Civil corporation. In the law of Louisiana, the term “civil” as applied to corporations, is used in a different sense, being contrasted with “religious.” Civil corporations are those which relate to temporal police; such are the corporations of the cities, the companies for the advancement of commerce and agriculture, literary societies, colleges or universities founded for the instruction of youth, and the like. Religious corporations are those whose establishment relates only to religion; such are the congregations of the different religious persuasions. Civ.Code La. art. 431.

Close corporation. A corporation whose shares, or at least voting shares, are held by a single shareholder or closely-knot group of shareholders. Generally, there are no public investors and its shareholders are active in the conduct of the business. A close corporation is one which fills its own vacancies or in which power of voting is held through manipulation under fixed and virtually perpetual proxies. *Brooks v. Willcuts*, C.C.A.Minn., 78 F.2d 270, 273. A corporation, the stock ownership of which is not widely dispersed. Instead, a few shareholders are in control of corporate policy and are in a position to benefit personally from such policy.

Closely held corporation. See Close corporation, *supra*.

Corporation de facto. One existing under color of law and in pursuance of an effort made in good faith to organize a corporation under the statute; an association of men claiming to be a legally incorporated company, and exercising the powers and functions of a corporation, but without actual lawful authority to do so. Its elements are a law or charter authorizing such a corporation, an attempt in good faith to comply with law authorizing its incorporation, and unintentional omission of essential requirements of the law or charter, and exercise in good faith of corporate functions under the law or charter. A corporation which has been defectively formed but which is not subject to collateral attack.

Corporation de jure. That which exists by reason of full compliance by incorporators with requirements on an existing law permitting organization of such corporation.

Collapsible corporation. A corporation formed for one specific venture such as a motion picture and then collapsed, allowing tax advantages to the shareholders. I.R.C. § 341.

Corporation sole. Unusual type of corporation consisting of only one person whose successor becomes the corporation on his death or resignation; limited in the main today to bishops and heads of dioceses. See also *Aggregate and sole, supra*.

Eleemosynary corporation. Corporation with charitable functions and purposes.

Joint venture corporation. A corporation which has joined with other individuals or corporations within the corporate framework in some specific undertaking commonly found in oil, chemical, electronic and atomic fields.

Miscellaneous Definitions

Migratory corporation. A corporation, organized under laws of another state than that of incorporators' residence for purpose of doing all or greater part of their business in state of their residence or in other state than that of incorporation. *Toklan Royalty Corporation v. Tiffany*, 193 Okl. 120, 141 P.2d 571, 573.

Moneyed corporations are, properly speaking, those dealing in money or in the business of receiving deposits, loaning money, and exchange; but in a wider sense the term is applied to all business corporations having a money capital and employing it in the conduct of their business.

Municipal corporations. See that title.

Public-service corporations. Those whose operations serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as public transportation, gas, water, and electric light companies. The business of such companies is said to be "affected with a public interest," and for that reason they are subject to legislative regulation and control to a greater extent than corporations not of this character. See also *Quasi public corporation, infra*.

Non-stock corporation. Type of corporation where ownership is not recognized by stock; *e.g.* municipal corporation.

Not-for-profit corporation. A corporation formed for some charitable or benevolent purpose and not for profit making and generally organized under special statutes for this purpose.

Professional corporation. In most states such may be organized by those rendering personal services to public of a type which requires a license or other legal authorization and which prior to such statutory authorization could not be performed by a corporation. Includes, but is not limited to, public accountants, certified public accountants, chiropractors, osteopaths, physicians, surgeons, dentists, podiatrists, chiropodists, architects, veterinarians, optometrists, and attorneys at law. Tax benefits are one of several reasons for professional incorporation. Incorporation does not alter professional responsibility or privilege nor does it insulate principal from malpractice liability.

Quasi corporation. A term applied to those bodies, or municipal societies, which, though not vested with the general powers of corporations, are yet recognized, by statutes or immemorial usage, as persons, or aggregate corporations, with precise duties, which may be enforced, and privileges, which may be maintained, by suits at law. "Quasi corporation" is a phrase used to designate bodies which possess a limited number of corporate powers, and which are low down in the scale or grade of corporate existence, and is generally applied to a body which exercises certain functions of a corporate character, but which has not been created a corporation by any statute, general or special. There is a well-defined and marked distinction between municipal corporations proper and political or quasi corporations. Cities, towns, and villages are municipal corporations proper, while counties, townships,

school districts, road districts, and the like are quasi corporations. See *Quasi public corporation*, below.

Quasi public corporation. This term is sometimes applied to corporations which are not strictly public, in the sense of being organized for governmental purposes, but whose operations contribute to the comfort, convenience, or welfare of the general public, such as telegraph and telephone companies, gas, water, and electric light companies, and irrigation companies. More commonly and more correctly styled “public-service corporations.”

There is a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. This class of corporations is known as public service corporations, and in legal phraseology as “quasi public corporations,” or corporations affected with a public interest. A “quasi public corporation” may be said to be a private corporation which has given to it certain powers of a public nature, such, for instance, as the power of eminent domain, in order to enable it to discharge its duties for the public benefit, in which respect it differs from an ordinary private corporation, the powers of which are given and exercised for the exclusive advantage of its stockholders.

The term is also applied to corporations of that class sometimes called “quasi municipal corporations,” such as school districts, irrigation districts, township, etc.

Subchapter S corporation. A small business corporation which, under certain conditions, may elect to have its undistributed taxable income taxed to its shareholders. I.R.C. § 1371 *et seq.* If (sic) major significance is the fact that Subchapter S status usually avoids the corporate income tax, and corporate losses can be claimed by the shareholders.

Spiritual corporations. Corporations, the members of which are entirely spiritual persons, and incorporated as such, for the furtherance of religion and perpetuating the rights of the church.

Trading corporations. A commercial corporation engaged in buying and selling. The word “trading,” is much narrower in scope than “business,” as applied to corporations, and though a trading corporation is a business corporation, there are many business corporations which are not trading companies. *Dartmouth College v. Woodward*, 17 U.S. (4 Wheat.) 669, 4 L.Ed. 629.

Tramp corporations. Companies chartered in one state without any intention of doing business therein, but which carry on their business and operations wholly in other states.

—*Black’s Law Dictionary*, 1979

[**Corporation**

[**cosmic** ... also **cosmical** ... *adj.* **1.** Of or relating to the universe, especially as distinct from Earth. **2.** Infinitely or inconceivably extended; vast: “*a coming together of heads of government to take up the cosmic business of nations*” (Meg Greenfield) —*The American Heritage Dictionary of the English Language*, 1992

[**cosmic**

Miscellaneous Definitions

[**cosmology** ... *n., pl.* **-gies. 1.** The study of the physical universe considered as a totality of phenomena in time and space. **2.a.** The astrophysical study of the history, structure, and constituent dynamics of the universe. **b.** A specific theory or model of this structure and these dynamics....

—*The American Heritage Dictionary of the English Language, 1992*

[**cosmology**

[**Court.** A space which is uncovered, but which may be partly or wholly inclosed by buildings or walls. When used in connection with a street, indicates a short street, blind alley, or open space like a short street inclosed by dwellings or other buildings facing thereon.

A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. This meaning of the word has also been retained in the titles of some deliberative bodies, such as the “General Court” of Massachusetts, *i.e.*, the legislature.

The person and suit of the sovereign; the place where the sovereign sojourns with his regal retinue, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury. An incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, *viz.*, attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings.

The words “court” and “judge,” or “judges,” are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood.

General Classification

Courts may be classified and divided according to several methods, the following being the more usual:

Appellate courts. Such courts review decisions of inferior courts, and may be either intermediate appellate courts (court of appeals) or supreme courts. See **Court of Appeals; Supreme Court.**

Article III courts. See **Constitutional court.**

Civil and criminal courts. The former being such as are established for the adjudication of controversies between individual parties, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public. While in some states there are both civil and criminal courts, in most states the trial court is a *court of general jurisdiction (q.v.)*.

Court above, court below. In appellate practice, the “court above” is the one to which a cause is removed for review, whether by appeal, writ of error, or certiorari; while the “court below” is the one from which the case is removed (normally the trial court).

Court in bank (en banc). A meeting of all the judges of a court, usually for the purposes of hearing arguments on demurrers, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or panel of judges. See *Full court, infra*.

Court of competent jurisdiction. One having power and authority of law at the time of acting to do the particular act. One having jurisdiction under the Constitution and/or laws to determine the question in controversy.

Court of general jurisdiction. A court having unlimited trial jurisdiction, both civil and criminal, though its judgments and decrees are subject to appellate review. A superior court; a court having full jurisdiction within its own jurisdictional area.

Court of limited jurisdiction. Court with jurisdiction over only certain types of matters; *e.g.* probate or juvenile court. When a court of general jurisdiction proceeds under a special statute, it is a “court of limited jurisdiction” for the purpose of that proceeding, and its jurisdiction must affirmatively appear.

Court of original jurisdiction. Courts where actions are initiated and heard in first instance.

Court of record. A court that is required to keep a record of its proceedings, and that may fine or imprison. Such record imports verity and cannot be collaterally impeached.

De facto court. One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government.

Equity courts and law courts. The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery (*i.e.* equity) law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law. Under Rules of Civil Procedure, however, equity and law have been merged at the procedural level, and as such this distinction no longer exists in the federal courts

Miscellaneous Definitions

nor in most state courts, though equity substantive jurisprudence remains viable. Fed.R.Civil P. 2. See **Court of Chancery; Court of Equity**.

Full court. A session of a court, which is attended by all the judges or justices composing it. See *Court in bank, infra*.

Spiritual courts. In English law, the ecclesiastical courts, or courts Christian. 3 Bl.Comm. 61. See **Ecclesiastical courts**.

Superior and inferior courts. The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari*; the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called “inferior courts”.

Trial courts. Generic term for courts where civil actions or criminal proceedings are first commenced at the state level such are variously called municipal, circuit, superior, district, or county courts. At the federal level, the U.S. district courts are the trial courts.

As to the division of courts according to their *jurisdiction*, see **Jurisdiction**.

As to several names or kinds of courts not specifically described in the titles immediately following, see Admiralty court, Arches Court, Appellate court, Bankruptcy proceedings (*Bankruptcy court*), Circuit courts, City courts, Commonwealth (sic) court, Consistory courts, Constitutional court, Consular courts, County (County court), Court-baron, Court of High Commission, Customs Court, District (District courts), Ecclesiastical courts, Family court, Federal courts, Forest courts, Instance court, Insular courts, International Court of Justice, Justice’s court, Kangaroo court, Land court, Legislative courts, Maritime court, Mayor’s court, Military courts, Moot court, Municipal courts, Orphans’ court, Police court, Prerogative court, Prize court, Probate court, Superior (*Superior courts*), Supreme court, Surrogate court, Tax court, United States courts.

—*Black’s Law Dictionary*, 1979

[Court

[Courts of the United States. “Court of the United States” means any of the following courts: the Supreme Court of the United States, a United States court of appeals, a United States district court, the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, the District Court of Guam, the District Court of the Virgin Islands, the United States Court of Claims, the United States Court of Customs and Patent Appeals, The Tax Court of the United States, the Customs Court, bankruptcy courts, and the Court of Military Appeals. 28 U.S.C.A. § 451. Also, the senate sitting as a court of impeachment.

—*Black’s Law Dictionary*, 1979

[Courts of the United States

[**creature**.... *n.* **1.** Something created. **2.a.** A living being, especially an animal. **b.** A human being. **3.** One dependent on or subservient to another; a tool....

—*The American Heritage Dictionary of the English Language*, 1992

[**creature**

[**CRIME** An act committed or omitted in violation of a public law forbidding or commanding it.

A wrong which the government notices as injurious to the public, and punishes in what is called a criminal proceeding in its own name; 1 Bish. Cr. Law, § 43. See 4 Denio, 260; 6 Ark. 187, 461.

The word crime generally denotes an offence of a deep and atrocious dye. When the act is of an inferior degree of guilt, it is called a misdemeanor. 4 Bla. Com. 4. Crime, however, is often used as comprehending *misdemeanor* and even as synonymous therewith, and also with *offence*; in short as embracing every indictable offence; 2 N. Y. Rev. Stat. 702, § 22; T. U. P. Charlt. 235; 60 Ill. 168; 31 Wis. 383; 9 Wend. 212; 24 How. 102; 32 N. J. L. 139, 144.

Crimes are defined and punished by statutes and by the common law. Most common-law offences are as well known and as precisely ascertained as those which are defined by statutes: yet, from the difficulty of exactly defining and describing every act which ought to be punished, the vital and preserving principle has been adopted that all immoral acts which tend to the prejudice of the community are punishable criminally by courts of justice; 2 Rev. Swift, Dig. 284; 2 East, 5, 21; 7 Conn. 386; 5 Cow. 258; 3 Pick. 26.

A crime *malum in se* is an act which shocks the moral sense of the community as being grossly immoral and injurious. With regard to some offences, such as murder, rape, arson, burglary, and larceny, there is but one sentiment in all civilized countries, which is that of unqualified condemnation. With regard to others, such as adultery, polygamy, and drunkenness, in some communities they are regarded as heinous *mala in se*; while in others, owing to the perversion of the moral sentiment by prejudice, education, and custom, they are not even *mala prohibita*.

An offence is regarded as strictly a *malum prohibitum* only when, without the prohibition of a statute, the commission or omission of it would in a moral point of view be regarded as indifferent. The criminality of the act or omission consists not in the simple perpetration of the act, or the neglect to perform it, but in its being a violation of a positive law.

It is not only just, but it has been found necessary, to have the severity of punishment proportioned to the enormity of crimes. Different opinions are entertained as to what should be the highest in degree. In the United States this is generally death by hanging.

Capital punishment has been abolished in Rhode Island, Wisconsin, and, except for treason, in Michigan. R. I. Rev. Stat. Supp. 866; Wisc. Act of 1853, n. 100; Mich. Rev. Stat. 1846. See No. Am. Rev. (1881) 557.

Miscellaneous Definitions

There are three degrees of murder according to the statute laws of Minnesota and Wisconsin, and two degrees in Alabama, Arkansas, California, Connecticut, Delaware, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Tennessee, Texas, and Virginia; and the death-penalty is inflicted for the first degree in all of them except Michigan and Wisconsin. In some of the other states murder remains as at common law, and in some it is somewhat modified by statute.

Crimes are sometimes classified according to the degree of punishment incurred by the commission of them. Ohio Rev. Stat. Swan ed. 266.

They are more generally arranged according to the nature of the offence.

The following is, perhaps, as complete a classification as the subject admits:-

Offences against the sovereignty of the state. 1. Treason. 2. Misprision of treason.

Offences against the lives and persons of individuals. 1. Murder. 2. Manslaughter. 3. Attempts to murder or kill. 4. Mayhem. 5. Rape. 6. Robbery. 7. Kidnapping. 8. False imprisonment. 9. Abduction. 10. Assault and battery.

Offences against public property. 1. Burning or destroying public property. 2. Injury to the same.

Offences against private property. 1. Arson. 2. Burglary. 3. Larceny. 4. Obtaining goods on false pretences. 5. Embezzlement. 6. Malicious mischief.

Offences against public justice. 1. Perjury. 2. Bribery. 3. Destroying public records. 4. Counterfeiting public seals. 5. Jail-breach. 6. Escape. 7. Resistance to officers. 8. Obstructing legal process. 9. Barratry. 10. Maintenance. 11. Champerty. 12. Contempt of court. 13. Oppression. 14. Extortion. 15. Suppression of evidence. 16. Compounding felony. 17. Misprision of felony.

Offences against the public peace. 1. Challenging or accepting a challenge to a duel. 2. Unlawful assembly. 3. Rout. 4. Riot. 5. Breach of the peace. 6. Libel.

Offences against chastity. 1. Sodomy. 2. Bestiality. 3. Adultery. 4. Incest. 5. Bigamy. 6. Seduction. 7. Fornication. 8. Lascivious carriage. 9. Keeping or frequenting house of ill-fame.

Offences against public policy. 1. False currency. 2. Lotteries. 3. Gambling. 4. Immoral shows. 5. Violations of the right of suffrage. 6. Destruction of game, fish, etc. 7. Nuisance.

Offences against the currency, and public and private securities. 1. Forgery. 2. Counterfeiting. 3. Passing counterfeit money.

Offences against religion, decency, and morality. 1. Blasphemy. 2. Profanity. 3. Sabbath-breaking. 4. Obscenity. 5. Cruelty to animals. 6. Drunkenness. 7. Promoting intemperance. See 2 Sharsw. Bla. Comm. 42, etc.; 2 Comp. Stat. 305, etc.

Offences against the public, individuals, or their property. 1. Conspiracy.

—*Bouvier's Law Dictionary*, 1889

[**crime**

[**Criminal** *Criminal contempt.* A crime which consists in the obstruction of judicial duty generally resulting in an act done in the presence of the court; *e.g.* contumelious conduct directed to the judge or a refusal to answer questions after immunity has been granted. Conduct directed against the majesty of the law or the dignity and authority of the court or judge acting judiciously, whereas a “civil contempt” ordinarily consists in failing to do something ordered to be done by a court in a civil action for the benefit of an imposing party therein. *Sullivan v. Sullivan*, 16 Ill. App.3d 549, 306 N.E.2d 604, 605. See also **Contempt**

—*Black's Law Dictionary*, 1979

[**Criminal**

[**CUSTODY.** The detainer of a person by virtue of a lawful authority. 3 Chitty, Pr. 355.

The care and possession of a thing.

Custody has been held to mean nothing less than actual imprisonment; 59 Penn. 320; 82 *id.* 306.

—*Bouvier's Law Dictionary*, 1889

[**Custody**

[**Custody.** The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority.

The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Term “custody” within statute requiring that petitioner be “in custody” to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty. *U. S. ex rel. Wirtz v. Sheehan*, D.C.Wis., 319 F.Supp. 146, 147. Accordingly, persons on probation or released on own recognizance have been held to be “in custody” for purposes of habeas corpus proceedings.

See **Chain of custody; Custodial interrogation; Protective custody.**

—*Black's Law Dictionary*, 1979

[**Custody**

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– D –

[**DEATH** The cessation of life. The ceasing to exist.

Civil death is the state of a person who, though possessing natural life, has lost all his civil rights and as to them, is considered as dead.

A person convicted and attainted of felony and sentenced to the state prison for life is, in the state of New York, in consequence of the act of 29th of March, 1799, and by virtue of the conviction and sentence of imprisonment for life, to be considered as civilly dead: 6 Johns. 118: 4 *id* . 228, 260. And a similar doctrine anciently prevailed in other cases at common law in England. See Co. Litt. 133: 1 Sharsw. Bla. Comm. 132, n.

Natural death is the cessation of life.

It is also used to denote a death which occurs by the unassisted operation of natural causes, as distinguished from a violent death, or one caused or accelerated by the interference of human agency.

—*Bouvier's Law Dictionary*, 1889

[**death**

[**debase**.... To lower in character, quality, or value; degrade. See Synonyms at adulterate, corrupt, degrade.

—*The American Heritage Dictionary of the English Language*, 1992

[**debase**

[**DEBASEMENT**. No Entry.

—*Bouvier's Law Dictionary*, 1889

[**DEBASEMENT**

[**Debasement**. Reducing the weight of gold and silver in coins of standard value or of increasing the amount of alloy in such coins. Such has the effect of reducing the intrinsic value.

—*Black's Law Dictionary*, 1979

[**Debasement**

[**Debt**. A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to receive and enforce payment. *State v. Ducey*, 25 Ohio App.2d 50, 266 N.E.2d 233, 235. Liability on a claim. Bankruptcy Act, § 101(11).

A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future. In a still more general sense, that which is due from one person to another, whether money, goods, or services. In a broad sense, any duty to respond to another in money, labor, or service; it may even mean a moral or honorary obligation, unenforceable by legal action. Also, sometimes an aggregate of separate debts, or the total sum of the existing claims against a person or company. Thus we speak of the “national debt”, the “bonded debt” of a corporation, etc.

Active debt . One due to a person. Used in the civil law.

Ancestral debt . One of an ancestor which the law compels the heir to pay.

Miscellaneous Definitions

Antecedent debt . See that title.

Bad debt . Uncollectible account receivable. Under National Bank Act, an unsecured debt on which interest or payment is past due for at least six months. See also **Bad Debt**; **Bad debt reserve**.

Bonded debt . Debt represented by bonds. See **Bonded debt**.

Common-law action . The name of a common-law action which lies to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty. It is thus distinguished from *assumpsit* , which lies as well where the sum due is uncertain as where it is certain, and from *covenant* , which lies only upon contracts evidenced in a certain manner.

It is said to lie in the *debet* and *detinet* (when it is stated that the defendant owes and detains), or in the *detinet* (when it is stated merely that he detains). Debt in the *detinet* for goods differs from detinue, because it is not essential in this action, as in detinue, that the specific property in the goods should have been vested in the plaintiff at the time the action is brought.

Consumer debt. See **Consumer debt**.

Contingent debt. See **Contingent debt**.

Convertible debt. Debt which may be changed or converted by creditor into another form of security, e.g. shares of stock. See **Debenture** (*Convertible debenture*).

Debt by simple contract. A debt or demand founded upon a verbal or implied contract, or upon any written agreement that is not under seal.

Debt by specialty or special contract. A debt due, or acknowledged to be due, by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 2 Bl.Comm. 465.

Debt of record. A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 Bl.Comm. 465.

Existing debt. See **Existing debt**.

Floating debt. Short-term or current debt, not represented by securities.

Fraudulent debt. A debt created by fraud. Such a debt implies confidence and deception. It implies that it arose out of a contract, express or implied, and that fraudulent practices were employed by the debtor, by which the creditor was defrauded.

Funded debt. Debt represented by bonds or other securities.

General debt. See that title.

Hypothecary debt. One which is a lien upon an estate.

Installment debt. Debt which is to be repaid in installments; e.g. retail installment contract.

Judgment debt. See **Judgment debt**.

Legal debts. Those that are recoverable in a court of law, as debt on a bill of exchange, a bond, or a simple contract.

Liquid debt. One which is immediately and unconditionally due. See also **Liquidated debt**.

Mutual debts. Money due on both sides between two persons. Such debts must be due to and from same persons in same capacity. Cross debts in the same capacity and right, and of the same kind and quality.

Passive debt. A debt upon which, by agreement between the debtor and creditor, no interest is payable, as distinguished from active debt; *i.e.*, a debt upon which interest is payable. As used in another sense, a debt is “active” or “passive” according as the person of the creditor or debtor is regarded; a passive debt being that which a man owes; an active debt that which is owing to him. In this meaning every debt is both active and passive; active as regards the creditor, passive as regards the debtor.

Preferential debts. See that title.

Privileged debt. One which is to be paid before others in case a debtor is insolvent; *e.g.* secured debt.

Proof of debt. See **Proof**.

Public debt. That which is due or owing by the government of a state or nation.

Secured debt. Debt secured by collateral; *e.g.* by mortgage, securities, deed, etc. See **Secured transaction**.

Simple contract debt. At common law, one where the contract upon which obligation arises is neither ascertained by matter of record nor yet by deed or special instrument, but by mere oral evidence the most simple of any, or by notes unsealed, which are capable of a more easy proof, and therefore only better than a verbal promise. 2 Bl. Comm. 466.

Specialty debt. See *Debt by specialty or special contract, supra*.

—*Black’s Law Dictionary*, 1979

[Debt

[De facto In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs which must be accepted for all practical purposes, but is illegal or illegitimate. Thus, an office, position or status existing under a claim or color of right such as a *de facto* corporation. In this sense it is the contrary of *de jure*, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer, king, or governor *de jure* is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual

Miscellaneous Definitions

possession. *MacLeod v. United States*, 229 U. S. 416, 33 S.Ct. 955, 57 L.Ed. 1260. A wife *de facto* is one whose marriage is voidable by decree, as distinguished from a wife *de jure*, or lawful wife. But the term is also frequently used independently of any distinction from *de jure*; thus a blockade *de facto* is a blockade which is actually maintained, as distinguished from a mere paper blockade. *Compare De jure*.

As to *de facto* Corporation; Court; Domicile; Government, and Officer, see those titles.

In old English law it means respecting or concerning the principal act of a murder, which was technically denominated *factum*. —*Black's Law Dictionary*, 1979

[De facto

[Defamation. Holding up of a person to ridicule, scorn or contempt in a respectable and considerable part of the community; may be criminal as well as civil. Includes both libel and slander.

Defamation is that which tends to injure reputation; to diminish the esteem, respect, goodwill or confidence in which the plaintiff is held, or to excite adverse, derogatory or unpleasant feelings or opinions against him. Statement which exposes person to contempt, hatred, ridicule or obloquy. *McGowen v. Prentice*, La.App., 341 So.2d 55, 57. The unprivileged publication of false statements which naturally and proximately result in injury to another. *Wolfson v. Kirk*, Fla.App., 273 So.2d 774, 776.

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. The meaning of a communication is that which the recipient correctly, or mistakenly but reasonably, understands that it was intended to express. Restatement, Second, Torts §§ 559, 563.

See also **Actionable per quod; Actionable per se; Journalist's privilege; Libel; Slander.**

—*Black's Law Dictionary*, 1979

[Defamation

[Defective. Lacking in some particular which is essential to the completeness, legal sufficiency, or security of the object spoken of; as a “defective” service of process or return of service. A product is “defective” if it is not fit for the ordinary purposes for which such articles are sold and used. *Manieri v. Volkswagenwerk, A.G.*, 151 N.J.Super. 422, 376 A.2d 1317, 1322. See also **Defect; Warranty.**

—*Black's Law Dictionary*, 1979

[Defective

[DE JURE. Rightfully; of right; lawfully; by legal title. Contrasted with *de facto* (which see). 4 Bla. Com. 77.

Of right: distinguished from *de gratia* (by favor). By law: distinguished from *de æquitate* (by equity).

A government *de jure*, but not *de facto*, is one deemed lawful, which has been supplanted; a government *de jure* and also *de facto* is one deemed lawful, which is

present or established; a government *de facto* is one deemed unlawful, but which is present or established. Any established government, be it deemed lawful or not, is a government *de facto*. Austin, Jur. sec. vi. 336. See DE FACTO

—*Bouvier's Law Dictionary*, 1889

[DE JURE

[**De jure....** Descriptive of a condition in which there has been total compliance with all requirements of law. Of right; legitimate; lawful; by right and just title. In this sense it is the contrary of *de facto* (*q.v.*). It may also be contrasted with *de gratia*, in which case it means “as a matter of right,” as *de gratia* means “by grace or favor.” Again it may be contrasted with *de æquitate*; here meaning “by law,” as the latter means “by equity.”

—*Black's Law Dictionary*, 1979

[**De jure**

[**delay** —*tr.* **1.** To postpone until a later time; defer. **2.** To cause to be later or slower than expected or desired: *Heavy traffic delayed us.* —*intr.* To act or move slowly; put off an action or a decision. —**delay** *n.* **1.** The act of delaying; postponement: *responded without delay.* **2.** The condition of being delayed; detainment. **3.** The period of time during which one is delayed. **4.** The interval of time between two events....

SYNONYMS: *delay, slow, retard, detain.* These verbs mean to cause to be later or slower than expected or desired. To *delay* is to cause to be behind schedule: *The bus was delayed by a cloudburst.* *Slow* implies a decrease in speed, often deliberate: *A sprained ankle slowed my pace.* *The driver slowed the car before coming to a full stop.* To *retard* is to slow and delay or impede progress, action, or accomplishment: “*the increasing hatred, which retarded the execution of his great designs*” (Edward Gibbon). *Detain* stresses being held back and prevented from proceeding: *She was detained by an unexpected visitor.*

—*The American Heritage Dictionary of the English Language*, 1992

[**delay**

[**desirable** **1.** Worth having or seeking, as by being useful, advantageous, or pleasing: *a desirable job in the film industry; a home computer with many desirable features.* **2.** Worth doing or achieving; advisable: *a desirable reform; a desirable outcome.* **3.** Arousing desire, especially sexual desire. —**desirable** *n.* A desirable person or thing....—*The American Heritage Dictionary of the English Language*, 1992

[**desirable**

[**despotism** *n.* **1.** Absolute power; authority unlimited and uncontrolled by constitution or laws, and depending alone on the will of the ruler.

2. An arbitrary government; the rule of a despot; absolutism; autocracy.

3. Figuratively, absolute power or influence of any kind. Such is the *despotism* of the imagination over uncultivated minds. —Macaulay.

—*Webster's Universal Dictionary of the English Language*, 1910

[**despotism**

Miscellaneous Definitions

[DICTIONARY], an alphabetical compilation of the words of a language, or part of a language, giving their meanings, spellings, derivation, pronunciation, and syllabication; in a more general sense, the term “dictionary” is also applied to any alphabetically arranged compendium in which special terms or subjects are defined. Thus in recent times there have been dictionaries devoted to science, biography, geography, mathematics, history, philosophy, slang, and other topics and terminologies. The earliest-known dictionaries were found in the library of the Assyrian king Ashurbanipal (r. 669—about 630 B.C.) at Nineveh. These consisted of clay tablets inscribed in columns of cuneiform, and remain the chief key of knowledge of Mesopotamian culture.

Sanskrit dictionaries appeared as early as the 5th century B.C. and were for the most part collections of rare words and meanings. These dictionaries, most of them written after the 5th century A.D., are invariably in verse and are divisible into two general classes, lexicons of synonyms and of homonyms. Sanskrit works also include special dictionaries on botany, medicine, and astronomy, as well as Buddhistic glossaries in Pali, and polyglot lexicons in Sanskrit, Tibetan, Mongolian, and Chinese. The first attempt to gather the entire Arabic vocabulary into one work was made probably by Khalil ibn Ahmed of Oman (died 791), who adopted an arrangement not alphabetical but based on certain phonetic and physiological principles. The compilation of Hebrew dictionaries began about the 10th century (although some scholars place the beginnings of Hebrew lexicography between the 6th and 8th centuries), originating from, and being stimulated by, the study of Arabic.

Dictionaries of language, however, as they exist in contemporary times, are relatively modern in origin. They are an outgrowth of the importance of Greek and Latin literature to the scholars of the Middle Ages, and may be traced to the medieval custom of inserting marginal glosses or explanatory words in texts of classical authors. The Greeks and Romans did not conceive of a work containing all the words of their own or a foreign language, and their early dictionaries were merely glossaries of unusual words or phrases. According to the Greek lexicographer Suidas, the first Greek lexicon, *Homeric Words*, was written by Apollonius, a Sophist of the days of Augustus. This is the most ancient dictionary extant, and was last published in Berlin in 1883. One of the earliest works in Latin lexicography, by Verrius Flaccus (fl. 1st century A.D.), is *De Verborum Significatu*, which survives as part of the compilation of Pompeius Festus entitled *De Significatione Verborum*; this work, in which the words are arranged alphabetically, has been of great service in giving information on antiquities and grammar. The earliest polyglot dictionary was the work of an Augustine monk, Calepino, dated 1502. At first it was a Latin-Greek lexicon, then came to be extended to include Italian, French, and Spanish, and finally in the 1590 Basel edition included eleven languages.

The precursors of English dictionaries appeared very early in the Old English period (see ENGLISH LANGUAGE: *History*) in the form of lists of relatively

difficult Latin terms, chiefly Scriptural, with Anglo-Saxon glosses. Around 1400, many such glosses were collected into the so-called *Medulla Grammatica*.

The *Promptorium Parvulorum*, a redaction of the latter, compiled in 1440 by the Dominican monk Galfridus Grammaticus in Norfolk, England, and printed in 1449 by Wynkyn de Worde, may be regarded as the first English dictionary; it consisted of Latin definitions of English words. It was followed by Sir Thomas Elyot's *Bibliotheca* (1538), another English-Latin dictionary, and by the *Dictionary in Englyshe and Welshe* (1547) compiled by William Salesbury (about 1520–1600). Robert Cawdrey (fl. 1604), in *The Table Alphabetical of Hard Words* (1604), produced the first dictionary giving definitions in English of English words. The word “dictionary” was first used by Henry Cockeram (fl. 1650) in *The English Dictionary* (1623). In 1656 Thomas Blount (1618–79) issued his *Glossographia*, also entirely in English with “...hard words together with Divinity Terms, Law, Physick, Mathematicks and other Arts and Sciences explicated”. These early works characteristically confined themselves to “hard words” and phrases not generally understood, because the daily vocabulary of the language was not expected to require elucidation. The first attempt at a comprehensive inventory of the English language was the *Universal Dictionary of the English Language* (1721) by Nathaniel Bailey (d. 1742), reissued in 1731 as the *Dictionarium Britannicum: A More Compleat Universal Etymological Dictionary Than Any Extant*. This work, which used quotations from established literary works to confirm and supplement definitions, served as the basis for the two-volume lexicon, *A Dictionary of the English Language* (1755), by the lexicographer Samuel Johnson, who extended the practice of using quotations. Johnson's dictionary remained the model of English lexicography for over a century. In 1769 and 1773, two dictionaries with guides to pronunciation were compiled by Buchanan and Kenrick, respectively. The actor Thomas Sheridan (1719–88) later compiled a *General Dictionary of the English Language* (1780) with the object of establishing a simple and permanent standard of pronunciation. The most influential of the dictionaries concerned with pronunciation was the *Critical Pronouncing Dictionary and Expositor of the English Language* (1791) by the actor John Walker (1732–1807).

The first historically important contribution to American lexicography was the volume *A New and Accurate Standard of Pronunciation* (1783), popularly known as *Webster's Spelling Book*. This work was issued by Noah Webster (q.v.), as the first part of his *Grammatical Institute of the English Language* (1783–85). Although not a dictionary in the strict sense of the term, the *Spelling Book*, because of its American origin and emphasis and its simplification of English, became a household reference wordbook throughout the country. Its success led Webster to compile his first American lexicon, *A Compendious Dictionary of the English Language* (1806), an unpretentious enlargement of Entick's *Spelling Dictionary* (London, 1764). Webster's work also contained supplementary encyclopedic material on American life. Webster's major contribution to lexicography, *An American Dictionary of the English Language*, begun in 1807 and published in 1828, included typically

Miscellaneous Definitions

American usage as distinguished from the British idiom, as well as 12,000 more words and 40,000 more definitions than had ever appeared in any dictionary of the English language. This work was never popular, however. It was soon followed by the *Comprehensive Pronouncing and Explanatory Dictionary of the English Language* (1830) by Joseph Emerson Worcester (q.v.). Worcester's dictionary, technically superior to and essentially a highly intelligent abridgment of Webster's, paved the way for modern collegiate dictionaries. Webster brought out a revised edition of his dictionary in 1841; since that time the *American Dictionary* has undergone various revisions and editions, including the contemporary *Webster's New International Dictionary of the English Language*, for which it provided the basis. In 1860 Worcester published *A Dictionary of the English Language* with the intention of displacing Webster's *American Dictionary*, which he considered frequently vulgar in vocabulary and pronunciation, but his work enjoyed little success, partly because of the lethargy of its publisher. In 1891 *The Century Dictionary*, an American dictionary containing encyclopedic information, and edited by William Dwight Whitney, the first great American linguist, was published in six volumes; it was a notable example in English of the French tradition of the combined dictionary-encyclopedia, a tradition established by Pierre Larousse (q.v.), compiler of the *Grand Dictionnaire Universel du XIX Siecle* (1866–76). The *Standard Dictionary of the English Language*, published in one volume in 1895, rivaled Webster's *American Dictionary* in popularity for a time. Both the *Century* and the *Standard* have been frequently revised, editions of the former appearing in a two-volume abridgment called *New Century Dictionary* and the latter as the Funk and Wagnalls *New Standard Dictionary of the English Language*.

The most comprehensive lexicographic work in the English language, popularly known as the *Oxford English Dictionary*, was begun under the auspices of the *English Philological Society* in 1857 and completed in seventy years with the collaboration of numerous specialists and their assistants after the editorship of the work had been undertaken by Sir James A. H. Murray in 1879. The dictionary, entitled *A New English Dictionary on Historical Principles; founded mainly on the materials collected by the Philological Society*, issued its first section in 1884; the tenth and closing volume was brought out in 1928, and a supplement, containing an introduction and bibliography, was added in 1933. The *Shorter Oxford Dictionary*, a two-volume abridgment of this work with some revisions in pronunciation, was published in 1933. In 1936 Sir William A. Craigie, who collaborated on the editing of the *Oxford English Dictionary*, began a companion work, *A Dictionary of American English on Historical Principles*, which was completed with the publication of its fourth volume in 1944.

A by-product of these scholarly works should be mentioned to complete this survey, namely the one-volume dictionary which is frequently an abridgment of the larger works and ranges from pocket size to 1900 pages. The most reputable one-volume dictionaries are the *Webster's New Collegiate Dictionary* (1956) based on *Webster's New International Dictionary*, the *Webster's New World Dictionary* (1953), and the

American College Dictionary (1947). Dictionaries of this sort, although reflecting many of the disadvantages of condensation, are handier, less expensive, and often more up-to-date than the larger works. In recent years such works have enjoyed, particularly in America, extraordinary popularity.

HAROLD WHITEHALL
UNIVERSITY OF INDIANA

— *Funk & Wagnalls Standard Reference Encyclopedia*, 1963
[**DICTIONARY**]

[**Diligent.** Attentive and persistent in doing a thing; steadily applied; active; sedulous; laborious; unremitting; untiring.

—*Black's Law Dictionary*, 1979

[**Diligent**]

[**DISCRIMINATION...** No Entry.

—*Bouvier's Law Dictionary*, 1889

[**DISCRIMINATION**]

[**DISCRIMINATION....n.** act or quality of distinguishing: acuteness, discernment, judgment; also, unjust partiality (Amer.).

[Editor's Note: In this dictionary, *Amer.* is an abbreviation for *American.*]

—*The American Dictionary of the English Language*, 1899

[**DISCRIMINATION**]

[**discrimination, n.** 1. The act of distinguishing; the act of making or observing a difference, distinction; as, the *discrimination* between right and wrong.

2. The faculty of distinguishing or discriminating; penetration; judgment; as, a man of nice *discrimination*.

Their own desire of glory would ... baffle their *discrimination*. —Milman.

3. The state of being discriminated, distinguished, or set apart.

There is a reverence to be showed them on the account of their *discrimination* from other places. Stillingfleet.

4. That which discriminates; mark of distinction.

Take heed of abetting any factions, or applying any public *discriminations* in matters of religion. —Gauden.

5. In transportation, the observance of different tariffs for different shippers.

Syn.—Discernment, penetration, clearness, acuteness, acumen, judgment, distinction. —*Webster's Universal Dictionary of the English Language*, 1910

[**discrimination**]

[**discriminationn.** Power of penetration; faculty of nice discernment.

— *The New Revised Webster Dictionary*, 1931

[**discrimination**]

[**discrimination1.** making or recognizing differences and distinctions. 2. the ability to make fine distinctions. 3. making a difference in favor of or against. *n.* 14.

—*The Thorndike-Century Junior Dictionary*, 1935

[**discrimination**]

Miscellaneous Definitions

[**discrimination** *n.* **1.** Act of discrimination, or state of being discriminated. **2.** That which discriminates; a mark of distinction. **3.** The quality of being discriminating; faculty of nicely distinguishing. **4.** A distinction, as in treatment; esp., an unfair or injurious distinction. —**Syn.** Discernment, penetration, distinction, acumen. —*Thin Paper Webster's Collegiate Dictionary, 1936*

[**discrimination**

[**discrimination** *n.* power of penetration; faculty of nice discernment.

—*The New Universities Webster Dictionary, 1938*

[**discrimination**

[**discrimination** *n.* power of penetration; faculty of nice discernment.

—*Webster's New School and Office Dictionary, 1938*

[**discrimination**

[**discrimination** **1.** act of making or recognizing differences and distinctions. **2.** ability to make fine distinctions. **3.** making a difference in favor of or against. *n.* **14.** —*Thorndike Century Senior Dictionary, 1941*

[**discrimination**

[**discrimination** *n.* power of penetration; faculty of nice discernment.

—*Webster's New School and Office Dictionary, 1955*

[**discrimination**

[**discrimination***n.* **1.** Act of discriminating, or state of being discriminated. **2.** That which discriminates; a mark of distinction. **3.** The quality of being discriminating; faculty of nicely distinguishing. **4.** A distinction, as in treatment; esp., an unfair or injurious distinction.—**Syn.** See DISCERNMENT.

—*Thin Paper Webster's New Collegiate Dictionary, 1961*

[**discrimination**

[**discrimination**.... *n.* The act of discriminating; the faculty of distinguishing or discriminating; penetration; discernment; the state of being discriminated or set apart.—**discriminative**.... *a.* Discriminating or tending to discriminate; forming the mark of distinction or difference; characteristic.—**discriminatively**.... *adv.* By discrimination.—**discriminatory**.... *a.* Discriminative.

—*Educational Book of Essential Knowledge, 1968*

[**discrimination**

[**discrimination***n* **1 a** : the act of discriminating **b** : the process by which two stimuli differing in some aspect are responded to differently : DIFFERENTIATION **2** : the quality or power of finely distinguishing **3 a** : the act, practice, or an instance of discriminating categorically rather than individually **b** : prejudiced or prejudicial outlook, action, or treatment <provided major opportunities for Negro advancement on purely equal term involving neither ~ nor preference —D. P. Moynihan. *syn* see DISCERNMENT....

—*Webster's New Collegiate Dictionary, 1973*

[**discrimination**

[Discrimination. In constitutional law, the effect of a statute or established practice which confers particular privileges on a class arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privileges granted and between whom and those not favored no reasonable distinction can be found. Unfair treatment or denial of normal privileges to persons because of their race, age, nationality or religion. A failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored. *Baker v. California Land Title Co.*, D.C.Cal., 349 F.Supp. 235, 238, 349.

Federal statutes prohibit discrimination in employment on basis of sex, age, race, nationality or religion; e.g. Title VII of 1964 Civil Rights Act, Age Discrimination in Employment Act, Equal Pay Act, Sex Discrimination in Employment Based on Pregnancy Act. Other federal acts, as supplemented by court decisions, prohibit discrimination in voting rights, housing, extension of credit, public education, and access to public facilities.

With reference to common carriers, a breach of the carrier's duty to treat all shippers alike, and afford them equal opportunities to market their product. A carrier's failure to treat all alike under substantially similar conditions.

See also Bias; Equal protection clause; Equal protection of the law; Price discrimination; Redlining; Reverse discrimination. —*Black's Law Dictionary*, 1979

[Discrimination

[discrimination *n* (1648) **1 a** : the act of discriminating **b** : the process by which two stimuli differing in some aspect are responded to differently : DIFFERENTIATION. **2** : the quality or power of finely distinguishing **3 a** : the act, practice, or an instance of discriminating categorically rather than individually **b** : prejudiced or prejudicial outlook, action, or treatment <racial ~> **syn** see DISCERNMENT.... —*Webster's Ninth New Collegiate Dictionary*, 1987

[discrimination

[discrimination *n*. **1**. The act of discriminating. **2**. The ability or power to see or make fine distinctions; discernment. **3**. Treatment or consideration based on class or category rather than individual merit; partiality or prejudice: “*It's necessary to eliminate all forms of sexual discrimination*” (Jimmy Carter). See Usage Note at **Bias**....

—*The American Heritage Dictionary of the English Language*, 1992

[discrimination[Editor's Note: Heterosexuality is a form of sexual discrimination.]

[Doppler effect *n*. *Physics*. An apparent change in the frequency of waves, as of sound or light, occurring when the source and the observer are in motion relative to each other, with the frequency increasing when the source and observer approach each other and decreasing when they move apart. [After Christian Johann DOPPLER.] —*The American Heritage Dictionary of the English Language*, 1992

[Doppler effect

Miscellaneous Definitions

[DURESS Personal restraint, or fear of personal injury or imprisonment. 2 Metc. Ky. 445.

Duress of imprisonment exists where a man actually loses his liberty. If a man be illegally deprived of his liberty until he sign and seal a bond, or the like, he may allege this duress and avoid the bond; 2 Bay, 211; 9 Johns. 201; 10 Pet. 137; 26 Barb. 122. But if a man be legally imprisoned, and, either to procure his discharge, or on any other fair account, seal a bond or a deed, this is not by duress of imprisonment, and he is not at liberty to avoid it; Co. 2d Inst. 482; 3 Caines, 168; 6 Mass. 511; 1 Lev. 69; 1 H. & M. 350; 17 Me. 338; 18 How. 307; 2 Wash. C. C. 180. Where the proceedings at law are a mere pretext, the instrument may be avoided; Al. 92; 1 Bla. Com. 136.

Duress per minas, which is either for fear of loss of life, or else for fear of mayhem or loss of limb, must be upon a sufficient reason; 1 Bla. Com. 131. In this case, a man may avoid his own act. Lord Coke enumerates four instances in which a man may avoid his own act by reason of menaces: - for fear of *loss of life*; *of member*; *of mayhem*; *of imprisonment*; Co. 2d Inst. 483; 2 Rolle, Abr. 124; Bacon, Abr. *Duress, Murder*, A; 2 Stra. 856; Foster, Cr. Law, 322; 2 Ld. Raym. 1578; Savigny, Dr. Rom. § 114.

It has been held that restraint of goods under circumstances of hardship will avoid a contract; 2 Bay, 211; 9 Johns. 201; 10 Pet. 137. But see 2 Metc. Ky. 445; 2 Gall. 337; 8 Ct. Cl. 461; 50 Ala. 437.

The violence or threats must be such as are calculated to operate on a person of ordinary firmness and inspire a just fear of great injury to person, reputation, or fortune. See 4 Wash. C. C. 402; 39 Me. 559. The age, sex, state of health, temper, and disposition of the party, and other circumstances calculated to give greater or less effect to the violence of threats, must be taken into consideration; 32 Am. Rep. 180, n.; 1 Ky. Law Rep. 137.

Violence or threats are cause of nullity, not only where they are exercised on the contracting party, but when the wife, the husband, the descendants or ascendants, of the party are the object of them.

If the violence used be only a legal constraint, or the threats only of doing that which the party using them had a right to do, they shall not invalidate the contract. A just and legal imprisonment, or threats of any measure authorized by law and the circumstances of the case, are of this description. See Norris Peake's Ev. 440, and the cases cited, also, 6 Mass. 506, for the general rule at common law.

But the mere forms of law to cover coercive proceedings for an unjust and illegal cause, if used or threatened in order to procure the assent to a contract, will invalidate it; and arrest without cause of action, or a demand of bail in an unreasonable sum, or threat of such proceeding, by this rule invalidates a contract made under their pressure.

Miscellaneous Definitions

All the above articles relate to cases where there may be some other motive besides the violence or threats for making the contract. When, however, there is no other cause for making the contract, any threats, even of slight injury, will invalidate it.

Excessive charges paid to railroad companies refusing to carry or deliver goods, unless these payments were made voluntary, have been recovered on the ground of duress; 27 L. J. Ch. 137; 32 *id.* 225; 31 *id.* 1; 30 L. J. Exch. 361; 28 *id.* 169.

See, generally, 2 Watts, 167; 1 Bail. 84; 6 Mass. 511; 6 N. H. 508; 2 Gall. 337.

—*Bouvier's Law Dictionary*, 1889

[**duress**

[**Duty.** A human action which is exactly conformable to the laws which require us to obey them. Legal or moral obligation. Obligatory conduct or service. Mandatory obligation to perform. *Huey v. King*, 220 Tenn. 189, 415 S.W.2d 136. See also **Obligation.**

A thing due; that which is due from a person; that which a person owes to another. An obligation to do a thing. A word of more extensive signification than “debt,” although both are expressed by the same Latin word “*debitum*.” Sometimes, however, the term is used synonymously with debt.

Those obligations of performance, care, or observance which rest upon a person in an official or fiduciary capacity; as the duty of an executor, trustee, manager, etc.

In negligence cases term may be defined as obligation, to which law will give recognition and effect, to conform to particular standard of conduct toward another. *Rasmussen v. Prudential Ins. Co.*, 277 Minn. 266, 152 N.W.2d 359, 362. The word “duty” is used throughout the Restatement of Torts to denote the fact that the actor is required to conduct himself in a particular manner at the risk that if he does not do so he becomes subject to liability to another to whom the duty is owed for any injury sustained by such other, of which the actor’s conduct is a legal cause. Restatement, Second, Torts § 4. See **Care**;

—*Black's Law Dictionary*, 1979

[**Duty**

[**duty** **1.** An act or a course of action that is required of one by position, social custom, law, or religion: *Do your duty to your country.* **2.a.** Moral obligation: *acting out of duty.* **b.** The compulsion felt to meet such obligation. See Synonyms at **obligation.** **3.** A service, function, or task assigned to one, especially in the armed forces: *hazardous duty.* **4.** Function or work, service: *jury duty.* See Synonyms at **function.** **5. Abbr. dy.** A tax charged by a government, especially on imports. **6. Abbr. dy. a.** The work performed by a machine under specified conditions. **b.** A measure of efficiency expressed as the amount of work done per unit of energy used. **7.** The total volume of water required to irrigate a given area in order to cultivate a specific crop until harvest. —**idiom. duty bound.** Obligated. *You are duty bound to help your little sister and brother....*

—*The American Heritage Dictionary of the English Language*, 1992

[**duty**

Miscellaneous Definitions

[**dynamics**... *n.* **1.a.** (*used with a sing. verb*). The branch of mechanics that is concerned with the effects of forces on the motion of a body or system of bodies, especially of forces that do not originate within the system itself. Also called *kinetics*. **b.** (*used with a pl. verb*). The forces and motions that characterize a system: *The dynamics of ocean waves are complex.* **2.** (*used with a pl. verb*). The social, intellectual, or moral forces that produce activity and change in a given sphere: *The dynamics of international trade have influenced our business decisions on this matter.* **3.** (*used with a pl. verb*). Variation in force or intensity, especially in musical sound: *"The conductor tended to overpower her with aggressive dynamics"* (Thor Eckert, Jr.). **4.** (*used with a sing. verb*). Psychodynamics.

—*The American Heritage Dictionary of the English Language*, 1992

[**dynamics**

— E —

[**Effect**, *v.* to do; to produce; to make; to bring to pass; to execute; enforce; accomplish.
—*Black's Law Dictionary*, 1979

[**Effect**

[**Effect**, *n.* That which is produced by an agent or cause; result; outcome; consequence. State by Clark v. Wolkoff, 250 Minn. 504, 85 N.W.2d 401, 410. The result which an instrument between parties will produce in their relative rights, or which a statute will produce upon the existing law, as discovered from the language used, the forms employed, or other materials for construing it. The operation of a law, of an agreement, or an act. The phrases “take effect,” “be in force,” “go into operation,” etc., are used interchangeably.

With effect. With success; as, to prosecute an action with effect.

—*Black's Law Dictionary*, 1979

[**Effect**

[**egocentric** ... *adj.* **1.** Holding the view that the ego is the center, object, and norm of all experience. **2.a.** Confined in attitude or interest to one's own needs or affairs. **b.** Caring only about oneself; selfish. **3. Philosophy.** **a.** Viewed or perceived from one's own mind as a center. **b.** Taking one's own self as the starting point in a philosophical system....

—*The American Heritage Dictionary of the English Language*, 1992

[**egocentric**

[**electricity**... *n.* *Abbr.* **elec.** **1.a.** The physical phenomena arising from the behavior of electrons and protons that is caused by the attraction of particles with opposite charges and the repulsion of particles with the same charge. **b.** the physical science of such phenomena. **2.** Electric current used or regarded as a source of power. **3.** Intense, contagious emotional excitement. —*attributive.* Often used to modify another noun: *electricity bills; electricity costs.*

—*The American Heritage Dictionary of the English Language*, 1992

[**electricity**

[**electron**... *n.* *Abbr.* **e** A stable subatomic particle in the lepton family having a rest mass of 9.1066×10^{-28} gram and a unit negative electric charge of approximately 1.602×10^{-19} coulomb. See table at **subatomic particle**. [ELECTR(IC) + —ON¹.]

—*The American Heritage Dictionary of the English Language*, 1992

[**electron**

[**elegance** ... *n.* **1.a.** Refinement, grace, and beauty in movement, appearance, or manners. **b.** Tasteful opulence in form, decoration, or presentation. **2.a.** Restraint and grace of style. **b.** Scientific exactness and precision. **3.** Something elegant.

SYNONYMS: *elegance, grace, polish, urbanity.* The central meaning shared by these nouns is “refined and tasteful beauty of manner, form, or style”: *a woman of unstudied elegance; walks with unconscious grace; comported herself with dignity*

Miscellaneous Definitions

and polish; tact and urbanity, the marks of a true diplomat.

ANTONYM: *inelegance.*

—*The American Heritage Dictionary of the English Language*, 1992
[**elegance**

[**Eminent domain** The power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character. *Housing Authority of Cherokee National of Oklahoma v. Langley*, Okl., 555 P.2d 1025, 1028 Fifth Amendment, U.S. Constitution.

In the United States, the power of eminent domain is founded in both the federal (Fifth Amend.) and state constitutions. However, the Constitution limits the power to taking for a public purpose and prohibits the exercise of the power of eminent domain without just compensation to the owners of the property which is taken. The process of exercising the power of eminent domain is commonly referred to as “condemnation”, or, “expropriation”.

The right of eminent domain is the right of the state, through its regular organization, to reassert, either temporarily or permanently, its dominion over any portion of the soil of the state on account of public exigency and for the public good. Thus, in time of war or insurrection, the proper authorities may possess and hold any part of the territory of the state for the common safety; and in time of peace the legislature may authorize the appropriation of the same to public purposes, such as the opening of roads, construction of defenses, or providing channels for trade or travel. Eminent domain is the highest and most exact idea of property remaining in the government, or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the state, whenever the public interest requires it.

See also Adequate compensation; Condemnation; Constructive taking; Damages; Expropriation; Fair market value; Just compensation; Larger parcel; Public use; Take.

Expropriation. The term “expropriation” (used *e.g.* in Louisiana) is practically synonymous with the term “eminent domain”. *Tennessee Gas Transmission Co. v. Violet Trapping Co.*, La.App., 200 So.2d 428, 433.

Partial taking. The taking of part of an owner’s property under the laws of eminent domain. Compensation must be based on damages or benefits to the remaining property, as well as the part taken. See **Condemnation**.

—*Black’s Law Dictionary*, 1979
[**Eminent domain**

[**encourage** **1.** To inspire with hope, courage, or confidence; hearten. **2.** To give support to; foster: *policies designed to encourage private investment.* **3.** To stimulate; spur: *burning the field to encourage new plant growth....*

—*The American Heritage Dictionary of the English Language*, 1992
[**encourage**

[**energy** ... *n.*, *pl.* **-gies**. **1.** The capacity for work or vigorous activity; vigor; power. See Synonyms at **strength**. **2.a.** Exertion or vigor or power: *a project requiring a great deal of time and energy*. **b.** Vitality and intensity of expression: *a speech delivered with energy and emotion*. **3.a.** Usable heat or power: *Each year Americans consume a high percentage of the world's energy*. **b.** A source of usable power, such as petroleum or coal. **4.** *Physics*. The capacity of a physical system to do work. —*attributive*. Often used to modify another noun: *energy conservation; energy efficiency; an energy czar*....

—*The American Heritage Dictionary of the English Language*, 1992

[**energy**

[**Enforce**. To put into execution; to cause to take effect; to make effective; as, to enforce a particular law, a writ, a judgment, or the collection of a debt or fine; to compel obedience to. See *e.g.* **Attachment; Execution; Garnishment**.

—*Black's Law Dictionary*, 1979

[**Enforce**

[**Engagement**. A contract or agreement characterized by exchange of mutual promises; *e.g.* engagement to marry.

—*Black's Law Dictionary*, 1979

[**Engagement**

[**entropy** ... *n.* *pl.* **-pies**. **1.** Symbol **S** For a closed thermodynamic system, a quantitative measure of the amount of thermal energy not available to do work. **2.** A measure of the disorder or randomness in a closed system. **3.** A measure of the loss of information in a transmitted message. **4.** A hypothetical tendency for all matter and energy in the universe to evolve toward a state of inert uniformity. **5.** Inevitable and steady deterioration of a system or society....

—*The American Heritage Dictionary of the English Language*, 1992

[**entropy**

[**EVIDENCE** That which tends to prove or disprove any matter in question, or to influence the belief respecting it. Belief is procured by the consideration of something presented to the mind. The matter thus presented, in whatever shape it may come, and through whatever material organ it is derived, is evidence. Prof. Parker, Lectures on Medical Jurisprudence, in Dartmouth college, N. H.

The word evidence, in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 Greenl. Ev. c.1, §1

That which is legally submitted to a jury, to enable them to decide upon the questions in dispute, or issue, as pointed out by the pleadings, and distinguished from all comment and argument, is termed evidence. 1 Starkie, Ev. pt. 1, §3.

Evidence may be considered with reference to its *instruments*, its *nature*, its *legal character*, its *effect*, its *object*, and the *modes of its introduction*.

The instruments of evidence, in the legal acceptation of the term, are:-

Miscellaneous Definitions

1. *Judicial notice or recognition.* There are divers thing of which courts take judicial notice, without the introduction of proof by the parties: such as the territorial extent of their jurisdiction, local divisions of their own countries, seats of courts, all public matters directly concerning the general government, the ordinary course of nature, divisions of time, the meanings of words, and generally, of whatever ought to be generally known in the jurisdiction. If the judge needs information on the subjects, he will seek it from such sources as he deems authentic. See 1 Greenleaf, Ev. c. 2; Steph. Ev. art. 58.

2. *Public Records;* the registers of official transactions made by officers appointed for the purpose: as, the public statutes, the judgements and proceedings of courts, etc.

3. *Judicial writings:* such as inquisitions, depositions, etc.

4. *Public documents* having a semi-official character: as, the statute-books published under the authority of the government, documents printed by the authority of congress, etc.

5. *Private writings:* as, deeds, contracts, wills.

6. Testimony of witness.

7. *Personal inspection,* by the jury or tribunal whose duty it is to determine the matter in controversy: as, a view of the locality by the jury, to enable them to determine the disputed fact, or the better to understand the testimony, or inspection of any machine or weapon which is produced in the cause.

There are rules prescribing the limits and regulating the use of these different instruments of evidence, appropriate to each class.

In its *nature*, evidence is *direct*, or *presumptive*, or *circumstantial*.

Direct evidence is that means of proof which tends to show the existence of a fact in question, without the intervention of the proof of any other fact.

It is that evidence which, if believed, establishes the truth of a fact in issue, and does not arise from any presumption. Evidence is direct and positive when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses. 1 Phill. Ev. 116; 1 Stark. Ev.19. In one sense their is but little direct or positive proof, or such proof as is acquired by means of one's own sense; all other evidence is presumptive; but, in common acceptation, direct and positive evidence is that which is communicated by one who has actual knowledge of the fact.

Presumptive evidence is that which shows the existence of one fact, by proof of the existence of another or others, from which the first may be inferred; because the fact or facts shown have a legitimate tendency to lead the mind to the conclusion that the fact exists which is sought to be proved.

Presumptive evidence has been divided into presumptions of law and presumptions of fact.

Presumptions of law, adopted from motives of public policy, are those which arise in certain cases by force of the rules of law, directing an inference to be drawn from proof of the existence of a particular fact or facts.

They may be conclusive or inconclusive.

Conclusive presumptions are those which admit of no averment or proof to the contrary. Thus, the records of a court, except in some proceeding to amend them, are conclusive evidence of the matter there recorded being presumed to be rightly made up.

Inconclusive or disputable presumptions of law are those where a fact is presumed to exist, either from the general experience of mankind, or from policy, or from proof of the existence of certain other facts, until something is offered to show the contrary. Thus, the law presumes a man to be sane until the contrary appears, and to be innocent of the commission of a crime until he is proved to be guilty. So, the existence of a person, or of a particular state of things, being shown, the law presumes the person or state of things to continue until something is offered to conflict with the presumption. See Best, *Presumption*, ch. ii.

But the presumption of a life may be rebutted by another presumption. Where a party has been absent from his place of residence for the term of seven years, without having been heard of, this raises a presumption of his death, until it is encountered by some evidence showing that he is actually alive, or was so within that period.

Presumptions of fact are not the subject of fixed rules, but are merely natural presumptions, such as appear, from common experience, to arise from the particular circumstances of any case. Some of these are “founded upon a knowledge of the human character, and of the motives, passions, and feelings by which the mind is usually influenced.” 1 Stark. Ev. 27.

They may be said to be the conclusions drawn by the mind from the natural connection of the circumstances disclosed in each case, or, in other words, from circumstantial evidence.

Circumstantial Evidence is sometimes used as synonymous with presumptive evidence; but presumptive evidence is not necessarily and in all cases what is usually understood by circumstantial evidence. The latter is that evidence which tends to prove a disputed fact by proof of other facts which have a legitimate tendency, from the laws of nature, the usual connection of things, the ordinary transaction of business, etc., to lead the mind to a conclusion that the fact exists which is sought to be established. See 1 Stark. Ev. 478. Presumptive evidence may sometimes be the result, to some extent, of any arbitrary rule—as in the case of the presumption of death after an absence of seven years without being heard of—derived by analogy from certain statutes.

The jurists and jury draw conclusions from circumstantial evidence, and find one fact from the existence of other facts shown to them,—some of the presumptions

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being so clear and certain that they have become fixed as rules of law, and others having greater or less weight according to the circumstances of the case, leaving the matter of fact inquired about in doubt until the proper tribunal to determine the question draws the conclusion.

In its *legal character*, evidence is *primary* or *secondary*, and *prima facie* or *conclusive*.

Primary evidence. The best evidence, or that proof which most certainly exhibits the true state of facts to which it relates. The law requires this, and rejects secondary or inferior evidence when it is attempted to be substituted for evidence of a higher or a superior nature. For example, when a written contract has been entered into, and the object is to prove what it was, it is requisite to produce the original writing, if it is to be attained; and in that case no copy or other inferior evidence will be received.

This is a rule of policy, grounded upon a reasonable suspicion that the substitution of inferior for better evidence arises from sinister motives, and an apprehension that the best evidence, if produced, would alter the case to the prejudice of the party. This rule relates not to the measure and quantity of evidence, but to its quality when compared with some other evidence of superior degree.

To this general rule there are several exceptions. 1. As it refers to the *quality* rather than to the quantity of evidence, it is evident that the fullest proof that every case admits of is not requisite: if, therefore, there are several eye-witnesses to a fact, it may be sufficiently proved by one only. 2. It is not always requisite, when the matter to be proved has been reduced to writing, that the writing should be produced: as, if the narrative of a fact to be proved has been committed to writing, it may yet be proved by parol evidence. A receipt for the payment of money, for example, will not exclude parol evidence of payment; 4 Esp. 213. And see 7 B. & C. 611; 1 Campb. 439; 3 B. & Ald. 566; 3 Cra. C. C. 51; 1 Dak. 372; 78 N. Y. 82.

Secondary evidence. That species of proof that is admissible when the primary evidence cannot be produced, and which becomes by that event the best evidence that can be adduced; 3 Yeates, 530.

But before such evidence can be allowed it must be clearly made to appear that the superior evidence is not to be had. The person who possesses it must be applied to, whether he be a stranger or the opposite party: in the case of a stranger, a subpoena and attachment, when proper, must be taken out and served; and in the case of a party, notice to produce such primary evidence must be proved before the secondary evidence will be admitted; 7 S. & R. 116; 4 Binn. 295, note; 6 *id.* 228, 478; 7 East. 66; 8 *id.* 278; 3 B. & Ald. 296; 61 Penn. 328; 7 Exch. 639. After proof of the due execution of the original, the contents should be proved by a counterpart, if there be one, for this is the next best evidence; and it seems that no evidence of a mere copy is admissible until proof has been given that the counterpart cannot be produced; 6 Term, 236. If there be no counterpart, a copy may be proved in evidence by any witness who knows that it is a copy, from having compared it with the original.

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Bull. N. P. 254; 1 Kebl. 117; 6 Binn. 234; 2 Taunt. 52; 1 Campb. 469; 8 Mass. 273. If regularly recorded, an office copy may be given in evidence. If there be no copy, the party may produce an abstract or even give parol evidence of the contents of a deed. 10 Mod. 8; 6 Term, 556.

If books or papers necessary as evidence in the courts in one state be in the possession of a person living in another state, secondary evidence, without further showing, may be given to prove the contents of such papers, and notice to produce them is unnecessary; 20 Wall. 125.

It has been decided in England that there are no degrees in secondary evidence; and when a party has laid the foundation for such evidence, he may prove the contents of a deed by parol, although it appear that an attested copy is in existence; 6 C. & P. 206; 8 *id.* 389; 7 M. & W. 102; but the question is not settled in the United States; Greenl. Ev. § 84, note; and the U. S. Supreme Court, after saying they do not adopt the English rule, observe that the rule of exclusion or admission must be so applied as to promote the ends of justice, and guard against fraud, surprise, and imposition; 20 Wall. 226.

Primâ facie evidence is that which appears to be sufficient proof respecting the matter in question, until something appears to convert it, but which may be contradicted or controlled.

Conclusive evidence is that which establishes the fact: as in the instance of conclusive presumptions.

Evidence may be conclusive for some purposes but not for others.

Admissibility of Evidence. In considering the legal character of evidence, we are naturally led to the rules which regulate its competency and admissibility, although it is not precisely accurate to say that evidence is in its legal character competent or incompetent; because what is incompetent for the consideration of the tribunal which is to pronounce the decision is not, strictly speaking, evidence.

But the terms incompetent evidence and inadmissible evidence are often used to designate what is not to be heard as evidence: as, witnesses are spoken of as competent or incompetent.

As the common law excludes certain classes of persons from giving testimony in particular cases, because it deems their exclusion conducive, in general, to the discovery, of the truth, so it excludes certain materials and statements from being introduced as testimony in a cause, for a similar reason. Thus, as a general rule, it requires witnesses to speak to facts within their own knowledge, and excludes hearsay evidence.

Hearsay is the evidence, not of what the witness knows himself, but of what he has heard from others.

Such mere recitals or assertions cannot be received in evidence for many reasons, but principally for the following:-first, that the party making such declarations is

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not on oath; and, secondly, because the party against whom it operates has no opportunity of cross-examination. 1 Phill. Ev. 185. See, for other reasons, 1 Stark. Ev. pt. 1, p. 44. The general rule excluding hearsay evidence does not apply to those declarations to which the party is privy, or to admissions which he himself has made.

Admissions are the declarations which a party by himself, or those who act under his authority, make of the existence of certain facts. See ADMISSION.

A statement of all the distinctions between what is to be regarded as hearsay and what is to be deemed original evidence would extend this article too far.

The general principle is that the mere declaration, oral or written, of a third person, as to a fact, standing alone, is inadmissible

Res gestae. But where evidence of an act done by a party is admissible, his declarations made at the time, having a tendency to elucidate or give a character to the act, and which may derive a degree of credit from the act itself, are also admissible, as part of the *res gestae*; 9 N. H. 271; 93 U. S. 465.

So, declarations of third persons, in the presence and hearing of a party, and which tend to affect his interest, may be shown in order to introduce his answer or to show an admission by his silence, but this species of evidence must be received with great caution; 1 Greenl. Ev. 236.

Confessions of guilt in criminal cases come within the class of admissions, provided they have been voluntarily made and have not been obtained by the hope of favor or by the fear of punishment. And if made under such inducements as to exclude them a subsequent declaration to the same effect, made after the inducement has ceased to operate, and having no connection with the hopes or fears which have existed, is admissible as evidence. 17 N. H. 171. There is, however, a growing unwillingness to rest convictions on confessions unless supported by corroborating circumstances, and in all cases there must be at least proof of the *corpus delicti*, independent of the confession; 1 Whart. Cr. Law, § 683; Cooley, Const. Lim. 385. See ADMISSIONS; CONFESSION.

Dying declarations are an exception to the rule excluding hearsay evidence, and are admitted, under certain limitations in cases of homicide, so far as the circumstances attending the death and its cause are the subject of them. See DECLARATION; DYING DECLARATIONS.

Opinions of persons of skill and experience, called experts, are also admissible in certain cases, when, in order to the better understanding of the evidence or to the solution of the question, a certain skill and experience are required which are not ordinarily possessed by jurors.

In several instances proof of facts is excluded from public policy; as professional communications, secrets of state, proceedings of grand jurors, and communications between husband and wife.

Many facts, from their very nature, either absolutely or usually exclude direct evidence to prove them, being such as are either necessarily or usually imperceptible by the senses, and therefore incapable of the ordinary means of proof. These are questions of pedigree or relationship, character, prescription, custom, boundary, and the like; as also questions which depend upon the exercise of particular skill and judgement. Such facts, some from their nature, and others from their antiquity, do not admit of the ordinary and direct means of proof by living witnesses; and, consequently, resort must be had to the best means of proof which the nature of the cases affords. See BOUNDARY; CUSTOM; OPINION; PEDIGREE; PRESCRIPTION.

Consult Greenleaf, Starkie, Wharton, Stephen, Phillips, Evidence; Best, Presumption.

The *effect* of evidence. As a general rule, a judgement rendered by a court of competent jurisdiction directly upon a point in issue is a bar between the same parties; 1 Phill. Ev. 242; and privies in blood, as an heir; 3 Mod. 141, or privies in estate, 1 Ld. Raym. 730; Bull. N. P. 232, stand in the same situation as those they represent: the verdict and judgement may be used for or against them, and is conclusive. See RES JUDICATA.

The constitution of the United States, art. 4, s. 1, declares that “full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.” See AUTHENTICATION; 7 Cra. 408, 481; 9 *id.* 192; 3 Wheat. 234; 10 *id.* 469; 17 Mass. 546; 2 Yeates, 532; 3 Bibb. 369; 2 Marsh. 293; 5 Day, 563.

As to the effect of foreign laws, see FOREIGN LAWS. For the force and effect of foreign judgments, see FOREIGN JUDGMENTS.

The *object* of evidence is next to be considered. It is to ascertain the truth between the parties. It has been discovered by experience that this is done most certainly by the adoption of the following rules, which are now binding as law:-1. The evidence must be confined to the point in issue 2. The substance of the issue must be proved; but only the substance is required to be proved. 3. The affirmative of the issue must be proved.

It is a general rule, both in civil and criminal cases, that *the evidence shall be confined to the point in issue*. Justice and convenience require the observance of this rule, particularly in criminal cases; for when a prisoner is charged with an offence it is of the utmost importance to him that the facts laid before the jury should consist exclusively of the transaction which forms the subject of the indictment, and which alone he has come prepared to answer. 2 Russ. Cr. 694; 1 Phill. Ev. 166.

To this general rule there are several exceptions, and a variety of cases which do not fall within the rule. In general, evidence of collateral facts is not admissible; but

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when such a fact is material to the issue joined between the parties, it may be given in evidence: as, for example, in order to prove that the acceptor of a bill knew the payee to be a fictitious person, or that the drawer had general authority from him to fill up bills with the name of a fictitious payee, evidence may be given to show that he had accepted similar bills before they could, from their date, have arrived from the place of date. 2 H. Blackst. 288.

When special damage sustained by the plaintiff is not stated in the declaration, it is not one of the points in issue, and, therefore, evidence of it cannot be received; yet a damage which is a necessary result of the defendant's breach of contract may be proved notwithstanding it is not in the declaration 11 Price, 19.

In general, evidence of the character of either party to a suit is inadmissible; yet in some cases such evidence may be given. See CHARACTER.

When evidence incidentally applies to another person or thing not included in the transaction in question, and with regard to whom or to which it is inadmissible, yet if it bear upon the point in issue it will be received; 8 Bing. 376. And see 1 Phill. Ev. 158; 2 East, Pl. Cr. 1035; 2 Leach, 985; 4 B. & P. 92; Russ. & R. 376; 2 Yeates, 114; 9 Conn. 47; 1 Whart. Cr. Law, § 649.

The *acts* of others, as in the cause of conspirators, may be given in evidence against the prisoner, when referable to the issue; but *confessions* made by one of several conspirators after the offence has been completed, and when the conspirators no longer act in concert, cannot be received. See CONFESSIO; 3 Pick. 33; 10 *id.* 497; 2 Pet. 364; 2 Va. Cas. 269; 3 S. & R. 9, 220; 1 Rawle, 362, 458; 2 Leigh, 745; 2 Day, 205; 2 B. & Ald. 573, 574.

In criminal cases, when the offence is a cumulative one, consisting itself in the commission of a number of acts, evidence of those acts is not only admissible, but essential to support the charge. On an indictment against a defendant for a conspiracy to cause himself to be believed a man of large property, for the purpose of defrauding tradesmen, after proof of a representation to one tradesman, evidence may thereupon be given of a representation to another tradesman at a different time; 1 Campb 399; 2 Day, 205; 1 Johns. 99; 4 Rog. 143; 2 Johns. Cas. 193.

To prove the guilty knowledge of a prisoner with regard to the transaction in question, evidence of other offences of the same kind committed by the prisoner, though not charged in the indictment, is admissible against him; as, in the case where a prisoner had passed a counterfeit dollar, evidence that he had other counterfeit dollars in his possession is evidence to prove the guilty knowledge; 2 Const. 758, 776; 1 Bail 300; 2 Leigh, 745; 1 Wheel. Cr. Cas. 415; 3 Rog. 148; Russ. & R. 132; 1 Camp. 324; 5 Rand. 70(?)1.

The substance of the issue joined between the parties must be proved. 1 Phill. Ev. 190. Under this rule will be considered the *quantity* of evidence required to support particular averments in the declaration or indictment.

And, *first*, of civil cases. 1. It is a fatal variance in a contract if it appear that a party who ought to have been joined as plaintiff has been omitted; 1 Saund. 291 *h*, n.; 2 Term, 282. But it is no variance to omit a person who might have been joined as a defendant; because the non-joinder ought to have been pleaded in abatement; 1 Saund. 291 *d*, n. 2. The consideration of the contract must be proved; but it is not necessary for the plaintiff to set out in his declaration, or prove on the trial, the several parts of a contract consisting of distinct and collateral provisions: it is sufficient to state so much of the contract as contains the entire consideration of the act, and the entire act to be done in virtue of such consideration, including the time, manner, and other circumstances of its performance; 6 East, 568; 4 B. & Ald. 387.

Secondly. In criminal cases, it may be laid down that it is, in general, sufficient to prove what constitutes an offence. It is enough to prove so much of the indictment as shows that the defendant has committed a substantive crime therein specified; 2 Campb. 585; 1 H. & J. Md. 427. If a man be indicted for robbery, he may be found guilty of larceny and not guilty of the robbery; 2 Hale, Pl. Cr. 302. The offence of which the party is convicted must, however, be of the same class with that of which he is charged; 1 Leach, 14; 2 Stra. 1133.

When the intent of the prisoner furnishes one of the ingredients in the offence, and several intents are laid in the indictment, each of which, together with the act done, constitutes an offence, it is sufficient to prove one intent only; 3 Stark. 35.

3. When a person or thing necessary to be mentioned in a indictment is described with circumstances of greater particularity than is requisite, yet those circumstances must be proved; 3 Rog. 77; 3 Day, 283. For example, if a party be charged with stealing a *black* horse, the evidence must correspond with the averment, although it was unnecessary to make it; Rose. Cr. Ev. 77; 4 Ohio, 350.

4. The name of the prosecutor or party injured must be proved as laid; and the rule is the same with reference to the name of a third person introduced into the indictment, as descriptive of some person or thing.

5. *The affirmative of the issue must be proved*. The general rule with regard to the burden of proving the issue requires that the party who asserts the affirmative should prove it. But this rule ceases to operate the moment the presumption of law is thrown into the other scale. When the issue is on the legitimacy of a child, therefore, it is incumbent on the party asserting the illegitimacy to prove it. 2 Selw. N. P. 709. See ONUS PROBANDI; PRESUMPTION; 2 Gall. 485; 1 M'Cord, 573; 2 So. L. Rev. (N. S.) 126.

Modes of proof. Records are to be proved by an exemplification, duly authenticated (see AUTHENTICATION), in all cases where the issue is *nul tiel record*. In other cases, and examined copy, duly proved, will, in general, be evidence; 2 Woods, 680. Foreign laws are proved in the mode pointed out under the article FOREIGN LAWS.

Private writings are proved by producing the attesting witness; or in case of his death, absence, or other legal inability to testify, as if after attesting the paper he

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becomes infamous, his handwriting may be proved. When there is no witness to the instrument, it may be proved by the evidence of the handwriting of the party, by a person who has seen him write or in a course of correspondence has become acquainted with his hand. See COMPARISON OF HANDWRITING; 5 Binn. 349; 6 S. & R. 12, 312; 10 *id.* 110; 11 *id.* 333, 347; 3 Wash. C. C. 31; 1 Rawle, 223; 3 *id.* 312; 1 Ashm. 8; 3 Penn. R. 136; article in 4 Am. L. Rev. 625.

Books of original entry, when duly proved, are *primâ facie* evidence of goods sold and delivered, and of work and labor done. See ORIGINAL ENTRY.

Proof by witnesses. The testimony of witnesses is called oral evidence, or that which is given *viva voce*, as contradistinguished from that which is written or documentary. It is a general rule that oral evidence shall in no case be received as equivalent to, or as a substitute for, a written instrument, where the latter is required by law; or to give effect to a written instrument which is defective in any particular which by law is essential to its validity; or to contradict, alter, or vary a written instrument, either appointed by law, or by the contract of the parties, to be the appropriate and authentic memorial of the particular facts it recites; for by doing so, oral testimony would be admitted to usurp the place of evidence decidedly superior in degree; 1 S. & R. 27, 464; 2 Dall. 172; 1 Binn. 616; 3 Marsh. 333; 1 Bibb, 271; 4 *id.* 473; 11 Mas. 30; 13 *id.* 443; 3 Conn. 9; 12 Johns. 77; 320 *id.* 49; 3 Campb. 57; 1 Esp. Cas. 53; 1 Maule & S. 21.

But parol evidence is admissible to defeat a written instrument, on the ground of fraud, mistake, etc., or to apply it to its proper subject-manner, or, in some instances, as ancillary to such application, to explain the meaning of doubtful terms, or to rebut presumptions arising extrinsically. In these cases, the parol evidence does not usurp the place, or arrogate the authority of, written evidence, but either shows that the instrument ought not to be allowed to operate at all, or is essential in order to give to the instrument its legal effect; 1 Murph. 426; 1 Des. 465; 4 *id.* 211; 1 Bay, 247; 1 Bibb, 271; 11 Mass. 30. See 1 Pet. C. C. 85; 1 Binn. 610; 3 S. & R. 340; Pothier, Obl. pl. 4, c. 2.

See, generally, the treatises on Evidence, of Gilbert, Phillipps, Starkie, Roscoe, Swift, Bentham, Macnally, Peake, Greenleaf, Wharton, Stephen; Best on Presumption; Bouvier, Inst. Index; and the various Digests.

—*Bouvier's Law Dictionary*, 1889

[**evidence**

[**evidence** 1. whatever makes clear the truth or falsehood of something; proof; facts. The evidence showed that he had not been near the place 2. indication; sign. A smile gives evidence of pleasure. 3. make easy to see or understand; show clearly; prove. His smiles evidenced his pleasure.

—*Thorndike Century Senior Dictionary*, 1941

[**evidence**

[**evidence** **1 a:** an outward sign: INDICATION **b:** something that furnishes proof: TESTIMONY; *specif:* something legally submitted to a tribunal to ascertain

the truth of a matter **2**: one who bears witness; *esp*: one who voluntarily confesses a crime and testifies for the prosecution against his accomplices- **in evidence 1**: to be seen: CONSPICUOUS <trim lawns . . . are everywhere in evidence-Amer. Guide Series: N. C. > **2**: as evidence —*Webster's New Collegiate Dictionary, 1973*
[evidence]

[**Evidence**. Any species of proof, or probative matter, legally presented at the trial of an issue, by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention. *Taylor v. Howard*. 111 R.I.527, 304 A.2d 891, 893.

Testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. *Calif.Evid.Code*.

All the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. Any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion of the existence or nonexistence of some matter of fact. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. That which tends to produce conviction in the mind as to existence of a fact. The means sanctioned by law of ascertaining in a judicial proceeding the truth respecting a question of fact.

As a part of procedure “evidence” signifies those rules of law whereby it is determined what testimony should be admitted and what should be rejected in each case, and what is the weight to be given to the testimony admitted. See **Evidence rules**.

For Presumption as evidence, see **Presumption**; Proof and evidence distinguished, see **Proof**; Testimony as synonymous or distinguishable, see **Testimony**; View as evidence, see **View**.

See also Adminicular evidence; Aliunde; Autoptic evidence; Best evidence; Beyond a reasonable doubt; Circumstantial evidence; Competent evidence; Conclusive evidence; Conflicting evidence; Corroborating evidence; Cumulative evidence; Demeanor evidence; Demonstrative evidence; Derivative evidence; Direct evidence; Documentary evidence; Extrajudicial evidence; Extraneous evidence; Extrinsic evidence; Fabricated evidence; Fact; Fair preponderance of evidence; Hearsay; Illegally obtained evidence; Immaterial evidence; Incompetent evidence; Incriminating evidence; Inculpatory; Independent source rule; Indirect evidence; Indispensable evidence; Inference: Laying foundation; Legal evidence; Legally sufficient evidence; Limited admissibility; Material evidence; Mathematical evidence; Moral evidence; Narrative evidence; Newly-discovered evidence; Offer of proof; Opinion evidence; Oral evidence; Original document rule; Parol evidence rule; Partial evidence; Past recollection recorded; Perpetuating testimony; Physical fact rule; Positive evidence; Preliminary evidence; Preponderance; Presumption; Presumptive evidence; Prima facie evidence;

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Primary evidence; Prior inconsistent statements; Privileged evidence; Probable evidence; Probative evidence; Probative facts; Proof; Proper evidence; Real evidence; Reasonable inference rule; Rebuttal evidence; Relevant evidence; Satisfactory evidence; Scintilla of evidence; Secondary evidence; Second-hand evidence; State's evidence; Substantial evidence; Substantive evidence; Substitutionary evidence; Sufficiency of evidence; Traditional evidence; View; Weight of evidence; Withholding of evidence.

There are, generally speaking, two types of evidence from which a jury may properly find the truth as to the facts of a case. One is direct evidence-such as the testimony of an eyewitness. The other is indirect or circumstantial evidence-the proof of a chain of circumstances pointing to the existence or non-existence of certain facts. As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that the jury find the facts in accordance with the preponderance of all the evidence in the case, both direct and circumstantial.

Autoptic evidence. Type of evidence presented in court which consists of the thing itself and not the testimony accompanying its presentation. Articles offered in evidence which the judge or jury can see and inspect. Real evidence as contrasted with testimonial evidence; *e.g.* in contract action, the document purporting to be the contract itself, or the gun in a murder trial.

Character evidence. Evidence of a person's character or traits is admissible under certain conditions in a trial, though, as a general rule, evidence of character traits are not competent to prove that a person acted in conformity therewith on a particular occasion. Fed.Evid.R. 404

Curative admissibility . See **Curative.**

Exculpatory evidence. A defendant in a criminal case is entitled to evidence in possession or control of the government if such evidence tends to indicate his innocence or tends to mitigate his criminality if he demands it and if the failure to disclose it results in a denial of a fair trial. U S. v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342. Disclosure of evidence by the government is governed by Fed.R.Crim.P. 16.

Expert evidence. Testimony given in relation to some scientific, technical, or professional matter by experts, *i.e.*, persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject. See also **Expert witness.**

Identification Evidence . See **Exemplars.**

Illegally obtained evidence. See Exclusionary Rule; Miranda rule; Mapp v. Ohio; McNabb-Mallory Rule; Motion to suppress; Poisonous tree doctrine.

Inculpatory evidence. Evidence tending to show a person's involvement in a crime; incriminating evidence.

Irrelevant evidence. Evidence is irrelevant if it is not so related to the issues to be tried and if it has no logical tendency to prove the issues. See also *Relevant evidence, infra.*

Material evidence. See *Relevant evidence, infra.*

Oral evidence. See **Testimony.**

Original evidence. See Original; Original document rule.

Preponderance of the evidence. A standard of proof (used in many civil suits) which is met when a party's evidence on a fact indicates that it is "more likely than not" that the fact is as the party alleges it to be. See **Fair preponderance of evidence.**

Proffered evidence. Evidence, the admissibility or inadmissibility of which is dependant upon the existence or nonexistence of a preliminary fact. Calif.Evid.Code.

Relevant Evidence. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed.Evid.R. 401. Evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. Calif.Evid.Code. Evidence which bears a logical relationship to the issues in a trial or case.

Tangible evidence. Physical evidence; evidence that can be seen or touched, *e.g.* documents, weapons. Testimonial evidence is evidence which can be heard, *e.g.*, the statements made by anyone sitting in the witness box. See **Demonstrative Evidence.**

—*Black's Law Dictionary*, 1979
[**Evidence**

[**EXCLUSIONARY RULE** no entry. —*Bouvier's Law Dictionary*, 1889

[**Exclusionary Rule** no entry. —*Thorndike Century Senior Dictionary*, 1941

[**Exclusionary Rule** no entry. —*Webster's New Collegiate Dictionary*, 1973

[**Exclusionary Rule.** This rule commands that where evidence has been obtained in violation of the privileges guaranteed by the U.S. Constitution, the evidence must be excluded at the trial. Evidence which is obtained by an unreasonable search and seizure is excluded from evidence under the Fourth Amendment, U.S. Constitution and this rule is applicable to the States. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081. See also Counsel, right to; Illegally obtained evidence; Independent source rule. **Miranda Rule; Motion to suppress; Suppression of evidence; Suppression hearing.**

—*Black's Law Dictionary*, 1979
[**Exclusionary Rule**

[**EXCLUSIVE** Shutting out; debarring from participation. Shut out; not included.

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An exclusive right or privilege, as a copyright or patent, is one which may be exercised and enjoyed only by the person authorized, while all others are forbidden to interfere.

When an act is to be done within a certain period from a particular time, as, for example, within ten days, one day is to be taken inclusive and the other exclusive. See Hob. 139; Cowp. 714; Dougl. 463; 2 Mod. 280; 3 Penn. 200; 1 S. & R. 43; 3 B. & Ald. 581; 3 East, 407; Comyns, Dig. *Estates* (G8) *Temps* (A); 2 Chitty, Pract. 69, 147.

—*Bouvier's Law Dictionary*, 1889

[**exclusive**

[**EXECUTIVE** That power in the government which causes the laws to be executed and obeyed. It is usually confided to the hands of the chief magistrate; the president of the United States is invested with this authority under the national government; and the governor of each state has the executive power in his hands.

The officer in whom the executive power is vested.

The constitution of the United States directs that “the executive power shall be vested in a president of the United States of America.” Art. 2, s. 1. See Story, Const. b. 3, c. 36.

—*Bouvier's Law Dictionary*, 1889

[**executive**

[**Executive**. As distinguished from the legislative and judicial departments (*i.e.* branches) of government, the executive department (*sic*) is that which is charged with the detail of carrying the laws into effect and securing their due observance. See also **Executive department**; **Executive powers**.

The word “executive” is also used as an impersonal designation of the chief executive officer of a state or nation. Term also refers to upper level management of business. See also **Executive Employees**.

—*Black's Law Dictionary*, 1979

[**Executive**

[**Executive order**. An order or regulation issued by the President or some administrative authority under his direction for the purpose of interpreting, implementing, or giving administrative effect to a provision of the Constitution or of some law or treaty. To have the effect of law, such orders must be published in the Federal Register.

—*Black's Law Dictionary*, 1979

[**Executive order**

[**Executive powers**. Power to execute laws. The enumerated powers of the President are provided for in Article II of the U.S. Const. Executive powers of governors are provided for in state constitutions. The executive powers vested in governors by state constitutions include the power to execute the laws, that is, to carry them into effect, as distinguished from the power to make the laws and the power to judge them. *Tucker v. State*, 218 Ind. 614, 35 N.E.2d 270, 291. See also **Executive order**.

—*Black's Law Dictionary*, 1979

[**Executive powers**

[**EXEMPLARS** no entry.

—*Bouvier's Law Dictionary*, 1889

[**exemplars** no entry. —*Thorndike Century Senior Dictionary*, 1941

[**exemplars** no entry. —*Webster's New Collegiate Dictionary*, 1973

[**Exemplars** Nontestimonial identification evidence taken from defendant; *e.g.* fingerprints, blood samples, voiceprints, lineup identification, handwriting samples.

—*Black's Law Dictionary*, 1979

[**Exemplars**

[**EXTORTION**. The unlawful taking by any officer, by color of his office, of any money or thing of value that is not due to him, or more than is due, or before it is due. 4 Bla. Com. 141; 1 Hawk. Pl. Cr. c. 68, s. 1; 1 Russ. Cr. *144.

In a large sense the term includes any oppression under color of right; but it is generally and constantly used in the more limited technical sense above given.

To constitute extortion, there must be the receipt of money or something of value; the taking a promissory note which is void is not sufficient to make an extortion; 2 Mass. 523; 16 *id.* 93, 94. See Bacon, Abr; Co. Litt. 168. It is extortion and oppression for an officer to take money for the performance of his duty, even though it be in the exercise of a discretionary power; 2 Burr. 927. See 6 Cow. 661; 1 Caines, 130; 13 S. & R. 426; 3 Penn. R. 183; 1 Yeates, 71; 1 South. 324; 1 Pick. 171; 7 *id.* 279; 4 Cox, Cr. Cas. 387.

—*Bouvier's Law Dictionary*, 1889

[**extortion**

[**Extortion**. The obtaining of property from another induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right. 18 U.S.C.A. § 871 et seq.; § 1951.

A person is guilty of theft by extortion if he purposely obtains property of another by threatening to: (1) inflict bodily injury on anyone or commit any other criminal offense; or (2) accuse anyone of a criminal offense; or (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or (4) take or withhold action as an official, or cause an official to take or withhold action; or (5) bring about or continue a strike, boycott or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act; or (6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (7) inflict any other harm which would not benefit the actor. Model Penal code, § 223.4.

See also **Blackmail**; **Hobbs Act**; **Loan Sharking**; **Shakedown**. With respect to "Larceny by extortion", see **Larceny**.

—*Black's Law Dictionary*, 1979

[**Extortion**

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— F —

[Fail. Fault, negligence, or refusal. Fall short; be unsuccessful or deficient. Fading health See **Extremis**.

Fail also means: involuntarily to fall short of success or the attainment of one's purpose; to become insolvent and unable to meet one's obligations as they mature; to become or be found deficient or wanting; to keep or cease from an appointed, proper, expected, or required action, *Romero v. Department of Public Works*, 17 Cal.2d 189, 109 P.2d 662, 665; to lapse, as a legacy which has never vested or taken effect; to leave unperformed; to omit; to neglect; to be wanting in action. See also **Failure; Lapse**.
—*Black's Law Dictionary*, 1979

[Fail

[fascism.... 1. Fascism. 2. any system of government in which property is privately owned, but all industry and business is regulated by a strong national government. *n.*
—*Thorndike Century Senior Dictionary*, 1941

[fascism

[fascism.... n. 1. Often **Fascism. a.** A system of government marked by centralization of authority under a dictator, stringent socioeconomic controls, suppression of the opposition through terror and censorship, and typically a policy of belligerent nationalism and racism. **b.** A political philosophy or movement based on or advocating such a system of government. **2.** Oppressive, dictatorial control....
—*The American Heritage Dictionary of the English Language*, 1992

[fascism

[Federal Register. The Federal Register, published daily, is the medium for making available to the public Federal agency regulations and other legal documents of the executive branch. These documents cover a wide range of Government activities. An important function of the Federal Register is that it includes proposed changes (rules, regulations, standards, etc.) of governmental agencies. Each proposed change published carries an invitation for any citizen or group to participate in the consideration of the proposed regulation through the submission of written data, views, or arguments, and sometimes by oral presentations. Such regulations and rules as finally approved appear thereafter in the Code of Federal Regulations.
—*Black's Law Dictionary*, 1979

[Federal Register

[FORBEARANCE. A delay in enforcing rights. The act by which a creditor waits for the payment of a debt due him by the debtor after it has become due. It is sufficient consideration to support assumpsit. See ASSUMPSIT; CONSIDERATION.
—*Bouvier's Law Dictionary*, 1889

[FORBEARANCE

[Forbearance. Act by which creditor waits for payment of debt due him by debtor after it becomes due. *Upton v. Gould*, 64 Cal.App.2d 814, 149 P.2d 731, 733. A delay in enforcing rights. Indulgence granted to a debtor.

Miscellaneous Definitions

Refraining from action. The term is used in this sense in general jurisprudence, in contradistinction to “act.”

Within usury law, term signifies contractual obligation of lender or creditor to refrain, during given period of time, from requiring borrower or debtor to repay loan or debt then due and payable. *Hafer v. Spaeth*, 22 Wash.2d 378, 156 P.2d 408, 411.

As regards forbearance as a form of consideration, see **Consideration**.

—*Black’s Law Dictionary*, 1979

[Forbearance

[**forbearance** ... *n.* **1.** The act of forbearing. **2.** Tolerance and restraint in the face of provocation; patience. See Synonyms at **patience**. **3.** The quality of being forbearing. **4. Law.** The act of a creditor who refrains from enforcing a debt when it falls due. —*The American Heritage Dictionary of the English Language*, 1992

[forbearance

[**force** *n.* **1.** The capacity to do work or cause physical change; energy, strength, or active power: *the force of an explosion*. **2.a.** Power made operative against resistance; exertion: *use force in driving a nail*. **b.** The use of physical power or violence to compel or restrain: *a confession obtained by force*. **3.a.** Intellectual power or vigor, especially as conveyed in writing or speech. **b.** Moral strength. **c.** A capacity for affecting the mind or behavior; efficacy: *the force of logical argumentation*. **d.** One that possesses such capacity: *the forces of evil*. **4.a.** A body of persons or other resources organized or available for a certain purpose: *a large labor force*. **b.** A person or group capable of influential action: *a retired senator who is still a force in national politics*. **5.a.** Military strength. **b.** The entire military strength, as of a nation. **c.** Units of a nation’s military personnel, especially those deployed into combat: *Our forces have at last engaged the enemy*. **6. Law.** Legal validity. **7. Physics.** A vector quantity that tends to produce an acceleration of a body in the direction of its application. —**force** *tr.v.*... **1.** To compel through pressure or necessity: *I forced myself to practice daily*. *He was forced to take a second job*. **2.a.** To gain by the use of force or coercion: *force a confession*. **b.** To move or effect against resistance or inertia: *forced my foot into the shoe*. **c.** To inflict or impose relentlessly: *He forced his ideas upon the group*. **3.a.** To put undue strain on: *She forced her voice despite being hoarse*. **b.** To increase or accelerate (a pace, for example) to the maximum. **c.** To produce with effort and against one’s will: *force a laugh in spite of pain*. **d.** To use (language) with obvious lack of ease and naturalness. **4.a.** To move, open, or clear by force: *forced our way through the crowd*. **b.** To break down or open by force: *force a lock*. **5.** To rape. **6. Botany.** To cause to grow or mature by artificially accelerating normal processes. **7. Baseball.** **a.** To put (a runner) out on a force play. **b.** To allow (a run) to be scored by walking a batter when the bases are loaded. **8. Games.** To cause an opponent to play (a particular card). —**idioms.** **force (someone’s) hand.** To force to act or speak prematurely or unwillingly. **in force.** **1.** In full strength; in large numbers: *Demonstrators were out in force*. **2.** In effect; operative: *a rule that is no longer in force*...

SYNONYMS: *force, compel, coerce, constrain, oblige, obligate.* These verbs mean to cause a person or thing to follow a prescribed or dictated course. *Force*, the most general, usually implies the exertion of strength, especially physical power, or the operation of circumstances that permit no alternative to compliance: *Tear gas forced the fugitives out of their hiding place. Lack of funds will eventually force him to look for work.* *Compel* is often interchangeable with *force*, but it applies especially to an act dictated by one in authority: *Say nothing unless you're compelled to. His playing compels respect, if not enthusiasm.* *Coerce* invariably implies the use of strength or harsh measures in securing compliance: "The way in which the man of genius rules is by persuading an efficient minority to coerce an indifferent and self-indulgent majority" (James Fitzjames Stephen). *Constrain* suggests that one is bound to a course of action by physical or moral means or by the operation of compelling circumstances: *"I am your anointed Queen. I will never be by violence constrained to do anything"* (Elizabeth I). *Oblige* is applicable when compliance is brought about by the operation of authority, necessity, or moral or ethical considerations: *"Work consists of whatever a body is obliged to do"* (Mark Twain). *Obligate* applies when force is exerted by the terms of a legal contract or promise or by the dictates of one's conscience or sense of propriety: *I am obligated to repay the loan.* See also Synonyms at **strength**.

—*The American Heritage Dictionary of the English Language, 1992*
[force]

[FRAUD. The unlawful appropriation of another's property, with knowledge, by design, and without criminal intent.

Fraud is sometimes used as a term synonymous with *covin, collusion, and deceit*, but improperly so. *Covin* is a secret contrivance between two or more persons to defraud and prejudice another of his rights. *Collusion* is an agreement between two or more persons to defraud another under the forms of law, or to accomplish an illegal purpose. *Deceit* is a fraudulent contrivance by words or acts to deceive a third person, who, relying thereupon, without carelessness or neglect of his own, sustains damage thereby; Co. Litt. 357 b; Bacon, Abr. Fraud.

Actual or positive *fraud* includes cases of the intentional and successful employment of any cunning, deception, or artifice, used to circumvent, cheat, or deceive another; 1 Story, Eq. Jur. § 186.

For instance, the misrepresentation by word or deed of material facts, by which one exercising reasonable discretion and confidence is misled to his injury, whether the misrepresentation was known to be false, or only not known to be true, or even if made altogether innocently; the suppression of material facts which one party is legally or equitably bound to disclose to another; all cases of unconscientious advantage in bargains obtained by imposition, circumvention, surprise, and undue influence over persons in general, and especially over those who are, by reason of age, infirmity, idiocy, lunacy, drunkenness, coverture, or other incapacity, unable to take due care of and protect their own rights and interests; bargains of such an

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unconscionable nature and of such gross inequality as naturally lead to the presumption of fraud, imposition, or undue influence, when the decree of the court can place the parties *in statu quo*; cases of surprise and sudden action, without due deliberation, of which one party takes advantage; cases of the fraudulent suppression or destruction of deeds and other instruments, in violation of, or injury to, the rights of others; fraudulent awards with intent to do injustice; fraudulent and illusory appointments and revocations under powers; fraudulent prevention of acts to be done for the benefit of others under false statements or false promises; frauds in relation to trusts of a secret or special nature; frauds in verdicts, judgments, decrees, and other judicial proceedings; frauds in the confusion of boundaries of estates and matters of partition and dower; frauds in the administration of charities; and frauds upon creditors and other persons standing upon a like equity, are cases of actual fraud: 1 Story, Eq. Jur. c. 6.

Legal or constructive fraud includes such contracts or acts as, though not originating in any actual evil design or contrivance to perpetrate a fraud, yet by their tendency to deceive or mislead others, or to violate private or public confidence, are prohibited by law.

Thus, for instance, contracts against some general public policy or fixed artificial policy of the law; cases arising from some peculiar confidential or fiduciary relation between the parties, where advantage is taken of that relation by the person in whom the trust or confidence is reposed, or by third persons; agreements and other acts of parties which operate virtually to delay, defraud, and deceive creditors; purchases of property, with full notice of the legal or equitable title of other persons to the same property (the purchaser becoming, by construction, *particeps criminis* with the fraudulent grantor); and voluntary conveyances of real estate, as affecting the title of subsequent purchasers; 1 Story, Eq. Jur. c. 7.

According to the civilians, *positive* fraud consists in doing one's self, or causing another to do, such things as induce the opposite party into error, or retain him there. The intention to deceive, which is the characteristic of fraud, is here present. Fraud is also divided into that which has induced the contract, *dolus dans causam contractui*, and incidental or accidental fraud. The former is that which has been the cause or determining motive of the contract, that without which the party defrauded would not have contracted, when the artifices practised by one of the parties have been such that it is evident that without them the other would not have contracted. *Incidental or accidental* fraud is that by which a person, otherwise determined to contract, is deceived on some accessories or incidents of the contract, —for example, as to the quality of the object of the contract, or its price, —so that he has made a bad bargain. Accidental fraud does not, according to the civilians, avoid the contract, but simply subjects the party to damages. It is otherwise where the fraud has been the determining cause of the contract, *qui causam dedit contractui*: in that case the contract is void. Toullier, Dr. Civ. Fr. liv. 3, t. 3, c. 2, n. § 5, n. 86, *et seq.* See, also, 1 Malleville, Analyse de la Discussion du Code Civil, pp. 15, 16; Bouvier, Inst. Index.

What constitutes fraud. 1. It must be such an appropriation as is not permitted by law. 2. It must be with knowledge that the property is another's, and with design to deprive him of it. 3. It is not in itself a crime, for want of a criminal intent; though it may become such in cases provided by law. Livermore, Penal Law, 739.

Fraud, in its ordinary application to cases of contracts, includes any trick or artifice employed by one person to induce another to fall into or to detain him in an error, so that he may make an agreement contrary to his interest; and it may consist in misrepresenting or concealing material facts, and may be effected by words or by actions.

While, on the one hand, the courts have aimed to repress the practice of fraud, on the other, they have required that before relieving a party from a contract on the ground of fraud, it should be made to appear that on entering into such contract he exercised a due degree of caution. *Vigilantibus, non dormientibus, subveniunt leges.* A misrepresentation as to a fact the truth or falsehood of which the other party has an opportunity of ascertaining, or the concealment of a matter which a person of ordinary sense, vigilance, or skill might discover, does not in law constitute fraud. Misrepresentation as to the legal effect of an agreement does not avoid it as against a party whom such misrepresentation has induced to enter into it, —every man being presumed to know the legal effect of an instrument which he signs or of an act which he performs.

An intention to violate entertained at the time of entering into a contract, but not afterwards carried into effect, does not vitiate the contract; *per Tindal*, C. J., 2 Scott, 588, 594; 4 B. & C. 506, 512; *per Parke*, B., 4 M. & W. 115, 122. But when one person misrepresents or conceals a material fact which is peculiarly within his own knowledge, or, if it is also within the reach of the other party, is a device to induce him to refrain from inquiry, and it is shown that the concealment or other deception was practised with respect to the particular transaction, such transaction will be void on the ground of fraud; 6 Cl. & F. 232; Comyn, Contr. 38; *per Tindal*, C. J., 3 M. & G. 446, 450. And even the concealment of a matter which may disable a party from performing the contract is a fraud; 9 B. & C. 387; *per Littledale*, J.

Equity doctrine of fraud. It is sometimes inaccurately said that such and such transactions amount to fraud in equity, though not in law; according to the popular notion that the law allows or overlooks certain kinds of fraud which the more conscientious rules of equity condemn and punish. But, properly speaking, fraud in all its shapes is as odious in law as in equity. The difference is that, as the law courts are constituted, and as it has been found in centuries of experience that it is convenient they should be constituted, they cannot deal with fraud otherwise than to punish it by the infliction of damages. All those manifold varieties of fraud against which specific relief, of a preventive or remedial sort, is required for the purposes of substantial justice, are the subjects of equity and not of law *jurisdiction*.

What constitutes a case of fraud in the view of courts of equity, it would be difficult to specify. It is, indeed, part of the equity doctrine of fraud not to define it, not to

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lay down any rule as to the nature of it, lest the craft of men should find ways of committing fraud which might escape the limits of such a rule or definition. “The court very wisely hath never laid down any general rule beyond which it will not go, lest other means for avoiding the equity of the court should be found out.” *Per* Hardwicke, C., in 3 Atk. 278. It includes all acts, omissions, or concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another. “It may be stated as a general rule that fraud consists in anything which is calculated to deceive, whether it be a single act or combination of circumstances, whether it be by suppression of the truth or suggestion of what is false; whether it be by direct falsehood, or by *innuendo*, by speech or by silence, by word of mouth or by a look or a gesture. Fraud of this kind may be defined to be any artifice by which a person is deceived to his disadvantage.” Bisph. Eq. § 206.

It is said by Lord Hardwicke, 2 Ves. Ch. 155, that in equity fraud may be presumed from circumstances, but in law it must be proved. His meaning is, unquestionably, no more than this: that courts of equity will grant relief upon the ground of fraud established by a degree of presumptive evidence which courts of law would not deem sufficient proof for their purposes; that a higher degree, not a different kind, of proof may be required by courts of law to make out what they will act upon as fraud. Both tribunals accept presumptive or circumstantial proof, if of sufficient force. Circumstances of mere suspicion, leading to no certain results, will not, in either, be held sufficient to establish fraud.

The equity doctrine of fraud extends, for certain purposes, to the violation of that class of so-called imperfect obligations which are binding on conscience, but which human laws do not and cannot ordinarily undertake to enforce: as in a large variety of cases of contracts which courts of equity do not set aside, but at the same time refuse to lend their aid to enforce; 2 Kent, 39; 1 Johns. Ch. 630; 1 Ball & B. 250. The proposition that “fraud must be proved and not assumed,” is to be understood as affirming that a contract, honest and lawful on its face, must be treated as such until it is shown to be otherwise by evidence, either positive or circumstantial. Fraud may be inferred from facts calculated to establish it. *Per* Black, C. J., in 22 Penn. 179.

The following classification of frauds as a head of equity jurisdiction is given by Lord Hardwicke, J., in *Chesterfield v. Janssen*, 2 Ves. Ch. 125; 1 Atk 301; 1 Lead. Cas. Eq. 428.

1. Fraud, or *dolus malus*, may be actual, arising from facts and circumstances of imposition.
2. It may be apparent from the intrinsic nature and subject of the bargain itself, such as no man in his senses and not under delusion would make, on the one hand, and no honest or fair man would accept, on the other.
3. It may be inferred from the circumstances and condition of the parties; for it is as much against conscience to take advantage of a man’s weakness or necessity as of his ignorance.
4. It may be collected from the nature and circumstances of the transaction, as being an imposition on third persons.

Effect of. Fraud, both at law and in equity, when sufficiently proved and ascertained, avoids a contract *ab initio*, whether the fraud be intended to operate against one of the contracting parties, or against third parties, or against the public; 1 W. Blackst. 465; Dougl. 450; 3 Burr. 1909; 3 V. & B. 42; 1 Sch. & L. 209; Domat, Lois Civ. p. 1, l. 4, t. 6, s. 3, n. 2; but the injured party may elect to allow the transaction to stand; L. R. 2 H. L. 246; 49 N. Y. 626; 7 Bush, 63.

The fraud of an agent by a misrepresentation which is embodied in the contract to which his agency relates, avoids the contract. But the party committing the fraud cannot in any case himself avoid the contract on the ground of the fraud; Chitty, Contr. 590, and cases cited. The party injured may lose the right to avoid the contract by *laches*; 47 N.H. 208; 21 Wis, 88; Bisph. Eq. § 202. But no delay will constitute *laches* except that occurring after the discovery of the fraud; 11 Cl. & F. 714; 4 How. 561; 23 Iowa, 467.

The injured party must repudiate the transaction *in toto*, if at all; he may not adopt it in part and repudiate it in part; 12 How. 51; 25 Beav. 594. See 2 Phill. 425.

As to frauds in contracts and dealings, the common law subjects the wrong-doer, in several instances, to an action on the case, such as actions for fraud and deceit in contracts on an express or implied warranty of title or soundness, etc. But fraud gives no action in any case without damage; 3 Term. 56; and in matters of contract it is merely a defence; it cannot in any case constitute a new contract; 7 Ves. 211; 2 Miles, 229. It is essentially *ad hominem*; 4 Term, 337, 338.

In Criminal Law. Without the express provision of any statute, all deceitful practices in defrauding or endeavoring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty, are condemned by the common law, and punishable according to the heinousness of the offence; Co. Litt. 3 b; Dy. 295; Hawk. Pl. Cr. c. 71.

In considering fraud in its *criminal* aspect, it is often difficult to determine whether facts in evidence constitute a fraud, or amount to a felony. It seems now to be agreed that if the *property* obtained, whether by means of a false token or a false pretence, be parted with absolutely by the owner, it is a fraud; but if the *possession* only be parted with, and that possession be obtained by fraud, it will be felony; Bacon, Abr. *Fraud*; 2 Leach, 1066; 2 East, Pl. Cr. c. 673.

Of those gross frauds or cheats which, as being “levelled against the public justice of the kingdom,” are punishable by indictment or information at the common law; 2 East, Pl. Cr. c. 18, § 4, p. 821; the following are examples:—uttering a fictitious bank bill; 2 Mass. 77; selling unwholesome provisions; 4 Bla. Com. 162; *mala praxis* of a physician; 1 Ld. Raym. 213; rendering false accounts, and other frauds, by persons in official situations; Rex v. Bembridge, cited 2 East, 136; 5 Mod. 179; 2 Campb. 269; 3 Chitty, Cr. Law, 666; fabrication of news tending to the public injury; Stark. Lib. 546; Hale, Summ. 132; *et per Scroggs*, C. J., Rex v. Harris, Guildhall, 1680; cheats by means of false weights and measures; 2 East, Pl. Cr. c. 18, § 3, p. 820; and generally, the fraudulent obtaining the property of another by

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any deceitful or illegal practice or token (short of felony) which affects or may affect the public; 2 East, Pl. Cr. c. 18, § 2, p. 818; as with the common cases of obtaining property by false pretences. —*Bouvier's Law Dictionary*, 1889

[FRAUD]

[**Fraud.** An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Any kind of artifice employed by one person to deceive another. *Goldstein v. Equitable Life Assur. Soc. of U. S.*, 160 Misc. 364, 289 N.Y.S. 1064, 1067. A generic term, embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. *Johnson v. McDonald*, 170 Okl. 117, 39 P.2d 150. “Bad faith” and “fraud” are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

Elements of a cause of action for “fraud” include false representation of a present or past fact made by defendant, action in reliance thereupon by plaintiff, and damage resulting to plaintiff from such misrepresentation. *Citizens Standard Life Ins. Co. v. Gilley*, Tex.Civ.App., 521 S.W.2d 354, 356.

It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions, and concealments involving a breach of a legal or equitable duty and resulting in damage to another. And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other.

See also Actionable fraud; Badges of fraud; Cheat; Civil fraud; Collusion; Constructive fraud; Deceit; False pretenses; False representation; Intrinsic fraud; Mail fraud; Material fact; Misrepresentation; Promissory fraud; Reliance.

Actionable fraud. See **Actionable**.

Actual or constructive fraud. Fraud is either *actual* or *constructive*. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or artifice used to circumvent or cheat another. It is something said, done, or omitted by a person with the design of perpetrating what he knows to

be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another. Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design. Or, constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud. Constructive fraud consists in any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or, in any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

Extrinsic fraud. Fraud which is collateral to the issues tried in the case where the judgment is rendered. Type of deceit which may form basis for setting aside a judgment as for example a divorce granted ex parte because the plaintiff-spouse falsely tells the court he or she is ignorant of the whereabouts of the defendant-spouse. *Patrick v. Patrick*, 245 N.C. 195, 95 S.E.2d 585.

Fraud in fact or in law. Fraud is also classified as *fraud in fact* and *fraud in law*. The former is actual, positive, intentional fraud. Fraud disclosed by matters of fact, as distinguished from constructive fraud or fraud in law. Fraud in law is fraud in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud (*q.v.*).

Fraud in the inducement. Fraud connected with underlying transaction and not with the nature of the contract or document signed.

Intrinsic fraud. That which pertains to issue involved in original action or where acts constituting fraud were, or could have been, litigated therein. *Fahrenbruch v. People ex rel. Taber*, 169 Colo. 70, 453 P.2d 601. Perjury is an example of intrinsic fraud.

Larceny. See **Larceny** (*Larceny by fraud or deception*).

Legal or positive fraud. Fraud is also said to be *legal* or *positive*. The former is fraud made out by legal construction or inference, or the same thing as constructive fraud. Positive fraud is the same thing as actual fraud. *Nocatee Fruit Co. v. Fosgate*, C.C.A. Fla., 12 F.2d 250, 252. See also **Legal fraud**.

Statute of frauds. See **Frauds, Statute of**.

Tax fraud. Tax fraud falls into two categories: civil and criminal. Under civil fraud, the IRS may impose as a penalty an amount equal to 50% of the

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underpayment. Fines and/or imprisonment are prescribed for conviction of various types of criminal tax fraud. Both civil and criminal fraud require a specific intent on the part of the taxpayer to evade the tax; mere negligence will not be enough. Criminal fraud requires the additional element of wilfulness (sic) (*i.e.*, done deliberately and with evil purpose). In actual practice, it becomes difficult to distinguish between the degree of intent necessary to support criminal, as opposed to civil, fraud. In both situations, however, the IRS has the burden of proving fraud.

—*Black's Law Dictionary*, 1979

[Fraud

[fraudn. **1.** A deception deliberately practiced in order to secure unfair or unlawful gain. **2.** A piece of trickery; a trick. **3.a.** One that defrauds; a cheat. **b.** One who assumes a false pose; an impostor....

—*The American Heritage Dictionary of the English Language*, 1992

[fraud

[fundamental *adj.* **1.a.** Of or relating to the foundation or base; elementary: *the fundamental laws of the universe.* **b.** Forming or serving as an essential component of a system or structure; central: *an example that was fundamental to the argument.* **c.** Of great significance or entailing major change: *a book that underwent fundamental revision.* **2. Physics.** **a.** of or relating to the component of lowest frequency of a periodic wave or quantity. **b.** Of or relating to the lowest possible frequency of a vibrating element or system. **3. Music.** Having the root in the bass: *a fundamental chord.* —**fundamental** *n.* **1.** Something that is an essential or necessary part of a system or object. **2. Physics.** The lowest frequency of a periodically varying quantity or of a vibrating system. —**fundamentally** *adv.*

—*The American Heritage Dictionary of the English Language*, 1992

[fundamental

– G –

[**galaxy** ... *n.*, *pl.* **-ies**. **1.a.** Any of numerous large-scale aggregates of stars, gas, and dust that constitute the universe, containing an average of 100 billion (10¹¹) solar masses and ranging in diameter from 1,500 to 300,000 light-years. Also called *nebula*. **b.** Often **Galaxy**. The Milky Way. **2.** An assembly of brilliant, glamorous, or distinguished persons or things: *a galaxy of theatrical performers*....

–*The American Heritage Dictionary of the English Language*, 1992

[**galaxy**

[**gay** **1:** happily excited: MERRY **2 a:** BRIGHT, LIVELY **b:** brilliant in color **3:** given to social pleasures: *also:* LICENTIOUS.... –Webster’s 1965

[**gay**

[**gay** **1:** happily excited: MERRY **b:** keenly alive and exuberant: having or inducing high spirits <he turned from a sober traditional style to one more timely and ~> **2 a:** BRIGHT, LIVELY <~ sunny meadows> **b:** brilliant in color **3:** given to social pleasures: *also:* LICENTIOUS **4a:** HOMOSEXUAL **b:** being a socially integrated group oriented toward and concerned with the welfare of the homosexual.... –*Webster’s New Collegiate Dictionary*, 1973

[**gay**

[**general** ... *adj.* *Abbr.* **gen.**, **genl.** **1.** Concerned with, applicable to, or affecting the whole or every member of a class or category: “*subduing all her impressions as a woman, to something more general*” (Virginia Woolf). **2.** Affecting or characteristic of the majority of those involved; prevalent: *general discontent*. **3.** Being usually the case; true or applicable in most instances but not all: *the general correctness of her decisions*. **4.a.** Not limited in scope, area, or application: *as a general rule*. **b.** Not limited to or dealing with one class of things; diversified: *general studies*. **5.** Involving only the main features rather than precise details: *a general grasp of the subject*. **6.** Highest or superior in rank: *the general manager*. –**general** *n.* **1.** *Abbr.* **Gen.** **a.** A commissioned rank in the U.S. Army, Air Force, or Marine Corps that is above lieutenant general. **b.** One who holds this rank or a similar rank in another military organization. **2.** A general officer. **3.** A statement, principle, or fact that embraces or is applicable to the whole. **4.** *Archaic.* The public. –**idiom.** **in general.** Generally....

SYNONYMS: *general, common, generic, universal.* The central meaning shared by these adjectives is “belonging to, relating to, or affecting the whole”: *the general welfare; a common enemy; generic differences between birds and reptiles; universal military conscription.*

ANTONYM: *particular.*

–*The American Heritage Dictionary of the English Language*, 1992

[**general**

Miscellaneous Definitions

[gobbledygook also **gobbledegook...** *n.* Unclear, wordy jargon. [Imitative of the gobbling of a turkey.]

—*The American Heritage Dictionary of the English Language*, 1992

[gobbledygook

[GOODS. In Contracts. The term goods is not so wide as chattels, for it applies to inanimate objects, and does not include animals or chattels real, as a lease for years of house or land, which chattels does include; Co. Litt. 118; 1 Russ. 376.

Goods will not include fixtures; 2 Mass. 495; 4 J. B. Moore, 73. In a more limited sense, goods is used for articles of merchandise; 2 Bla. Com. 389. It has been held in Massachusetts that promissory notes were within the term goods in the Statute of Frauds; 3 Metc. Mass. 365; but see 24 N. H. 484; 4 Dudl. 28; so stock or shares of an incorporated company; 20 Pick. 9; 3 H. & J. 38; 15 Conn. 400; so, in some cases, bank notes and coin; 2 Stor. 52; 5 Mas. 537.

In Wills. In wills goods is *nomen generalissimum*, and, if there is nothing to limit it, will comprehend all the personal estate of the testator, as stocks, bonds, notes, money, plate, furniture, etc.; 1 Atk. 180-182; 2 *id.* 62; 1 P. Wms. 267; 1 Brown, Ch. 128; 4 Russ. 370; Will. Ex. 1014; 1 Rop. Leg. 250; but in general it will be limited by the context of the will; see 2 Belt, Suppl. Ves. 287; 1 Chitty, Pr. 89, 90; 1 Ves. 63; 3 *id.* 212; Hamm. Parties, 182; 1 Yeates, 101; 2 Dall. 142; Ayliffe, Pand. 296; Weskett, Ins. 260; Sugd. Vend. 493, 497; see 1 Jarman, Wills, 751; and the articles BIENS, CHATTELS, FURNITURE. —*Bouvier's Law Dictionary*, 1889

[GOODS

[Goods. A term of variable content and meaning. It may include every species of personal property or it may be given a very restricted meaning.

Items of merchandise, supplies, raw materials, or finished goods. Sometimes the meaning of “goods” is extended to include all tangible items, as in the phrase “goods and services.”

All things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action. Also includes the unborn of animals and growing crops and other identified things attached to realty as fixtures. U.C.C. § 2-105(1). All things treated as movable for the purposes of a contract of storage or transportation. U.C.C. § 7-102(1)(f).

As used with reference to collateral for security interest, goods include all things which are movable at the time the security interest attaches or which are fixtures. Section 9-105(1)(h) of the 1972 U.C.C.; § 9-105(1)(f) of the 1962 U.C.C.

See also **Confusion of goods; Future goods; Identification of goods.**

Capital goods. The equipment and machinery used in production of other goods or services.

Consumer goods. Goods which are used or bought for use primarily for personal, family or household purposes. U.C.C. § 9-109(1). See also **Consumer goods**.

Durable goods. Goods which have a reasonably long life and which are not generally consumed in use; *e.g.* refrigerator.

Fungible goods. Goods, every unit of which is similar to every other unit in the mass; *e.g.* uniform goods such as coffee, grain, etc. U.C.C. § 1-201.

Hard goods. Consumer durable goods. See *Durable goods, supra*.

Soft goods. Generally consumer goods such as wearing apparel, curtains, etc., in contrast to hard goods. —*Black's Law Dictionary, 1979*

[**Goods**

[**government** ... 1. Direction; regulation; control; restraint; the exercise of authority; the administration of public affairs, according to laws and usages, or by arbitrary edicts; as, parental *government*.

2. The system of polity in a state; that form of fundamental rules and principles by which a nation or state is governed; as, a republican *government*.

3. An empire, kingdom, or state; any territory over which the right of sovereignty is extended.

4. The right of governing or administering the laws; as, the king of England vested the *government* of Ireland in the lord lieutenant.

5. The persons or council which administer the laws of a kingdom or state; executive power.

6. In grammar, the influence of a word in regard to construction, as when established usage requires that one word shall cause another to be in a particular case or mode. —*Webster's Universal Dictionary of the English Language, 1910*

[**government**

[**gradient** ... *n.* *Abbr. grad.* **1.** A rate of inclination; a slope. **2.** An ascending or descending part; an incline. **3.** *Physics.* The rate at which a physical quantity, such as temperature or pressure, changes relative to change in a given variable, especially distance. **4.** *Mathematics.* A vector having coordinate components that are the partial derivatives of a function with respect to its variables. **5.** *Biology.* A series of progressively increasing or decreasing differences in the growth rate, metabolism, or physiological activity of a cell, an organ, or an organism....

—*The American Heritage Dictionary of the English Language, 1992*

[**gradient**

[**graviton**... *n.* *Physics.* A hypothetical particle postulated to be the quantum of gravitational interaction and presumed to have an indefinitely long lifetime, zero electric charge, and zero rest mass. See table at subatomic particle. [GRAVIT(A-TION) + —ON¹.] —*The American Heritage Dictionary of the English Language, 1992*

[**graviton**

Miscellaneous Definitions

[**gravity** ... *n.* **1.** *Abbr. gr. Physics.* **a.** The natural force of attraction exerted by a celestial body, such as Earth, upon objects at or near its surface, tending to draw them toward the center of the body. **b.** The natural force of attraction between any two massive bodies, which is directly proportional to the product of their masses and inversely proportional to the square of the distance between them. **c.** Gravitation. **2.** Grave consequence; seriousness or importance: *They are still quite unaware of the gravity of their problems.* **3.** Solemnity or dignity of manner....

—*The American Heritage Dictionary of the English Language, 1992*

[**gravity**

[**group** **1.** An assemblage of persons or objects gathered or located together; an aggregation: *a group of dinner guests; a group of buildings near the road.* **2.** Two or more figures that make up a unit or design, as in sculpture. **3.** A number of individuals or things considered together because of similarities: *a small group of supporters across the country.* **4. Linguistics.** A category of related languages that is less inclusive than a family. **5.a.** A military unit consisting of two or more battalions and a headquarters. **b.** A unit of two or more squadrons in the U.S. Air Force, smaller than a wing. **6.** A class or collection of related objects or entities, as: **a.** Two or more atoms behaving or regarded as behaving as a single chemical unit. **b.** A column in the periodic table of the elements. **c.** A stratigraphic unit, especially a unit consisting of two or more formations deposited during a single geologic era. **7. Mathematics.** A set with an associative binary operation under which the set is closed, which contains an identity element and an inverse for every element in the set....

—*The American Heritage Dictionary of the English Language, 1992*

[**group**

– H –

[hinder –*tr.* **1.** To be or get in the way of. **2.** To obstruct or delay the progress of. –*intr.* To interfere with action or progress....

SYNONYMS: *hinder, hamper, impede, obstruct, block, dam, bar.* These verbs mean to slow or prevent progress or movement. To *hinder* is to hold back, as by delaying: *The travelers were hindered by storms throughout their journey.* Often the word implies stopping or prevention: *What is to hinder you from trying?* To *hamper* is to hinder by or as if by fastening or entangling: *A suit and an overcoat hampered the efforts of the accident victim to swim to safety. She was hampered by ill health in building up her business.* To *impede* is to slow by making action or movement difficult: *“Sentiment and eloquence serve only to impede the pursuit of truth”* (Macaulay). *Obstruct* implies the presence of obstacles that interfere with progress: *A building under construction obstructs our view of the mountains. One of the mugger’s accomplices tried to obstruct the police officer from upholding the law.* *Block* refers to complete obstruction that prevents progress, passage, or action: *A huge snowdrift is blocking the entrance to the driveway. “Do not block the way of inquiry”* (Charles S. Peirce). *Dam* suggests obstruction of the flow, progress, or release of something, such as water or emotion: *dammed the brook to form a swimming pool; dammed up his emotions.* To *bar* is to prevent entry or exit or prohibit a course of action: *mounted troops barring access to the presidential palace; laws that bar price fixing.*

–*The American Heritage Dictionary of the English Language, 1992*

[hinder

[**HOMONYM**, ...*n.* a word having the same sound as another, but a different meaning....

–*The American Dictionary of the English Language, 1899*

[HOMONYM

[**homonym**.... *n*.... **1 a :** HOMOPHONE **b:** HOMOGRAPH **c:** one of two or more words spelled and pronounced alike but different in meaning (the noun *quail* and the verb *quail* are ~s) **2 :** NAMESAKE **3 :** a taxonomic designation rejected because the identical term has been used to designate another group of the same rank – compare **SYNONYM**.... –*Webster’s Ninth New Collegiate Dictionary, 1987*

[homonym

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— I —

[**ID CARD** no entry. —*Bouvier's Law Dictionary*, 1889
[**ID CARD**

[**ID card** no entry —*Thorndike Century Senior Dictionary*, 1941
[**ID card**

[**ID card** *n*: a card bearing identifying data (as age or organizational membership) about the individual whose name appears thereon — called also *identification card, identity card* —*Webster's New Collegiate Dictionary*, 1973
[**ID card**

[**ID Card** no entry. —*Black's Law Dictionary*, 1979
[**ID Card**

[**ID card** *n*. A card, often bearing a photograph, that gives identifying data, such as name, age, or organizational membership, about a person.
—*The American Heritage Dictionary of the English Language*, 1992
[**ID card**

[**ID card** ... *n* (ca. 1945): a card bearing identifying data (as age or organizational membership) about the individual whose name appears thereon — called also *identification card, identity card* —*Merriam-Webster's Collegiate Dictionary*, 2011
[**ID card**

[**IDENTIFICATION** no entry. —*Bouvier's Law Dictionary*, 1889
[**IDENTIFICATION**

[**identification** 1. an identifying. 2. a being identified. 3. something used to identify a person or thing. —*Thorndike Century Senior Dictionary*, 1941
[**identification**

[**identification** **1 a**: an act of identifying: the state of being identified **b**: evidence of identity **2 a**: psychological orientation of the self in regard to something (as a person or group) with a resulting feeling of close emotional association **b**: a mental mechanism whereby the individual attains gratification, emotional support, or relief from stress by consciously or unconsciously attributing to himself the characteristics of another person or a particular group *syn* see RECOGNITION —*Webster's New Collegiate Dictionary*, 1973
[**identification**

[**Identification**. Proof of identity. The proving that a person, subject, or article before the court is the very same that he or it is alleged, charged, or reputed to be; as where a witness recognizes the prisoner as the same person whom he saw committing the crime; or where handwriting, stolen goods, counterfeit coin, etc., are recognized as the same which once passed under the observation of the person identifying them. See also **Authentication; Line-up; Mug book**

Miscellaneous Definitions

The requirement of identification as a condition precedent to admissibility (sic) is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Fed.Evid.R. 901.

See also **Authentication; Eyewitness identification; Label; Lineup; Voiceprint.**

—*Black's Law Dictionary*, 1979

[Identification

[**identification** ... *n.* **1.a.** The act of identifying **b.** The state of being identified. **2.** *Abbr. ID, I.D.* Proof or evidence of identity. **3.** *Psychology.* **a.** A person's association with the qualities, characteristics, or views of another person or group. **b.** An unconscious process by which a person transfers the response appropriate to a particular person or group to a different person or group.

—*The American Heritage Dictionary of the English Language*, 1992

[identification

[**identification** ... *n* (1644) **1a:** an act of identifying: the state of being identified **b:** evidence of identity **2a:** psychological orientation of the self in regard to something (as a person or group) with a resulting feeling of close emotional association **b:** a largely unconscious process whereby an individual models thoughts, feelings, and actions after those attributed to an object that has been incorporated as a mental image

—*Merriam-Webster's Collegiate Dictionary*, 2011

[identification

[**IDENTIFY** no entry.

—*Bouvier's Law Dictionary*, 1889

[IDENTIFY

[**identify** 1. recognize as being, or show to be, a certain person or thing; prove to be the same. Fred identified the bag as his by telling what it contained. 2. make the same; treat as the same. A good king identifies the interest of his people with his own prosperity. 3. connect closely; link; associate.

—*Thorndike Century Senior Dictionary*, 1941

[identify

[**identify** **1 a:** to cause to be or become identical **b:** to conceive as united (as in spirit, outlook, or principle) <groups that are identified with conservation> **2 a:** to establish the identity of **b:** to determine the taxonomic position of (a biological specimen) **1:** to be or become the same **2:** to practice psychological identification <~ with the hero of a novel>

—*Webster's New Collegiate Dictionary*, 1973

[identify

[**Identify** no entry.

—*Black's Law Dictionary*, 1979

[Identify

[**identify** ... *v.*.... — *tr.* **1.** To establish the identity of. **2.** To ascertain the origin, nature, or definitive characteristics of. **3.** *Biology.* To determine the taxonomic classification of (an organism). **4.** To consider as identical or unified; equate. **5.** To associate or affiliate (oneself) closely with a person or group. —*intr.* To establish an identification with another or others...

USAGE NOTE: In the sense “to associate or affiliate (oneself) closely with a person or group,” *identify* has developed two distinct subsenses. In one, the verb suggests a psychological empathy with the feelings or experiences of another person, as in *Most young readers readily identify (or identify themselves) with Holden Caulfield*. This usage derives originally from psychoanalytic writing, where it has a specific technical sense, but like other terms from that field, it was widely regarded as jargon when introduced into the wider discourse. In particular, critics seized on the fact that in this sense the verb was often used intransitively, with no reflexive pronoun. As Wilson Follett wrote in 1966, “The critic ... could help restore the true notion in these words if he would give up *identifying* at large and resume *identifying himself with* Ivan Karamazov, Don Quixote, Mary Poppins, or whomever.” In recent years, however, this use of *identify with* without the reflexive has become a standard locution. Eighty-two percent of the Usage Panel accepts the sentence *I find it hard to identify with any of his characters*; whereas only 63 percent now accepts this same usage when the reflexive pronoun is used, as in *I find it hard to identify myself with any of his characters*. • Omission of the reflexive with this use of *identify* serves among other things to distinguish it from use of the verb to mean “to associate (oneself) with the goals, interests, or principles of a group.” This use of the verb can be traced back to the 18th century, but it is now somewhat less acceptable to the Panel than the first sense under discussion: 58 percent of the Panel accepts the sentence *She identified herself with the campaign against drug abuse*, and only 40 percent accepts *She identified with the campaign against drug abuse*, where no reflexive pronoun is used.

—*The American Heritage Dictionary of the English Language*, 1992

[**identify**

[**identify** ...*vt* (1644) **1a:** to cause to be or become identical **b:** to conceive as united (as in spirit, outlook, or principle) <groups that are *identified* with conservation> **2a:** to establish the identity of **b:** to determine the taxonomic position of (a biological specimen) ~*vi* **1:** to be or become the same **2:** to practice psychological identification <~ with the hero of a novel>....

—*Merriam-Webster’s Collegiate Dictionary*, 2011

[**identify**

[**IDENTITY** Sameness. In cases of larceny, trover, and replevin, the things in question must be identified; 4 Bla. Com. 396. So, too, the identity of articles taken or injured must be proved in all indictments where taking property is the gist of the offence, and in actions of tort for damage to specific property. Many other cases occur in which identity must be proved in regard either to persons or things. The question is sometimes one of great practical difficulty, as in case of the death of strangers, reappearance after a long absence, and the like. See Ryan, Med. Jur. 301; 1 Beck, Med. Jur. 509; 1 Hall, Am. L. J. 70; 6 C. & P. 677; 1 Cr. & M. 730; 1 Hagg. Cons. 180; Shelf. Marr. & D. 226; Best, Pres. App. Case 4; 88 Ill. 498; Wills, Circ. Ev. 143 *et seq.*; 4 Bla. Com. 296; 4 Steph. Com. 468.

—*Bouvier’s Law Dictionary*, 1889

[**identity**

Miscellaneous Definitions

[identity 1. individuality; who a person is; what a thing is. The writer concealed his identity under a false name. 2. sameness; exact likeness. The identity of the crimes led the police to think that the same person committed them.

—*Thorndike Century Senior Dictionary*, 1941

[identity

[identity **1 a:** sameness of essential or generic character in different instances **b:** sameness in all that constitutes the objective reality of a thing; ONENESS **2 a:** the distinguishing character or personality of an individual : INDIVIDUALITY **b:** the relation established by psychological identification <a symbolic act . . . marking ~ and participation in a collective action - Paul Jacobs> **3:** the condition of being the same with something described or asserted <establish the ~ of stolen goods> **4:** an equation that is satisfied for all values of the symbols **5:** IDENTITY ELEMENT

—*Webster's New Collegiate Dictionary*, 1973

[identity

[Identity. Evidence. Sameness; the fact that a subject, person, or thing before a court is *the same* as it is represented, claimed, or charged to be. See **Authentication; Identification....**

—*Black's Law Dictionary*, 1979

[Identity

[identity **1.** The collective aspect of the set of characteristics by which a thing is definitively recognizable or known: “*If the broadcast group is the financial guts of the company, the news division is its public identity*” (Bill Powell). **2.** The set of behavioral or personal characteristics by which an individual is recognizable as a member of a group. **3.** The quality or condition of being the same as something else. **4.** The distinct personality of an individual regarded as a persisting entity; individuality. **5. Mathematics. a.** An equation that is satisfied by any number that replaces the letter for which the equation is defined. **b.** Identity element....

—*The American Heritage Dictionary of the English Language*, 1992

[identity

[identity ... n, ... 1a: sameness of essential or generic character in different instances b: sameness in all that constitutes the objective reality of a thing: ONENESS 2a: the distinguishing character or personality of an individual: INDIVIDUALITY b: the relation established by psychological identification 3: the condition of being the same with something described or asserted <establish the ~ of stolen goods> 4: an equation that is satisfied for all values of the symbols 5: IDENTITY ELEMENT

—*Merriam-Webster's Collegiate Dictionary*, 2011

[identity

[Immunity *Immunity from prosecution.* By state and federal statutes, a witness may be granted immunity from prosecution for his or her testimony (e.g. before grand jury). States either adopt the “use” or the “transactional” immunity approach. The federal government replaced the later with the former approach in 1970. The distinction between the two is as follows: “Use immunity” prohibits witness’ compelled testimony and its fruits from being used in any manner in

connection with criminal prosecution of the witness; on the other hand, “transactional immunity” affords immunity to the witness from prosecution for offense to which his compelled testimony relates.

Protection from prosecution must be commensurate with privilege against self incrimination, but it need not be any greater and hence a person is entitled only to protection from prosecution based on the use and derivative use of his testimony; he is not constitutionally entitled to protection from prosecution for everything arising from the illegal transaction which his testimony concerns (transactional immunity). *Kastigar v. U.S.*, 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212....

—*Black’s Law Dictionary*, 1979

[Immunity]

[INALIENABLE A word denoting the condition of those things the property in which cannot be lawfully transferred from one person to another. Public highways and rivers are inalienable. There are also many rights which are inalienable, as the rights of liberty or of speech.

—*Bouvier’s Law Dictionary*, 1889

[inalienable]

[inalienable that cannot be given away or taken away. Life, liberty, and the pursuit of happiness have been called the inalienable rights of man.

—*Thorndike Century Senior Dictionary*, 1941

[inalienable]

[inalienable Incapable of being alienated, surrendered, or transferred.

— *Webster’s New Collegiate Dictionary*, 1961

[inalienable]

[Inalienable Not subject to alienation; the characteristic of those things which cannot be bought or sold or transferred from one person to another, such as rivers and public highways, and certain personal rights; e.g., liberty.

—*Black’s Law Dictionary*, 1979

[Inalienable]

[Inalienable rights. Rights which are not capable of being surrendered or transferred without the consent of the one possessing such rights. *Morrison v. State*, Mo.App., 252 S.W.2d 97, 101.

—*Black’s Law Dictionary*, 1979

[Inalienable rights]

[include **1.** To take in as a part, an element, or a member. **2.** To contain as a secondary or subordinate element. **3.** To consider with or place into a group, class, or total: *thanked the host for including us*

SYNONYMS: *include, comprise, comprehend, embrace, involve.* These verbs mean to take in or contain as part of something larger. *Include* and *comprise* both take as their objects things or persons that are constituent parts. *Comprise* usually implies that all of the components are stated: The book comprises (that is, consists of or is composed of) *15 chapters*. *Include*, like the remaining terms, more often implies an incomplete listing: *included a reference to the accompanist in the review of the*

Miscellaneous Definitions

concert; will include an amount for postage in my payment. "Through the process of amendment, interpretation and court decision I have finally been included in 'We, the people'" (Barbara C. Jordan). Comprehend and embrace usually refer to the taking in of subordinate elements as part of something broader: The study of art comprehends both aesthetic and intellectual considerations. No single theory can embrace and explain every facet of human behavior. Involve usually suggests inclusion as a logical consequence or necessary condition: "Every argument involves some assumptions" (Brooke F. Westcott).

USAGE NOTE: Some writers have insisted that *include* be used only when it is followed by a partial list of the contents of the referent of the subject. On this account, one may write *New England includes Connecticut and Rhode Island*, but one must use *comprise* or *consist of* when a full enumeration is provided: *New England comprises (not includes) Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine*. This restriction is too strong. *Include* does not rule out the possibility of a complete listing. Thus the sentence *The bibliography should include all the journal articles you have used* does not entail that the bibliography must contain something other than journal articles, though it does leave that possibility open. When one wants to make clear that the listing is exhaustive, however, the use of *comprise* or *consist of* will avoid ambiguity. Thus the sentence *The task force includes all of the Navy units on active duty in the region* allows for the possibility that Marine and Army units are also taking part, where the same sentence with *comprise* would entail that the task force contained only Navy forces. See Usage Note at **comprise**.

—*The American Heritage Dictionary of the English Language*, 1992
[**include**]

[**Incompetency**. Lack of ability, legal qualification, or fitness to discharge the required duty. A relative term which may be employed as meaning disqualification, inability or incapacity and it can refer to lack of legal qualifications or fitness to discharge the required duty and to show want of physical or intellectual or moral fitness. *County Bd. of Ed. of Clarke County v. Oliver*, 270 Ala. 107, 116 So.2d 566, 567. See also **Incapacity; Insanity**. —*Black's Law Dictionary*, 1979

[**Incompetency**]

[**incompetent** **1:** lacking the qualities needed for effective action **2:** not legally qualified **3:** inadequate to or unsuitable for a particular purpose

—*Webster's New Collegiate Dictionary*, 1973

[**incompetent**]

[**infamous** *Infamous crime*; in law, a crime or offense which renders the offender liable to infamous punishment, such as capital punishment or incarceration in the penitentiary ...

—*Webster's Universal Dictionary of the English Language*, 1910

[**infamous**]

[In lieu of Instead of; in place of; in substitution of.

—*Black's Law Dictionary*, 1979

[In lieu of

[Innocent. Free from guilt; acting in good faith and without knowledge of incriminatory circumstances, or of defects or objections.

—*Black's Law Dictionary*, 1979

[Innocent

[Instrumentality rule. Under this rule, corporate existence will be disregarded where a corporation (subsidiary) is so organized and controlled and its affairs so conducted as to make it only an adjunct and instrumentality of another corporation (parent corporation), and parent corporation will be responsible for the obligations of its subsidiary. *Taylor v. Standard Gas & Electric Co.*, C.C.A.Okl., 96 F.2d 693, 704.

The so-called “instrumentality” or “alter ego” rule states that when a corporation is so dominated by another corporation that the subservient corporation becomes a mere instrument and is really indistinct from controlling corporation, then the corporate veil of dominated corporation will be disregarded, if to retain it results in injustice. *National Bond Finance Co. v. General Motors Corp.*, D.C.Mo., 238 F.Supp. 248, 255.

—*Black's Law Dictionary*, 1979

[Instrumentality rule

[insufficient not enough.

—*Thorndike Century Senior Dictionary*, 1941

[insufficient

[Insufficient. Not sufficient; inadequate to some need, purpose, or use; wanting in needful value, ability, or fitness; incompetent; unfit, as insufficient food; insufficient means. It is the antonym of “sufficient.” *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 325.

—*Black's Law Dictionary*, 1979

[Insufficient

[INTERMARRIAGE No entry.

—*Bouvier's Law Dictionary*, 1889

[INTERMARRIAGE

[Intermarriage. See **Miscegenation.**

—*Black's Law Dictionary*, 1979

[Intermarriage

[intermarry *intr.v.* **1.** To marry a member of another group. **2.** To be bound together by the marriages of members. **3.** To marry within one's family, tribe, or clan.... —*The American Heritage Dictionary of the English Language*, 1992

[intermarry

[INTERNATIONAL LAW. The system of rules which Christian states acknowledge to be obligatory upon them in their relations to each other and to each other's subjects. It is the *jus inter gentes*, as distinguished from the *jus gentium*.

The scientific basis of these rules is to be found in natural law, or the doctrine of rights and of the state; for nations, like smaller communities and individuals, have

Miscellaneous Definitions

rights and correlative obligations, moral claims and duties. Hence it might seem as if the science consisted simply of deductions from certain fundamental propositions of natural right; but this is far from being the case, for national intercourse is the most voluntary possible, and takes a shape widely different from a system of natural justice. It would be true to say that this science, like every department of moral science, can require nothing unjust; but, on the other hand, the actual law of nations contains many provisions which imply a waiver of just rights; and, in fact, a great part of the modern improvements in this code are due, to the spirit of humanity controlling the spirit of justice, and leading the circle of Christian nations freely to abandon the position of rigorous right for the sake of mutual convenience or good will.

So much for the general foundation of international law. The particular sources are the *jural* and the *moral*. The jural elements are, *first*, the rights of states as such, deducible from the nature of the state and from its office of a protector to those who live under its law; *second*, those rights which the state shares with individuals, and in part with artificial persons, as the rights of property, contract, and reputation; and, *third*, the rights which arise when it is wronged, as those of self-protection and redress. To these have been joined by some the rights of punishment and of conquest, — the latter, at least, without good reason; for there is and can be no naked right of conquest, irrespective of redress and self protection. The moral elements are the duties of humanity, comity, and intercourse.

Various divisions of international law have been proposed but none are of any great importance. One has been into natural and voluntary law, in which latter conventional or treaty law and customary are embraced. Another, somewhat similar, separates international rules into those which are deducible from general natural *jus*, those which are derived from the idea of estate, and those which grow out of simple compact. Whatever division be made, it is to be observed that nations are voluntary, *first*, in deciding the question what intercourse they will hold with each other; *second*, that they are voluntary in defining their rights and obligations, moral claims and duties, although these have an objective existence beyond the control of the will of nations; and, *third*, that when international law has arisen by the free assent of those who enter into certain arrangements, obedience to its provisions is as truly in accordance with natural law — which requires the observance of contracts— as if natural law had been intuitively discerned or revealed from heaven and no consent had been necessary at the outset.

The aids in ascertaining what international law is or has been, are derived from the sea-codes of mediæval Europe, especially the Consolato del Mare; from treaties, especially those in which a large part of Europe has had a share, like the treaties of Westphalia; from judicial decisions, state papers on controverted points, and the treatises of text-writers. Among the latter, Grotius led the way in the seventeenth century, while Puffendorf, fifty years afterwards, from his having confounded the law of nature with that of nations, has sunk into deserved oblivion. In the next century, Cornelius van Bynkershoek although the author of no continuous work

embracing the whole of our science, ranks among its ablest expounders, through his treatises entitled, *De Dominio Maris*, *De Furo Legatorum*, and *Quæstiones Juris Publici*. In the middle of the eighteenth century, Vattel, a disciple of the Wolfian philosophy, published a clear but somewhat superficial treatise, which has had more than its due share of popularity down to the present day. Of the very numerous modern works we can only name that of Klüber, in French and German (1819 and since), that of De Martens, which came to a fifth edition in 1855, and those of Wheaton and of Heffter, which last two are leading authorities, — the former for the English-speaking lands, the latter for the Germans. The literature of the science must be drawn from Von Ompteda and his continuator, Von Kamptz, or from the more recent work of Von Mohl (Erlangen, 1855-58), in which, also, an exposition of the history is included. The excellent works of Ward (*Inquiry into the Foundation and History of the Law of Nations*, etc.), and of Wheaton (*History of the Law of Nations from the Earliest Times to the Treaty of Washington in 1842*) are of the highest use to all who would study the science, as it ought to be studied as the offshoot and index of a progressive Christian civilization.

Among the provisions of international law, we naturally start from those which grow out of the essence of the individual state. The rights of the state, as such, may be comprised under the term sovereignty, or be divided into sovereignty, independence, and equality; by which latter term is intended equality of rights. Sovereignty and independence are two sides of the same property, and equality of rights necessarily belongs to sovereign states, whatever be their size or constitution; for no reason can be assigned why all states, as they have the same powers and destination in the system of things, should not have identically the same rights. States are thus, as far as other states are concerned, masters over themselves and over their subjects, free to make such changes in their laws and constitutions as they may choose, and yet incapable by any change, whether it be union, or separation, or whatever else, of escaping existing obligations. With regard to every state, international law only asks whether it be such in reality, whether it actually is invested with the properties of a state. With forms of government international law has nothing to do. All forms of government, under which a state can discharge its obligations and duties to others, are, so far as this code is concerned, equally legitimate.

Thus, the rule of non-intervention in the affairs of other states is a well-settled principle of international law. In the European system, however, there is an acknowledged exception to this rule, and also a claim on the part of certain states to a still wider departure from the rule of non-intervention, which other states have not as yet admitted.

It is conceded that any political action of any state or states which seriously threatens the existence or safety of others, any disturbance of the balance of power, may be resisted and put down. This must be regarded as an application of the primary principle of self-preservation to the affairs of nations.

Miscellaneous Definitions

But when certain states claim a right to interfere in the internal affairs of others in order to suppress constitutional movements and the action of a people without its own sphere, this is as yet an unauthorized ground of interference. The plea here is, on the part of those states which have asserted such a right, especially of Austria, Prussia, Russia, and at times of France, that internal revolutions are the result of wide-spread conspiracies, and if successful anywhere are fatal to the peace and prosperity of all absolute or non-constitutional governments. The right, if admitted, would destroy by an international law all power of the people in any state over their government, and would place the smaller states under the tutelage of two or three of the larger. England has always protested against this enlargement of the right of interference, and France has established more than one revolutionary government in spite of it.

In the notion of sovereignty is involved paramount exclusive jurisdiction within a certain territory. As to the definition of territory, international law is tolerably clear. Besides the land and water included within the line of boundary separating one state from another, it regards as territory the coast-water to the distance of a marine league, and the portions of sea within lines drawn between headlands not very remote, or, in other words, those parts of the sea which are closely connected with a particular country when it needs to defend itself against attack. The high sea, on the other hand, is free, and so is every avenue from one part of the sea to another, which is necessary for the intercourse of the world. It has been held that rivers are exclusively under the jurisdiction of countries through which they flow, so that the dwellers on their upper waters have no absolute right of passage to and from the sea; but practically, at present, all the rivers which divide or run through different states are free for all those who live upon them, if not for all mankind. It has been claimed that ships are territory; but it is safer to say that they are under the jurisdiction of their own state until they come within that of another state. By comity, public vessels are exempt from foreign jurisdiction, whether in foreign ports or elsewhere.

The relations of a state to aliens, especially within its borders, come next under review. Here it cannot be affirmed that a state is bound, in strict right, to admit foreigners into or to allow them transit across its territory, or even to hold intercourse with them. All this may be its duty and perhaps, when its territory affords the only convenient pathway to the rest of the world or its commodities are necessary to others of mankind, transit and intercourse may be enforced. But, aside from these extreme cases, intercourse is only a duty, and not definable with precision, as is shown by the endless varieties of commercial treaties. It can only be said that the practice of Christian states is growing more and more liberal, both as regards admitting foreigners into their territories and to the enjoyment of those rights of person and property which the natives possess, and as regards domiciliating them, or even incorporating them, afterwards, if they desire it, into the body politic. See ALIEN.

The multiplied and very close relations which have arisen between nations in modern times, through domiciled or temporary residents, have given rise to the question, What law, in particular cases involving personal status, property, contracts, family rights, and succession, shall control the decisions of the courts? Shall it be always the *lex loci*, or sometimes some other? The answers to these questions are given in *private international law*, or the *conflict of law*, as it is sometimes called, — a very interesting branch of law, as showing how the Christian nations are coming from age to age nearer to one another in their views of the private relations of men. See CONFLICT OF LAWS.

Intercourse needs its agents, both those whose office it is to attend to the relations of states and the rights of their countrymen in general, and those who look after the commercial interests of individuals. The former share with public vessels, and with sovereigns travelling abroad, certain exemptions from the law of the land to which they are sent. Their persons are ordinarily inviolate; they are not subject to foreign civil or criminal jurisdiction; they are generally exempt from imposts; they have liberty of worship, and a certain power over their trains, who likewise share their exemptions. Only within five centuries have ambassadors resided permanently abroad — a change which has had an important effect on the relations of states. Consuls have almost none of the privileges of ambassadors, except in countries beyond the pale of Christianity.

Nations, like individuals, have the right of contracts, and their treaties are subject to the same rules of interpretation and of morality which govern in municipal law. An interesting description of treaties are those of guaranty, by which sometimes a right of intervention in the affairs of other states is secured beforehand.

But treaties may be broken, and all other rights invaded; and there is no court of appeal (except by arbitration) where wrongs done by states can be tried. The rights of self-defence and of redress now arise, and are of such importance that but for redress by force or war, and to prevent war, international law would be a very brief science. The laws and usages of modern warfare show a great advance of the nations in humanity since the middle ages. The following are among the leading principles and usages: —

That declarations of war, as formerly practised, are unnecessary; the change in this respect being due chiefly to the intimate knowledge which nations now have, through resident ambassadors and in other ways, of each other's movements and dispositions.

That at the opening of war the subjects of one hostile state within the territory of another are protected in their persons and property and this notwithstanding it is conceded that by strict right such property is liable to confiscation.

That war is waged between states, and by the active war agents of the parties, but that non-combatants are to be uninjured in person and property by an invading army. Contributions or requisitions, however, are still collected from a conquered or occupied territory, and property is taken for the uses of armies at a compensation.

Miscellaneous Definitions

That combatants, when surrendering themselves in battle, are spared, and are to be treated with humanity during their captivity, until exchanged or ransomed.

That even public property, when not of a military character, is exempt from the ordinary operations of war, unless necessity requires the opposite course.

That in the storming of inhabited towns great license has hitherto been given to the besieging party; and this is one of the blots of modern as well as of ancient warfare. But humane commanders avoid the bombardment of fortified *towns* as far as possible; while mere fortresses may be assailed in any manner.

The laws of sea-warfare have not as yet come up to the level of those of land-warfare. Especially is capture allowed on the sea in cases where it would not occur on the land. Yet there are indications of a change in this respect: privateering has been abandoned by many states (the first article of the Declaration of Paris recites that "Privateering is and remains abolished"), and there is a growing demand that all capture upon the sea, even from enemies, except for violations of the rules of contraband, blockade, and search, shall cease. See CAPTURE.

When captures are made on the sea, the title, by modern law, does not fully vest in the captor at the moment, but needs to pass under the revision of a competent court. The captured vessel may be ransomed on the sea, unless municipal law forbids, and the ransom is of the nature of a safe-conduct. If a vessel is recaptured, or rescued from other perils, a compensation is due to the rescuer, which is called salvage; which see.

In modern international law, questions of neutrality play a great part. A neutral is one, strictly, who affords assistance to *neither* party; for assistance afforded to *both alike*, in almost every case, would benefit one party and be of little use to the other. The neutral territory, on land and sea, must be untouched by the war; and for all violations of this rule the neutral can take or demand satisfaction.

The principal liabilities of neutral trade are the following: —

In regard to the nationality of goods and vessels, the rule, *on the whole*, has been that enemy's goods were exposed to capture on any vessel, and neutral's goods were safe on any vessel, and that the neutral vessel was not guilty for having enemy's goods on board. Owing to the declaration of the Peace of Paris in 1856, the humane rule that free ships make free goods will no doubt become universal.

Certain articles of especial use in war are called contraband, and are liable to capture. But the list has been stretched by belligerents, especially by England, so as to include naval stores and provisions; and then, to cure the hardship of the rule, another — the rule of pre-emption — has been introduced. The true doctrine with regard to contraband seems to be that nothing can be so called unless nations have agreed so to consider it; or, in other words, that articles cannot become occasionally contraband owing to the convenience of a belligerent. See CONTRABAND.

An attempt of a neutral ship to enter a blockaded place is a gross violation of neutrality; and, as in cases of contraband trade the goods, so here the guilty vessel

is confiscated. But blockade. must exist in fact, and not alone upon paper, must be made known to neutrals, and, if discontinued, must be resumed with a new notification. See BLOCKADE.

To carry out the rights of war, the right of search is indispensable; and such search ought to be submitted to without resistance. Search is exclusively a war right, excepting that vessels in peace can be arrested near the coast on suspicion of violating revenue laws, and anywhere on suspicion of piracy. The slavetrade not being piracy by the law of nations (though it is piracy by statute in the United States, Great Britain, and other countries), vessels of other nations cannot be searched on suspicion of being engaged in this traffic. And here comes in the question which has agitated the two leading commercial states of Christendom: How shall it be known that a vessel is of a nationality which renders search unlawful? The English claim, and justly, that they have a right to ascertain this simple fact by detention and examination; the United States contend that if in so doing mistakes are committed, compensation is due, and to this England has agreed.

—*Bouvier's Law Dictionary*, 1889

[International law

[International law. The law which regulates the intercourse of nations; the law of nations. The customary law which determines the rights and regulates the intercourse of independent nations in peace and war.

—*Black's Law Dictionary*, 1979

[International law

[INTERPLEADER. In Practice. A proceeding in the action of detinue, by which the defendant states the fact that the thing sued for is in his hands, and that it is claimed by a third person, and that whether such person or the plaintiff is entitled to it is unknown to the defendant, and thereupon the defendant prays that a process of garnishment may be issued to compel such third person so claiming to become defendant in his stead. 3 Reeve, *Hist. Eng. Law*, c. 23; *Mitf. Eq. Pl.* 141; *Story, Eq. Jur.* §§ 800, 801. 802. Interpleader is allowed to avoid inconvenience; for two parties claiming adversely to each other cannot be entitled to the same thing; *Brooke, Abr. Interpleader*, 4; hence the rule which requires the defendant to allege that different parties demand the same thing.

If two persons sue the same person in detinue for the thing, and both actions are depending in the same court at the same time, the defendant may plead that fact, produce the thing (*e. g.* a deed or charter) in court, and aver his readiness to deliver it to either as the court shall adjudge, and thereupon pray that they may interplead. In such a case it has been settled that the plaintiff whose writ bears the earliest teste has the right to begin the interpleading, and the other will be compelled to answer. *Brooke, Abr. Interpleader*, 2.

For the law in regard to interpleader in equity, see BILL OF INTERPLEADER.

Under the Pennsylvania practice, when goods levied upon by the sheriff are claimed by a third party, the sheriff takes a rule of interpleader on the parties, upon which,

Miscellaneous Definitions

when made absolute, a feigned issue is framed, and the title to the goods is tested. The goods, pending the proceedings, remain in the custody of the defendant upon the execution of a forthcoming bond.

—*Bouvier's Law Dictionary*, 1889

[INTERPLEADER]

[Interpleader]. When two or more persons claim the same thing (or fund) of a third, and he, laying no claim to it himself, is ignorant which of them has a right to it, and fears he may be prejudiced by their proceeding against him to recover it, he may join such claimants as defendants and require them to interplead their claims so that he may not be exposed to double or multiple liability. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. Interpleader in federal court is governed by the federal Interpleader Act, 28 U.S.C.A. § 1335, and Fed.R. Civil P. 22. Similar statutes and court rules govern interpleader in state courts.

Statutory interpleader. A federal statutory right (28 U.S.C.A. § 1335) whereby disinterested stakeholder from whom several people claim same proceeds may require claimants to litigate matter among themselves without embroiling stakeholder. *Glens Falls Ins. Co. v. Strom*. D.C.Cal., 198 F.Supp. 450, 455.

—*Black's Law Dictionary*, 1979

[Interpleader]

[Interpret]. To construe; to seek out the meaning of language; to translate orally from one tongue to another.

—*Black's Law Dictionary*, 1979

[Interpret]

[intuition ... n. 1.a.] The act or faculty of knowing or sensing without the use of rational processes; immediate cognition. See Synonyms at **Reason**. **b.** Knowledge gained by the use of this faculty; a perceptive insight. **2.** A sense of something not evident or deducible; an impression...

—*The American Heritage Dictionary of the English Language*, 1992

[intuition]

[intuitionism ... n. Philosophy.] **1.** The theory that truth or certain truths are known by intuition rather than reason. **2.** The theory that external objects of perception are immediately known to be real by intuition. **3.** The theory that ethical principles are known to be valid and universal through intuition...

—*The American Heritage Dictionary of the English Language*, 1992

[intuitionism]

[intuitive ... adj.] **1.** Of, relating to, or arising from intuition. **2.** Known or perceived through intuition. See Synonyms at **instinctive**. **3.** Possessing or demonstrating intuition...

—*The American Heritage Dictionary of the English Language*, 1992

[intuitive]

[IRRELEVANT]. No entry.

—*Bouvier's Law Dictionary*, 1889

[IRRELEVANT]

Miscellaneous Definitions

[Irrelevant. Not relevant; immaterial; not relating or applicable to the matter in issue; not supporting the issue or fact to be proved. Evidence is irrelevant where it has no tendency to prove or disprove any issue of fact involved. Irrelevant evidence is commonly objected to and disallowed at trial. Fed.Evid.R. 402. See also **Immaterial; Impertinence; Irrelevancy.** —*Black's Law Dictionary*, 1979

[Irrelevant

[irrelevant *adj.* Unrelated to the matter at hand....

SYNONYMS: *irrelevant, extraneous, immaterial, impertinent.* The central meaning shared by these adjectives is “not pertinent to the subject under consideration”: *an irrelevant comment; a question extraneous to the discussion; an objection that is immaterial after the fact; mentioned several impertinent facts before finally coming to the point.*

ANTONYM: *relevant.*

—*The American Heritage Dictionary of the English Language*, 1992

[irrelevant

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– J –

[JUDGE-MADE LAW A phrase used to indicate judicial decisions which construe away the meaning of statute, or find meanings in them the legislature never intended. It is sometimes used as meaning, simply, the law established by judicial precedent. Cooley, Const. Lim. 70, n. See Austin, Prov. of Jur.

–*Bouvier's Law Dictionary*, 1889

[Judge-made law

[Judge-made law. A phrase used to indicate judicial decisions which construe away the meaning of statutes, or find meanings in them the legislature never intended. It is perhaps more commonly used as meaning, simply, the law established by judicial precedent and decisions. Laws having their source in judicial decisions as opposed to laws having their source in statutes or administrative regulations.

–*Black's Law Dictionary*, 1979

[Judge-made law

[JUDGMENT REQUISITES OF. To be valid, a judicial judgment must be given by a competent judge or court, at a time and place appointed by law, and in the form it requires. A judgment would be null if the judge had not jurisdiction of the matter, or, having such jurisdiction, he exercised it when there was no court held, or out of his district, or if he rendered a judgment before the cause was prepared for a hearing.

The judgment must confine itself to the question raised before the court, and cannot extend beyond it. For example, where the plaintiff sues for an injury committed on his lands by animals owned and kept carelessly by defendant, the judgment may be for damages, but it cannot command the defendant for the future to keep his cattle out of the plaintiff's land. That would be to usurp the power of the legislature. A judgment declares the rights which belong to the citizen, the law alone rules future actions. The law commands all men, it is the same for all, because it is general; judgments are particular decisions, which apply only to particular persons, and bind no others; they vary like the circumstances on which they are founded....

–*Bouvier's Law Dictionary*, 1889

[JUDGMENT

[Judicial branch. Branch of state and federal government whose function it is to interpret, construe, apply, and generally administer and enforce the laws. This branch, together with the executive and legislative branches forms our tripartite form of federal and state government. See **Judicial Article; Judicial power; Judicial system; Judiciary Acts.**

–*Black's Law Dictionary*, 1979

[Judicial branch

[JUDICIAL POWER The authority vested in the judges.

The constitution of the United States declares that “the judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish.” Art. 3, s. 1.

Miscellaneous Definitions

By the constitutions of the several states, the judicial power is vested in such courts as are enumerated in each respectively. *See the articles on the several states.* There is nothing in the constitution of the United States to forbid or prevent the legislature of a state from exercising judicial functions; 2 Pet. 413; but even in the absence of special limitations in the state constitutions, legislatures cannot exercise powers in their nature essentially judicial; 13 N. Y. 391. The different classes of power have been apportioned to different departments, and as all derive their authority from the same instrument, there is an implied exclusion of each department from exercising the functions conferred upon the others; Cooley, Const. Lim. 106. The legislative power cannot from its nature be assimilated to the judicial; the law is made by the one, and applied by the other; 1 N. H. 204; 10 Wheat. 46; 11 Penn. 494; 19 Ill. 282; 1 Ohio St. 81; 13 N. Y. 391.

A state legislature cannot annul the judgments nor determine the jurisdiction of the courts of the United States; 5 Cra. 115; 2 Dall. 410; nor authoritatively declare what the law is or has been, but what it shall be; 2 Cra. 272; 4 Pick. 23; 3 Mart. La. 248; 10 *id.* 1; 3 Mart. La. N. S. 551; 5 *id.* 519.

—*Bouvier's Law Dictionary*, 1889

[judicial power

[JURISDICTION The authority by which judicial officers take cognizance of and decide causes. Power to hear and determine a cause. 3 Ohio. 494; 6 Pet. 591. The right of a judge to pronounce a sentence of the law, on a case or issue before him, acquired through due process of law. It includes power to enforce the execution of what is decreed. 9 Johns. 239; 3 Metc. Mass. 460; Thach. 202....

—*Bouvier's Law Dictionary*, 1889

[jurisdiction

[JURISDICTION... *n.* the *distribution of justice*: legal authority: extent of power: district over which any authority extends....

—*The American Dictionary of the English Language*, 1899

[JURISDICTION

[jurisdiction 1. right or power of administering law or justice. 2. authority; power; control. 3. extent of authority. It does not lie within his jurisdiction to set you free. 4. territory over which authority extends.

—*Thorndike Century Senior Dictionary*, 1941

[jurisdiction

[jurisdiction **1:** the power, right, or authority to interpret and apply the law **2:** the authority of a sovereign power to govern or legislate **3:** the limits or territory within which authority may be exercised: CONTROL

—*Webster's New Collegiate Dictionary*, 1973

[jurisdiction

[Jurisdiction. The word is a term of large and comprehensive import, and embraces every kind of judicial action. Federal Land Bank of Louisville, Ky., v. Crombie, 258 Ky. 383, 80 S.W.2d 39, 40. It is the authority by which courts and

judicial officers take cognizance of and decide cases. Board of Trustees of Firemen's Relief and Pension Fund of City of Marietta v. Brooks, 179 Okl. 600, 67 P.2d 4, 6; State v. True, Me., 330 A.2d 787. The legal right by which judges exercise their authority. Max Ams, Inc. v. Barker, 293 Ky. 698, 170 S.W.2d 45, 48. It exists when court has cognizance of class of cases involved, proper parties are present, and point to be decided is within powers of court. United Cemeteries Co. v. Strother, 342 Mo. 1155, 119 S.W.2d 762, 765; Harder v. Johnson, 147 Kan. 440, 76 P.2d 763, 764. Power and authority of a court to hear and determine a judicial proceeding. In re De Camillis' Estate, 66 Misc.2d 882, 322 N.Y.S.2d 551, 556. The right and power of a court to adjudicate concerning the subject matter in a given case. Biddinger v. Fletcher, 224 Ga. 501, 162 S.E.2d 414, 416.

Areas of authority; the geographic area in which a court has power or types of cases it has power to hear.

Scope and extent of jurisdiction of federal courts is governed by 28 U.S.C.A. § 1251 et seq.

For Ancillary; Appellate; Concurrent; Contentious; Continuing; Coordinate; Criminal; Equity; Exclusive; Foreign; General; International; Legislative; Limited; Military; Pendent; Plenary; Primary; Probate; Special; Subject-matter; Summary; Territorial; and Voluntary jurisdiction, see those titles. See also Excess of jurisdiction; Jurisdiction in personam; Jurisdiction in rem; Jurisdiction of the subject matter; Jurisdiction quasi in rem; Lack of jurisdiction. For original jurisdiction, see **Original**. For diversity jurisdiction, see **Diversity of citizenship**. For federal question jurisdiction, see **Federal Question**. For jurisdiction over nonresidents or foreign corporations, see **Long arm statutes; Minimal contracts**.

—*Black's Law Dictionary*, 1979

[**Jurisdiction**

[**Jurisdiction**.... **1.** *Law.* The right and power to interpret and apply the law: *courts having jurisdiction in this district.* **2.a.** Authority or control: *islands under U.S. jurisdiction; a bureau with jurisdiction over Native American affairs.* **b.** The extent of authority or control: *a family matter beyond the school's jurisdiction.* **3.** The territorial range of authority or control....

—*The American Heritage Dictionary of the English Language*, 1992

[**Jurisdiction**

[**Justification.** Just, lawful excuse or reason for act or failing to act. A maintaining or showing a sufficient reason in court why the defendant did what he is called upon to answer, particularly in an action of libel and as a defense to criminal charges of assault or homicide (*e.g.* self defense).

Justification is a procedure with common-law origins by which a surety must demonstrate to the satisfaction of the court that it has sufficient ability to perform its obligations. Matthews v. IMC Mint Corp., C.A. Utah, 542 F.2d 544, 546.

Miscellaneous Definitions

Justification means explanation with supporting data. *American Export-Isbrandtsen Lines, Inc. v. Federal Maritime Commission*, 35 U.S.App.D.C. 181, 417 F.2d 749, 752. Term means maintaining or showing a sufficient reason in court why the defendant did what he is called upon to answer or, just cause or excuse, just, lawful excuse for act, reasonable excuse. *Young Women's Christian Ass'n of Princeton, N. J. v. Kugler*, D.C.N.J., 342 F. Supp. 1048, 1062.

See also Legal excuse.

—*Black's Law Dictionary*, 1979
[Justification]

– K –

[**Kangaroo court.** Term descriptive of a sham legal proceeding in which a person's rights are totally disregarded and in which the result is a foregone conclusion because of the bias of the court or other tribunal. —*Black's Law Dictionary*, 1979

[**Kangaroo court**

[**kinetic energy** *n.* The energy possessed by a body because of its motion, equal to one half of the mass of the body times the square of its speed.

—*The American Heritage Dictionary of the English Language*, 1992

[**kinetic energy**

[**knowing** **1.** Possessing knowledge, information, or understanding. See Synonyms at **intelligent**. **2.** Showing clever awareness and resourcefulness; shrewd. **3.** Suggestive of secret or private knowledge: a knowing glance. **4.** Deliberate; conscious: *a knowing attempt to defraud*. —**knowingly** *adv.*

—*The American Heritage Dictionary of the English Language*, 1992

[**Knowing**

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– L –

[Language. Any means of conveying or communicating ideas; specifically, human speech, or the expression of ideas by written characters or by means of sign language. The letter, or grammatical import, of a document or instrument, as distinguished from its spirit; as “the language of a statute.” As to “offensive language,” see **Offensive language.** —*Black’s Law Dictionary*, 1979

[Language

[Lawful. Legal; warranted or authorized by the law; having the qualifications prescribed by law: not contrary to nor forbidden by the law.

The principal distinction between the terms “lawful” and “legal” is that the former contemplates the substance of law, the latter the form of law. To say of an act that it is “lawful” implies that it is authorized, sanctioned, or at any rate not forbidden, by law. To say that it is “legal” implies that it is done or performed in accordance with the forms and usages of law, or in a technical manner. In this sense “illegal” approaches the meaning of “invalid.” For example, a contract or will, executed without the required formalities, might be said to be invalid or illegal, but could not be described as unlawful. Further, the word “lawful” more clearly implies an ethical content than does “legal.” The latter goes no further than to denote compliance, with positive, technical, or formal rules; while the former usually imports a moral substance or ethical permissibility. A further distinction is that the word “legal” is used as the synonym of “constructive,” which “lawful” is not. Thus “legal fraud” is fraud implied or inferred by law, or made out by construction. “Lawful fraud” would be a contradiction of terms. Again, “legal” is used as the antithesis of “equitable.” Thus, we speak of “legal assets,” “legal estate,” etc., but not of “lawful assets,” or “lawful estate.” But there are some connections in which the two words are used as exact equivalents. Thus, a “lawful” writ, warrant, or process is the same as a “legal” writ, warrant, or process.

See also **Legal; Legitimate; Valid.** —*Black’s Law Dictionary*, 1979

[Lawful

[LEGAL That which is according to law. It is used in opposition to equitable: as, the legal estate is in the trustee, the equitable estate in the *cestui que trust*. But see Powell, Mortg, Index. —*Bouvier’s Law Dictionary*, 1889

[legal

[legal 1. of law; as, legal knowledge. 2. of lawyers. 3. according to law; lawful. 4. recognized by law rather than by equity.

—*Thorndike Century Senior Dictionary*, 1941

[legal

[Legal. 1. Conforming to the law; according to law; required or permitted by law; not forbidden or discountenanced by law; good and effectual in law. *Freeman v. Fowler Packing Co.*, 135 Kan. 378, 11 P.2d 276, 277. See **Lawful; Valid.**

Miscellaneous Definitions

2. Proper or sufficient to be recognized by the law; cognizable in the courts; competent or adequate to fulfill the requirements of the law.

3. Cognizable in courts of law, as distinguished from courts of equity; construed or governed by the rules and principles of law, in contradistinction to rules of equity. With the merger in most states of law and equity courts, this distinction generally no longer exists. Rule of Civil Proc. 2.

4. Posited by the courts as the inference or imputation of the law, as a matter of construction, rather than established by actual proof; *e.g.*, legal malice.

5. Created by law.

6. Lawful; of or pertaining to law. *Kinsley v. Herald & Globe Ass'n*, 113 Vt. 272, 34 a.2d 99, 101.

As to legal Consideration; Damages; Day; Debt; Defense; Demand; Disability; Discretion; Estate; Incapacity; Irregularity; Memory; Mortgage; Process; Relevancy; Remedy; Reversion, and Tender, see those titles.

—*Black's Law Dictionary*, 1979

[**Legal**

[**LEGALLY** no entry.

—*Bouvier's Law Dictionary*, 1889

[**legally**

[**legally** 1. in a legal manner. 2. according to law.

—*Thorndike Century Senior Dictionary*, 1941

[**legally**

[**Legally**. Lawfully; according to law.

—*Black's Law Dictionary*, 1979

[**Legally**

[**LEGISLATIVE POWER** The authority, under the constitution, to make laws, and to alter and repeal them.

—*Bouvier's Law Dictionary*, 1889

[**legislative power**

[**LIBERTY** (Lat. *liber* , free; *libertas* , freedom, liberty). Freedom from restraint. The faculty of willing, and the power of doing what has been willed, without influence from without.

A privilege held by grant or prescription, by which some men enjoy greater privileges than ordinary subjects.

The place within which certain privileges or immunities are enjoyed, or jurisdiction is exercised, as the liberties of a city. See FAUBOURG.

Civil liberty is the greatest amount of absolute liberty which can in the nature of things be equally possessed by every citizen in a state.

The term is frequently used to denote the amount of absolute liberty which is actually enjoyed by the various citizens under the government and laws of the state as administered. 1 Bla. Com. 125.

The fullest political liberty furnishes the best possible guarantee for civil liberty.

Lieber defines civil liberty as guaranteed protection against interference with the interests and rights held dear and important by large classes of civilized men, or by all the members of a state, together with an effectual share in the making and administration of the laws, as the best apparatus to secure that protection, including Blackstone's divisions of civil and political under this head.

Natural liberty is the right which nature gives to all mankind of disposing of their persons and property after the manner they judge most consistent with their happiness, on condition of their acting within the limits of the law of nature and so as not to interfere with an equal exercise of the same rights by other men. Burlam. c. 3.§15; 1 Bla. Com. 125. It is called by Lieber *social* liberty, and is defined as the protection or unrestrained action in as high a degree as the same claim of protection of each individual admits of.

Personal liberty consists in the power of locomotion, of changing situation, of removing one's person to whatever place one's inclination may direct, without imprisonment or restraint unless by due course of law. 1 Bla. Com. 134.

Political liberty is an effectual share in the making and administration of the laws. Lieber, Civ. Lib.

Liberty, in its widest sense, means the faculty of willing, and the power of doing what has been willed without influence from without. It means self-determination, unrestrainedness of action. Thus, defined, one being only can be absolutely free, - namely, God. So soon as we apply the word liberty to spheres of human action the term receives a relative meaning, because the power of man is limited; he is subject to constant influences from without. If the idea of unrestrainedness of action is applied to the social state of man, it receives a limitation still greater, since the equal claims of unrestrained action of all necessarily involves the idea of protection against interference by others. We thus come to the definition, that liberty of social man consists in the protection of unrestrained action in as high a degree as the same claim of protection of each individual admits of, or in the most efficient protection of his rights, claims, interests, as man or citizen, or of his humanity, manifested as a social being. (See RIGHT.) The word liberty, applied to men in their political state, may be viewed with reference to the state as a whole, and in this case means the independence of the state, of other states (see AUTONOMY); or it may have reference to the relation of the citizen to the government, in which case it is called political or civil liberty; or it may have reference to the status of a man as a political being, contradistinguished from him who is not considered master over his own body, will, or labor - the slave. This is called personal liberty, which, as a matter of course, includes freedom from prison.

Lieber, in his work on Civil Liberty, calls that system which was evolved in England, and forms the basis of liberty in the countries settled by English people, Anglican liberty. The principal guarantees, according to him, are: -

Miscellaneous Definitions

1. National independence. There must be no foreign interference. The country must have the right and power of establishing the government it thinks best.
2. Individual liberty, and, as belonging to it, personal liberty, or the great habeas corpus principle, and the prohibition of general warrants of arrest. The right of bail belongs also to this head.
3. A well-secured penal trial, of which the most important is trial for high treason.
4. The freedom of communion, locomotion, and emigration.
5. Liberty of conscience. The United States constitution and the constitutions of all the states have provisions prohibiting any interference in matters of religion.
6. Protection of individual property, which requires unrestrained action in producing and exchanging, the prohibition of unfair monopolies, commercial freedom, and the guarantee that no property shall be taken except in the course of law, the principle that taxation shall only be with the consent of the tax-payer, and shall be levied for short periods only, and the exclusion of confiscation.
7. Supremacy of the law. The law must not, however, violate any superior law or civil principle, nor must it be an *ex post facto* law. The executive must not possess the power of declaring martial law, which is merely a suspension of all law. In extreme cases, parliament in England and congress in the United States can pass an act suspending the privilege of habeas corpus.
8. Every officer must be responsible to the person affected for the legality of his act; and no act must be done for which some one is not responsible.
9. It has been deemed necessary in the Bill of Rights and the American constitution specially to refer to the quartering of soldiers as a dangerous weapon in the hands of the executive.
10. The military forces must be strictly submitted to the law, and the citizen should have the right to bear arms.
11. The right of petitioning, and the right of meeting and considering public matters, and of organizing into associations for any lawful purpose are important guarantees of civil liberty.

The following guarantees relate more especially to the government of a free country and the character of its polity: -

12. Publicity of public business in all its branches, whether legislative, judicial, written, or oral.
13. The supremacy of the law, or the protection against the absolutism of one, of several, or of the majority, requires other guarantees. It is necessary that the public funds be under close and efficient popular control; they should therefore be chiefly in the hands of the popular branch of the legislature, never of the executive. Appropriations should also be for distinct purposes and short times.

14. It is further necessary that the power of making war reside with the people, and not with the executive. A declaration of war in the United States is an act of Congress.

15. The supremacy of the law requires, also, not only the protection of the minority, but the protection of the majority against the rule of a factious minority or cabal.

16. The majority, and through it the people, are protected by the principle that the administration is founded on party principles.

17. A very important guarantee of liberty is the division of government into three distinct functions, - legislative, administrative, and judicial. The union of these is absolutism or despotism on the one hand, and slavery on the other.

18. As a general rule, the principle prevails in Anglican liberty that the executive may do what is positively allowed by fundamental or other law, and not all that which is not prohibited.

19. The supremacy of the law requires that, where enacted constitutions form the fundamental law, there be some authority which can pronounce whether the legislature itself has or has not transgressed it. This power must be vested in courts of law.

20. There is no guarantee of liberty more important and more peculiarly Anglican than the representative government. See Lieber, Civ. Lib. p. 168.

In connection with this, a very important question is, whether there should be direct elections by the people, or whether there should be double elections. The Anglican principle favors simple elections; and double elections have often been resorted to as the very means of avoiding the object of a representative government.

The management of the elections should also be in the hands of the voters, and government especially should not be allowed to interfere.

Representative bodies must be free. They must be freely chosen, and, when chosen, act under no threat or violence of the executive or any portion of the people. They must be protected as representative bodies; and a wise parliamentary law and usage should secure the rights of each member and the elaboration of the law.

A peculiar protection is afforded to members of the legislature in England and the United States by their freedom from arrest, except for certain specified crimes.

Every member must possess the right to propose any measure or resolution.

Not only must the legislature be the judge of the right each member has to his seat, but the whole internal management belongs to itself. It is indispensable that it possess the power and privileges to protect its own dignity.

The principle of two houses, or the bicameral system, is an equally efficient guarantee of liberty, by excluding impassioned legislation and embodying in the law the collective mind of the legislature.

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21. The independence of the law, of which the independence of the judiciary forms a part, is one of the main stays of civil liberty. It requires “a living common law, a clear division of the judiciary from other powers, the public accusatorial process, the independence of the judge, the trial by jury, and an independent position of the advocate.”: See Lieber, *Civil Liberty and Self-Government*, 208-250.

22. Another constituent of our liberty is local and institutional self-government. It arises out of a willingness of the people to attend to their own affairs, and an unwillingness to permit of the interference of the executive and administration with them beyond what it necessarily must do, or which cannot or ought not to be done by self-action. A pervading self-government, in the Anglican sense, is organic; it consists in organs of combined self-action, in institutions, and in a systematic connection of these institutions. It is, therefore, equally opposed to a disintegration of society and to despotism.

American liberty belongs to the great division of Anglican liberty, and is founded upon the checks, guarantees, and self-government of the Anglican race. The following features are, however, peculiar to American liberty: republican federalism, strict separation of the state from the church, greater equality and acknowledgment of abstract rights in the citizen, and a more popular or democratic cast of the whole polity. With reference to the last two may be added these further characteristics: -

We have everywhere established voting by ballot. The executive has never possessed the power of dissolving or proroguing the legislature. The list of states has not been closed. We admit foreigners to the rights of citizenship, and we do not believe in inalienable allegiance.

There is no attainder of blood. We allow no *ex post facto* laws. American liberty possesses, also, as a characteristic, the enacted constitution,-distinguishing it from the English polity, with its accumulative constitution. Our legislatures are, therefore, not omnipotent, as the British Parliament theoretically is; but the laws enacted by them may be declared by the courts to conflict with the constitution.

The liberty sought for by the French, as a peculiar system, was founded chiefly, in theory, on the idea of equality and the abstract rights of man. (Rousseau’s *Social Contract*.)
—*Bouvier’s Law Dictionary*, 1889

[liberty

[LICENSE In Contracts. A permission. A right given by some competent authority to do an act which without such authority would be illegal.

An authority to do a particular act or series of acts on another’s land without possessing any estate therein. 11 Mass. 533; 4 Sandf. Ch. 72; 1 Washb. R. P. *398.

The written evidence of the grant of such right.

An *executed license* exists when the licensed act has been done.

An *executory license* exists where the licensed act has not been performed.

An *express license* is one which is granted in direct terms.

An *implied license* is one which is presumed to have been given from the acts of the party authorized to give it.

It is distinguished from an *easement*, which implies an interest in the land to be affected, and a *lease*, or right to take the profits of land. It may be, however, and often is, coupled with a grant of some interest in the land itself, or right to take the profits; 1 Washb. R. P. *398.

A license may be by specialty; 2 Pars. Contr. 22; by parol; 13 M. & W. 838; 4 Maule & S. 562; 7 Barb. 4; 1 Washb. R. P. 148; or by implication from circumstances, as opening a door in response to a knock; Hob. 62; 2 Greenl. Ev. § 427.

It may be granted by the owner, or, in many cases, by a servant; Cro. Eliz. 246; 2 Greenl. Ev. § 427.

An executory license may be revoked at the pleasure of the grantor; 1 Washb. R. P. *398. In general, a mere license may be revoked at the grantor's pleasure; 11 Mass. 433; 15 Wend. 380; although the licensee has incurred expense; 10 Conn. 378; 23 *id.* 223; 3 Du. N. Y. 355; 11 Metc. 251; 2 Gray, 302; 24 N. H. 364; 13 *id.* 264; 4 Johns. 418; 3 Wisc. 117; 1 Dev. & B. 492; 13 M. & W. 838; 37 E. L. & Eq. 489; 5 B. & Ad. 1. But see 14 S. & R. 267. Not so a license closely coupled with a transfer of title to personal property; 8 Metc. 34; 11 Conn. 525; 13 M. & W. 856; 11 Ad. & E. 34.

An executed license which destroys an easement enjoyed by the licensor in the licensee's land, cannot be revoked; 9 Metc. 395; 2 Gray, 302; 2 Gill, 221; 3 Wisc. 124; 3 Du. N. Y. 255; 7 Bingh. 682; 3 B. & C. 332; 5 *id.* 221.

The effect of an executed license, though revoked, is to relieve or excuse the licensee from liability for acts done properly in pursuance thereof, and their consequences; 22 Barb. 336; 2 Gray, 302; 10 Conn. 378; 13 N. H. 264; 7 Taunt. 374; 5 B. & C. 221.

It has been held that a license, to the enjoyment of which it was necessary to expend money upon the licensor's land, could not be revoked, without reimbursing the licensee for the expenditures; 33 Ala. 600; 7 N. H. 237; and in Pennsylvania and some other states such a license is treated as irrevocable upon the ground of estoppel; 33 Penn. 169; 59 Ill. 337; 45 Ga. 33; but the current of authority is against this doctrine; 13 M. & W. 838; 38 Mo. 599; 12 Gray, 213. Courts of equity, however, will interfere to restrain the exercise of a legal right to revoke a license on the ground of preventing fraud, and construe the license as an agreement to give the right, and compel specific performance by deed; 4 C. E. Green, 153; 66 N. C. 546; 1 Washb. R. P. *400.

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In International Law. Permission granted by a belligerent state to its own subjects, or to the subjects of the enemy, to carry on a trade interdicted by war. Wheat. Int. Law, 475.

Licenses operate as a dispensation of the rules of war, so far as its provisions extend. They are *stricti juris*, but are not to be construed with pedantic accuracy. Wheat. Int. Law, 476; 1 Kent, 163, N.; 4 C. Rob. 8. They can be granted only by the sovereign authority, or by those delegated for the purpose by special commission; 1 Dods. 226; Stew. Adm. 367. They constitute a ground of capture and confiscation *per se* by the adverse belligerent party; Wheat. Int. Law, 475.

In Patent Law. See PATENTS.

In Pleading. A plea of justification to an action of trespass, that the defendant was authorized by the owner of the freehold to commit the trespass complained of.

A license must be specially pleaded to an action of trespass; 2 Term, 166; but may be given in evidence in an action on the case; 2 Mod. 6; 8 East, 308.

—*Bouvier's Law Dictionary*, 1889

[license

[**license** 1. permission given by law to do something. 2. paper, card, plate, etc., showing such permission. 3. give a license to; permit by law. A doctor is licensed to practice medicine. 4. fact or condition of being permitted to do something. 5. freedom of action, speech, thought, etc., that is permitted or conceded. Poetic license is the freedom from rules that is permitted in poetry and art. 6. too much liberty; disregard of what is right and proper; abuse of liberty.

—*Thorndike Century Senior Dictionary*, 1941

[license

[**license** **1 a:** permission to act **b:** freedom of action **2 a:** a permission granted by competent authority to engage in a business or occupation or in an activity otherwise unlawful **b:** a document, plate, or tag evidencing a license granted **3 a:** freedom that allows or is used with irresponsibility **b:** disregard for rules of personal conduct: LICENTIOUSNESS **4:** deviation from fact, form, or rule by an artist or writer for the sake of the effect gained *syn* see FREEDOM

—*Webster's New Collegiate Dictionary*, 1973

[license

[**License.** The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, or a tort. *People v. Henderson*, 391 Mich. 612, 218 N.W.2d 2, 4. Certificate or the document itself which gives permission. Leave to do thing which licensor could prevent. *Western Electric Co. v. Patent Reproducer Corporation*, C.C.A.N.Y., 42 F.2d 116, 118. Permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation. *Blatz Brewing Co. v. Collins*, 88 Cal.App.2d 438, 160 P.2d 37, 39, 40. Permission to do something which without the license would not be allowable. *Great Atlantic & Pacific Tea Co. v. City of Lexington*, 256 Ky. 595,

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76 S.W.2d 894, 896. Privilege from state or sovereign. *M. Itzkowitz & Sons v. Geraghty*, 139 Misc. 163, 247 N.Y.S. 703, 704; *Alabama Power Co. v. Federal Power Commission*, 75 U.S. App.D.C. 315, 128 F.2d 280, 289.

A permit, granted by an appropriate governmental body, generally for a consideration, to a person, firm, or corporation to pursue some occupation or to carry on some business subject to regulation under the police power. A license is not a contract between the state and the licensee, but is a mere personal permit. *Rosenblatt v. California State Board of Pharmacy*, 69 Cal.App.2d 69, 158 P.2d 199, 203. Neither is it property or a property right. *American States Water Service Co. of California v. Johnson*, 31 Cal.App.2d 606, 88 P.2d 770, 774; *Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438, 452.

License with respect to real property is a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property. *Timmons v. Cropper*, 40 Del.Ch. 29, 172 A.2d 757, 759

See also Certificate; Exclusive license; Letter of license; Licensee; Marriage license; Permit.

Executed License. That which exists when the licensed act has been done.

Executory license. That which exists where the licensed act has not been performed.

Express license. One which is granted in direct terms.

Implied license. One which is presumed to have been given from the acts of the party authorized to give it.

License bond. See **Bond**.

Patents. A written authority granted by the owner of a patent to another person empowering the latter to make or use the patented article for a limited period or in a limited territory. A permission to make, use or sell articles embodying invention. *De Forest Radio Telephone & Telegraph Co. v. Radio Corporation of America*, D.C.Del., 9 F.2d 150, 151. A transfer which does not affect the monopoly, except by estopping licensor for exercising his prohibitory powers in derogation of privileges conferred upon licensee. *L. L. Brown Paper Co. v. Hydroiloid, Inc.*, D.C.N.Y., 32 F.Supp. 857, 867, 868; *De Forest Radio Telephone & Telegraph Co. v. Radio Corporation of America*, D.C.Del., 9 F.2d 150, 151. An assignment by the patentee to another of rights less in degree than the patent itself. Any right to make, use, or sell the patented invention, which is less than an undivided part interest in the patent itself. Any transfer of patent right short of assignment. Language used by owner of patent, or any conduct on his part exhibited to another, from which that other may properly infer that owner consents to his use of patent, on which the other acts, constitutes a license. *General Motors Corporation v. Dailey*, C.C.A.Mich., 93 F.2d 938, 941; *Finley v. Asphalt Paving Co. of St. Louis*, C.C.A.Mo., 69 F.2d 498, 504. Transfer of exclusive right to do merely two of the three rights under patent to make, use, and vend invention. *Overman Cushion Tire Co. v. Goodyear Tire & Rubber Co.*, C.C.A.N.Y., 59 F.2d 998, 1000.

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Pleading. The defense of justification to an action of trespass that the defendant was authorized by the owner of the land to commit the trespass complained of. License is an affirmative defense which must be pleaded by defendant. Fed.R.Civil P. 8(c).

Real property. A license is ordinarily considered to be a mere personal or revocable privilege to perform an act or series of acts on the land of another. *Hennebont Co. v. Kroger Co.*, 221 Pa.Super. 65, 289 A.2d 229, 231. A privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title interest, or estate in such property. *Timmons v. Cropper*, 40 Del.Ch. 29, 172 A.2d 757, 759. Such privilege is unassignable.

A license is distinguished from an “easement,” which implies an interest in the land, and a “lease,” or right to take the profits of land. It may be, however, and often, is, coupled with a grant of some interest in the land itself, or right to take the profits. *National Memorial Park v. C. I. R.*, C.C.A.4, 145 F.2d 1008, 1015.

Simple license. One revocable at the will of the grantor; *i.e.*, one not coupled with a grant.

Streets and highways. A permit to use street is a mere license revocable at pleasure. *City of Boston v. A. W. Perry, Inc.*, 304 Mass. 18, 22 N.E.2d 627, 630; *Lanham v. Forney*, 196 Wash. 62, 81 P.2d 777, 779. The privilege of using the streets and highways by the operation thereon of motor carriers for hire can be acquired only by permission or license from the state or its political subdivisions.

Trade, business or calling. Authority or permission to do or carry on some trade or business which would otherwise be unlawful. *Standard Oil Co. (Indiana) v. State Board of Equalization*, 110 Mont. 5, 99 P.2d 229, 234. Permission conferred by proper authority to pursue certain trade, profession, or calling. *Lloyds of Texas v. Bobbitt*, Tex.Civ.App., 40 S.W.2d 897, 901. A license confers upon licensee neither contractual nor vested rights. *Rosenblatt v. California State Board of Pharmacy*, 69 Cal.App.2d 69, 158 P.2d 199, 203; *Asbury Hospital v. Cass County*, 72 N.D. 359, 7 N.W.2d 438, 452. Nor does it create a property right.

Trade-mark. Permission to use a trade-mark in an area where the purported owner’s goods have not become known and identified by his use of mark is a naked “license”. *E. F Prichard Co. v. Consumers Brewing Co.*, C.C.A.Ky., 136 F.2d 512, 521.

—*Black’s Law Dictionary*, 1979

[License

[license.... *n.* **1.a.** Official or legal permission to do or own a specified thing. See Synonyms at **permission**. **b.** Proof of permission granted, usually in the form of a document, card, plate, or tag: *a driver’s license*. **2.** Deviation from normal rules, practices, or methods in order to achieve a certain end or effect: *Poetic license*. **3.** Latitude of action, especially in behavior or speech. See Synonyms at **freedom**. **4.a.** Lack of due restraint; excessive freedom: “*When liberty becomes license, dictatorship is near*” (Will Durant). **b.** Heedlessness for the precepts of proper

behavior; licentiousness. —**license** *tr.v.* **-censed, -cens•ing, -cens•es. 1.** To give or yield permission to or for. **2.** To grant a license to or for; **authorize.** See Synonyms at authorize. [Middle English *licnece*, from Old French, from Medieval Latin *licentia*, authorization, from Latin, freedom, from *licens, licent-*, present participle of *licere*, to be permitted.]...

—*The American Heritage Dictionary of the English Language, 1992*

[**license**

[**LIFE** “The sum of the forces by which death is resisted.” Bichat.

A state in which energy of function is ever resisting decay and dissolution.

It commences, for many legal purposes, at the period of quickening, when the first motion of the foetus in utero is perceived by the mother. 1 Bla. Com. 129: Co. 3d Inst. 50. It ceases at death. See DEATH.

But physiology pronounces life as existing from the period of conception, because foetuses in utero do die prior to quickening, and then all the signs of death are found to be perfect: Dean, Med. Jur. 129, 130.

For many important purposes, however, the law concedes to physiology the fact that life commences at conception, *in ventre sa mère* . See FŒTUS. Thus, it may receive a legacy, have a guardian assigned to it, and an estate limited to its use: 1 Bla. Com. 130. It is thus considered as alive for all beneficial purposes: 1 P. Wms. 329.

But for the transfer of civil rights the child must be born alive. The ascertainment of this, as a fact, depends upon certain signs which are always attendant upon life: the most important of these is crying. As to conditions of live birth, see BIRTH: INFANTICIDE.

Life is presumed to continue for one hundred years; 9 Mart. La. 257. As to the presumption of survivorship in case of the death of two persons, at or about the same time, see DEATH: 14 Cent. L. J. 367, a full article reprinted from the Irish L. Times.

—*Bouvier’s Law Dictionary, 1889*

[**life**

[**linear** ... *adj.* **Abbr. lin. 1.** Of, relating to, or resembling a line; straight. **2.a.** In, of, describing, described by, or related to a straight line. **b.** Having only one dimension. **3.** Characterized by, composed of, or emphasizing drawn lines rather than painterly effects. **4. Botany.** Narrow and elongated with nearly parallel margins: *a linear leaf*.... —**linearly** *adv.*

—*The American Heritage Dictionary of the English Language, 1992*

[**linear**

[**Locke** **Locke, John (1632-1704)** In his views on government Locke believed with Hobbes that government is the result of an original contract. Right existed before the foundation of society, which is a means to the better enjoyment of natural rights. Locke distinguishes in government the three functions of legislation, execution, and adjudication. Of these the legislative function is supreme, but even over this stands the sovereign will of the people. When the

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people enforce their will against the government, there is no rebellion. They are acting within their rights ...

—*Funk & Wagnalls Standard Reference Encyclopedia*, 1963

[**Locke, John**]

– M –

[MARRIAGE.] A contract, made in due form of law, by which a man and woman reciprocally engage to live with each other during their joint lives, and to discharge towards each other the duties imposed by law on the relation of husband and wife.

Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the civil status of one man and one woman united in law for life, for the discharge to each other and the community, of the duties legally incumbent on those whose association is founded on the distinction of sex. 1 Bish. Mar. & D. § 3.

The better opinion appears to be that marriage is something more than a mere civil contract. It has been variously said by different writers, to be a status, or a relation, or an institution. This view is supported by the following: Story, Confl. Laws, § 108 n.; 4 R. I. 85; 9 Ind. 37; 3 P. D. 1; s. c. 19 Am. L. Reg. N. S. 80; 4 P. D. 1; 5 *id.* 94; 5 Law Mag & Rev. 4 Ser. 26. In New York, however, it has been held to be merely a civil contract; 19 Am. L. Reg. N. S. 219.

All persons are able to contract marriage unless they are under the legal age, or unless there be other disability. The age of consent at common law is fourteen in males, and twelve in females; Reeve, Dom. Rel. 236; 2 Kent, 78; 1 N. Chipm. 254; 10 Humphr. 61; 1 Gray, 119. See 20 Ohio, 1. This is still the rule in the older states; but in Ohio, Indiana, and other western states, the age of consent is raised to eighteen for males, and fourteen for females; Schoul, Husb. & W. § 24. When a person under this age marries, such person can, when he or she arrives at the age above specified, avoid the marriage, or such person or both may, if the other is of legal age, confirm it. It has been held that the one who is of legal age may also disaffirm the marriage; Co. Litt. 79; East, P. C. 468; but see 15 Mich. 193. The disaffirmance may be either with or without a judicial sentence; 1 Bish. Marr. & D. § 150. If either of the parties is under seven, the marriage is void; 1 Sharsw. Bla. Com. 436, note 9; 5 Ired. Eq. 487.

If either party is *non compos mentis*, or *insane*, the marriage is void; 21 N. H. 52; 22 *id.* 533; 4 Johns. Ch. 343.

If either party has a husband or wife living, the marriage is void; 4 Johns. 53; 22 Ala. N. S. 86; 1 Salk. 120; 1 Bla. Com. 438. See NULLITY OF MARRIAGE.

Consanguinity and affinity within the rules prescribed by law in this country render a marriage void. In England they render the marriage liable to be annulled by the ecclesiastical courts; 10 Metc. 451; 2 Bla. Com. 434. See CONFLICT OF LAWS.

The parties must each be willing to marry the other.

If either party acts under compulsion, or is under duress, the marriage is voidable; 2 Hagg. Cons. 104, 246.

Where one of the parties is mistaken in the person of the other, this requisite is wanting. But a mistake in the qualities or character of the other party will not

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avoid the marriage; Poynt. Marr. & D. c. 9. If a man marries the woman he intends to marry, the marriage is valid, though she passes under an assumed name; 1 Bish. Mar. & D. § 204; 3 Curt. Ec. 185; see Burke's Trials, 63.

If the apparent willingness is produced by fraud, the marriage will be valid till set aside by a court of chancery or by a degree of divorce; 5 Paige, Ch. 43. Fraud is sometimes said to render a marriage void; but this is incorrect, as it is competent for the party injured to waive the tort and affirm the marriage. Impotency in one of the parties is sometimes laid down as rendering the marriage void, as being a species of fraud on the other party; but it is only a ground for annulling the contract by a court, or for a divorce.

Dr. Wharton (Confl. Laws) gives three distinct theories as to the law which is to determine the question of matrimonial capacity.

It is determined by the law of the place of solemnization of the marriage. This view is supported by Judge Story (Confl. Laws, §§ 110, 112), and Mr. Bishop (Mar. & D. § 390); 19 Am. L. Reg. N. S. 219; but it is objected to this theory that it is subject to exceptions which destroy its applicability to the majority of litigated cases. Thus marriages which by our law are incestuous, are not validated by being performed in another land, where they would be lawful, and so the converse is true, that the marriage, in England, of an American with his deceased wife's sister, would be recognized as valid in such of our states as hold such a marriage to be legal, nor is it believed that an American court will ever hold a marriage of American citizens, solemnized abroad, to be illegal, simply because the consent of parents was withheld or because one of the parties, though of age at home, was a minor at the place of celebration. Further, to make the *lex loci celebrationis* supreme enables parties to acquire for themselves any kind of marital capacity they want, by having the marriage solemnized in a state where this kind of marital capacity is sanctioned by law.

A second theory of matrimonial capacity is that it is determined by the *lex domicilii*; Wheat. Int. Law (Lawr.), 172; 4 Phill. Int. Law, 284; 2 Cl. & F. 488; 9 H. L. C. 193. There are two serious objections to this theory. First, it would make the validity of the marriages in the United States of natives of other countries, depend upon the question whether such persons had acquired a domicil in the United States; for if they had not, they would be governed by the laws of their foreign domicil. Few aliens, who marry in this country, could be sure they were legally married. Second, it would be necessary upon this theory to sustain the polygamous marriages of Chinese; see, as sustaining this theory, L. R. 2 P. & M. 440; 4 P. D. 13; 3 P. D. 1; 29 L. J. P. & M. 97; Westl. 56; but see 125 Mass. 374. According to Savigny, all questions of capacity are to be determined by the husband's domicil, which, as the true seat of the marriage, absorbs that of the wife. It has been conceded that the law of domicil does not extend to the direction of the ceremonial part of the marriage rite, and that the *lex domicilii* is the law of the country in which the parties are domiciled at the time of the marriage, and in which their matrimonial residence is contemplated; Lord Campbell in 9 H. L. C. 193.

The third theory is that matrimonial capacity is a distinctive national policy, as to which judges are obliged to enforce the rules of the state of which they are the officers. So far as concerns the United States, our national policy in this respect is to sustain the matrimonial capacity in all classes of persons arrived at puberty, and free from the impediments of prior ties. This view is approved by Dr. Wharton, *Conf. Laws*, §§ 160-165. See 19 Am. L. Reg. N. S. 76, 219.

At common law, no particular form of words or ceremony was necessary. Mutual assent to the relation of husband and wife was sufficient. Any words importing a present assent to being married to each other were sufficient evidence of the contract. If the words imported an assent to a future marriage, if followed by consummation, this established a valid marriage by the canon law, but not by the common law; 10 Cl. & F. 534; 15 N. Y. 345; 2 Rop. *Husb. & W.* 445-475; 1 How. 219; 2 N. H. 268. But a betrothal followed by copulation does not make the common law marriage *per verba de futuro cum copula* when the parties looked forward to a formal ceremony, and did not agree to become husband and wife without it; 12 R. 1. 485.

At common law the consent might be given in the presence of a magistrate or of any other person as a witness, or it might be found by a court or jury from the subsequent acknowledgment of the parties, or from the proof of cohabitation, or of general reputation resulting from the conduct of the parties. In the original United States the common-law rule prevails, except where it has been changed by legislation; 6 Binn. 405; 4 Johns. 52. See 10 N. H. 388; 4 Burr. 2058; 1 How. 219, 234; 1 Gray, 119; 2 Me. 102.

In civil cases a marriage can generally be proved by showing that the parties have held themselves out as husband and wife, and by general reputation founded on their conduct. This is sufficient, too, for purposes of administration; 2 Redf. 456. There is an exception, however, in the case of such civil suits as are founded on the marriage relation, such as actions for the seduction of the wife, where general reputation and cohabitation will not be sufficient; 4 N. Y. 230; 3 Bradf. *Surr.* 369, 373; 6 Conn. 446; 29 Me. 323; 14 N. H. 450.

In most of the states, the degrees of relationship within which marriages may not be contracted are prescribed by statute. This limit in cases of consanguinity is generally, though not always, that of first cousins. In some of the states, a violation of the rule renders, by statute, the marriage absolutely void. In others, no provision of this kind is made. Various statutes have been passed to guard against abuse of the marriage ceremony. Such of them as require license, or the publication of bans, or the consent of parents or guardians, are regarded as directory, and, unless explicitly declaring the marriage to be void, if not complied with, do not render it void. See 4 Iowa, 449; 26 Mo. 260; 2 Watts, 9; 1 How. 219; 2 Halst. 138; 2 N. H. 268. As to rights of married women, see HUSBAND AND WIFE; WIFE.

—*Bouvier's Law Dictionary*, 1889

[MARRIAGE]

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[Marriage. Legal union of one man and one woman as husband and wife. *Singer v. Hara*, 11 Wash.App. 247, 522 P.2d 1187, 1193. Marriage, as distinguished from the agreement to marry and from the act of becoming married, is the legal status, condition, or relation of one man and one woman united in law for life, or until divorced, for the discharge to each other and the community of the duties legally incumbent on those whose association is founded on the distinction of sex. A contract, according to the form prescribed by law, by which a man and woman capable of entering into such contract, mutually engage with each other to live their whole lives (or until divorced) together in state of union which ought to exist between a husband and wife. The word also signifies the act, ceremony, or formal proceeding by which persons take each other for husband and wife.

In old English law, marriage is used in the sense of “*maritagium*” (*q.v.*), or the feudal right enjoyed by the lord or guardian in chivalry of disposing of his ward in marriage.

See also Avail of marriage; Banns of matrimony; Common-law marriage; Consensual marriage; Restraint of marriage; Voidable marriage; Void marriage.

Ceremonial marriage. Marriage which follows all the statutory requirements of blood tests, license, waiting period, and which has been solemnized before an official (religious or civil) capable of presiding at the marriage.

Informal marriage. A marriage in which promises are exchanged between the parties without an official ecclesiastical representative present. In most cases, the law requires consummation of the marriage to consider such valid. See **Consensual marriage.**

Jactitation of marriage. See **Jactitation.**

Manus marriage. A form of marriage in early Rome; it formed a relation called *manus* (hand) and brought the wife into the husband's power, placing her as to legal rights in the position of a daughter.

Marriage in jest. A marriage in jest is subject to annulment for lack of requisite consent and intention to marry.

Mixed marriage. A marriage between persons of different nationalities or religions; or, more particularly, between persons of different racial origin; as between a white person and a negro or an Indian. See **Miscegenation.**

Morganatic marriage. The lawful, and inseparable conjunction of a man, of noble or illustrious birth, with a woman of inferior station, upon condition that neither the wife nor her children shall partake of the titles, arms, or dignity of the husband, or succeed to his inheritance, but be contented with a certain allowed rank assigned to them by the morganatic contract. But since these restrictions relate only to the rank of the parties and succession to property, without affecting the nature of a matrimonial engagement, it must be considered as a just marriage. The marriage ceremony is regularly performed; the union is indissoluble; the children legitimate.

Plural marriage. In general, any bigamous or polygamous union, but particularly, a second or subsequent marriage of a man who already has one wife living under system of polygamy. Such marriages are prohibited.

Proxy marriage. Marriage contracted or celebrated by one or more agents rather than by the parties themselves.

Putative marriage. One contracted in good faith and in ignorance of some existing impediment on the part of at least one of the contracting parties. U. S. Fidelity & Guaranty Co. v. Henderson, Tex.Civ.App., 53 S.W.2d 811. Such marriages are recognized in very few jurisdictions. —*Black's Law Dictionary*, 1979

[**Marriage**

[**marriage** ... *n.* **1.a.** The legal union of a man and woman as husband and wife. **b.** Wedlock. **2.** A wedding. **3.** A close union: “*the most successful marriage of beauty and blood in mainstream comics*” (Lloyd Rose). **4. Games.** The combination of the king and queen of the same suit, as in pinochle....

—*The American Heritage Dictionary of the English Language*, 1992

[**marriage**

[**MARRIAGE LICENSE.** No entry

—*Bouvier's Law Dictionary*, 1889

[**MARRIAGE LICENSE**

[**Marriage license.** A license or permission granted by public authority to persons who intend to intermarry, usually addressed to the minister or magistrate who is to perform the ceremony, or, in general terms, to any one authorized to solemnize marriages. By statute in most jurisdictions, it is made an essential prerequisite to the lawful solemnization of the marriage. —*Black's Law Dictionary*, 1979

[**Marriage license**

[**marriage license.** No entry

—*The American Heritage Dictionary of the English Language*, 1992

[**marriage license**

[**MILITIA.** The military force of the nation, consisting of citizens called forth to execute the laws of the Union, suppress insurrection, and repel invasion.

The constitution of the United States provides on this subject that congress shall have power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions; to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress.

In accordance with the provisions of the constitution, congress, in 1792, act of May 8, passed an act relating to the militia, which has remained, with modifications, till the present time. Under these provisions the militia can be used for the suppression of rebellion as well as of insurrection; R. S. § 1642; 7 Wall. 700; 45 Penn. 238. The president of the United States is to judge when the exigency has

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arisen which requires the militia to be called out; 12 Wheat. 19; 8 Mass. 548. He may make his request directly to the executive of the state, or by an order directed to any subordinate officer of the state militia; 3 S. & R. 169. So provided by R. S. § 1642; and see 12 Wheat. 19; 5 Phila. 259.

When the militia are called into actual service, they are subject to the same rules and articles of war as the regular troops; R. S. § 1644. The president may specify their term of service, not exceeding nine months; R. S. § 1648. When in actual service the militia are entitled to the same pay as the regular troops; R. S. § 1650. The militia, until mustered into the United States service, is considered as a state force; 3 S. & R. 169; 5 Wheat. 1. See 1 Kent, 262; Story, Const. §§ 1194-1210. See MILITARY LAW; MARTIAL LAW. —*Bouvier's Law Dictionary*, 1889

[MILITIA

[MISCEGENATION a mixture of races. The intermarriage of persons belonging to the white and black races. In many of the states this is prohibited by statute. The constitutionality of such statutes has been repeatedly affirmed; 3 Tex. Ct. App. 263; s. c. 30 Am. Rep. 131; 30 Gratt. 658; 3 Heisk. 287. It has been further held that a statute denouncing a severer penalty on persons of the two races living together in adultery, than that prescribed for a like offence between persons of the same race, is constitutional; 58 Ala. 190; s. c. 29 Am. Rep. 739; 2 Whart. Cr. L. § 1754.

—*Bouvier's Law Dictionary*, 1889

[MISCEGENATION

[Miscegenation Mixture of races; marriage between persons of different races, as between a white person and a Negro. —*Black's Law Dictionary*, 1979

[Miscegenation

[miscegenation *n.* 1. A mixture of different races. 2. Cohabitation, sexual relations, or marriage involving persons of different races....

—*The American Heritage Dictionary of the English Language*, 1992

[miscegenation

[MOLEST no entry.

—*Bouvier's Law Dictionary*, 1889

[MOLEST

[MOLEST.... *v.t.* to trouble, disturb, or annoy....

—*The American Dictionary of the English Language*, 1899

[MOLEST

[molest.... To trouble; to disturb; to render uneasy.

—*Webster's Universal Dictionary of the English Language*, 1910-1911

[molest

[molest.... meddle with and injure; interfere with and trouble; disturb....

—*Thorndike Century Senior Dictionary*, 1941

[molest

[**molest**.... To interfere with or meddle with unwarrantably so as to injure or disturb....
—*Thin Paper Webster's New Collegiate Dictionary*, 1961

[**molest**

[**molest**.... **1:** ANNOY, DISTURB **2:** to make indecent advances to....

—*Webster's Seventh New Collegiate Dictionary*, 1965

[**molest**

[**Molest** no entry.

—*Black's Law Dictionary*, 1979

[**Molest**

[**molest**.... **1:** to annoy, disturb, or persecute esp. with hostile intent or injurious effect **2:** to make annoying sexual advances to....

—*Webster's New Collegiate Dictionary*, 1973

[**molest**

[**molest**.... **1.** To disturb, interfere with, or annoy. **2.** To subject to unwanted or improper sexual activity....

—*The American Heritage Dictionary of the English Language*, 1992

[**molest**

[**muff**.... **1 :** a warm tubular covering for the hands **2 :** a cluster of feathers on the side of the face of some domestic fowls

—*Webster's Ninth New Collegiate Dictionary*, 1987

[**muff**

[**Municipal corporation.** A legal institution formed by charter from sovereign (*i.e.* state) power erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state. A body corporate consisting of the inhabitants of a designated area created by the legislature with or without the consent of such inhabitants for governmental purposes, possessing local legislative and administrative power, also power to exercise within such area so much of the administrative power of the state as may be delegated to it and possessing limited capacity to own and hold property and to act in purveyance of public conveniences.

Municipal corporation is a body politic and corporate, created to administer the internal concerns of the district embraced within its corporate limits, in matters peculiar to such place and not common to the state at large. *Tribe v. Salt Lake City Corp.*, Utah, 540 P.2d 499, 502. A municipal corporation has a dual character, the one public and the other private, and exercises correspondingly twofold functions and duties—one class consisting of those acts performed by it in exercise of delegated sovereign powers for benefit of people generally, as arm of state, enforcing general laws made in pursuance of general policy of the state, and the other consisting of acts done in exercise of power of the municipal corporation for its own benefit, or for benefit of its citizens alone, or citizens of the municipal corporation and its

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immediate locality. *Associated Enterprises, Inc. v. Toltec Watershed Imp. Dist.*, Wyo., 490 P.2d 1069, 1070.

Quasi municipal corporations. Bodies politic and corporate, created for the sole purpose of performing one or more municipal functions. Public corporations organized for governmental purposes and having for most purposes the status and powers of municipal corporations (such as counties, townships, school districts, drainage districts, irrigation districts, etc.), but not municipal corporations proper, such as cities and incorporated towns.

—*Black's Law Dictionary*, 1979

[Municipal corporation

— N —

[**name** *n* **1 a:** a word or phrase that constitutes the distinctive designation of a person or thing **b:** a word or symbol used in logic to designate **2:** a descriptive often disparaging epithet <called him ~ s> **3 a:** REPUTATION <gave the town a bad ~ > **b:** an illustrious record: FAME <made a ~ for himself in golf> **c:** a person or thing with a reputation <he is a big ~ in baseball> **4:** FAMILY, CLAN **5:** appearance as opposed to reality <a friend in ~ only> **6:** one referred to by a name <praise his holy ~ > - **in the name of:** by authority of <open *in the name of* the law>
 —*Webster's New Collegiate Dictionary, 1973*

[**name**

[**nebula** ... *n., pl. -lae ... or -las. 1. Astronomy. a.* A diffuse mass of interstellar dust or gas or both, visible as luminous patches or areas of darkness depending on the way the mass absorbs or reflects incident radiation. **b.** See **galaxy** (sense 1a). **2. Pathology. a.** A cloudy spot on the cornea. **b.** Cloudiness in the urine. **3.** A liquid medication applied by spraying....

—*The American Heritage Dictionary of the English Language, 1992*

[**nebula**

[**necessity** **1.a.** The condition or quality of being necessary. **b.** Something necessary: *The necessities of life include food, clothing, and shelter.* **2.a.** Something dictated by invariable physical laws. **b.** The force exerted by circumstance. **3.** The state or fact of being in need. **4.** Pressing or urgent need, especially that arising from poverty. See Synonyms at **need.** —**idiom. of necessity.** As an inevitable consequence; necessarily....

—*The American Heritage Dictionary of the English Language, 1992*

[**necessity**

[**NOBILITY.** An order of men, in several countries, to whom special privileges are granted. The constitution of the United States provides, Art. I. § 10, that “no state shall grant any title of nobility.” and § 9, that “no title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of congress, accept of any title of any kind, whatever, from any king, prince, or foreign state.” It is singular that there should not have been a general prohibition against any citizen whatever, whether in private or public life, accepting any foreign title of nobility. An amendment for this purpose has been recommended by congress, but it has not been ratified by a sufficient number of states to make it a part of the constitution, probably from a growing sense that it is unnecessary; Rawle, Const. 120; Story, Const §§ 1350-52; Fed. No. 84. A marshal of the United States cannot at the same time hold the office of commercial agent of a foreign nation; 8 Opin. of Att. Gen. 409.— *Bouvier's Law Dictionary, 1889*

[**nobility**

[**nomenclature**... *n.* **1.** A system of names used in an art or a science: *the nomenclature of mineralogy.* **2.** The procedure of assigning names to the kinds and groups of organisms listed in a taxonomic classification: *the rules of nomenclature*

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in botany.... —*The American Heritage Dictionary of the English Language, 1992*
[**nomenclature**]

[**Notice.** Information; the result of observation, whether by the senses or the mind; knowledge of the existence of a fact or state of affairs; the means of knowledge. Intelligence by whatever means communicated. *Koehn v. Central Nat. Ins. Co. of Omaha, Neb.*, 187 Kan. 192, 354 P.2d 352, 358.

Notice is knowledge of facts which would naturally lead an honest and prudent person to make inquiry, and does not necessarily mean knowledge of all the facts. *Wayne Bldg. & Loan Co. of Wooster v. Yarborough*, 11 Ohio St.2d 195, 228 N.E.2d 841, 847, 40 O.O.2d 182. In another sense, “notice” means information, an advice, or written warning, in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved, or informing him of some fact which it is his right to know and the duty of the notifying party to communicate.

Fed.R. Civil P. 5(a) requires that every written notice be served upon each of the parties.

A person has notice of a fact if he knows the fact, has reason to know it, should know it, or has been given notification of it. *Restatement, Second, Agency § 9.*

Notice may be either (1) statutory, *i.e.*, made so by legislative enactment; (2) actual, which brings the knowledge of a fact directly home to the party; or (3) constructive. Constructive notice may be subdivided into: (a) Where there exists actual notice of matter, to which equity has added constructive notice of facts, which an inquiry after such matter would have elicited; and (b) where there has been a designed abstinence from inquiry for the very purpose of escaping notice.

See also Adequate notice; Charged; Due notice; Immediate notice; Imputed notice; Judicial notice; Knowledge; Legal notice; Reasonable notice.

Actual notice. Actual notice has been defined as notice expressly and actually given, and brought home to the party directly. The term “actual notice,” however, is generally given a wider meaning as embracing two classes, express and implied; the former includes all knowledge of a degree above that which depends upon collateral inference, or which imposes upon the party the further duty of inquiry; the latter imputes knowledge to the party because he is shown to be conscious of having the means of knowledge. In this sense actual notice is such notice as is positively proved to have been given to a party directly and personally, or such as he is presumed to have received personally because the evidence within his knowledge was sufficient to put him upon inquiry.

Averment of notice. The statement in a pleading that notice has been given.

Commercial law. A person has “notice” of a fact when: (a) he has actual knowledge of it; or (b) he has received a notice or notification of it; or (c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person “knows” or has “knowledge” of a fact when he has actual knowledge of it. “Discover” or “learn” or a word or phrase of similar import refers to

knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Act. U.C.C. § 1-201(25).

A person “notifies” or “gives” a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person “receives” a notice or notification when: (a) it comes to his attention; or (b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications. U.C.C. § 1-201(26).

Under the Uniform Commercial Code, the law on “notice,” actual or inferable, is precisely the same whether the instrument is issued to a holder or negotiated to a holder. *Eldon’s Super Fresh Stores, Inc. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 296 Minn. 130, 207 N.W.2d 282, 287.

Constructive notice. Constructive notice is information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it. Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.

Constructive “notice” includes implied actual notice and inquiry notice. *F. P. Bough, Inc. v. Little Lake Lumber Co.*, C.A.Cal., 297 F.2d 692, 696.

Express notice. Express notice embraces not only knowledge, but also that which is communicated by direct information, either written or oral, from those who are cognizant of the fact communicated. See also *Actual Notice*.

Implied notice. Implied notice is one of the varieties of actual notice (not constructive) and is distinguished from “express” actual notice. It is notice inferred or imputed to a party by reason of his knowledge of facts or circumstances collateral to the main fact, of such a character as to put him upon inquiry, and which, if the inquiry were followed up with due diligence, would lead him definitely to the knowledge of the main fact. “Implied notice” is a presumption of fact, relating to what one can learn by reasonable inquiry, and arises from actual notice of circumstances, and not from constructive notice. Or as otherwise defined, implied notice may be said to exist where the fact in question lies open to the knowledge of the party, so that the exercise of reasonable observation and watchfulness would not fall to apprise him of it, although no one has told him of it in so many words.

Personal notice. Communication of notice orally or in writing (according to the circumstances) directly to the person affected or to be charged, as distinguished from constructive or implied notice, and also from notice imputed to him because given to his agent or representative. See *Actual notice*; *Express notice, supra*.

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Public notice. Notice given to the public generally, or to the entire community, or to all whom it may concern. Such must commonly be published in a newspaper of general circulation.

Reasonable notice. Such notice or information of a fact as may fairly and properly be expected or required in the particular circumstances.

—*Black's Law Dictionary*, 1979

[**Notice**

[**Null.** Naught; of no validity or effect. Usually coupled with the word “void;” as “null and void.” The words “null and void,” when used in a contract or statute are often construed as meaning “voidable.” *Burns Mortg. Co. v. Schwartz*, C.C.A.N.J., 72 F.2d 991, 992; *Metropolitan Life Ins. Co. v. Hall*, 191 Ga. 294, 12 S.E.2d 53, 61. “Null and void” means that which binds no one or is incapable of giving rise to any rights or obligations under any circumstances, or that which is of no effect. *Zogby v. State*, 53 Misc.2d 740, 279 N.Y.S.2d 665, 668. See also **Void; Voidable.**

—*Black's Law Dictionary*, 1979

[**Null**

[**number** **1 a** (1): a sum of units: TOTAL (2): COMPLEMENT 1 b (3): an indefinite usu. large total <a ~ of members were absent> (4) *pl*: a numerous group: MANY; *also*: a numerical preponderance **b**: the characteristic of an individual by which it is treated as a unit or of a collection by which it is treated in terms of units: the aspect of something that can be counted **c** (1): a unit belonging to an abstract mathematical system and subject to specified laws of succession, addition, and multiplication; *esp*: NATURAL NUMBER (2): an element (as π) of any of many mathematical systems obtained by extension of or analogy with the natural number system (3) *pl*: ARITHMETIC **2**: a distinction of word form to denote reference to one or more than one; *also*: a form or group of forms so distinguished **3 pl a** (1): metrical structure: METER (2): metrical lines: VERSES b *archaic*: musical sounds: NOTES **4 a**: a word, symbol, letter, or combination of symbols representing a number **b**: a numeral or combination of numerals or other symbols used to identify or designate **c** (1): a member of a sequence or collection designated by *esp*. consecutive numbers (as an issue or a periodical) (2): a position in a numbered sequence **d**: a group of one kind <not of their ~ > **5**: one singled out from a group: INDIVIDUAL: as **a**: GIRL, WOMAN <met an attractive ~ at the dance> **b**: a musical, theatrical, or literary selection **c**: an item of merchandise and *esp*. clothing **6**: insight into a person's ability or character <had my ~ > **7 pl but sing or pl in constr a**: a form of lottery in which an individual wagers on the appearance of a certain combination of digits (as in regularly published numbers) - called also *numbers game*

—*Webster's Ninth New Collegiate Dictionary*, 1987

[**number**

— O —

[Oath. Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully, *e.g.* President’s oath on entering office, Art. II, Sec. 1, U.S. Const. *Vaughn v. State*, 146 Tex.Cr.R. 586, 177 S.W.2d 59, 60. An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. A solemn appeal to the Supreme Being in attestation of the truth of some statement. An external pledge or asseveration, made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be false. In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly. In a more restricted sense, it excludes all those forms of attestation or promise which are not accompanied by an imprecation.

See also *Affirmation*; *Attestation*; *False swearing*; *Jurat*; *Loyalty oath*; *Pauper’s oath*; *Verification*.

Affirmation in lieu of oath. Fed.R.Civil P. 43 provides that whenever an oath is required under the rules, a solemn affirmation may be accepted in lieu thereof. See also Art. II, Sec. 1, and Art. VI, U.S. Const.

Assertory oath. One relating to a past or present fact or state of facts, as distinguished from a “promissory” oath which relates to future conduct; particularly, any oath required by law other than in judicial proceedings and upon induction to office, such, for example, as an oath to be made at the custom-house relative to goods imported.

Corporal oath. See **Corporal oath**.

Decisive or decisory oath. In the civil law, where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary, which the adversary was bound to accept, to tender the same proposal back again, otherwise the whole was taken as confessed by him.

Extrajudicial oath. One not taken in any judicial proceeding, or without any authority or requirement of law, though taken formally before a proper person.

False oath. See **False swearing**; **Perjury**.

Judicial oath. One taken in some judicial proceeding or in relation to some matter connected with judicial proceedings. One taken before an officer in open court, as distinguished from a “non-judicial” oath, which is taken before an officer *ex parte* or out of court. See also *Witnesses*, below.

Loyalty oath. An oath requiring one to swear his loyalty to the state and country generally as a condition of public employment. Such oaths which are not overbroad

Miscellaneous Definitions

have been upheld. *Elfbrandt v. Russell*, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321; *Cole v. Richardson*, 405 U.S. 676, 92 S.Ct. 1332, 31 L.Ed.2d 593. See also **Oath of allegiance**.

Official oath. One taken by an officer when he assumes charge of his office, whereby he declares that he will faithfully discharge the duties of the same, or whatever else may be required by statute in the particular case. See Art. VI, U.S. Const.

Poor debtor's oath. See **Pauper's oath**.

Promissory oaths. Oaths which bind the party to observe a certain course of conduct, or to fulfill certain duties, in the future, or to demean himself thereafter in a stated manner with reference to specified objects or obligations; such, for example, as the oath taken by a high executive officer, a legislator, a judge, a person seeking naturalization, an attorney at law. A solemn appeal to God, or, in a wider sense, to some superior sanction or a sacred or revered person in witness of the inviolability of the promise or undertaking.

Purgatory oath. An oath by which a person *purges* or clears himself from presumptions, charges or suspicions standing against him, or from a contempt.

Solemn oath. A corporal oath.

Suppletory oath. In the civil and ecclesiastical law, the testimony of a single witness to a fact is called "half-proof," on which no sentence can be founded; in order to supply the other half of proof, the party himself (plaintiff or defendant) is admitted to be examined in his own behalf, and the oath administered to him for that purpose is called the "suppletory oath," because it supplies the necessary *quantum* of proof on which to found the sentence. This term, although without application in American law in its original sense, is sometimes used as a designation of a party's oath required to be taken in authentication or support of some piece of documentary evidence which he offers, for example, his books of account.

Voluntary oath. Such as a person may take in extra-judicial matters, and not regularly in a court of justice, or before an officer invested with authority to administer the same.

Witnesses. Before testifying, every witness shall be required to declare that he will testify, truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so. Fed.Evid.R. 603. See also *Affirmation in lieu of oath*, above. —*Black's Law Dictionary*, 1979

[**Oath**

[**OBLIGATION** (from Lat. *obligo, ligo*, to bind). A duty.

A tie which binds us to pay or do something agreeably to the laws and customs of the country in which the obligation is made. Inst. 3. 14.

A bond containing a penalty, with a condition annexed, for the payment of money, performance of covenants, or the like, and which differs from a bill, which is generally without a penalty or condition, though it may be obligatory. Co. Litt. 172.

A deed whereby a man binds himself under a penalty to do a thing. Comyns, Dig. *Obligation* (A); 2 S. & R. 502; 6 Vt. 40; 1 Blackf. 241; Harp. 434; Baldw. 129.

An *absolute* obligation is one which gives no alternative to the obligor, but requires fulfilment (sic) according to the engagement.

An *accessory* obligation is one which is dependent on the principal obligation; for example, if I sell you a house and lot of ground, the principal obligation on my part is to make you a title for it; the accessory obligation is to deliver you all the title-papers which I have relating to it, to take care of the estate till it is delivered to you, and the like.

An *alternative* obligation is where a person engages to do or to give several things in such a manner that the payment of one will acquit him of all.

Thus, if A agrees to give B, upon a sufficient consideration, a horse, or one hundred dollars, it is an *alternative* obligation. Pothier, Obl. pt. 2, c. 3, art. 6, no. 245.

In order to constitute an alternative obligation, it is necessary that two or more things should be promised disjunctively: where they are promised conjunctively, there are as many obligations as the things which are enumerated; but where they are in the alternative, though they are all due, there is but one obligation, which may be discharged by the payment of any of them.

The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor; Dougl. 14; 1 Ld. Raym. 279; 4 Mart. La. N.S. 167. If one of the acts is prevented by the obligee or the act of God, the obligor is discharged from both. See 2 Evans, Pothier, Obl. 52-54; Viner, Abr. *Condition* (S b); CONJUNCTIVE; DISJUNCTIVE; ELECTION.

A *civil* obligation is one which has a binding operation in law, and which gives to the obligee the right of enforcing it in a court of justice; in other words, it is an engagement binding on the obligor. 4 Wheat. 197; 12 *id.* 318, 337.

Civil obligations are divided into express and implied, pure and conditional, primitive and secondary, principal and accessory, absolute and alternative, determinate and indeterminate, divisible and indivisible, single and penal, and joint and several. They are also purely personal, purely real, or mixed.

A *conditional* obligation is one the execution of which is suspended by a condition which has not been accomplished, and subject to which it has been contracted.

A *determinate* obligation is one which, has for its object a certain thing: as, an obligation to deliver a certain horse named Bucephalus. In this case the obligation can only be discharged by delivering the identical horse.

Miscellaneous Definitions

A *divisible* obligation is one which, being a unit, may nevertheless be lawfully divided with or without the consent of the parties.

It is clear that it may be divided by consent, as those who made it may modify or change it as they please. But some obligations may be divided without the consent of the obligor: as, where a tenant is bound to pay two hundred dollars a year rent to his landlord, the obligation is entire; yet, if his landlord dies and leaves two sons, each will be entitled to one hundred dollars; or if the landlord sells one undivided half of the estate yielding the rent, the purchaser will be entitled to receive one hundred dollars and the seller the other hundred. See APPORTIONMENT.

Express or conventional obligations are those by which the obligor binds himself in express terms to perform his obligation.

Imperfect obligations are those which are not binding on us as between man and man, and for the non-performance of which we are accountable to God only: such as charity or gratitude. In this sense an obligation is its mere duty. Pothier, Obl. art. pré. n. 1.

An *implied* obligation is one which arises by operation of law: as for example, if I send you daily a loaf of bread, without any express authority, and you make use of it in your family, the law raises an obligation on your part to pay me the value of the bread.

An *indeterminate* obligation is one where the obligor binds himself to deliver one of a certain species: as, to deliver a horse, where the delivery of any horse will discharge the obligation.

An *indivisible* obligation is one which is not susceptible of division: as, for example if I promise to pay you one hundred dollars, you cannot assign one-half of this to another, so as to give him a right of action against me for his share. See DIVISIBLE.

A *joint* obligation is one by which several obligors promise to the obligee to perform the obligation. When the obligation is only joint, and the obligors do not promise separately to fulfil (sic) their engagement, they must be all sued, if living, to compel the performance: or, if any be dead, the survivors must all be sued. See PARTIES TO ACTIONS.

A *natural* or *moral* obligation is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to natural justice.

As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished; 5 Binn. 573. Although natural obligations cannot be enforced by action, they have the following effect; *first*, no suit will lie to recover back what has been paid or given in compliance with a natural obligation: 1 Term, 285; 1 Dall. 184; *second*, a natural obligation has been held to be a sufficient consideration for a new contract; 2 Binn. 591; 5 *id.* 33; Yelv. 41 *a*, n. 1; Cowp. 290; 2 Bla. Com. 445; 3 Bos. & P. 249, n.; 2

East, 506; 3 Taunt. 311; 5 *id.* 36; 3 Pick. 207; Chitty, Contr. 10; but see MORAL OBLIGATION; CONSIDERATION.

A *penal* obligation is one to which is attached a penal clause, which is to be enforced if the principal obligation be not performed. See LIQUIDATED DAMAGES.

A *perfect* obligation is one which gives a right to another to require us to give him something or not to do something. These obligations are either natural or moral, or they are civil.

A *personal* obligation is one by which the obligor binds himself to perform an act, without directly binding his property for its performance.

It also denotes an obligation in which the obligor binds himself only, not including his heirs or representatives.

A *primitive* obligation, which in one sense may also be called a principal obligation, is one which is contracted with a design that it should itself be the first fulfilled.

A *principal* obligation is one which is the most important object of the engagement of the contracting parties.

A *pure* or simple obligation is one which is not suspended by any condition, either because it has been contracted without condition, or, having been contracted with one, it has been fulfilled.

A *real* obligation is one by which real estate, and not the person, is liable to the obligee for the performance.

A familiar example will explain this. When an estate owes an easement as a right of way, it is the thing, and not the owner, who owes the easement. Another instance occurs when a person buys an estate which has been mortgaged, subject to the mortgage: he is not liable for the debt, though the estate is. In these cases the owner has an interest only because he is seised of the servient estate or the mortgaged premises, and he may discharge himself by abandoning or parting with the property. The obligation is both personal and real when the obligor has bound himself and pledged his estate for the fulfilment of his obligations.

A *secondary* obligation is one which is contracted and is to be performed in case the *primitive* cannot be. For example, if I sell you my house, I bind myself to give a title: but I find I cannot, as the title is in another: then my *secondary* obligation is to pay you damages for my non-performance of my obligation.

A *several* obligation is one by which one individual, or, if there be more, several individuals, bind themselves separately to perform the engagement. In this case each obligor may be sued separately; and if one or more be dead, their respective executors may be sued. See PARTIES TO ACTIONS.

A *single* obligation is one without any penalty: as where I simply promise to pay you one hundred dollars. This is called a single bill, when it is under seal.

—*Bouvier's Law Dictionary*, 1889

[OBLIGATION

Miscellaneous Definitions

[Obligation. A generic word, derived from the Latin substantive “obligatio,” having many, wide, and varied meanings, according to the context in which it is used. That which a person is bound to do or forbear; any duty imposed by law, promise, contract, relations of society, courtesy, kindness, etc. *Rucks-Brandt Const. Co. v. Price*, 165 Okl. 178, 23 P.2d 690; *Helvering v. British-American Tobacco Co.*, C.C.A., 69 F.2d 528, 530. Law or duty binding parties to perform their agreement. An undertaking to perform. That which constitutes a legal or moral duty and which renders a person liable to coercion and punishment for neglecting it; a word of broad meaning, and the particular meaning intended is to be gained by consideration of its context. An obligation or debt may exist by reason of a judgement as well as an express contract, in either case there being a legal duty on the part of the one bound to comply with the promise. *Schwartz v. California Claim Service*, 52 Cal.App.2d 47, 125 P.2d 883, 888. Liabilities created by contract or law (*i.e.* judgements). *Rose v. W. B. Worthen Co.*, 186 Ark. 205, 53 S.W.2d 15, 16. As legal term word originally meant a sealed bond, but it now extends to any certain written promise to pay money or do a specific thing. *Lee v. Kenan*, C.C.A.Fla., 78 F.2d 425. A formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing. *United States v. One Zumstein Briefmarken Katalog 1938*, D.C.Pa., 24 F.Supp. 516, 519. The binding power of a vow, promise, oath, or contract, or of law, civil, political, or moral, independent of a promise; that which constitutes legal or moral duty.

See also **Contract**; **Duty**; **Liability**.

Absolute obligation. One which gives no alternative to the obligor, but requires fulfillment according to the engagement.

Conjunctive or alternative obligation. The former is one in which the several objects in it are connected by a copulative, or in any other manner which shows that all of them are severally comprised in the contract. This contract creates as many different obligations as there are different objects; and the debtor, when he wishes to discharge himself, may force the creditor to receive them separately. But where the things which form the object of the contract are separated by a disjunctive, then the obligation is alternative, and the performance of either of such things will discharge the obligor. The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor. A promise to deliver a certain thing or to pay a specified sum of money is an example of an alternative obligation. Civ.Code La. arts. 2063, 2066, 2067.

Contractual obligation. One which arises from a contract or agreement. See **Contract**.

Current obligation. See **Current obligations**.

Determinate or indeterminate obligation. A determinate obligation is one which has for its object a certain thing; as, an obligation to deliver a certain horse named Bucephalus, in which case the obligation can be discharged only by delivering the identical horse. An indeterminate obligation is one where the obligor binds himself

to deliver one of a certain species: as, to deliver a horse, where the delivery of any horse will discharge the obligation.

Divisible or indivisible obligation. A divisible obligation is one which, being a unit, may nevertheless be lawfully divided, with or without the consent of the parties. An indivisible obligation is one which is not susceptible of division; As, for example, if I promise to pay you one hundred dollars, you cannot assign one-half of this to another, so as to give him a right of action against me for his share.

Express or implied obligation. Express or conventional obligations are those by which the obligor binds himself in express terms to perform his obligation, while implied obligations are such as are raised by the implication or inference of the law from the nature of the transaction.

Failure to meet obligations. See **Failure to meet obligations.**

Joint or several obligation. A joint obligation is one by which two or more obligors bind themselves jointly for the performance of the obligation. A several obligation is one where the obligors promise, each for himself, to fulfill the engagement.

Moral obligation. A duty which is valid and binding in conscience and according to natural justice, but is not recognized by the law as adequate to set in motion the machinery of justice; that is, one which rests upon ethical considerations alone, and is not imposed or enforced by positive law. A duty which would be enforceable by law, were it not for some positive rule, which, with a view to general benefit, exempts the party in that particular instance from legal liability. See also **Love and affection.**

Natural or civil obligation. A natural obligation is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to natural justice. As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished. *Ogden v. Saunders*, 25 U.S. 213, 337, (12 Wheat.) 6 L.Ed. 606. A civil obligation is a legal tie, which gives the party with whom it is contracted the right of enforcing its performance by law.

Obediential obligation. One incumbent on parties in consequence of the situation or relationship in which they are placed.

Perfect or imperfect obligation. A perfect obligation is one recognized and sanctioned by positive law; one of which the fulfillment can be enforced by the aid of the law. But if the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called an "imperfect obligation," and creates no right of action, nor has it any legal operation. The duty of exercising gratitude, charity, and the other merely moral duties are examples of this kind of obligation. *Edwards v Kearzey*, 96 U.S. 595, 600, 24 L.Ed. 793.

Personal or heritable obligation. An obligation is heritable when the heirs and assigns of one party may enforce the performance against the heirs of the other. It is personal when the obligor binds himself only, not his heirs or representatives. An

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obligation is strictly personal when none but the obligee can enforce the performance, or when it can be enforced only against the obligor. An obligation may be personal as to the obligee, and heritable as to the obligor, and it may in like manner be heritable as to the obligee, and personal as to the obligor. For the term *Personal obligation*, as used in a different sense, see the next paragraph.

Personal or real obligation. A personal obligation is one by which the obligor binds himself to perform an act, without directly binding his property for its performance. A real obligation is one by which real estate, and not the person, is liable to the obligee for the performance.

Primary or secondary obligation. An obligation which is the principal object of the contract. For example, the primary obligation of the seller is to deliver the thing sold, and to transfer the title to it. It is distinguished from the accessory or secondary obligation to pay damages for not doing so. The words "primary" and "direct," contrasted with "secondary," when spoken with reference to an obligation, refer to the remedy provided by law for enforcing the obligation, rather than to the character and limits of the obligation itself.

A primary obligation, which in one sense may also be called a principal obligation, is one which is contracted with a design that it should itself be the first fulfilled. A secondary obligation is one which is contracted and is to be performed in case the primitive cannot be. For example, if one sells his house, he binds himself to give a title; but if he finds he cannot as when the title is in another, then his secondary obligation is to pay damages for nonperformance of the obligation.

Principal or accessory obligation. A principal obligation is one which arises from the principal object of the engagement of the contracting parties; while an accessory obligation depends upon or is collateral to the principal. For example, in the case of the sale of a house and lot of ground, the principal obligation on the part of the vendor is to make title for it; the accessory obligation is to deliver all the title-papers which the vendor has relating to it, to take care of the estate until it is delivered, and the like. See, further, the title **Accessory obligation**.

Pure obligation. One which is not suspended by any condition, whether it has been contracted without any condition, or, when thus contracted, the condition has been accomplished. See *Simple or conditional obligation*.

Simple or conditional obligation. Simple obligations are such as are not dependent for their execution on any event provided for by the parties, and which are not agreed to become void on the happening of any such event. Conditional obligations are such as are made to depend on an uncertain event. If the obligation is not to take effect until the event happens, it is a suspensive condition; if the obligation takes effect immediately, but is liable to be defeated when the event happens, it is then a resolutive condition. A simple obligation is also defined as one which is not suspended by any condition, either because it has been contracted without condition, or, having been contracted with one, the condition has been fulfilled; and a conditional obligation is also defined as one the execution of which is suspended

by a condition which has not been accomplished, and subject to which it has been contracted.

Single or penal obligation. A penal obligation is one to which is attached a penal clause, which is to be enforced if the principal obligation be not performed. A single obligation is one without any penalty, as where one simply promises to pay another one hundred dollars. This is called a single bill, when it is under seal.

Solidary obligation. In the law of Louisiana, one which binds each of the obligors for the whole debt, as distinguished from a “joint” obligation, which binds the parties each for his separate proportion of the debt. *Groves v. Sentell*, 153 U.S. 465, 14 S.Ct. 898, 38 L.Ed. 785. See **Solidary**. —*Black’s Law Dictionary*, 1979

[**Obligation**

[**obligation** ... *n.* **1.** The act of binding oneself by a social, legal, or moral tie. **2.a.** A social, legal, or moral requirement, such as a duty, contract, or promise that compels one to follow or avoid a particular course of action. **b.** A course of action imposed by society, law, or conscience by which one is bound or restricted. **3.** The constraining power of a promise, contract, law, or sense of duty. **4. Law.** **a.** A legal agreement stipulating a specified payment or action, especially if the agreement also specifies a penalty for failure to comply. **b.** The document containing the terms of such an agreement. **5.a.** Something owed as payment or in return for a special service or favor. **b.** The service or favor for which one is indebted to another. **6.** The state, fact, or feeling of being indebted to another for a special service or favor received....

SYNONYMS: *obligation, responsibility, duty.* These nouns refer to a course of action that is demanded of a person, as by law or conscience. *Obligation* usually applies to a specific constraint arising from a particular cause: “*Then in the marriage union, the independence of the husband and wife will be equal, their dependence mutual, and their obligations reciprocal*” (Lucretia Mott). *Responsibility* stresses accountability for the fulfillment of an obligation: “*I believe that every right implies a responsibility; every opportunity, an obligation; every possession, a duty*” (John D. Rockefeller, Jr.). *Duty* applies especially to constraint deriving from moral or ethical considerations: “*I therefore believe it is my duty to my country to love it, to support its Constitution, to obey its laws, to respect its flag, and to defend it against all enemies*” (William Tyler Page).

—*The American Heritage Dictionary of the English Language*, 1992

[**obligation**

[**Observe.** To perform that which has been prescribed by some law or usage. To adhere to or abide by. —*Black’s Law Dictionary*, 1979

[**Observe**

[**Ockham’s razor** also **Occam’s razor** ... *n.* A rule in science and philosophy stating that entities should not be multiplied needlessly. This rule is interpreted to mean that the simplest of two or more competing theories is preferable and that an

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explanation for unknown phenomena should first be attempted in terms of what is already known. Also called *law of parsimony*. [After William of OCKHAM.]

—*The American Heritage Dictionary of the English Language*, 1992

[**Ockham's razor**

[**official** *adj.* *Abbr. off.* **1.** Of or relating to an office or a post of authority: *official duties*. **2.** Authorized by a proper authority; authoritative: *official permission*. **3.** Holding office or serving in a public capacity: *an official representative*. **4.** Characteristic of or befitting a person of authority; formal: *an official banquet*. **5.** Authorized by or contained in the U.S. Pharmacopoeia or National Formulary. Used of drugs. —**official** *n.* *Abbr. off.* **1.** One who holds an office or a position, especially one who acts in a subordinate capacity for an institution such as a corporation or governmental agency. **2.** *Sports.* A referee or an umpire.... —*The American Heritage Dictionary of the English Language*, 1992

[**official**

[**Organic Act.** An act of Congress conferring powers of government upon a territory. In *re Lane*, 135 U.S. 443, 10 S.Ct. 760, 34 L.Ed. 219.

A statute by which a municipal corporation is organized and created is its “organic act” and the limit of its power, so that all acts beyond the scope of the powers there granted are void.

—*Black's Law Dictionary*, 1979

[**Organic Act**

[**Organic law.** The fundamental law, or constitution, of a state or nation, written or unwritten. That law or system of laws or principles which defines and establishes the organization of its government. —*Black's Law Dictionary*, 1979

[**Organic law**

[**organize** —*tr.* **1.** To put together into an orderly, functional, structured whole. **2.a.** To arrange in a coherent form; systematize: *organized her thoughts before speaking*. **b.** To arrange in a desired pattern or structure: “*The painting is organized about a young reaper enjoying his noonday rest*” (William Carlos Williams). **3.** To arrange systematically for harmonious or united action: *organize a strike*. See Synonyms at **arrange**. **4.a.** To establish as an organization: *organize a club*. See Synonyms at **found**¹. **b.** To induce (employees) to form or join a labor union. **c.** To induce the employees of (a business or an industry) to form or join a union: *organize a factory*. —*intr.* **1.** To develop into or assume an organic structure. **2.** To form or join an activist group, especially a labor union....

—*The American Heritage Dictionary of the English Language*, 1992

[**organize**

[**overthrow** *tr.v.*.... **1.** To throw over; overturn. **2.** To bring about the downfall or destruction of, especially by force or concerted action: *a plot to overthrow the government*. **3.** *Sports.* To throw an object over and beyond (an intended mark): *The infielder overthrew first base*.... *n.* **1.** An instance of overthrowing, especially one that results in downfall or destruction. **2.** *Sports.* The throwing of a ball over and beyond a target, especially in baseball.

SYNONYMS: *overthrow, overturn, subvert, topple, upset.* The central meaning shared by these verbs is “to cause the downfall, destruction, abolition, or undoing of”: *overthrow an empire; overturn existing institutions; subverting civil order; toppled the government; unable to upset the will.*

—*The American Heritage Dictionary of the English Language, 1992*

[**overthrow**

[**own** ... *adj.* Of or belonging to oneself or itself: *She makes her own clothes.*
—**own** *n.* That which belongs to one: *It is my own.* —**own** *v.* **owned, own•ing, owns.** —*tr.* **1.a.** To have or possess as property: *owns a chain of restaurants.* **b.** To have control over: *For a time, enemy planes owned the skies.* **2.** To admit as being in accordance with fact, truth, or a claim; acknowledge. —*intr.* To make a full confession or acknowledgment: *When confronted with the evidence the thief owned up.* See Synonyms at **acknowledge.** —**idioms. of (one’s) own.** Belonging completely to oneself: *a room of one’s own.* **on (one’s) own.** **1.** By one’s own efforts: *She got the job on her own.* **2.** Responsible for oneself; independent of outside help or control: *He is now out of college and on his own....* —**owner** *n.*

—*The American Heritage Dictionary of the English Language, 1992*

[**own**

[**OWNER** He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right.

Although there can be but one absolute owner of a thing, there may be a qualified ownership of the same thing by many. Thus, a bailor has the general ownership of the thing bailed, the bailee the special ownership. See 2 Cra. C. C. 83. The right of the absolute owner is more extended than that of him who has only a qualified ownership: as, for example, the use of the thing. Thus, the absolute owner of an estate, that is, an owner in fee, may cut the wood, demolish the buildings, build new ones, and dig wherever he may deem proper for minerals, stone, plaster, and similar things, which would be considered waste and would not be allowed in a qualified owner of the estate, as a lessee or a tenant for life. The word owner, when used alone, imports an absolute owner; but it has been held in Ohio that the word owner, in the Mechanic Lien Law of that state, included the owner of the leasehold as well as of the reversion, on the ground that any other construction would be subversive of the policy and intent of the statute. 2 Ohio, 123.

The owner continues to have the same right although he perform no acts of ownership or be disabled from performing them, and although another perform such acts without the knowledge or against the will of the owner. But the owner may lose his right in a thing if he permit it to remain in the possession of a third person for a sufficient time to enable the latter to acquire a title to it by prescription or under the Statute of Limitations. See La. Civ. Code, b. 2, tit. 2, c. 1; *Encyclopedie de M. d’Alembert, Proprietaire.*

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When there are several joint owners of a thing,-as, for example, of a ship,-the majority of them have the right to make contracts in respect of such thing in the usual course of business or repair, and the like, and the minority will be bound by such contracts; Holt, 586; 1 Bell, Com. 5th ed. 519; 5 Whart. 366. See, further, 2 Wall. 263; 76 Ill. 490; 64 Mo. 112; 57 N. H. 110; 36 N. J. L. 181; 13 N. Y. 553; 25 N. J. Eq. 284; 26 Penn. 238. —*Bouvier's Law Dictionary*, 1889

[**owner**

[**OWNERSHIP** The right by which a thing belongs to some one in particular, to the exclusion of all others. La. Civ. Code, art. 480. —*Bouvier's Law Dictionary*, 1889

[**ownership**

[**oxymoron** a combination of contradictory or incongruous words (as *cruel kindness*) —*Webster's Ninth New Collegiate Dictionary*, 1987

[**oxymoron**

— P —

[PAROL (more properly, *parole*. A French word, which means, literally, word, or speech). A term used to distinguish contracts which are made verbally, or in writing not under seal, which are called parol contracts, from those which are under seal, which bear the name of deeds or specialties; 1 Chitty, Contr. 1; 7 Term, 350, 351, n.; 3 Johns. Cas. 60; 1 Chitty, Pl. 88. It is proper to remark that when a contract is made under seal, and afterwards it is modified verbally, it becomes wholly a parol contract; 2 Watts, 451; 9 Pick. Mass. 298; 123 Wend. 71.

Pleadings are frequently denominated the *parol*. In some instances the term parol is used to denote the entire pleadings in a cause: as, when in an action brought against an infant heir, on an obligation of his ancestors, he prays that the parol may demur, *i.e.* that the pleadings may be stayed till he shall attain full age; 3 Bla. Com. 300; 4 East, 485; 1 Hoffm. 178. See a form of a plea in abatement, praying that the parol may demur, in 1 Wentw. Pl. 43, and 2 Chitty, Pl. 520. But a devisee cannot pray the parol to demur; 4 East, 485. —*Bouvier's Law Dictionary*, 1889

[parol

[parsimony ... *n.* **1.** Unusual or excessive frugality; extreme economy or stinginess. **2.** Adoption of the simplest assumption in the formulation of a theory or in the interpretation of data, especially in accordance with the rule of Ockham's razor.... —*The American Heritage Dictionary of the English Language*, 1992

[parsimony

[PARTIES (*Lat. pars*, a part). Those who take part in the performance of an act, as, making a contract, carrying on an action. A party in law may be said to be those united in interest in the performance of an act: it may then be composed of one or more persons. Parties includes every party to an act. It is also used to denote all the individual separate persons engaged in the act, —in which sense, however, a corporation may be a party.

To Contracts. Those persons who engage themselves to do or not to do the matters and things contained in agreement.

In general, all persons may be parties to contracts. But no person can contract with himself in a different capacity, as there must be an agreement of minds; 1 Vern. 465; 9 Ves. Ch. 234; 13 *id.* 156; 2 Bro. C. C. 400; 1 Pet. C. C. 373; 3 Binn. 54; 13 S. & R. 210; 9 Paige, Ch. 238, 650; 2 Johns. Ch. 252; 4 How. 503. And no want, immaturity, or incapacity of mind, in the consideration of the law, disables a person from becoming a party. Such disability may be entire or partial, and must be proved; 2 Stark. 326; 1 Term, 648; 11 Ad. & E. 634; 17 L. J. Ex. 233.

Aliens were under greater disabilities at common law with reference to real than to personal property; 7 Co. 25 *a*; 1 Ventr. 417; 6 Pet. 102; 11 Paige, Ch. 292; 1 Cush. 531. The disability is now removed, in a greater or less degree, by statutes in the various states; 2 Kent, Lect. 25; and alien friends stand on a very different footing

Miscellaneous Definitions

from alien enemies; 2 Sandf. Ch. 586; 2 W. & M. 1; 3 Stor. 458; 2 How. 65; 5 *id.* 103; 8 Cra. 110; 3 Dall. 199.

Bankrupts and *insolvents* are disabled to contract, by various statutes, in England, as well as by insolvent laws in the states of the United States.

Duress renders a contract voidable at the option of him on whom it was practised. See DURESS.

Excommunication can have no effect in the United States, as there is no national church recognized by the law.

Infants are generally incapable of contracting before the age of twenty-one years. This provision is intended for their benefit; and therefore most of their contracts are voidable, and not void. It is the infant's privilege at maturity to elect whether to avoid or ratify the contract he has made during minority. Though the infant is not bound, the adult with whom he may contract is. The infant may always sue, but cannot be sued; Stra. 937, — which seems to be an exception to the mutuality of contracts. The infant cannot avoid his contract for necessaries; 10 Vt. 225; 11 N. H. 51; 12 Metc. 559; 6 M. & W. 42.

Married women, at common law, were almost entirely disabled to contract, their personal existence being almost entirely merged in that of their husbands; 2 J. J. Marsh. 82; 23 Me. 305; 2 Chitty, Bail, 117; 5 Exch. 388; so that contracts made by them before marriage may be taken advantage of and enforced by their husbands, but not by themselves; 13 Mass. 384; 17 Me. 29; 2 Dev. 360; 9 Cow. 230; 14 Conn. 99; 6 T. B. Monr. 257. The contract of a *feme covert* is, then, generally void, unless she be the agent of her husband in which case it is the husband's Contract, and not hers; 15 East, 607; 6 Mod. 171; 6 N. H. 124; 16 Vt. 390; 5 Binn. 285; 15 Conn. 347. See WIFE.

Non compotes mentis. At common law, formerly, in this class were included *lunatics*, *insane persons*, and *idiots*. It is understood now to include *drunkards*; 4 Conn. 203; 2 N. H. 435; 15 Johns. 503; 2 Harr. & J. 421; 11 Pick. 304; 1 Rice, 56; 5 Munf 466; Blackf. 51; 1 Green, N. J. 233; 1 Bibb, 168; 17 Miss. 94; 13 M. & W. 623. *Spendthrifts* under guardianship are not competent to make a valid contract for the payment of money; 13 Pick. 206. *Seamen* "are the wards of the admiralty, and though not technically incapable of entering into a valid contract, they are treated in the same manner as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and *cestuis que trust* with their trustees." 2 Mas. 541. See 3 Kent, 193; 2 Dods. 504; 2 Sumn. 444.

Outlawry does not exist in the United States.

As to the character in which parties contract. They may act independently or severally, jointly, or jointly and severally. The decision of the question of the kind of liability incurred depends on the terms of the contract, if they are express, or, if not express, upon the intention of the parties as gathered from the circumstances of the case. Whenever, however, the obligation is undertaken by two or more, or a right

given to two or more, it is a general presumption of law that it is a joint obligation or right; words of joinder are not necessary for this purpose; but, on the other hand, there should be words of severance in order to produce a several responsibility or a several right; 1 Taunt. 7; 13 M. & W. 499; 8 C. & P. 332; Shepp. Touchst. 375; 6 Wend. 629; 7 Mass. 58; 10 Barb. 385, 638; 14 *id.* 644; 1 Lutw. 695; Peake, N. P. 130; Holt, N. P. 474; 1 B. & C. 407; 12 Gill & J. 265. It may be doubted, however, whether any thing less than express words can raise at once a joint and several liability. Parties may act as the representatives of others, as *agents, factors or brokers, servants, attorneys, executors, or administrators, and guardians*. See these titles.

They may act in a collective capacity, as corporations, joint-stock companies, or as partnerships. See these titles.

New parties may be made to contracts already in existence, by *novation, assignment, and indorsement*, which see.

To Suits in Equity. The person who seeks a remedy in chancery by suit, commonly called the plaintiff, or complainant, and the person against whom the remedy is sought, usually denominated the defendant, are the parties to a suit in equity.

Active parties are those who are so involved in the subject-matter in controversy that no decree can be made without their being in court. *Passive parties* are those whose interests are involved in granting complete relief to those who ask it. 1 Wash. C. C. 517. See 3 Ala. 361.

Plaintiffs.

In general, all persons, whether natural or artificial, may sue in equity; and an equitable title only is sufficient; 10 Ill. 332. Incapacities which prevent suit are *absolute*, which disable during their continuance, or *partial* which disable the party to sue alone.

Alien enemies are under an absolute incapacity to sue. Alien friends may sue; Mitf. Eq. Pl. 129; Coop. Eq. Pl. 27; if the subject-matter be not such as to disable them; Co. Litt. 129 *b*; although a sovereign; 1 Sim. 94; 2 Gall. 105; 8 Wheat. 464; 4 Johns. Ch. 370; Adams, Eq. 314. In such case he must have been first recognized by the executive of the forum; Story, Eq. Pl. § 55; 3 Wheat. 324.

In such case the sovereign submits to the jurisdiction, as to the subject-matter, and must answer on oath; Mitf. Eq. Pl. 30; Adams, Eq. 313; 6 Beav. 1.

Attorney-general. Government (in England, the crown) may sue both in its own behalf, for its own political rights and interests, and in behalf of the rights and interests of those partaking of its prerogatives or claiming its peculiar protection; Mitf. Eq. Pl. 421-427; Coop. Eq. Pl. 21, 101; usually by the agency of the attorney-general or solicitor-general; Mitf. Eq. Pl. 7; Adams, Eq. 312. See INJUNCTION; QUO WARRANTO; TRUSTS.

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Corporations, like natural persons, may sue; Grant, Corp. 198; although foreign; *id.* 200; but in such case the corporate act must be set forth; 1 Stra. 612; 1 Cr. M. & R. 296; 4 Johns. Ch. 327; as it must if they are domestic and created by a private act; 3 Conn. 199; 15 Viner, Abr. 198. All the members of a voluntary association must be joined; 15 Ill. 251; unless too numerous. 2 Pet. 566; 3 Barb. Ch. 362.

Idiots and lunatics may sue by their committees; Mitf. Eq. Pl. 29; Adams, Eq. 301. As to when a mere petition is sufficient, see 7 Johns. Ch. 24; 2 Ired. Eq. 294.

Infants may sue; Mitf. Eq. Pl. 25; and if they be on the wrong side of the suit, may be transferred at any time, on suggestion; 3 Edw. Ch. 32. The bill must be filed by the next friend; Coop. Eq. Pl. 27; 1 Sm. Ch. Pr. 54; 2 Ala. 406; who must not have an adverse interest; 2 Ired. Eq. 478; and who may be compelled to give bail; 1 Paige, Ch. 178. If the infant have a guardian, the court may decide in whose name the suit shall continue; 12 Ill. 424.

A *married woman* is under partial incapacity to sue; 7 Vt. 369. Otherwise, when in such condition as to be considered in law a *feme sole*; 2 Hayw. 406. She may sue on a separate claim by aid of a next friend of her own choice; Story, Eq. Pl. § 61; Fonbl. Eq. b. 1, c. 2, § 6, note p; 1 Freem. 215; but see 2 Paige, Ch. 454; and the defendant may insist that she shall sue in this manner; 2 Paige, Ch. 255; 4 Rand. 397.

Societies. A certain number of persons belonging to a voluntary society may sue on behalf of themselves and their associates for purposes common to them all; 2 Pet. 366.

Defendants.

Generally, all who are able to sue may be sued in equity. To constitute a person defendant, process must be prayed against him; 2 Bland, Ch. 106; 4 Ired. Eq. 175; 5 Ga. 251; 1 A. K. Marsh. 594. Those who are under incapacity may be made defendants, but must appear in a peculiar manner. One, or more, interested with the plaintiff, who refuse to join may be made defendants; 2 Bland, Ch. 264; 3 Des. 31; 10 Ill. 534; 15 *id.* 251.

Corporations must be sued by their corporate names, unless authorized to come into court in the name of some other person, as president, etc.; Story, Eq. Pl. § 70; 4 Ired. Eq. 195. Governments cannot, generally, be sued in their own courts; Story, Eq. Pl. § 69: yet the attorney-general may be made a party to protect its rights when involved; 1 Barb. Ch. 157; and the rule does not prevent suits against officers in their official capacity; 1 Dougl. Mich. 225.

Idiots and lunatics may be defendants and defend by committees, usually appointed guardians *ad litem* as of course; Mitf. Eq. Pl. 103; Story, Eq. Pl. § 70; Shelf. Lun. 425; 6 Paige, Ch. 237.

A guardian *de facto* may not have a bill against a lunatic for a balance due him, but must proceed by petition; 2 D. & B. Eq. 385; 2 Johns Ch. 242; 2 Paige, Ch. 422; 8 *id.* 609.

Infants defend by guardians appointed by the court; Mitf. Eq. Pl. 103; 9 Ves. 357; 11 *id.* 563; 1 Madd. 290; 8 Pet. 128; 12 Mass. 16; 2 Tayl. 125.

On becoming of age, an infant is allowed, as of course, to put in a new plea, or to demur on showing that it is necessary to protect his rights; 6 Paige, Ch. 353.

Married women may be made defendants, and may answer as if *femes sole*, if the husband is plaintiff, an exile, or an alien enemy, has abjured the realm or been transported under criminal sentence; Adams, Eq. 313; Mitf. Eq. Pl. 104.

She should be made defendant where her husband seeks to recover an estate held in trust for her separate use; 9 Paige, Ch. 225; and, generally, where the interests of her husband conflict with hers in the suit, and he is plaintiff; 3 Barb. Ch. 397. See, also, 11 Me. 145; Mitf. Eq. Pl. 104. See, generally, as to who may be defendants. JOINDER OF PARTIES.

At Law. *In actions ex contractu.*

Plaintiffs. In general, all persons who have a just cause of action may sue, unless some disability be shown; Dicey, Part. 1. An action on a contract, of whatever description, must be brought in the name of the party in whom the legal interest is vested; 1 East, 497; Yelv. 25, n. 1; 1 Lev. 235; 3 B. & P. 147; 1 H. Blackst. 84; 5 S. & R. 27; 10 Mass. 230, 287; 15 *id.* 286; 1 Pet. C. C. 109; 2 Root, 119; 2 Wend. 158; 21 *id.* 110; Hempst. 541.

On simple contracts by the party from whom (in part, at least) the consideration moved; Browne, Act. 99; 1 Stra. 592; 2 W. & S. 237; although the promise was made to another, if for his benefit; Browne, Act. 103; 10 Mass. 287; 3 Pick. 83; 2 Wend. 158; 10 *id.* 87, 156; 5 Dana, 45; and not by a stranger to the consideration, even though the contract be for his sole benefit; Browne, Act. 101. On contracts under seal by parties to the instrument only; 10 Wend. 87; Co. Litt. 231.

Agents contracting in their own name, without disclosing their principals, may, in general, sue in their own names; 3 B. & Ald 280; 5 *id.* 393; 1 Campb. 337; 4 B. & C. 656; 10 *id.* 672; 5 M. & W. 650; 5 Penn. 41; or the principals may sue; 6 Cow. 181; 3 Hill, N. Y. 72; 2 Ashm. 485; Broom, Part. 44.

So they may sue on contracts made for an unknown principal; 3 E. L. & E. 391; and also when acting under a *del credere* commission; 4 Maule & S. 566; 6 *id.* 172; 4 Campb. 195; 10 Barb. 202; but not an ordinary merchandise broker. An auctioneer may sue for the price of goods sold; 1 H. Blackst. 81; 16 Johns. 1; but a mere attorney having no beneficial interest may not sue in his own name; 10 Johns. 383.

Alien enemies, unless resident under a license or contracting under specific (sic) license, cannot sue, nor can suit be brought for their benefit; Broom, Part. 84; 1 Campb. 482; 1 Kent, 67; 11 Johns. 418; 2 Paine, 639. License is presumed if they are not ordered away; 10 Johns. 69; 6 Binn. 241. See, also, Co. Litt. 129 *b*; 15 East, 260; 1 Kent, 68.

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Alien friends may bring actions concerning personal property; Browne, Act. 304; Bacon, Abr. *Aliens*; for libel published here; 8 Scott, 182; and now, in regard to real estate generally, by statute; 12 Wend. 342; see 15 Tex. 495; and, by common law, till office found, against an intruder; 13 Wend. 546; 1 Johns. Cas. 399; 3 *id.* 109; 3 Hill, N. Y. 79. But see 5 Cal. 373. As a general rule, an alien may maintain it personal action in the federal courts; 3 Story, 458 ; 4 McLean, 516.

Assignees of choses in action cannot, at common law, maintain actions in their own names; Broom, Part. 10; 42 Me. 221. Promissory notes, bills of exchange, bail-bonds, and replevin-bonds, etc., are exceptions to this rule; Hamm. Part. 108.

An assignee of real estate may have an action in his own name for breaches of a covenant running with the land, occurring after assignment; 3 Bouvier, Inst. 150; Broom, Part. 9; 14 Johns. 89; and he need not be named in an express covenant of this character; Broom, Part. 8.

An assignee in insolvency or bankruptcy should sue in his own name on a contract made before the act of bankruptcy or the assignment in insolvency; 1 Chitty, Pl. 14; Hamm. Part. 167; Comyns. Dig. *Abatement* (E 17); 3 Dall. 276; 5 S. & R. 394; 7 *id.* 182; 9 *id.* 434. See 3 Salk. 61; 3 Term, 779. Otherwise of a suit by a foreign assignee; 11 Johns. 488. The discharge of the insolvent pending suit does not abate it; 2 Johns. 342; 11 *id.* 488. But see 1 Johns. 118.

An assignee who is to execute trusts may sue in his own name; 4 Abb. 106. *Cestuis que trustent* cannot sue at law; 3 Bouvier, Inst. 135.

Civil death occurring in case of an outlaw, an attainted felon or one sentenced to imprisonment for life, incapacitates the person for suing as plaintiff during the continuance of the condition; Broom, Part. 85. Sentence as above, during suit, abates it; 1 Du. N. Y. 664; but the right to sue is suspended only; Broom, Part. 85.

Corporations may sue in their true corporate name, on contracts made in their behalf by officers or agents; 2 Blatchf. 343; 6 Cal. 258; 5 Vt. 500; 20 Me. 45; 3 N. J. 321; 9 Ind. 359; Dicey, Part. 276; as, a bank, on a note given to a cashier; 5 Mo. 26; 4 How. Pr. 63; 21 Pick. 486 See, also, 15 Me. 443.

The name must be that at the time of suit; 3 Ind. 285; 4 Rand. 359; with an averment of the change, if any, since the making of the contract; 6 Ala. 327, 494; even though a wrong name were used in making the contract; 6 S. & R. 16; 10 Mass. 360; 5 Ark. 234; 10 N. H. 123; 5 Halst. 323.

If the corporation be a foreign one, proof of its existence must be given; 1 C. & P. 569; 13 Pet. 519; 2 Gall. 105; 5 Wend. 478; 7 *id.* 539; 10 Mass. 91; 2 Tex. 531; 1 T. B. Monr. 170; 7 *id.* 584; 2 Rand. 465; 2 Green, N. J. 439; 1 Mo. 184.

As to their ability to sue in the United States courts, see 5 Cra. 57.

Executors and administrators in whom is vested the legal interest are to sue in all personal contracts; 5 Term, 393; Will. Exec. Index; see 15 S. & R. 183; or covenants affecting the realty but not running with the land ; 2 H. Blackst. 310;

and on such covenants running with the land, for breach during the decedent's lifetime occasioning special damage; 2 Johns. Cas. 17; 4 Johns. 72. They must sue as such, on causes accruing prior to the death of the decedent; 1 Saund. 112; Comyns, Dig. *Pleader* (2 D 1); 3 Dougl. 36; 2 Swan, 170; and as such, or in their own names, at their election, for those accruing subsequent; 16 Ark. 36; 3 Dougl. 36; Will. Exec. 1590; and upon contracts made by them in their official capacity; 30 Ala. 482; 32 Miss. 319; 15 Tex. 44; in their own names only, in some states; 4 Jones, 159.

On death of an executor, his executor, or administrator *de bonis non* if be die intestate, is the legal representative of the original decedent; 7 M. & W. 306; 2 Swan, 127; 2 Bla. Com. 506.

Foreign governments, whether monarchical or republican; 5 Du. N. Y. 634; if recognized by the executive of the forum; 3 Wheat. 324; Story, Eq. Pl. § 55; see 4 Cra. 272; 2 Wash. C. C. 43; 9 Ves 347; 10 *id.* 354; 11 *id.* 283; may sue; 26 Wend. 212; 6 Hill, 33.

Husband must sue alone for wages accruing to the wife, for the profits of business carried on by her, or money lent by her during coverture; Broom, Part. 71; 2 W. Blackst. 1239; 4 E. D. Smith, 384; and see 1 Salk. 114; 2 Wils. 424; 9 East, 472; 1 Maule & S. 180; 4 Term, 516; for slanderous words spoken of the wife which are actionable only by reason of special damage; 2 Du. N. Y. 633; on a fresh promise, for which the consideration was in part some matter moving from him, renewing a contract made with the wife *dum sola*; 1 Maule & S. 180; and see 2 Penn. 827; for a legacy accruing to the wife during coverture; 22 Pick. Mass. 480; and as administrator of the wife to recover chattels real and personal not previously reduced into possession; Broom, Part. 74.

He may sue alone for property that belonged to the wife before coverture; 1 Murph. 41; 5 T. B. Monr. 264; on a joint bond given for a debt due to the wife *dum sola*; 1 Maule & S. 180; 4 Term, 616; 1 Chitty, Pl. 20; on a covenant running to both; Cro. Jac. 399; 2 Mod. 217; 1 B. & C. 443; 1 Bulstr. 31; to reduce choses in action into possession; 2 Maule & S. 396, n. (b); 2 Mod. 217; 2 Ad. & E. 30; and, after her death, for any thing he became entitled to during coverture; Co. Litt. 351 *a*, n. 1. And see 4 B. & C: 529.

Infants may sue only by guardian or *prochein ami*; 3 Bouvier, Inst. 138; 13 M. & W. 640; Broom, Part. 84; 11 How. Pr. 188; 13 *id.* 413; 13 B. Monr. 193.

Joint tenants. See JOINDER.

Lunatic, or *non compos mentis*, may maintain an action, which should be in his own name; Broom, Part. 84; Browne, Act. 301; Hob. 215; 8 Barb. 552. His wife may appear, if he have no committee; 7 Dowl. 22. An idiot may by a next friend who petitions for that purpose; 2 Chitty, Archb. Pr. 909.

Married women cannot, in general, sue alone at common law; Broom, Part. 74; but a married woman may sue alone where her husband is civilly dead; see 4 Term,

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361; Cro. Eliz. 519; 9 East, 472; 2 B. & P. 165; 1 Selw. N. P. 286; or, in England, where he is an alien out of the country, on her separate contracts; 2 Esp. 544; 1 B. & P. 357; 2 *id.* 226; 11 East, 301; 3 Campb. 123; while he is in such condition; Broom, Part. § 114.

So she may sue alone after a sentence of nullity or divorce *a vinculo*; 9 B. & C. 698; 8 Term, 548; but not after a divorce *a mensa et thoro*, or voluntary separation merely; 3 B. & C. 297.

She may, where he is legally presumed to be dead; 2 Campb. 113; 5 B. & Ad. 94; 2 M. & W. 894; or where he has been absent from the country for a very long time; 12 Mo. 30; 23 E. L. & E. 127. See 11 East, 301; 2 B. & P. 226.

When the wife survives the husband, she may sue on all contracts entered into by others with her before coverture, and she may recover all arrears of rent of her real estate which became due during the coverture, on their joint demise; 8 Taunt. 181; 1 Rolle, Abr. 350*d*. She is also entitled to all her real property, and her chattels real and choses in action not reduced into possession by the husband; Broom, Part. 76.

Partners. One cannot, in general, sue another for goods sold; 9 B. & C. 356; for work done; 1 B. & C. 74; 7 *id.* 419; for money had and received in connection with a partnership transaction; 6 B. & C. 194; or for contribution towards a payment made under compulsion of law; 5 B. & Ad. 936; 1 M. & W. 504. See 1 M. & W. 168; 2 Term, 476. But one may sue the other for a final balance struck; Broom, Part. 57; 2 Term, 479; 5 M. & W. 21; 2 Cr. & M. 361; see JOINDER; and they may sue the administrator of a deceased partner; 4 Wisc. 102.

Survivors. The survivor or survivors of two or more jointly interested in a contract not running with the land must sue as such; Broom, Part. 21; Archb. Pl. 54; 1 East, 497; Yelv. 177; 1 Dall. 65, 248; 4 *id.* 354; 2 Johns. Cas. 374; 7 Ala. 89.

The survivor of a partnership must sue alone as such; 9 B. & C. 538; 4 B. & Ald. 374; 2 Maule & S. 225.

The survivor of several, parties to a simple contract, should describe himself as such; 3 Conn. 203.

Tenants in common may sue each other singly for actual ouster; Woodf. Landl. & T. 789. See JOINDER.

Trustees must sue, and not the cestuis que trustent; 1 Lev. 235; 15 Mass. 286; 12 Pick. 554; 4 Dana, 474. See JOINDER.

Defendants.

All persons having a direct and immediate legal interest in the subject-matter of the suit are to be made parties. The proper defendants to a suit on a specialty are pointed out by the instrument.

In case of simple contracts, the person made liable expressly by its terms; 3 Bingham. N. C. 732; 8 East, 12; or by implication of law, is to be made defendant; 2 Bla.

Com. 443; 3 Campb. 356; 1 H. Blackst. 93; 2 *id.* 563. See 6 Mass. 253; 11 *id.* 335; 1 Chitty, Pl. 24. Where there are several persons parties, if the liability be joint, all must be joined as defendants, either on specialties; 1 Wins. Saund. 154; or simple contracts; Chitty, Contr. 99. If it be joint and several, all may be joined; 1 Wins. Saund. 154, n. 4; or each sued separately; 1 Wins. Saund. 191, c ; Comyns, Dig. *Obligations* (G); 3 Term, 782; 1 Ad. & E. 207; if it be several, each must be sued separately; 1 East, 226. The presumption is, in such case, that a written agreement is joint; 2 Campb. 640; 3 *id.* 49, 51, n.; otherwise of verbal contracts; 1 Ad. & E. 691; 3 B. & Ald. 89; 1 Bingh. 201.

Alien enemies may be sued; Broom, Part. 18-21; 1 W. Blackst. 30; Cro. Eliz. 516; 4 Bingh. 421; Comyns, Dig. *Abatement* (E 3); and, of course, alien friends.

Assignees of a mere personal contract cannot, in general, be sued; of covenants running with the realty may be, for breach after assignment; 2 Saund. 304, n. 12; Woodf. Landl. & T. 113; 1 Fonbl. Eq. 359, n. y; 3 Salk. 4; 7 Term, 312; 1 Dall. 210; but not after an assignment by him; Bacon, Abr. *Covenant* (E 4). See, on this subject, Bouvier, Inst. 162.

Assignees of bankrupts cannot be sued as such at law; Cowp. 134; Chitty, Pl. 11, n. (i).

Bankrupts after discharge cannot be sued. An insolvent after discharge may be sued on his contracts, but his person is not liable to arrest in a suit on a debt which was due at the date of his discharge; Dougl. 93; 8 East, 311; 1 Saund. 241, n. 5; Ingr. Insolv. 377.

See CONFLICT OF LAWS; BANKRUPTCY; INSOLVENCY.

Corporations must be sued by their true names; 7 Mass. 441; 2 Cow. 778; 15 Ill. 185; 4 Rand. 359; 2 Blatchf. 343. The suit may be brought in the United States courts by a citizen of a foreign state; 2 How. 497. Assumpsit lies against a corporation aggregate on an express or implied promise, in the same manner as against an individual; 3 Halst. 182; 3 S. & R. 117; 4 *id.* 16; 12 Johns. 231; 44 *id.* 118; 7 Cra. 297; 2 Bay, 109; 10 Mass. 397; 1 Aik. 180; 9 Pet. 541; 3 Dall. 496; 1 Pick. 215; 2 Conn. 260; 5 Q. B. 547.

Executors and *administrators* of a deceased contractor or the survivor of several point contractors may be sued; Hamm. Part. 156; but not if any of the original contractors survive; 6 S. & R. 272; 2 Wheat. 344.

The liability does not commence till probate of the will; 2 Sneed, 58. The executor or administrator *de bonis non* of a deceased person is the proper defendant; Broom, Part. 197.

The liability is limited by the amount of assets, and does not arise on subsequent breach of a covenant which could be performed only by the covenantor; Broom, Part. 118. They, or real representatives, may be parties, at election of the plaintiff, where both are equally liable; 1 Lev. 189, 303.

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Foreign governments cannot be sued to enforce a remedy, but may be made defendants to give an opportunity to appear; 14 How. Pr. 517. A foreign sovereign cannot be sued for any act done by him in the character of a sovereign prince; 2 H. L. C. 1; 17 Q. B. 171; it would appear most probably that he can in no case be made defendant in an action; Dicey, Part. *5; but see 10 Q. B.. 656.

Heirs may be liable to suit under the ancestor's covenant, if expressly named, to the extent of the assets received; Broom, Part. 118; Platt, Cov. 449.

Husband may be sued alone for breach of joint covenant of himself and wife; 15 Johns. 483; 17 How. 609, and *must* be on a mere personal contract of the wife made during coverture; Comyns, Dig. *Pleader* (2 A 2); 3 W. Raym. 6; 1 Lev. 25; 8 Term, 545; 2 B. & P. 105; 1 Taunt. 217; 4 Price, 48; 16 Johns. 281; even if made to procure necessaries when living apart; 6 W. & S. 346; *may* be on a new promise for which the consideration is a debt due by the wife before marriage; Al. 72; 7 Term, 348; but such promise must be express; Broom, Part. 174; and have some additional considerations, as forbearance, etc.; 1 Show. 183; 11 Ad. & E. 438, 451; on lease to both made during coverture; Comyns, Dig. *Baron & YF.* (2 B); on lease to wife *dum sola*, for rent accruing during coverture, or to wife as executrix; Broom, Part. 178; Comyns, Dig. *Baron & F.* (T); 1 Rolle, Abr. 149; not on wife's contracts *dum sola* after her death; 3 Mod. 186; Rep. *temp.* Talb. 173; 3 P. Wins. 410; except as administrator; 7 Term, 350; Cro. Jac. 257; 1 Campb. 189, n.

He is liable, after the death of the wife, in cases where he might have been sued alone during her lifetime.

Idiots, lunatics, and non compotes mentis, generally, may be sued on contracts for necessaries; 2 M. & W. 2. See APPEARANCE.

Infants may be sued on their contracts for necessaries; 10 M. & W. 195; Macph. Inf. 447. Ratification in due form; 11 Ad. & E. 934; after arriving at full age, renders them liable to suit on contracts made before.

Partner is not liable to suit by his co-partners. A sole ostensible partner, the others being dormant, may be sued alone by one contracting with him; Broom, Part. 172.

Survivor of two or more joint contractors must be sued alone; 1 Saund. 291, n. 2; 2 Burr. 1196. A sole surviving partner may be sued alone; Chitty, Pl. 152, note d; 1 B. & Ald. 29.

In actions ex delicto. plaintiffs.

The plaintiff must have a legal right in the property affected, whether real; 2 Term, 684; 7 *id.* 50; Broom, Part. 202; Co. Litt. 240 *b*; 2 Bla. Com. 185; or personal; 11 Cush. 55; though a mere possession is sufficient for trespass, and trespass *quare clausum*; Cro. Jac. 122; 11 East, 65; 4 B. & C. 591; 2 Bingh. N. C. 98; 1 Ad. & E. 44; and the possession may be constructive in case of trespass for injury to *personal* property; 1 Term, 450; 6 Q. B. 606; 5 B. & Ald. 603; 1 Hill, N. Y. 311. The

property of the plaintiff may be absolute; 3 Campb. 187; 5 Bingham. 305; 1 Taunt. 190; 1 C. B. 672; or special. See 7 Term, 9; 4 B. & C. 941; 3 Scott, N. S. 358.

Agents who have a qualified property in goods may maintain an action of tort in their own names for injury to the goods.

A principal may sue in the name of his agent for a false representation to the agent; 12 Wend. 176.

Assignees of property may sue in their own names for tortious injuries committed after the assignment; 4 Bingham. 106; 3 Maule & S. 7; 5 *id.* 105; 1 Ad. & E. 580; although it has never been their possession; 9 Wend. 80; 2 N.Y. 293; 1 E. Smith, 522; 8 B. & C. 270; 5 B. & Ald. 604; Wins. Saund. 252 a, n. (7).

Otherwise of the assignee of a mere right of action; 12 N. Y. 322; 18 Barb. 500; 7 How. 492. See 15 N. Y. 432. Assignees in insolvency may sue for torts to the property; 6 Binn. 186; 8 S. & R. 124; but not to the person of the assignee; W. Jones, 215.

Executors and *administrators* cannot, in general, sue in actions *ex delicto*, as such actions are said to die with the plaintiff; Broom, Part. 212; 13 N. Y. 322. See PERSONAL ACTION. They may sue in their own names for torts subsequent to the death of the deceased; 11 Rich. 363.

Heirs and *devisors* have no claim for torts committed during the lifetime of the ancestor or devisor; 2 Inst. 305.

Husband must sue alone for all injuries to his own property and person; 3 Bla. Coin. 143; 2 Ld. Raym. 1208; Cro. Jac. 473; 1 Lev. 3; 2 *id.* 20; including personalty (sic) of the wife which becomes his upon marriage; 1 Salk. 141; 6 Call, 55; 13 N. H. 283; Cro. Eliz. 133; 6 Ad. & E. 259; 27 Vt. 17; Hempst. 64; and including the continuance of injuries to such property commenced before marriage; 1 Salk. 141; 6 Call, 55; 1 Selw. N. P. 656; in replevin for timber cut on land belonging to both; 8 Watts, 412; for personal injuries to the wife for the damages which he sustains; 3 Bla. Com. 140; Chitty, Pl. 718, n.; 4 B. & Ald. 523; 4 Iowa, 420; as in battery; 2 Ld. Raym. 1208; 8 Mod. 342; 2 Brev. 170; slander, where words are not actionable *per se*; 1 Lev. 140; 3 Mod. 120; 4 B. & Ad. 514; 22 Barb. 396; 2 Hill, N. Y. 309; or for special damages; 4 B. & Ad. 514.

He may sue alone, also, for injuries to personalty commenced before marriage and consummated afterwards; 2 Lev. 107; Ventr. 260; 2 B. & P. 407; and the right survives to him after death of the wife in all cases where he can sue alone; 1 Chitty, Pl. 75; Viner, Abr. Baron & F. (G); for cutting trees on land held by both in right of the wife; 16 Pick. 235; 1 Rop. Husb. & W. 215; and generally, for injury to real estate of the wife during coverture; 18 Pick. 110; 20 Conn. 296; 2 Wils. 414; although her interests be reversionary only; 5 M. & W. Exch. 142.

Infants may sue by guardian for torts; Broom, Part. 238.

Miscellaneous Definitions

Lessors and *reversioners*, generally, may have an action for injury to their reversions; Broom, Part. 214. Damage necessarily to the reversion must be alleged and shown; 1 Maule & S. 234; 11 Ad. & E. 40; 5 Bingh. 153; 10 B. & C. 145.

Lessees and *tenants*, generally, may sue for injuries to their possession; 4 Burr. 2141; 3 Lev. 209; Selw. N. P. 1417; Woodf. Landl. & T. 661.

Married woman must sue alone for injury to her separate property; 29 Barb. 512; especially after her husband's death; 87 N. H. 355.

The restrictions on her power to sue are the same as in actions *ex contractu*; Broom, Part. 233. Actions in which she might or must have joined her husband survive to her. Rolle, Abr. 349 (A).

Master has an action in tort for enticing away an apprentice; 3 Bla. Coin. 342; 3 Burr. 1345; 3 Maule & S. 191; and, upon the same principle, a parent for a child; 1 Halst. 322; 4 B. & C. 660; 4 Litt. 25; and for personal injury to his servant, for loss of time, expenses, etc; 3 Bla. Com. 342.

For seduction or debauchery, a master; Broom, Part. 227; 4 Cow. 422; and if any service be shown, a parent; 2 M. & W. 542; 6 *id.* 56; 2 Term, 166; has his action.

Survivor, whether sole or several, must sue for a tortious injury, the rule being that the remedy, and not the right, survives; Broom, Part. 212; 1 Show. 188; 2 Maule & S. 225.

Tenants in common must sue strangers separately to recover land; 15 Johns. 479; 1 Wend. 380.

A tenant in common may sue his co-tenant, where there has been actual ouster, in ejectment; Littleton, § 322; 1 Campb. 173; 11 East, 49; Cowp. 217; or trespass *quare clausum*; 7 Penn. 397; and trespass for mesne profits after recovery; 3 Wils. Ch. 118. Where there is a total destruction or conversion of the property, one tenant in common may sue his co-tenant in trespass; Co. Litt. 200 *a, b*; Cro. Eliz. 157; s B. & C. 257; or in trover; Selw. N. P. 1366; 1 Term, 658; 2 Ga. 73; 2 Johns. 468; 3 *id.* 175; 9 Wend. 338; 21 *id.* 72; 6 Ired. 388. For a misfeasance, waste, or case in the nature of waste, may be brought.

Defendants.

The party committing the tortious act or asserting the adverse title is to be made defendant: as, the wrongful occupant of land, in ejectment; 7 Term, 327; 1 B. & P. 573; the party converting, in trover; Broom, Part. 246; making fraudulent representations; 3 Term, 56; 5 Bingh. N. C. 97; 3 M. & W. 532; 4 *id.* 337. The act may, however, have been done by the defendant's agent; 2 M. & W. 650; his mischievous animal; 12 Q. B. 29; or by the plaintiff himself, if acting with due care and suffering from the defendant's negligence; 1 Q. B. 29; 1 Ld. Raym. 738; 10 Ill. 425.

Agents and *principals*; Story, Ag. § 625; Paley, A., 294; are both liable for tortious act or negligence of the agent under the direction; 1 Sharsw. Bla. Com. 431, n.; or

Miscellaneous Definitions

in the regular course of employment, of the principal; 10 Ill. 425; 1 Metc. Mass. 550. See 2 Denio, 115; 5 *id.* 639. As to the agent of a corporation acting erroneously without malice, see 1 East, 555.

Subsequent ratification is equivalent to prior authority; Broom, Part. 259.

Agents are liable to their principals for conversion; 14 Johns. 128; 8 Penn. 442.

Assignees are liable only for torts committed by them: as, where one takes property from another who has possession unlawfully; Bacon, Abr. *Actions* (B.); or continues a nuisance; 2 Salk. 460; 1 B. & P. 409.

Bankrupts; 3 B. & Ald. 408; 2 Denio, 73; and *insolvents*; Broom, Part. 284; 2 Chitty, Bail. 222; 2 B. & Ald. 407; 9 Johns. 161; 10 *id.* 289; 14 *id.* 128; are liable even after a discharge, for torts committed previously.

Corporations are liable for torts committed by their agents; 7 Cow. 485; 2 Wend. 452; 17 Mass. 503; 4 S. & R. 16; 9 *id.* 94; 2 Ark. 255; 4 Ohio, 500; 4 Wash. C. C. 106; 5 Ind. 252; but not, it seems, at common law, in replevin; Kyd, Corp. 205; or trespass *quare clausum*; 9 Ohio, 31.

Death of a tort-feasor, at common law, takes away all cause of action for torts disconnected with contract; 5 Term, 651; 1 Saund. 291 *e.* But actions against the personal representatives are provided for by statute in most of the states, and in England by stat. 3 & 4 Will. IV. c. 42, § 2.

Executors and *administrators*, at common law, are liable for the continuance of torts first committed by the deceased; W. Jones, 173; 5 Dana, 34; see 28 Ala. N. S. 360; but such continuance must be laid to be, as it really is, the act of the executor; 1 Cowp. 373; Will. Exec. 1358; 13 Penn. 54; 1 Harr. Mich. 7.

Husband must be sued alone for his torts, and in detinue for goods delivered to himself and wife; 2 Bulstr. 308; 1 Leon. 312.

He may be sued alone for a conversion by the wife during coverture; 2 Rop. Husb. & W, 127.

Idiots and *lunatics* are liable, civilly, for torts committed; Hob. 134; Bacon, Abr. *Trespass* (G); though they may be capable of design; Broom, Part. 281. But if the lunatic is under control of chancery, proceedings must be in that court, or it will constitute a contempt; 3 Paige, Ch. 199.

Infants may be sued in actions *ex delicto*, whether founded on positive wrongs or constructive torts; Broom, Part. 280; Co. Litt. 180 *b*, n. 4; as, in detinue for goods delivered for a specific purpose; 4 B. & P. 140, for tortiously converting or fraudulently obtaining goods; 3 Pick. 492; 5 Hill, N. Y. 391; 4 M'Cord, 387; for uttering slander; 8 Term, 337; but only if the act be wholly tortious and disconnected from contract; 8 Term, 35; 6 Watts, 1; 6 Cra. 226.

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Lessor and *lessee* are respectively liable for their part of the tort in case of a wrong commenced by one and continued by the other: as, for example, a nuisance; 2 Salk. 460; Broom, Part. 253; Woodf. Landl. & T. 671.

Master is liable for a negligent tortious act or default of his servant while acting within the scope of his employment; 6 Cow. 189; 1 Pick. 465; 2 Gray, 181; 23 N. H. 157; 16 Me. 241; 5 Rich. 44; 18 Mo. 362; although not in his immediate employ; 5 B. & C. 554; 8 Ad. & E. log; see 3 Gray, 349; for the direct effect of such negligence; 17 Mass. 132; but not to one servant for the neglect of another engaged in the same general business; 36 Eng. L. & Eq. 486; 3 Cush. 270; 23 Penn. 384; 15 Barb. 574; 6 Ind. 205; 22 Ala. N. S. 294; 23 Me. 269; 4 Sneed, 36; see 5 Du. N. Y. 39; 37 E. L. & E. 281; if the servant injured be not unnecessarily exposed; 28 Vt. 59; 6 Cal. 209; 4 Sneed, 36.

And the servant is also liable; 1 Sharsw. Bla. Com. 431, n. For wilful (sic) acts; 9 C. & P. 607; 3 Barb. 42; for those not committed while in the master's service; 26 Penn. 482; or not within the scope of his employment, he alone is liable.

Partners may be sued separately for acts of the firm, its agents or servants; 4 Gill, 403; 1 C. & M. 93; 17 Mass. 182; 1 Metc. Mass. 560; 11 Wend. 571; 18 *id.* 175.

—*Bouvier's Law Dictionary*, 1889

[PARTIES

[**PERFECT**. Complete.

This term is applied to obligations in order to distinguish those which may be enforced by law, which are called *perfect*, from those which cannot be so enforced, which are said to be *imperfect*.

—*Bouvier's Law Dictionary*, 1889

[perfect

[**PERFORMANCE**. The act of doing something. The thing done is also called a performance: as, Paul is exonerated from the obligation of his contract by its performance.

When a contract has been made by parol, which under the Statute of Frauds and Perjuries could not be enforced, because it was not in writing, and the party seeking to avoid it has received the whole or a part performance of such agreement, he cannot afterwards avoid it; 14 Johns. 15; 1 Johns. Ch. 273; and such part performance will enable the other party to prove it *aliunde*; 1 Pet. C. C. 380; 1 Rand. 165; 1 Blackf. 58; 2 Day, 255; 5 *id.* 67; 1 Des. 350; 1 Binn. 218; 1 Johns. Ch. 131, 146; 3. Paige, Ch. 545.

—*Bouvier's Law Dictionary*, 1889

[PERFORMANCE

[**Performance**. The fulfillment or accomplishment of a promise, contract, or other obligation according to its terms. See also **Execute**; **Execution**; **Part performance**; **Payment**; **Substantial performance**.

Non performance. See **Commercial frustration**; **Default**; **Impossibility**.

Part performance. The doing some portion, yet not the whole, of what either party to a contract has agreed to do.

Miscellaneous Definitions

Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

As regards the sale of goods, the statute of frauds requirement is dispensed with by partial performance for the goods which have been accepted or for which payment has been made and accepted. U.C.C. § 2-201(3). See also Part performance.

Specific performance. The remedy of performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. The actual accomplishment of a contract by a party bound to fulfill it. The doctrine of specific performance is that, where damages would be an inadequate compensation for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed to do; e.g. ordered to execute a specific conveyance of land. See Fed.R.Civil P. 70.

With respect to sale of goods, specific performance may be decreed where the goods are unique or in other proper circumstances. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just. U.C.C. §§ 2-711(2)(b), 2-716.

As the exact fulfillment of an agreement is not always practicable, the phrase may mean, in a given case, not literal, but substantial performance.

—*Black's Law Dictionary*, 1979

[Performance

[**performance** *n.* **1.** The act of performing or the state of being performed. **2.** The act or style of performing a work or role before an audience. **3.** The ways in which someone or something functions: *The pilot rated the airplane's performance in high winds.* **4.** A presentation, especially a theatrical one, before an audience. **5.** Something performed; an accomplishment.

—*The American Heritage Dictionary of the English Language*, 1992

[performance

[**PERMIT** A license or warrant to do something not forbidden by law: as, to land goods imported into the United States, after the duties have been paid or secured to be paid. Act of Congr. March 2, 1799, s. 49, cl. 2. See form of such a permit, Gordon, Dig. App. II. 46.

—*Bouvier's Law Dictionary*, 1889

[permit

[**permit** **1.** let; allow. **2.** formal written order giving permission to do something; as, a permit to fish or hunt. **3.** permission.

—*Thorndike Century Senior Dictionary*, 1941

[permit

[**permit** **1:** to consent to expressly or formally <~ access to records> **2:** to give leave: AUTHORIZE **3:** to make possible ~ *vi:* to give an opportunity: ALLOW <if time ~ s> *syn* see LET **ant** prohibit, forbid

Miscellaneous Definitions

1: a written warrant or license granted by one having authority <a gun ~ > **2:**
PERMISSION — *Webster's New Collegiate Dictionary*, 1973
[**permit**]

[**Permit**, *n.* In general, any document which grants a person the right to do something. A license or grant of authority to do a thing. Matter of Building Permit and Zoning, 29 N.C.App. 749, 225 S.E.2d 647, 649. A written license or warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without such authority.

A license or instrument granted by the officers of excise (or customs), certifying that the duties on certain goods have been paid, or secured, and permitting their removal from some specified place to another.

See also **Building permit; Certificate; License; Special permit.**
— *Black's Law Dictionary*, 1979
[**Permit**]

[**PER VERBA DE PRÆSENTI.** No entry. — *Bouvier's Law Dictionary*, 1889
[**PER VERBA DE PRÆSENTI**]

[**Per verba de præsentī.** Lat. By words of the present [tense]. A phrase applied to contracts of marriage.
— *Black's Law Dictionary*, 1979
[**Per verba de præsentī**]

[**per verba de præsentī** No entry.
— *The American Heritage Dictionary of the English Language*, 1992
[**per verba de præsentī**]

[**photon** ... *n.* **1.** The quantum of electromagnetic energy, generally regarded as a discrete particle having zero mass, no electric charge, and an indefinitely long lifetime. See table at **subatomic particle.** **2.** A unit of retinal illumination, equal to the amount of light that reaches the retina through 1 square millimeter of pupil area from a surface having a brightness of 1 candela per square meter....
— *The American Heritage Dictionary of the English Language*, 1992
[**photon**]

[**Piercing corporate veil.** Judicial process whereby court will disregard usual immunity of corporate officers or entities from liability for corporate activities; *e.g.* when incorporation was for sole purpose of perpetrating fraud. The doctrine which holds that the corporate structure with its attendant limited liability of stockholders may be disregarded and personal liability imposed on stockholders, officers and directors in the case of fraud. The court, however, may look beyond the corporate form only for the defeat of fraud or wrong or the remedying of injustice. *Hanson v. Bradley*, 298 Mass. 371, 381, 10 N.E.2d 259, 264. See also **Instrumentality rule.**
— *Black's Law Dictionary*, 1979
[**Piercing corporate veil**]

[**POLICE POWER** The power we allude to is rather the police power; the power vested in the legislature to make, ordain, and establish all manner of

wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries or prescribe limits to its existence The exercise of this power has been left with the individual states The power to establish police regulations may be conferred by the state upon municipal corporations

—*Bouvier's Law Dictionary*, 1889

[police power

[possess **1.** To have as property; own. **2.** To have as a quality, characteristic, or other attribute: *possessed great tact*. **3.** To acquire mastery of or have knowledge of: *possess valuable data*. **4.a.** To gain or exert influence or control over; dominate: *Fury possessed me*. **b.** To control or maintain (one's nature) in a particular condition: *I possessed my temper despite the insult*. **5.** To cause to own, hold, or master something, such as property or knowledge: *She possessed herself of the unclaimed goods*. **6.** To cause to be influenced or controlled, as by an idea or emotion: *The thought of getting rich possessed him*. **7. Obsolete.** To gain or seize....

—*The American Heritage Dictionary of the English Language*, 1992

[possess

[pretentious... adj. **1.** Claiming or demanding a position of distinction or merit, especially when unjustified. **2.** Making or marked by an extravagant outward show; ostentatious. See Synonyms at **showy**....

—*The American Heritage Dictionary of the English Language*, 1992

[pretentious

[prevent —*tr.* **1.** To keep from happening: *took steps to prevent the strike*. **2.** To keep (someone) from doing something; impede: *prevented us from winning*. **3. Archaic.** To anticipate or counter in advance. **4. Archaic.** To come before; precede. —*intr.* To present an obstacle: *There will be a picnic if nothing prevents....*

SYNONYMS: *prevent, preclude, avert, obviate, forestall*. These verbs mean to stop or hinder something from happening, especially by advance planning or action. *Prevent* implies anticipatory counteraction: “*The surest way to prevent war is not to fear it*” (John Randolph). To *preclude* is to exclude the possibility of the occurrence of an event or action: “*a tranquillity which . . . his wife's presence would have precluded*” (John Henry Newman). To *avert* is to ward off something about to happen: *Only quick thinking on the pilot's part averted a disastrous accident*. *Obviate* implies that something, such as a difficulty, has been anticipated and disposed of effectively: “*the objections . . . having . . . been obviated in the preceding chapter*” (Joseph Butler). *Forestall* usually suggests anticipatory measures taken to counteract, neutralize, or nullify the effects of something: *We installed an alarm system to forestall break-ins*.

—*The American Heritage Dictionary of the English Language*, 1992

[prevent

Miscellaneous Definitions

[Privilege. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power of exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law.

An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons. A peculiar advantage, exemption, or immunity. See also **Exemption; Immunity.**

See also Doctor-patient privilege; Executive privilege; Husband-wife privilege; Journalist's privilege; Legislative immunity; Marital communications privilege; Newsmen's privilege; Patient-physician privilege; Priest-penitent privilege; Privileged communication; Right.

Attorney-client, doctor-patient, etc. privilege. See **Privileged communications.**

Civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Civil Code La. art. 3186. It is merely an accessory of the debt which it secures, and falls with the extinguishment of the debt. The civil law privilege became, by adoption of the admiralty courts, the admiralty lien. The J. E. Rumbell, 148 U.S. 1, 13 S.Ct. 498, 37 L.Ed 345.

Communications. See Privileged communications.

Discovery. When interrogatories, depositions or other forms of discovery seek information which is otherwise privileged, the party from whom it is sought may claim his privilege. Fed.R.Civil P. 26; Fed.R.Crim.P. 16. See also **Protective order; Work product rule.**

Evidence. See Privileged communications; Privileged evidence.

Exclusive privilege. See **Exclusive privilege.**

Executive privilege. The protection afforded to confidential presidential communications. However, the generalized need for confidentiality of high level communications cannot sustain an absolute unqualified presidential privilege. U. S. v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039. See also **Executive privilege.**

Journalist's privilege. See Journalist's privilege; Newsmen's privilege; Shield laws.

Libel and slander. An exemption from liability for the speaking or publishing of defamatory words concerning another, based on the fact that the statement was made in the performance of a political, judicial, social, or personal duty. Privilege is either *absolute* or *conditional*. The former protects the speaker or publisher without reference to his motives or the truth or falsity of the statement. This may be

claimed in respect, for instance, to statements made in legislative debates, in reports of military officers to their superiors in the line of their duty, and statements made by judges, witnesses, and jurors in trials in court. Conditional privilege (called also “qualified privilege”) will protect the speaker or publisher unless actual malice and knowledge of the falsity of the statement is shown. This may be claimed where the communication related to the matter of public interest, or where it was necessary to protect one’s private interest and was made to a person having an interest in the same matter. *Saroyan v. Burkett*, 57 Cal.2d 706, 21 Cal.Rptr. 557, 558, 371 P.2d 293.

For defense of “constitutional privilege” in libel actions, see **Libel**.

Maritime law. An allowance to the master of a ship of the same general nature with prize, being compensation, or rather a gratuity, customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge of such usage by the parties.

Parliamentary law. The right of a particular question, motion, or statement to take precedence over all other business before the house and to be considered immediately, notwithstanding any consequent interference with or setting aside the rules of procedure adopted by the house. The matter may be one of “personal privilege,” where it concerns one member of the house in his capacity as a legislator, or of the “privilege of the house,” where it concerns the rights, immunities, or dignity of the entire body, or of “constitutional privilege,” where it relates to some action to be taken or some order of proceeding expressly enjoined by the constitution.

Privilege from arrest. A privilege extended to certain classes of persons, either by the rules of international law, the policy of the law, or the necessities of justice or of the administration of government, whereby they are exempted from arrest on civil process, and, in some cases, on criminal charges, either permanently, as in the case of a foreign minister and his suite, or temporarily, as in the case of members of the legislature, parties and witnesses engaged in a particular suit, etc. Art. I, § 6, U.S.Const. See also **Immunity**.

Privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required. *Gulf & Ship Island R. Co. v. Hewes*, 183 U.S. 66, 22 S.Ct. 26, 46 L.Ed. 86.

Torts. Privilege is the general term applied to certain rules of law by which particular circumstances justify conduct which otherwise would be tortious, and thereby defeat the tort liability (or defense) which, in the absence of such circumstances, ordinarily would follow from that conduct. In other words, even if all of the facts necessary to a prima facie case of tort liability can be proved, there are additional facts present sufficient to establish some privilege, and therefore defendant has committed no tort. Privileges thus differ from other defenses, such as contributory negligence, which operate to bar plaintiff’s recovery but do not negate the tortious nature of defendant’s conduct. Conversely, plaintiff’s privilege

Miscellaneous Definitions

may defeat a defense which defendant otherwise might have had. The term and concept of privilege apply primarily to the intentional torts, but also appear in other areas, such as defamation (See *Libel and slander* above.)

A privilege may be based upon: (a) the consent of the other affected by the actor's conduct, or (b) the fact that its exercise is necessary for the protection of some interest of the actor or of the public which is of such importance as to justify the harm caused or threatened by its exercise, or (c) the fact that the actor is performing a function for the proper performance of which freedom of action is essential. Restatement, Second, Torts, § 10.

Privileges may be divided into two general categories: (1) consent, and (2) privileges created by law irrespective of consent. In general, the latter arise where there is some important and overriding social value in sanctioning defendant's conduct, despite the fact that it causes plaintiff harm.

Privilege is an affirmative defense which must be pleaded by defendant. Fed.R.Civil P. 8(c).

Writ of privilege. A common law process to enforce or maintain a privilege; particularly to secure the release of a person arrested in a civil suit contrary to his privilege.
—*Black's Law Dictionary*, 1979

[Privilege

[**PROMISE** (Lat. *promitto*, to put forward). An engagement by which the promisor contracts with another to perform or do something to the advantage of the latter.

When a promise is made, all that is said at the time in relation to it must be considered: if, therefore, a man promises to pay all he owes, accompanied by a denial that he owes any thing, no action will lie to enforce such a promise; 15 Wend. 187.

And when the promise is conditional, the condition must be performed before it becomes of binding force; 7 Johns. 36. See **CONDITION**; **CONTRACTS**; 5 East, 17; 2 Leon. 224; 4 B. & Ald. 595.
—*Bouvier's Law Dictionary*, 1889

[PROMISE

[**Promise.** A declaration which binds the person who makes it, either in honor, conscience, or law, to do or forbear a certain specific act, and which gives to the person to whom made a right to expect or claim the performance of some particular thing. A declaration, verbal or written, made by one person to another for a good or valuable consideration, in the nature of a covenant by which the promisor binds himself to do or forbear some act, and gives to the promisee a legal right to demand and enforce a fulfillment. An express undertaking, or agreement to carry a purpose into effect. *E. I. Du Pont De Nemours & Co. v. Claiborne-Reno Co.*, C.C.A.Iowa, 64 F.2d 224.

Promise is an undertaking, however expressed, either that something shall happen, or that something shall not happen, in the future. *Plumbing Shop, Inc. v. Pitts*, 67 Wash.2d 514, 408 P.2d 382, 384.

A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made. Restatement, Second, Contracts § 2.

While a “promise” is sometimes loosely defined as a declaration by any person of his intention to do or forbear from anything at the request or for the use of another, it is to be distinguished, on the one hand, from a mere declaration of intention involving no engagement or assurance as to the future, and, on the other, from “agreement,” which is an obligation arising upon reciprocal promises, or upon a promise founded on a consideration.

See also Aleatory promise; Conditional promise; Illusory promise; Implied promise; Offer; Raising a promise.

Commercial law. An undertaking to pay and it must be more than an acknowledgment of an obligation. U.C.C. § 3-102(1)(c).

Fictitious promise. Sometimes called “implied promises,” or “promises implied in law,” occur in the case of those contracts which were invented to enable persons in certain cases to take advantage of the old rules of pleading peculiar to contracts, and which are not now of practical importance.

Illusory promise. A promise in which the promisor does not bind himself to do anything and hence it furnishes no basis for a contract because of the lack of consideration; e.g. a promise to buy whatever goods the promisor chooses to buy.

Mutual promises. Promises simultaneously made by and between two parties; each promise being the consideration for the other.

Naked promise. One given without any consideration, equivalent, or reciprocal obligation, and for that reason not enforceable at law.

New promise. An undertaking or promise, based upon and having relation to a former promise which, for some reason, can no longer be enforced, whereby the promisor recognizes and revives such former promise and engages to fulfill it.

Parol promise. A simple contract; a verbal promise.

Promise implied in fact. Promise implied in fact is merely tacit promise, one which is inferred in whole or in part from expressions other than words by promisor. *Cooke v. Adams*, Miss., 183 So.2d 925, 927.

Promise implied in law. Promise implied in law is one in which neither words nor conduct of party involved are promissory in form or justify inference of promise and term is used to indicate that party is under legally enforceable duty as he would have been, if he had in fact made promise. *Cooke v. Adams*, Miss., 183 So.2d 925, 927.

Promise of marriage. A contract mutually entered into by a man and a woman that they will marry each other.

Promise to pay the debt of another. Within the statute of frauds, a promise to pay

Miscellaneous Definitions

the debt of another is an undertaking by a person not before liable, for the purpose of securing or performing the same duty for which the party for whom the undertaking is made, continues liable.

—*Black's Law Dictionary*, 1979

[**Promise**

[**promise** *n.* **1.a.** A declaration assuring that one will or will not do something; a vow. **b.** Something promised. **2.** Indication of something favorable to come; expectation: *a promise of spring in the milder air.* **3.** Indication of future excellence or success: *a young player of great promise.* *v....* —*tr.* **1.** To commit oneself by a promise to do or give; pledge: *promised a quick answer; left early but promised to return.* **2.** To afford a basis for expecting: *thunderclouds that promise rain.* —*intr.* **1.** To make a declaration assuring that something will or will not be done. **2.** To afford a basis for expectation: *an enterprise that promises well....*

SYNONYMS: *promise, covenant, engage, pledge, plight, swear, vow.* The central meaning shared by these verbs is “to declare solemnly that one will perform or refrain from a particular course of action”: *promise to write soon; covenanting to exchange their prisoners of war; engaged to reorganize the department; pledged to uphold the law; plighted their loyalty to the king; swore to get revenge; vowed they would never surrender.*

—*The American Heritage Dictionary of the English Language*, 1992

[**promise**

[**PROOF** **In Practice.** The conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged. Thus, *to prove* is to determine or persuade that a thing does or does not exist; 8 Toullier, n. 2; Ayliffe, Parerg. 442; 2 Phill. Ev. 44, n. a. Proof is the perfection of evidence; for without evidence there is no proof, although there may be evidence which does not amount to proof: for example, if a man is found murdered at a spot where another has been seen walking but a short time before, this fact will be *evidence* to show that the latter was the murderer, but, standing alone, will be very far from *proof* of it.

Ayliffe defines *judicial proof* to be a clear and evident declaration or demonstration of a matter which was before doubtful, conveyed in a judicial manner by fit and proper arguments, and likewise by all other legal methods: first, by proper arguments, such as conjectures, presumptions, indicia, and other adminicular ways and means; secondly, by legal methods, or methods according to law, such as witnesses, public instruments, and the like. Ayliffe, Parerg. 442; Aso & M. Inst. b. 3, t. 7.

—*Bouvier's Law Dictionary*, 1889

[**proof**

[**proof** **1.** way or means of showing beyond doubt the truth of something. **2.** the establishment of the truth of anything. **3.** act of testing; trial. **4.** condition of having been tested and approved. **5.** trial impression from type, an engraving plate, or a photograph negative. A book is first printed in proof so that errors can be corrected. **6.** of tested value against something; as, rainproof, proof against

being taken by surprise. 7. standard strength of alcoholic liquors; strength with reference to this standard; as, brandy of 90% proof. 8. of standard strength.

—*Thorndike Century Senior Dictionary*, 1941

[**proof**

[**proof** **1 a:** the cogency of evidence that compels acceptance by the mind of a truth or a fact **b:** the process or an instance of establishing the validity of a statement exp. by derivation from other statements in accordance with accepted or stipulated principles of reasoning **2 obs:** EXPERIENCE **3:** and act, effort, or operation designed to establish or discover a fact or truth: TEST **4 archaic:** the quality or state of having been tested or tried: *esp:* unyielding hardness **5:** evidence operating to determine the finding or judgment of a tribunal **6 a:** an impression (as from type) taken for correction or examination **b:** a proof impression of an engraving, etching, or lithograph **c:** a coin that is struck from a highly-polished die on a polished planchet, is not intended for circulation, and sometimes differs in metallic content from that of coins of identical design struck for circulation **d:** a test photographic print made from a negative **7:** a test applied to articles or substances to determine whether they are of standard or satisfactory quality **8 a:** the minimum alcoholic strength of proof spirit **b:** strength with reference to the standard for proof spirit; *specif:* alcoholic strength indicated by a number that is twice the percent by volume of alcohol present <whiskey of 90 ~ is 45% alcohol>

—*Webster's New Collegiate Dictionary*, 1973

[**proof**

[**Proof.** The effect of evidence; the establishment of a fact by evidence. *New England Newspaper Pub. Co. v. Bonner*, C.C.A. Mass., 77 F.2d 915, 916. Any fact or circumstance which leads the mind to the affirmative or negative of any proposition. The conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged. *Ellis v. Wolfe-Shoemaker Motor Co.*, 227 Mo.App. 508, 55 S.W.2d 309.

“Proof” is the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. *Calif. Evidence Code*.

See also Burden of going forward; Burden of persuasion; Burden of producing evidence; Burden of proof; Clear and convincing proof; Clear evidence of proof; Degree of proof; Evidence; Failure of proof; Offer of proof; Testimony.

Evidence and proof distinguished. Proof is the logically sufficient reason for assenting to the truth of a proposition advanced. In its juridical sense it is a term of wide import, and comprehends everything that may be adduced at a trial, within the legal rules, for the purpose of producing conviction in the mind of judge or jury, aside from mere argument; that is, everything that has a probative force intrinsically, and not merely as a deduction from, or combination of, original probative facts. But “evidence” is a narrower term, and includes only such kinds of proof as may be legally presented at a trial, by the act of the parties, and through the aid of such concrete facts as witnesses, records, or other documents. Thus, to urge a presumption of law in support of one’s case is adducing proof, but it is not

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offering evidence. “Belief” is a subjective condition resulting from proof. It is a conviction of the truth of a proposition, existing in the mind, and induced by persuasion, proof, or argument addressed to the judgment. Proof is the result or effect of evidence, while evidence is the medium or means by which a fact is proved or disproved, but the words “proof” and “evidence” may be used interchangeably. Proof is the perfection of evidence; for without evidence there is no proof, although there may be evidence which does not amount to proof; for example, if a man is found murdered at a spot where another has been seen walking but a short time before, this fact will be *evidence* to show that the latter was the murderer, but, standing alone, will be very far from *proof* of it.

Affirmative proof. Evidence establishing the fact in dispute by a preponderance of the evidence.

Burden of proof. See that title.

Degree of proof. Refers to effect of evidence rather than medium by which truth is established, and in this sense expressions “preponderance of evidence” and “proof beyond reasonable doubt” are used.

Full proof. See **Full**.

Half proof. See **Half**.

Negative proof. See *Positive proof, infra*.

Positive proof. Direct or affirmative proof. That which directly establishes the fact in question; as opposed to negative proof, which establishes the fact by showing that its opposite is not or cannot be true.

Preliminary proof. See **Preliminary**.

Proof beyond a reasonable doubt. Such proof as precludes every reasonable hypothesis except that which it tends to support and which is wholly consistent with defendant’s guilt and inconsistent with any other rational conclusion. *State v. Dubina*, 164 Conn. 95, 318 A.2d 95, 97. Such is the required standard of proof in criminal cases.

Proof evident or presumption great. As used in constitutional provisions that accused shall be bailable unless for capital offenses when the “proof is evident” or “presumption great,” means evidence clear and strong, and which leads well guarded, dispassionate judgment to conclusion that accused committed offense and will be punished capitally. *Ex parte Coward*, 145 Tex.Cr.R. 593, 170 S.W.2d 754, 755; *Ex parte Goode*, 123 Tex.Cr.R 492, 59 S.W.2d 841.

Proof of claim. Statement under oath filed in a bankruptcy proceeding by a creditor in which the creditor sets forth the amount owed and sufficient detail to identify the basis for the claim. Also used in probate proceedings to submit the amount owed by the decedent to the creditor and filed with the court for payment by the fiduciary.

Proof of debt. The formal establishment by a creditor of his debt or claim, in some prescribed manner (as, by his affidavit or otherwise), as a preliminary to its allowance, along with others, against an estate or property to be divided, such as the estate of a bankrupt or insolvent, a deceased person or a firm or company in liquidation. See *Proof of claim, supra*.

Proof of loss. A formal statement made by the policy-owner to the insurer regarding a loss, intended to give insurer enough information to enable it to determine the extent of its liability under a policy or bond.

Proof of service. Evidence submitted by a process server that he has made service on a defendant in an action. It is also called a return of service. Fed.R.Civil P.4.

Proof of will. A term having the same meaning as “probate,” (*q.v.*), and used interchangeably with it.

Standard of proof. A statement of how convincing the evidence must be in order for a party to comply with his/her burden of proof. The main standards of proof are proof beyond a reasonable doubt (in criminal cases only), proof by clear and convincing evidence, and proof by a preponderance of the evidence.

—*Black’s Law Dictionary*, 1979

[Proof

[PROPERTY. The right and interest which a man has in lands and chattels to the exclusion of others. 6 Binn. 98; 4 Pet. 511; 17 Johns. 283; 11 East, 290, 518; 14 *id.* 370.

The term “property” embraces every species of valuable right and interest, including real and personal property, easements, franchises, and hereditaments; 19 Am. L. Reg. N. 8. 376 (N. Y. Sup. Ct.).

All things are not the subject of property: the sea, the air, and the like cannot be appropriated; every one may enjoy them, but he has no exclusive right in them. When things are fully our own, or when all others are excluded from meddling with them or from interfering about them, it is plain that no person besides the proprietor, who has this exclusive right, can have any claim either to use them, or to hinder him from disposing of them. as he pleases: so that property, considered as an exclusive right to things, contains not only a right to use those things, but a right to dispose of them, either by exchanging them for other things, or by giving them away to any other person without any consideration, or even throwing them away. Rutherford, *Inst.* 20; Domat, *liv. pré.* tit. 3; Pothier, *des Choses*; 18 Viner, *Abr.* 63; Comyns, *Dig. Biens*. See, also, 2 B. & C. 281; 9 *id.* 396; 3 Dowl. & R. 394; 1 C. & M. 39; 4 Call, 472; 18 Ves. 193; 6 Bingh. 630.

Property is said to be real and personal property. See those titles.

It is also said to be, when it relates to goods and chattels, *absolute* or *qualified*. Absolute property is that which is our own without any qualification whatever: as, when a man is the owner of a watch, a book, or other inanimate thing, or of a horse, a sheep, or other animal which never had its natural liberty in a wild state.

Miscellaneous Definitions

Qualified property consists in the right which men have over wild animals which they have reduced to their own possession, and which are kept subject to their power: as, a deer, a buffalo, and the like, which are his own while he has possession of them, but as soon as his possession is lost his property is gone, unless the animals go *animo revertendi*. 2 Bla. Com. 396; 3 Binn. 546.

But property in personal goods may be absolute or qualified without any relation to the nature of the subject-matter, but simply because more persons than one, have an interest in it, or because the right of property is separated from the possession. A bailee of goods, though not the owner, has a qualified property in them; while the owner has the absolute property. See BAILEE; BAILMENT.

Personal property is further divided into property in possession, and property or choses in action. See CHOSE IN ACTION.

Property is again divided into corporeal and incorporeal. The former comprehends such property as is perceptible to the senses, as lands, houses, goods, merchandise, and the like; the latter consists in legal rights, as choses in action, easements, and the like.

Property is lost by the act of man by—*first, alienation*; but in order to do this the owner must have a legal capacity to make a contract; *second*, by the voluntary abandonment of the thing; but unless the abandonment be purely voluntary the title to the property is not lost: as, if things be thrown into the sea to save the ship, the right is not lost; Pothier, n. 270; 3 Toullier, n. 346. But even a voluntary abandonment does not deprive the former owner from taking possession of the thing abandoned at any time before another takes possession of it.

It is lost *by operation of law*—*first*, by the forced sale, under a lawful process, of the property of a debtor to satisfy a judgment, sentence, or decree rendered against him, to compel him to fulfil his obligations; *second*, by confiscation, or sentence of a criminal court; *third*, by prescription; *fourth*, by civil death; *fifth*, by capture of a public enemy. It is lost *by the act of God*, as in the case of the death of slaves or animals, or in the total destruction of a thing: for example, if a house be swallowed up by an opening in the earth during in earthquake.

It is proper to observe that, in some cases, the moment that the owner loses his possession he also loses his property or right in the thing; animals *feræ naturæ*, as mentioned above, belong to the owner only while he retains the possession of them. But, in general, the loss of possession does not impair the right of property, for the owner may recover it within a certain time allowed by law. See, generally, Bouvier Inst. Index.

—*Bouvier's Law Dictionary*, 1889

[PROPERTY

[**propriety** **1.** The quality of being proper; appropriateness. **2.** Conformity to prevailing customs and usages. See Synonyms at **etiquette**. **3. Proprieties.** The usages and customs of polite society....

—*The American Heritage Dictionary of the English Language*, 1992

[propriety

[Protest. A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such a declaration is generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to him unless he expressly negatived his assent.

A notarial act, being a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill or note, in which it is declared that the bill or note described was on a certain day presented for payment (or acceptance), and that such payment or acceptance was refused, and stating the reasons, if any, given for such refusal, whereupon the notary *protests* against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor. It denotes also all the steps or acts accompanying dishonor necessary to charge an indorser.

A protest is a certificate of dishonor made under the hand and seal of a United States consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person. U.C.C. § 3-509. See also **Dishonor**.

A formal declaration made by a minority (or by certain individuals) in a legislative body that they dissent from some act or resolution of the body, usually adding the grounds of their dissent. The term, in this sense, refers to such a proceeding in the English House of Lords.

The formal statement, usually in writing, made by a person who is called upon by public authority to pay a sum of money, in which he declares that he does not concede the legality or justice of the claim or his duty to pay it, or that he disputes the amount demanded; the object being to save his right to recover or reclaim the amount, which right would be lost by his acquiescence. Thus, taxes may be paid under “protest.”

The name of a paper served on a collector of customs by an importer of merchandise, stating that he believes the sum charged as duty to be excessive, and that, although he pays such sum for the purpose of getting his goods out of the custom-house, he reserves the right to bring an action against the collector to recover the excess.

In maritime law, a written statement by the master of a vessel, attested by a proper judicial officer or a notary, to the effect that damage suffered by the ship on her voyage was caused by storms or other perils of the sea, without any negligence or misconduct on his own part.

Notice of protest. A notice given by the holder of a bill or note to the drawer or indorser that the bill has been protested for refusal of payment or acceptance. U.C.C. § 3-509.

Waiver of protest. As applied to a note or bill, a waiver of protest implies not only dispensing with the formal act known as “protest,” but also with that which

Miscellaneous Definitions

ordinarily must precede it, viz, demand and notice of non-payment.

—*Black's Law Dictionary*, 1979

[**Protest**

[**PROVE.** no entry.

—*Bouvier's Law Dictionary*, 1889

[**PROVE**

[**prove** 1. establish as true; make certain. 2. establish the genuineness or validity of, especially of a will. 3. be found to be. This book proved interesting. 4. try out; test; subject to some testing process; as, to prove a gun.—*Thorndike Century Senior Dictionary*, 1941

[**prove**

[**Prove.** To establish or make certain; to establish a fact or hypothesis as true by satisfactory and sufficient evidence. *Lawson v. Superior Court In and For Los Angeles county*, 155 Cal.App.2d 755, 318 P.2d 812, 814. The word “prove” as used in legal matters and proceedings means to establish, to render or make certain. *Texas & N. O. R. Co. v. Flowers*, Tex.Civ.App., 336 S.W.2d 907, 914. See also

Proof.

—*Black's Law Dictionary*, 1979

[**Prove**

[**Public, adj.** Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. common to all or many; general; open to common use. Belonging to the people at large; relating to or affecting the whole people of a state, nation, or community; not limited or restricted to any particular class of the community. *Peacock v. Retail Credit Co.*, D.C.Ga., 302 F.Supp. 418, 423.

As to public Accounts; Acknowledgment; Act; Administrator; Agent; Attorney; Auction; Breach; Blockade; Boundary; Business; Capacity; Carrier; Chapel; Charge; Charity; Company; Corporation; Debt; Document; Domain; Easement; Enemy; Ferry; Fund; Good; Grant; Health; Highway; Holiday; Hospital; House; Indecent; Institution; Market; Minister: Money; Necessity; Notice; Nuisance; Office; Officer; Peace; Policy; Pond; Property; Prosecutor; Record; Revenue; River; Road; Sale; School; Seal; Square; Stock; Store; Tax; Things; Thoroughfare; Trial; Trust; Trustee; Verdict; Vessel; War; Works; Worship, and Wrong, see those titles.

—*Black's Law Dictionary*, 1979

[**Public**

[**PUBLIC AUTHORITY.** No entry.

—*Bouvier's Law Dictionary*, 1889

[**PUBLIC AUTHORITY**

[**Public authority.** An agency established by government though not a department thereof but subject to some governmental control, e.g. Mass. Port Authority. *Opinion of the Justices*, 334 Mass. 721, 136 N.E.2d 223, 235.

—*Black's Law Dictionary*, 1979

[**Public authority**

[**public authority** No entry.

—*The American Heritage Dictionary of the English Language*, 1992

[**public authority**

[Punishment. Any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law. A deprivation of property or some right. But does not include a civil penalty redounding to the benefit of an individual, such as a forfeiture of interest. *People v. Vanderpool*, 20 Cal.2d 746, 128 P.2d 513, 515. See also **Sentence**.

Cumulative punishment. An increased punishment inflicted for a second or third conviction of the same offense, under the statutes relating to habitual criminals. To be distinguished from a “cumulative sentence,” as to which see **Sentence**.

Cruel and unusual punishment. Such punishment as would amount to torture or barbarity, and any cruel and degrading punishment not known to the common law, and also any punishment so disproportionate to the offense as to shock the moral sense of the community. *In re Kemmler*, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519. Punishment which is excessive for the crime committed is cruel and unusual. *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982. The death penalty is not per se cruel and unusual punishment within the prohibition of the 8th Amendment, U.S. Const., but states must follow strict safeguards in the sentencing of one to death. *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859. See also **Capital** (*Capital punishment*); **Corporal punishment**; **Excessive punishment**; **Hard labor**.

Infamous punishment. Punishment by imprisonment, particularly in a penitentiary. Sometimes, imprisonment at hard labor regardless of the place of imprisonment. *U.S. v. Moreland*, 258 U.S. 433, 42 S.Ct. 368, 66 L.Ed. 700.

—*Black’s Law Dictionary*, 1979

[Punishment

[Pursuant. A following after or following out. To execute or carry out in accordance with or by reason of something. To do in consequence or in prosecution of anything. “Pursuant to” means “in the course of carrying out: in conformance to or agreement with: according to” and, when used in a statute, is a restrictive term. *Knowles v. Holly*, 82 Wash.2d 694, 513 P.2d 18, 23. —*Black’s Law Dictionary*, 1979

[Pursuant

[pursue 1. follow to catch or kill; chase. 2 follow; proceed along; follow in action. He pursued a wise course by taking no chances. 3. strive for; try to get; seek. 4. carry on; keep on with. She pursued the study of French for four years. 5. continue to annoy or trouble. Don’t pursue me with questions.—*Thorndike Century Senior Dictionary*, 1941

[pursue

[pursuit 1. act of pursuing. 2 occupation.

—*Thorndike Century Senior Dictionary*, 1941

[pursuit

[pursuit of happiness. As used in constitutional law, this right includes personal freedom, freedom of contract, exemption from oppression or invidious

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discrimination, the right to follow one's individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relations and the privileges of the family and the home. *Butchers' Union, etc., Co. v. Crescent City Live Stock, etc., Co.*, 4 S.Ct. 652, 111 U.S. 746, 28 L.Ed. 585. The right to follow or pursue any occupation or profession without restriction and without having any burden imposed upon one that is not imposed upon others in a similar situation. *Myers v. City of Defiance*, 67 Ohio App. 159, 36 N.E.2d 162, 21 O.L.A. 165.

—*Black's Law Dictionary*, 1979

[Pursuit of happiness

– Q –

[**qualified** 1. fitted; adapted; having the desirable or required qualifications.
2. modified; limited; restricted. –*Thorndike Century Senior Dictionary*, 1941

[**qualified**

[**Qualified**. Adapted; fitted; entitled; susceptible; capable; competent; fitting; possessing legal power or capacity; eligible; as a “qualified voter” (*q.v.*). Applied to one who has taken the steps to prepare himself for an appointment or office, as by taking oath, giving bond, etc. Also limited; restricted; confined; modified; imperfect, or temporary. See also **Capacity; Competency; Duly qualified**.

–*Black’s Law Dictionary*, 1979

[**Qualified**

[**QUASI-CONTRACTUS** (Lat.). **In Civil Law**. The act of a person, permitted by law, by which he obligates himself towards another, or by which another binds himself to him, without any agreement between them.

By article 2272 of the Civil Code of Louisiana, which is translated from article 1371 of the Code Civil, quasi-contracts are defined to be “the lawful and purely voluntary acts of a man, from which there results any obligation whatever to a third person, and sometimes a reciprocal obligation between the parties.” In contracts, it is the consent of the contracting parties which produces the obligation; in quasi-contracts no consent is required, and the obligation arises from the law or natural equity, on the facts of the case. These acts are called quasi-contracts, because, without being contracts, they bind the parties as contracts do.

There is no term in the common law which answers to that of quasi-contracts; many quasi-contracts may doubtless be classed among implied contracts: there is, however, a difference to be noticed. For example: in case money should be paid by mistake to a minor, it maybe recovered from him by the civil law, because his consent is not necessary to a quasi-contract; but by the common law, if it can be recovered, it must be upon an agreement to which the law presumes he has consented, and it is doubtful, upon principle, whether such recovery could be had.

Quasi-contracts may be multiplied almost to infinity. They are, however, divided into five classes; such as relate to the voluntary and spontaneous management of the affairs of another, without authority (*negotiorum gestio*); the administration of tutorship; the management of common property (*communio bonorum*); the acquisition of an inheritance; and the payment of a sum of money or other thing by mistake, when nothing was due (*indebiti solutio*).

Each of these quasi-contracts has an affinity with some contract: thus, the management of the affairs of another without authority, and tutorship, are compared to a mandate; the community of property, to a partnership; the acquisition of an inheritance, to a stipulation; and the payment of a thing which is not due, to a loan.

All persons, even infants and persons destitute of reason, who are consequently

Miscellaneous Definitions

incapable of consent, may be obliged by the quasi-contract which results from the act of another, and may also oblige others in their favor; for it is not consent which forms these obligations: they are contracted by the act of another, without any act on our part. The use of reason is indeed required in the person whose act forms the quasi-contract, but it is not required in the person by whom or in whose favor the obligations which result from it are contracted. For instance, if a person undertakes the business of an infant or a lunatic, this is a quasi-contract, which obliges the infant or the lunatic to the person undertaking his affairs, for what he has beneficially expended, and reciprocally obliges the person to give an account of his administration or management.

Quasi-contracts are usually identified with *implied* contracts, but this is in error, for implied contracts are true contracts which quasi-contracts are not, inasmuch as the *convention*, the essential part of a contract, was wanting: Maine, Anc. Law, 332.

See, generally, Justinian, Inst. 3.28; Dig. 3.5; Ayl. Pand. b. 4, tit. 31; 1 Brown, Civil Law, 386; Erskine, Inst. 3. 3. 16; Pardessus, Dr. Com. n. 192 *et seq*; Pothier, Obl. n. 113 *et seq*; Merlin, Répert. *Quasi-Contract*. —*Bouvier's Law Dictionary*, 1889

[**QUASI-CONTRACTUS**]

– R –

[**red shift** *n.* An increase in the wavelength of radiation emitted by a celestial body as a consequence of the Doppler effect. [From the fact that the longer wavelengths of light are at the red end of the visible spectrum.]

–*The American Heritage Dictionary of the English Language*, 1992

[**red shift**

[**redact** **1.** To draw up or frame (a proclamation, for example). **2.** To make ready for publication; edit or revise.....

–*The American Heritage Dictionary of the English Language*, 1992

[**redact**

[**Regulation.** The act of regulating; a rule or order prescribed for management or government; a regulating principle; a precept. Rule of order prescribed by superior or competent authority relating to action of those under its control. Regulation is rule or order having force of law issued by executive authority of government. State ex rel. Villines v. Freeman, Okl., 370 P.2d 307, 309. See **Regulations.**

–*Black’s Law Dictionary*, 1979

[**Regulation**

[**Release, v.** To discharge a claim one has against another, as for example in a tort case the plaintiff may discharge the liability of the defendant in return for a cash settlement. To lease again or grant new lease. See **Accord and satisfaction.**

–*Black’s Law Dictionary*, 1979

[**Release**

[**Release, n.** The relinquishment, concession, or giving up of a right, claim, or privilege, by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced. Abandonment of claim to party against whom it exists, and is a surrender of a cause of action and may be gratuitous or for consideration. Melo v. National Fuse & Powder Co., D.C.Colo., 276 F.Supp. 611, 612. Giving up or abandoning of claim or right to person against whom claim exists or against whom right is to be exercised. Adder v. Holman & Moody, Inc., 288 N.C. 484, 219 S.E.2d 190, 195.

A discharge of a debt by act of party, as distinguished from an extinguishment which is a discharge by operation of law, and, in distinguishing release from receipt, “receipt” is evidence that an obligation has been discharged, but “release” is itself a discharge of it. Glickman v. Weston, 140 Or. 117, 11 P.2d 281, 284.

An *express* release is one directly made in terms by deed or other suitable means. An *implied* release is one which arises from acts of the creditor or owner, without any express agreement. A *release by operation of law* is one which, though not expressly made, the law presumes in consequence of some act of the releasor; for instance, when one of several joint obligors is expressly released, the others are also released by operation of law.

Liberation, discharge, or setting free from restraint or confinement Thus, a man

Miscellaneous Definitions

unlawfully imprisoned may obtain his *release* on *habeas corpus*. See also **Bail**.

The abandonment to (or by) a person called as a witness in a suit of his interest in the subject-matter of the controversy, in order to qualify him to testify, under the common-law rule.

A receipt or certificate given by a ward to the guardian, on the final settlement of the latter's accounts, or by any other beneficiary on the termination of the trust administration, relinquishing all and any further rights, claims, or demands, growing out of the trust or incident to it.

In admiralty actions, when a ship, cargo, or other property has been arrested, the owner may obtain its release by giving bail, or paying the value of the property into court.

The conveyance of a person's interest or right which he has in a thing to another that has the possession thereof or some estate therein. The relinquishment of some right or benefit to a person who has already some interest in the property, and such interest as qualifies him for receiving or availing himself of the right or benefit so relinquished.

Conditional release. See that title.

Deed of release. A deed operating by way of release; but more specifically, in those states where deeds of trust are in use instead of common-law mortgages, as a means of pledging real property as security for the payment of a debt, a "deed of release" is a conveyance in fee, executed by the trustee or trustees, to the grantor in the deed of trust, which conveys back to him the legal title to the estate, and which is to be given on satisfactory proof that he has paid the secured debt in full or otherwise complied with the terms of the deed of trust.

Release by way of enlarging an estate. A conveyance of the ulterior interest in lands to the particular tenant; as, if there be tenant for life or years, remainder to another in fee, and he in remainder releases all his right to the particular tenant and his heirs, this gives him the estate in fee. 2 Bl. Comm. 324.

Release by way of entry and feoffment. If there be two joint disseisors, and the disseisee releases to one of them, he shall be sole seised, and shall keep out his former companion; which is the same in effect as if the disseisee had entered and thereby put an end to the disseisin, and afterwards had enfeoffed one of the disseisors in fee. 2 Bl. Comm. 325.

Release by way of extinguishment. If my tenant for life makes a lease to A. for life, remainder to B. and his heirs, and I release to A., this extinguishes my right to the reversion, and shall inure to the advantage of B.'s remainder, as well as of A.'s particular estate. 2 Bl. Comm. 325.

Release by way of passing an estate. As, where one or two coparceners releases all her right to the other, this passes the fee-simple of the whole. 2 Bl. Comm. 324, 325.

Release by way of passing a right. If a man be disseised and releaseth to his disseisor all his right, hereby the disseisor acquires a new right, which changes the quality of his estate, and renders that lawful which before was tortious or wrongful. 2 Bl. Comm. 325.

Release of dower. The relinquishment by a married woman of her expectant dower interest or estate in a particular parcel of realty belonging to her husband, as, by joining with him in a conveyance of it to a third person.

Release of mortgage. A written document which discharges the obligation of a mortgage upon payment and which is given by mortgagee to mortgagor or holder of equity and recorded in the office where deeds and other instruments of conveyance are recorded.

Release to uses. The conveyance by deed of release to one party to the use of another is so termed. Thus, when a conveyance of lands was effected, by those instruments of assurance termed a lease and release, from A. to B. and his heirs, to the use of C. and his heirs, in such case C. at once took the whole fee-simple in such lands; B. by the operation of the statute of uses, being made a mere conduit-pipe for conveying the estate to C.

—*Black's Law Dictionary*, 1979

[**Release**

[**Relieve.** To give ease, comfort, or consolation to; to give aid, help, or succor to; alleviate, assuage, ease, mitigate; succor, assist, aid, help; support, sustain; lighten, diminish. *Brollier v. Van Alstine*, 236 Mo.App. 1233, 163 S.W.2d 109, 115.

To release from a post, station, or duty; to put another in place of, or to take the place of, in the bearing of any burden, or discharge of any duty. *Kemp v. Stanley*, 204 La. 110, 15 So.2d 1,11.

—*Black's Law Dictionary*, 1979

[**Relieve**

[**religion**.... *n*.... **1.a.** Belief in and reverence for a supernatural power or powers regarded as creator and governor of the universe. **b.** A personal or institutionalized system grounded in such belief and worship. **2.** The life or condition of a person in a religious order. **3.** A set of beliefs, values, and practices based on the teachings of a spiritual leader. **4.** A cause, a principle, or an activity pursued with zeal or conscientious devotion. —*idiom.* **get religion.** *Informal.* To accept a higher power as a controlling influence for the good in one's life....

—*The American Heritage Dictionary of the English Language*, 1992

[**religion**

[**REMEDY.** The means employed to enforce a right or redress an injury.

Remedies for *non-fulfilment* of contracts are generally by action, see ACTION; ASSUMPSIT; COVENANT; DEBT; DETINUE; or in equity, in some cases, by bill for specific performance. Remedies for the redress of injuries are either public, by indictment, when the injury to the individual or to his property affects the public, or private, when the tort is only injurious to the individual. See INDICTMENT; FELONY; MERGER; TORTS; CIVIL REMEDY.

Miscellaneous Definitions

Remedies are *preventive* which seek *compensation*, or which have for their object *punishment*. The *preventive*, or *removing*, or *abating* remedies may be by acts of the party aggrieved or by the intervention of legal proceedings: as in the case of injuries to the person or to personal or real property, *defence*, *resistance*, *recaption*, *abatement of nuisance*, and *surety of the peace*, or *injunction* in equity, and perhaps some others. Remedies for *compensation* may be either by the *acts of the party aggrieved*, or *summarily* before justices, or by *arbitration*, or *action*, or *suit* at law or in equity. Remedies which have for their object *punishments* or compensation and punishments are either *summary proceedings* before magistrates, or *indictment*, etc.

Remedies are *specific* and *cumulative*: the former are those which can alone be applied to restore a right or punish a crime: for example, where a statute makes unlawful what was lawful before, and gives it particular remedy, that is specific, and must be pursued, and no other; Cro. Jac. 644; 1 Salk. 45; 2 Burr. 803. But when an offence was antecedently punishable by a common-law proceeding, as by indictment, and a statute prescribes a particular remedy, there such particular remedy is cumulative, and proceedings may be had at common law or under the statute; 1 Saund. 134, n. 4.

The maxim *ubi jus, ibi remedium*, has been considered so valuable that it gave occasion to the first invention of that form of action called an action on the case; 1 Sm. Lead. Cas. 472. The novelty of the particular complaint alleged in an action on the case, is no objection, provided there appears to have been an injury to the plaintiff cognizable by law; 2 Wils. 146; 3 Term, 63; Willes, 577; 2 M. & W. 519.

—*Bouvier's Law Dictionary*, 1889

[REMEDY

[Remedy. The means by which a right is enforced or the violation of a right is prevented, redressed, or compensated. Long Leaf Lumber, Inc. v. Svolos, La.App., 258 So.2d 121, 124. The means employed to enforce a right or redress an injury, as distinguished from right, which is a well founded or acknowledged claim. Chelentis v. Luckenbach S. S. Co., 247 U.S. 372, 38 S.Ct. 501, 503, 62 L.Ed. 1171.

The rights given to a party by law or by contract which that party may exercise upon a default by the other contracting party, or upon the commission of a wrong (a tort) by another party.

Remedy means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal. "Rights" includes remedies. U.C.C. § 1-201.

That which relieves or cures a disease, including a medicine or remedial treatment.

See also Adequate remedy; Administrative remedy; Alternative relief; Cause of action; Extraordinary remedies; Inadequate remedy at law; Marshaling remedies; Mutuality of remedy; Provisional remedy.

Civil remedy. The remedy afforded by law to a private person in the civil courts in so far as his private and individual rights have been injured by a delict or crime; as

distinguished from the remedy by criminal prosecution for the injury to the rights of the public.

Cumulative remedy. See **Cumulative**.

Equitable remedy. See **Equity; Injunction; Performance (Specific performance); Reformation**.

Extraordinary remedy. See **Extraordinary**.

Joinder of remedies. See **Joinder**.

Legal remedy. A remedy available, under the particular circumstances of the case, in a court of law, as distinguished from a remedy available only in equity. Procedurally, this distinction is no longer generally relevant, for under Rules of Civil Procedure there is only one form of action known as a “civil action.” Rule 2.

Remedy over. A person who is primarily liable or responsible, but who, in turn, can demand indemnification from another, who is responsible to him, is said to have a “remedy over.” For example, a city, being compelled to pay for injuries caused by a defect in the highway, has a “remedy over” against the person whose act or negligence caused the defect, and such person is said to be “liable over” to the city. See **Subrogation**.
—*Black’s Law Dictionary*, 1979

[**Remedy**

[**remedy** *n.*,... **1.** Something, such as medicine or therapy, that relieves pain, cures disease, or corrects a disorder. **2.** Something that corrects an evil, a fault, or an error. **3. Law.** A legal order of preventing or redressing a wrong or enforcing a right. **4.** The allowance by a mint for deviation from the standard weight or quality of coins. —*tr.*... **1.** To relieve or cure (a disease or disorder). **2.** To set right; remove, rectify, or counteract. See Synonyms at **Correct**. **3.** See Synonyms at **Cure**.... —*The American Heritage Dictionary of the English Language*, 1992

[**remedy**

[**render** *vt* **1 a:** to melt down: extract by melting <~ lard> **b:** to treat so as to convert into industrial fats and oils or fertilizer **2 a:** to transmit to another; DELIVER **b:** to give up: YIELD **c:** to furnish for consideration, approval, or information: as (1): to hand down (a legal judgment) (2): to agree on and report (a verdict) **3 a:** to give in return or retribution **b(1):** to give back: RESTORE (2): REFLECT, ECHO **c:** to give in acknowledgment of dependence or obligation: PAY **d:** to do (a service) for another **4 a:** (1) to cause to be or become: MAKE <enough rainfall . . . to ~ irrigation unnecessary - P. E. James> <~ a person helpless> (2): IMPART **b(1):** to reproduce or represent by artistic or verbal means: DEPICT (2): to give a performance of (3): to produce a copy or version of <the documents are ~ *ed* in the original French> (4): to execute the motions of <~ a salute> **c:** TRANSLATE **5:** to direct the execution of: ADMINISTER <~ justice> **6:** to apply a coat of plaster or cement directly to ~ *vi:* to give recompense *n:* a return esp. in goods or services due from a feudal tenant to his lord

—*Webster’s New Collegiate Dictionary*, 1973

[**render**

Miscellaneous Definitions

[Rescind. To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. To declare a contract void in its inception and to put an end to it as though it never were. *Russell v. Stephens*, 191 Wash. 314, 71 P.2d 30, 31. Not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made. *Sylvania Industrial Corporation v. Lilienfeld's Estate*, C.C.A.Va., 132 F.2d 887, 892. See also **Rescission of Contract**.
—*Black's Law Dictionary*, 1979

[Rescind

[resolve *vt* **1** *obs*: DISSOLVE, MELT **2 a**: to break up: SEPARATE <the prism *resolved* the light into a play of color>; *also*: to change by disintegration **b**: to reduce by analysis <~ the problem into simple elements> **c**: to distinguish between or make independently visible adjacent parts of **d**: to separate (a racemic compound or mixture) into the two components **3**: to cause resolution of (as inflammation) **4 a**: to deal with successfully: clear up <~ doubts> (~ a dispute) **b**: to find an answer to **c**: to make clear or understandable **d**: to find a mathematical solution of **e**: to split up (as a vector) into two or more components esp. in assigned directions **5**: to reach a firm decision about <~ to get more sleep> <~ disputed points in a text> **6 a**: to declare or decide by a formal resolution and vote **b**: to change by resolution or formal vote <the house resolved itself into a committee> **7**: to make (as voice parts) progress from dissonance to consonance **8**: to work out the resolution of (as a play) ~ *vi* **1**: to become separated into component parts; *also*: to become reduced by dissolving or analysis **2**: to form a resolution: DETERMINE **3**: CONSULT, DELIBERATE **4**: to progress from dissonance to consonance *n* **1**: something that is resolved **2**: fixity of purpose: RESOLUTENESS **3**: a legal or official determination; *esp*: a formal resolution

—*Webster's New Collegiate Dictionary*, 1973

[resolve

[RESTRAINT. Contracts operating for the restraint of trade are presumptively illegal and void on the ground of the policy of the law favoring freedom of trade; but the presumption of illegality may be rebutted by the occasion and circumstances. Thus in agreements for the sale of the good-will of a firm, or the formation or dissolution of a partnership, provisions operating in restraint of trade are frequently inserted. Their validity depends upon whether the restraint is such only as to afford a fair protection to the interests of the party in whose favor it is imposed; *Leake Contr.* 734-735. Whatever restraint is larger than is necessary for the protection of this party is void: therefore, the restraint must be limited in regard to space; 5 M. & W. 562; L. R. 15 Eq. 59. An agreement reasonably in regard to space may be unlimited in regard to the duration of time provided for; but where the question is whether the limit of space is unlimited, the duration of the restraint in point of time may become an important matter; *Leake, Contr.* 736; 2 M. & G. 20.

There are cases where an unlimited restraint is justified: *e.g.* the sale of a secret

process of manufacture of an article in general demand, which it is agreed shall be communicated for the exclusive benefit of the buyer; see L. R. 9 Eq. 45; so of the sale of a patent right, the restraint may be unlimited while the patent continues; 1 H. & N. 189.

Some cases have required the presence of a sufficient and reasonable consideration to support a contract in restraint of trade; 8 Mass. 223; 21 Wend. 158; see 3 Ohio St. 275; but in England a legally valid consideration only is required; 6 A. & E. 438. See, generally, 1 Sm. L. C. 724; 35 Am. Rep. 269.

Conditions in wills in general restraint of marriage are held void. The subject is encumbered with many refined distinctions; see 2 Jarm. Wills, *44; art. in 2 Law Mag. & Rev. 419, 4th series.

—*Bouvier's Law Dictionary*, 1889

[**RESTRAINT**

[**Restraint.** Confinement, abridgment, or limitation. Prohibition of action; holding or pressing back from action. Hindrance, confinement, or restriction of liberty. Obstruction, hindrance or destruction of trade or commerce. See **Restraint of trade; Stop.**

Unlawful restraint. Unlawful restraint is knowingly and without legal authority restraining another so as to interfere substantially with his liberty.

Person is guilty of “unlawful restraint” if he knowingly: (1) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or (2) holds another in a condition of involuntary servitude. 18 Pa.C.S.A. § 2902. See also **Imprisonment.** (*False imprisonment*); **Kidnapping.**

—*Black's Law Dictionary*, 1979

[**Restraint**

[**restraint** *n.* **1.** The act of restraining or the condition of being restrained. **2.** Loss or abridgment of freedom. **3.** An influence that inhibits or restrains; a limitation. **4.** An instrument or a means of restraining. **5.** Control or repression of feelings; constraint....

—*The American Heritage Dictionary of the English Language*, 1992

[restraint

[**Right.** As a noun, and taken in an *abstract* sense, means justice, ethical correctness, or consonance with the rules of law or the principles of morals. In this signification it answers to one meaning of the Latin “jus,” and serves to indicate law in the abstract, considered as the foundation of all rights, or the complex of underlying moral principles which impart the character of justice to all positive law, or give it an ethical content. As a noun, and taken in a *concrete* sense, a power, privilege, faculty, or demand, inherent in one person and incident upon another. Rights are defined generally as “powers of free action.” And the primal rights pertaining to men are enjoyed by human beings purely as such, being grounded in personality, and existing antecedently to their recognition by positive law. But leaving the abstract moral sphere, and giving to the term a juristic content, a

Miscellaneous Definitions

“right” is well defined as “a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.”

As an adjective, the term “right” means just, morally correct, consonant with ethical principles or rules of positive law. It is the opposite of wrong, unjust, illegal.

A power, privilege, or immunity guaranteed under a constitution, statutes or decisional laws, or claimed as a result of long usage. See **Bill of rights; Civil liberties; Civil Rights Acts; Natural rights.**

In a narrower signification, an interest or title in an object of property; a just and legal claim to hold, use, or enjoy it, or to convey or donate it, as he may please.

A legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act. Restatement of the Law of Property, § 1.

That which one person ought to have or receive from another, it being withheld from him, or not in his possession. In this sense “right” has the force of “claim,” and is properly expressed by the Latin “jus.”

See also Conditional right; Correlative rights; Droit; Jus; Natural rights; Power; Recht; Vested rights.

General Classification

Rights may be described as *perfect* or *imperfect*, according as their action or scope is clear, settled, and determinate, or is vague and unfixed.

Rights are also either *in personam* or *in rem*. A right *in personam* is one which imposes an obligation on a definite person. A right *in rem* is one which imposes an obligation on persons generally; *i.e.*, either on all the world or on all the world except certain determinate persons. Thus, if I am entitled to exclude all persons from a given piece of land, I have a right *in rem* in respect to that land; and, if there are one or more persons, A., B., and C., whom I am not entitled to exclude from it, my right is still a right *in rem*.

Rights may also be described as either *primary* or *secondary*. *Primary* rights are those which can be created without reference to rights already existing. *Secondary* rights can only arise for the purpose of protecting or enforcing primary rights. They are either preventive (protective) or remedial (reparative).

Preventive or *protective secondary* rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. *Remedial* or *reparative secondary* rights are also either judicial or extrajudicial. They may further be divided into (1) rights of restitution or restoration, which entitle the person injured to be replaced in his original position; (2) rights of enforcement, which entitle the person injured to the performance of an act by the person bound; and (3) rights of satisfaction or compensation.

With respect to the ownership of external objects of property, rights may be classed as *absolute* and *qualified*. An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times and for all purposes. A qualified right gives the possessor a right to the object for certain purposes or under certain circumstances only. Such is the right of a bailee to recover the article bailed when it has been unlawfully taken from him by a stranger.

Rights are also either *legal* or *equitable*. The former is the case where the person seeking to enforce the right for his own benefit has the legal title and a remedy at law. The latter are such as are enforceable only in equity; as, at the suit of *cestui que trust*. Procedurally, under the Rules of Civil Procedure, both legal and equitable rights are enforced in the same court under a single cause of action.

Constitutional Rights

There is also a classification of rights, with respect to the constitution of civil society. Thus, according to Blackstone, “the rights of persons, considered in their natural capacities, are of two sorts, -*absolute* and *relative*; absolute, which are such as appertain and belong to particular men, merely as individuals or single persons; relative, which are incident to them as members of society, and standing in various relations to each other.” 1 Bl.Comm. 123.

Rights are also classified in constitutional law as natural, civil, and political, to which there is sometimes added the class of “personal rights.”

Natural rights are those which grow out of the nature of man and depend upon personality, as distinguished from such as are created by law and depend upon civilized society; or they are those which are plainly assured by natural law; or those which, by fair deduction from the present physical, moral, social, and religious characteristics of man, he must be invested with, and which he ought to have realized for him in a jural society, in order to fulfill the ends to which his nature calls him. Such are the rights of life, liberty, privacy, and good reputation.

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, equal protection of the laws, freedom of contract, trial by jury, etc. Or as otherwise defined, civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its very general sense, to rights capable of being enforced or redressed in a civil action. Also, a term applied to certain rights secured to citizens of the United States by the Thirteenth and Fourteenth amendments to the Constitution, and by various acts of Congress (e.g. Civil Rights Acts) made in pursuance thereof. See **Bill of Rights; Civil liberties; Civil Rights Acts.**

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right of petition.

Miscellaneous Definitions

Personal rights is a term of rather vague import, but generally it may be said to mean the right of personal security, comprising those of life, limb, body, health, reputation, and the right of personal liberty.

Other Compound and Descriptive Terms

Bill of rights. See that title.

Common right. See **Common**.

Declaration of rights. See **Bill of Rights**.

Exclusive right. See that title.

Marital rights. See **Marital**.

Mere right. In the law of real estate, the mere right of property in land; the right of a proprietor, but without possession or even the right of possession; the abstract right of property.

Patent right. See **Patent**.

Petition of right. See **Petition**.

Private rights. Those rights which appertain to a particular individual or individuals, and relate either to the person, or to personal or real property.

Right heir. See **Heir**.

Riparian rights. See **Riparian**.

Stock rights. See **Stock**.

Vested rights. See **Vested**.

—*Black's Law Dictionary*, 1979
[**Right**

[**rigorous** ... *adj.* **1.** Characterized by or acting with rigor: *a rigorous program to restore physical fitness*. **2.** Full rigors; harsh: *a rigorous climate*. **3.** Rigidly accurate; precise. See Synonyms at **burdensome**. —**rigorously** *adv.* —**rigorousness** *n.*

—*The American Heritage Dictionary of the English Language*, 1992
[**rigorous**

— S —

[**SANCTUARY**. A place of refuge, where the process of the law cannot be executed.

Sanctuaries may be divided into religious and civil. The former were very common in Europe, —religious houses afforded protection from arrest to all persons, whether accused of crime or pursued for debt. This kind was never known in the United States, and was abolished in England by statute 21 Jac. I. c. 28.

Civil sanctuary, or that protection which is afforded to a man by his own house, was always respected in this country. The house protects the owner from the service of all civil process in the first instance, but not if he is once lawfully arrested and takes refuge in his own house. See **DOOR**; **HOUSE**; **ARREST**.

No place affords protection from arrest in criminal cases: a man may, therefore, be arrested in his own house in such cases, and the doors may be broken for the purpose of making the arrest. See **ARREST**. —*Bouvier's Law Dictionary*, 1889

[**Sanctuary**

[**Sanctuary**. In old English law, a consecrated place which had certain privileges annexed to it, and to which offenders were accustomed to resort for refuge, because they could not be arrested there, nor the laws be executed. In general, any holy or consecrated place. —*Black's Law Dictionary*, 1979

[**Sanctuary**

[**Sedition**. Communication or agreement which has as its objective the stirring up of treason or certain lesser commotions, or the defamnation (sic) of the government. Sedition is advocating, or with knowledge of its contents knowingly publishing, selling or distributing any document which advocates, or, with knowledge of its purpose, knowingly becoming a member of any organization which advocates the overthrow or reformation of the existing form of government of this state by violence or unlawful means. An insurrectionary movement tending towards treason, but wanting an overt act; attempts made by meetings or speeches, or by publications, to disturb the tranquillity of the state. See 18 U.S.C.A. § 2383 *et seq.*; see also **Alien and sedition laws**; **Smith Act**. —*Black's Law Dictionary*, 1979

[**Sedition**

[**seize** —*tr.* **1.** to grasp suddenly and forcibly; take or grab: *seize a sword*. **2.a.** To grasp with the mind; apprehend: *seize an idea and develop it to the fullest extent*. **b.** To possess oneself of (something): *seize an opportunity*. **3.a.** To have a sudden, overwhelming effect on: *a heinous crime that seized the minds and emotions of the populace*. **b.** To overwhelm physically: *a person who was seized with a terminal disease*. **4.** To take into custody; capture. **5.** To take quick and forcible possession of; confiscate: *seize a cache of illegal drugs*. **6.** Also **seise** . . . **a.** To put (one) into possession of something. **b.** To vest ownership of a feudal property in. **7. Nautical.** To bind with turns of small line. —*intr.* **1.** To lay sudden or forcible hold of. **2.a.** To cohere or fuse with another part as a result of high pressure or temperature and restrict or prevent further motion or flow. **b.** To

Miscellaneous Definitions

come to a halt: *The talks seized up and were rescheduled....*

—*The American Heritage Dictionary of the English Language*, 1992

[**seize**

[**SERVICE. In Contracts.** The being employed to serve another.

In cases of seduction, the gist of the action is not the injury which the seducer has inflicted on the parent by destroying his peace of mind and the reputation of his child, but for the consequent inability to perform those services for which she was accountable to her master or her parent, who assumes this character for the purpose. See SEDUCTION; 2 M. & W. 539; 7 C. & P. 528.

In Feudal Law. That duty which the tenant owed to his lord by reason of his fee or estate.

The services, in respect of their quality, were either free or base, and in respect of their quantity, and the time of exacting them, were either certain or uncertain. 2 Bla. Com. 62.

In Civil Law. A servitude.

In Practice. The execution of a writ or process. Thus, to serve a writ of *capias* signifies to arrest a defendant under the process; Kirb. 48; 2 Aik. 338; 11 Mass. 181; to serve a summons is to deliver a copy of it at the house of the party, or to deliver it to him personally, or to read it to him: notices and other papers are served by delivering the same at the house of the party, or to him in person.

But where personal service is impossible, through the non-residence or absence of a party, constructive service by *publication* is, in some cases, permitted, and is effected by publishing the paper to be served in a newspaper designated in the order of court and by mailing a copy of the paper to the last known address of the party.

Substituted service is a constructive service made upon some recognized representative, as where a statute requires a foreign insurance company doing business in the State of Massachusetts to appoint the insurance commissioner of the state their attorney, “upon whom all lawful processes in any proceeding against the company may be served with like effect as if the company existed in that commonwealth;” 16 Am. L. Rev. 421. Service by publication is in general held valid only in proceedings *in rem*, where the subject matter is within the jurisdiction of the court, as in suits in partition, attachment, for the foreclosure of mortgages, and the enforcement of mechanics’ liens. In many of the states statutes have been passed to meet this class of cases. In purely personal actions, service by publication is invalid, upon the well-settled principle that the person or thing proceeded against must be within the jurisdiction of the Court entertaining the cause of action. 27 Am. L. Reg. 92; 95 U. S. 704; Story, Contl. L. § 539. Some states, however, have gone so far as to allow suits in chancery to be maintained against non-residents upon constructive service of process by publication; 15 Am. L. Reg, 2. But proceedings in divorce are generally recognized as forming an exception to the rule; Bish. Mar. & D. § 159 *et seq.* See DIVORCE; FOREIGN JUDGMENT; Wall. 329.

When the service of a writ is prevented by the act of the party on whom it is to be served, it will, in general, be sufficient if the officer do everything in his power to serve it; 1 Mann. & G. 238.

—*Bouvier's Law Dictionary*, 1889

[**SERVICE**]

[**Service.** This term has a variety of meanings, dependent upon the context or the sense in which used. *Central Power & Light Co. v. State*, Tex.Civ.App., 165 S.W.2d 920, 925.

Contracts. Duty or labor to be rendered by one person to another, the former being bound to submit his will to the direction and control of the latter. The act of serving the labor performed or the duties required. Occupation, condition, or status of a servant, etc. Performance of labor for benefit of another, or at another's command; attendance of an inferior, hired helper, etc. *Claxton v. Johnson County*, 194 Ga. 43, 20 S.E.2d 606, 610. "Service" and "employment" generally imply that the employer, or person to whom the service is due, both selects and compensates the employee, or person rendering the service.

The term is used also for employment in one of the offices, departments, or agencies of the government; as in the phrases "civil service," "public service," "military service," etc.

Domestic relations. The "services" of a wife, for the loss of which occasioned by an injury to the wife, the husband may recover in an action against the tortfeasor include whatever of aid, assistance, comfort, and society the wife would be expected to render to bestow upon her husband in the circumstances in which they were situated. See **Consortium**.

Feudal law. The consideration which the feudal tenants were bound to render to the lord in recompense for the lands they held of him. The services, in respect of their quality, were either free or base services, and, in respect of their quantity and the time of exacting them, were either certain or uncertain. 2 Bl.Comm. 60.

Practice. The exhibition or delivery of a writ, summons and complaint, criminal summons, notice, order, etc., by an authorized person, to a person who is thereby officially notified of some action or proceeding in which he is concerned, and is thereby advised or warned of some action or step which he is commanded to take or to forbear. Fed.R.Civil Proc. 4 and 5; Fed.R.Crim.P. 4 and 49. Pleadings, motions, orders, etc., after the initial summons are normally served on the party's attorney unless otherwise ordered by court. See *Service of process*, below.

General Classification

Civil service. See that title.

Public utilities. The furnishing of water, heat, light and power, etc., by utility. *Claxton v. Johnson County*, 194 Ga. 43, 20 S.E.2d 606, 610.

Salvage service. See **Salvage**.

Miscellaneous Definitions

Secular service. Worldly employment or service, as contrasted with spiritual or ecclesiastical.

Service of process. The service of writs, summonses, etc., signifies the delivering to or leaving them with the party to whom or with whom they ought to be delivered or left; and, when they are so delivered, they are then said to have been served. Usually a copy only is served and the original is shown. The service must furnish reasonable notice to defendant of proceedings to afford him opportunity to appear and be heard. *Chemical Specialties Sales Corp. Industrial Div. v. Basic Inc., D.C.Conn., 296 F.Supp. 1106, 1107. Fed.R.Civil P. 4; Fed.R.Crim.P. 4.* The various types of service of process are as follows:

Constructive service of process. Any form of service other than actual personal service. Notification of an action or of some proceeding therein, given to a person affected by sending it to him in the mails or causing it to be published in a newspaper. *Fed.R.Civil P. 4(e).* See also *Service by publication; Substituted service*, below.

Long arm statutes. Laws enacted in most states which permit courts to acquire personal jurisdiction of non-residents by virtue of activity within the state. See **Foreign service; Long arm statutes; Minimal contacts.**

Personal service. Actual delivery of process to person to whom it is directed or to someone authorized to receive it in his behalf. *Green Mountain College v. Levine, 120 Vt. 332, 139 A.2d 822, 824.* Personal service is made by delivering a copy of the summons and complaint to the person named or by leaving copies thereof at his dwelling or usual place of abode with some responsible person or by delivering a copy to an agent authorized to receive such. Special rules are also provided for service on infants, incompetents, corporations, the United States or officers or agencies thereof, etc. *Fed.R. Civil P. 4(d); Fed.R.Crim.P. 4(d).*

Proof of service. See **Proof.**

Service by publication. Service of a summons or other process upon an absent or nonresident defendant, by publishing the same as an advertisement in a designated newspaper, with such other efforts to give him actual notice as the particular statute may prescribe. See also *Substituted service*, below.

Substituted service. Any form of service of process other than personal service, such as service by mail or by publication in a newspaper; service of a writ or notice on some person other than the one directly concerned, for example, his attorney of record, who has authority to represent him or to accept service for him. See also **Long arm statutes.**

—*Black's Law Dictionary, 1979*

[**Service**

[**service** *n.*.... **1.a.** Employment in duties or work for another, especially for a government. **b.** A government branch or department and its employees: *the diplomatic service.* **2.a.** The armed forces of a nation. **b.** A branch of the armed forces of a nation. **3.a.** Work or duties performed for a superior. **b.** The occupation

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or duties of a servant. **4.a.** Work done for others as an occupation or a business: *provides full catering service*. **b.** A department or branch of a hospital staff that provides specified patient care: *the anesthesiology service; the chest service*. **5.** Installation, maintenance, or repairs provided or guaranteed by a dealer or manufacturer. **6.** A facility providing the public with the use of something, such as water or transportation. **7.a.** Acts of devotion to God; witness. **b.** A religious rite. **8.** An act of assistance or benefit to another or others; a favor. **9.a.** The serving of food or the manner in which it is served. **b.** A set of dishes or utensils: *a silver tea service*. **10.** *Sports*. The act, manner, or right of serving in many court games; a serve. **11.** Copulation with a female. **12.** *Law*. The serving of a writ or summons. **13.** The material, such as cord, used in binding or wrapping rope.... *tr.v....* **1.** To make fit for use; adjust, repair, or maintain: *service a car*. **2.** To provide services to. **3.** To make interest payments on (a debt). **4.** To copulate with.... *adj....* **1.** Of or relating to the armed forces of a country. **2.** Intended for use in supplying or serving: *a service elevator; the service entrance*. **3.** Offering repairs or maintenance: *a service guarantee; a road service area*. **4.** Offering services to the public in response to need or demand: *a service industry....*

USAGE NOTE: Aside from specialized senses in finance (*service a debt*) and animal breeding (*service a mare*), *service* is used principally in the sense “to repair or maintain”: *service the electric dishwasher*. In the sense “to supply goods or services to,” *serve* is the most frequent or only choice: *One radio network serves three states*.

—*The American Heritage Dictionary of the English Language*, 1992
[**service**]

[**sic**, *adv.* [L.] Thus; it is so; in a quotation, used within brackets in order to call attention to the fact that the quotation is literally given, though containing an ingrammaticism or a misstatement; as, whom [*sic*] do men say that I am?

—*Webster’s Universal Dictionary of the English Language*, 1910-1911
[**sic**]

[**Smith Act**. Federal law which punishes, among other activities, the advocacy of the overthrow of the government by force or violence. An anti-sedition law. 18 U.S.C.A. § 2385.

—*Black’s Law Dictionary*, 1979
[**Smith Act**]

[**social contract** **social contract**, or **compact**, a theory of the origin of human society, first formulated in systematic manner by the 17th-century English philosopher Thomas Hobbes (q.v.). According to Hobbes, men lived originally in a state of nature and enjoyed the right to act as they chose without interference from any source. As this condition of anarchy made life insecure and enabled the strong to dominate the weak, men entered into a compact or contract whereby they submitted voluntarily to necessary limitations on their freedom of action in order to secure the benefits of organized social existence; specifically, they surrendered their right to act as they chose to a sovereign to whom they owed obedience but who was under no obligation to his subjects. Hobbes’ theory contained contradictory

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elements. In positing a social contract as the origin of human society, he synthesized ideas advanced in the latter part of the 16th century and in the 17th century by various Protestant philosophers and writers who sought a democratic doctrine to oppose the authoritarian theory of the divine right of kings. In postulating an absolute sovereign, however, Hobbes included in his theory the central conception against which the doctrines of his predecessors were directed. In effect, Hobbes' theory was an attempt to adapt democratic ideas to conservative political doctrines; in accordance with his theoretical views, he regarded opposition to the government as a species of treason.

In the latter part of the 17th century the philosopher John Locke (q.v.) recast Hobbes' theory in the interest of democratic government. In justifying the Glorious Revolution (q.v.) of 1688 in his *Treatise of Civil Government* (1690), he made a notable presentation of the theory that in constituting social groups men sought a means of preserving life, liberty, and property; and that the powers they had delegated to government were limited to the achievement of those ends. According to Locke, sovereignty rested in the people. In the 18th century Locke's ideas influenced the thinking of the French philosopher Jean Jacques Rousseau (q.v.) and through Rousseau the leaders of the French Revolution of 1789. Locke's views were also influential in shaping the conceptions of government of the leaders of the American Revolution. —*Funk & Wagnalls Standard Reference Encyclopedia*, 1963

[Social Contract

[**society** **1.a.** The totality of social relationships among human beings. **b.** A group of human beings broadly distinguished from other groups by mutual interests, participation in characteristic relationships, shared institutions, and a common culture. **c.** The institutions and culture of a distinct self-perpetuating group. **2.** An organization or association of persons engaged in a common profession, activity, or interest: *a folklore society; a society of bird watchers.* **3.a.** The rich, privileged, and fashionable social class. **b.** The socially dominant members of a community. **4.** Companionship; company: *enjoys the society of friends and family members.* **5. Biology.** A colony or community of organisms, usually of the same species: *an insect society....*—*The American Heritage Dictionary of the English Language*, 1992

[society

[**SOMETHING** no entry.

—*Bouvier's Law Dictionary*, 1889

[something

[**something** some thing; a particular thing not named or known. 2. certain amount or quantity; a part; a little. 3. somewhat; to some extent or degree. 4. thing or person of some value or importance. 5. thing or person that is to a certain extent an example of what is named. Einstein is something of a violinist.

—*Thorndike Century Senior Dictionary*, 1941

[something

[**something** **1:** some indeterminate or unspecified thing **2:** a person or thing of consequence

—*Webster's New Collegiate Dictionary*, 1973

[something

[**Something** ... no entry.

—*Black's Law Dictionary*, 1979

[**SOVEREIGNTY** ... The union and exercise of all human power possessed in a state: it is a combination of all power; it is the power to do everything in a state without accountability, - to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like. Story, Const. § 207.

Abstractly, sovereignty resides in the body of the nation and belongs to the people. But these powers are generally exercised by delegation.

When analyzed, sovereignty is naturally divided into three great powers: namely, the legislative, the executive, and the judiciary: the first is the power to make new laws and to correct and repeal the old; the second is the power to execute the laws, both at home and abroad; and the last is the power to apply the laws to particular facts, to judge the disputes which arise among the citizens, and to punish crimes.

Strictly speaking, in our republican forms of government the absolute sovereignty of the nation is in the people of the nation; and the residuary sovereignty of each state, not granted to any of its public functionaries, is in the people of the state; 2 Dall. 471. And see, generally, 2 Dall, 433, 455; 3 *id.* 93; 1 Story, Const. § 208; 1 Toullier, n. 20; Merlin, Répert. Lieber's Hermenties, p. 250.

—*Bouvier's Law Dictionary*, 1889

[**Sovereignty**

[**space-time**... *n.* *Physics.* The four-dimensional continuum of one temporal and three spatial coordinates in which any event or physical object is located.

—*The American Heritage Dictionary of the English Language*, 1992

[**space-time**

[**spectrum** ... *n.*, *pl.* **-tra** ... or **-trums**. **1.** *Physics.* The distribution of a characteristic of a physical system or phenomenon, especially: **a.** The distribution of energy emitted by a radiant source, as by an incandescent body, arranged in order of wavelengths. **b.** The distribution of atomic or subatomic particles in a system, as in a magnetically resolved molecular beam, arranged in order of masses. **2.** A graphic or photographic representation of such a distribution. **3.a.** A range of values of a quantity or set of related quantities. **b.** A broad sequence or range of related qualities, ideas, or activities: *the whole spectrum of 20th-century thought*....

—*The American Heritage Dictionary of the English Language*, 1992

[**spectrum**

[**spontaneous** ... *adj.* **1.** Happening or arising without apparent external cause; self-generated. **2.** Arising from a natural inclination or impulse and not from external incitement or constraint. **3.** Unconstrained and unstudied in manner or behavior. **4.** Growing without cultivation or human labor; indigenous....

—*The American Heritage Dictionary of the English Language*, 1992

[**spontaneous**

Miscellaneous Definitions

[**statics**... *n.* (used with a *sing.* or *pl. verb*). The equilibrium mechanics of stationary bodies.

—*The American Heritage Dictionary of the English Language*, 1992

[**statics**

[**statism** concentration of economic controls and planning in the hands of a highly centralized government —*Webster's Ninth New Collegiate Dictionary*, 1987

[**statism**

[**STATUTE**. A law established by the act of the legislative power. An act of the legislature. The written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state.

This word is used to designate the written law in contradistinction to the unwritten law. See COMMON LAW.

Among the civilians, the term statute is generally applied to laws and regulations of every sort; every provision of law which ordains, permits, or prohibits anything is designated a statute, without considering from what source it arises. Sometimes the word is used in contradistinction from the Imperial Roman law, which, by way of eminence, civilians call the common law.

A *negative statute* is one expressed in negative terms, and so controls the common law that it has no force in opposition to the statute. Bacon, *Abr. Statute* (G).

An *affirmative statute* is one which is enacted in affirmative terms.

Such a statute does not necessarily take away the common law; Co. 2d Inst. 200. If, for example, a statute without negative words declares that when certain requisites shall have been complied with, deeds shall have a certain effect as evidence, this does not prevent their being used in evidence, though the requisites have not been complied with, in the same manner they might have been before the statute was passed; 2 Caines, 169. Or a custom; 6 Cl. & F. 41. Nor does such an affirmative statute repeal a precedent statute if the two can both be given effect: Dwarris, Stat. 474. The distinction between negative and affirmative statutes has been considered inaccurate; 13 Q. B. 33.

A *declaratory statute* is one which is passed in order to put an end to a doubt as to what is the common law or the meaning of another statute, and which declares what it is and ever has been.

Penal statutes are those which command or prohibit a thing under a certain penalty. Bacon, *Abr.* A statute affixing a penalty to an act, though it does not in words prohibit it, thereby makes it illegal; 14 Johns. 273; 1 Binn. 110; 37 E. L. & E. 475; 14 N. H. 294; 4 Iowa, 490; 7 Ind. 77. See, as to the construction of penal statutes, 2 Cr. L. Mag. Jan. 81.

A *perpetual statute* is one for the continuance of which there is no limited time, although it be not expressly declared to be so.

If a statute which did not itself contain any limitation is to be governed by another which is temporary only, the former will also be temporary and dependent upon the existence of the latter. Bacon, *Abr. Statute* (D).

Private statutes or *acts* are those of which the judges will not take notice without pleading; such as concern only a particular species or person.

Private Statutes may be rendered public by being so declared by the legislature; 1 Bla. Com. 85; 4 Co. 76. And see 1 Kent, 459. Private statutes will not bind *strangers*; though they should contain any saving of their rights. A general saving clause used to be inserted in all private bills; but it is settled that, even if such saving clause be omitted, the act will bind none but the parties.

Public statutes are those of which the courts will take judicial notice without pleading or proof.

They are either general or local, —that is, have operation throughout the state at large, or within a particular locality. It is not easy to say what degree of limitation will render an act local. Thus, it has been held that a public act relating to one county only is not local within the meaning of a constitutional provision which forbids enactments of local bills embracing more than one subject; 5 N. Y. 285; 2 Sandf. 355,

A *remedial* statute is one made to supply such defects and abridge such superfluities in the common law as may have been discovered. 1 Bla. Com. 86.

These remedial statutes are themselves divided into *enlarging* statutes, by which the common law is made more comprehensive and extended than it was before, and into *restraining* statutes, by which it is narrowed down to that which is just and proper. The term *remedial statute* is also applied to those acts which give the party injured a remedy; and in some cases such statutes are penal; Esp. Pen. Act. 1.

A *temporary statute* is one which is limited in its duration at the time of its enactment.

It continues in force until the time of its limitation has expired, unless sooner repealed. A statute which by reason of its nature has only a single and temporary operation — *e.g.* an appropriation bill — is also called a temporary statute.

The most ancient English statute extant is Magna Charta. Formerly the statutes enacted after the beginning of the reign of Edw. III. were called *Nova Statuta*, or new statutes, to distinguish them from the ancient statutes.

There is also a distinction in England between *general* and *special* statutes. The former affect the whole community, or large and important sections, the interest of which may be identical with those of the whole body. *Special* statutes relate to private interests, and deal with the affairs of persons, places, classes, etc., which are not of a public character. Wilb. Stat. 218.

As to *mandatory* and *directory* statutes, see 2 Ky. L. Rep. 166.

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It is a general rule that when the provision of a statute is general, everything which is necessary to make such provision effectual is supplied by the common law; Co. Litt. 235; Co. 2d Inst. 222; and when a power is given by statute, everything necessary for making it effectual is given by implication: *quando lex aliquid concedit, concedere videtur et id sine quo res ipsa esse non potest*; 12 Co. 130.

The provisions of a statute cannot be evaded by any shift or contrivance; 2 B. & C. 655. Whatever is prohibited by law to be done directly cannot legally be effected by an indirect and circuitous contrivance; 7 Cl. & F. 540.

As to the doctrine of the interpretation of Statutes, See CONSTRUCTION; 2 Cr. L. Mag. 1.

The mode of enacting laws in the United States is regulated by the constitution of the Union and of the several states respectively. The advantage of having a law officer, or board of officers, to revise bills and amendments of bills during their progress through the legislature, has been somewhat discussed. It is urged that legislators often have no general knowledge of law, are ignorant or careless of the extent to which a proposed law may affect previous statutes on the same or collateral subjects; amendments, too, are affixed without carefully harmonizing them with the bill amended; and special provisions are resorted to when a more general and simple remedy should be applied. Reports of Eng. Stat. Law Com. 1856, 1857; Street, Council of Revision; 5 Rep. Am. Bar Asso.

Much interesting discussion has arisen on the question whether a statute which appears to be contrary to the laws of God and nature, and to right reason, is void. Earlier dicta in the affirmative (see 8 Co. *118 a; 12 Mod. 687) are not now considered to be law; L. R. 6 C. P. 582. See Dwarris, Stat. 482.

In the United States, a statute which contravenes a provision of the constitution of the state by whose legislature it was enacted, or of the constitution of the United States, is in so far void. See CONSTITUTIONAL. The presumption, however, is that every state statute the object and provision of which are among the acknowledged powers of legislation is valid and constitutional; and such presumption is not to be overcome unless the contrary is clearly demonstrated; 6 Cra. 87; 1 Cow. 564; 7 N. Y. 109. Where a part only of a statute is unconstitutional, the rest is not void if it can stand by itself; 1 Gray, 1.

By the common law, statutes took effect by relation back to the first day of the session at which they were enacted; 4 Term, 660. The injustice which this rule often worked led to the statute of 33 Geo. III. c. 13, which declared that, except when otherwise provided, statutes should take effect from the day of obtaining the royal assent, unless otherwise ordered therein. This rule, however, does not obviate the hardship of sometimes holding men responsible under a law before its promulgation. By the Code Napoleon, a law takes effect in each department of the empire as many days after its promulgation in that department as there are distances of twenty leagues between the seat of government and the place of promulgation. The general rule in America is, that an act takes effect from the time

when the formalities of enactment are actually complete, unless it is ordered otherwise or there is some constitutional or statutory rule on the subject; Cooley, Const. Lim. 190; 7 Wheat. 164. As to retroactive statutes, see Ex POST FACTO.

A statute is not to be deemed repealed merely by the enactment of another statute on the same subject. There must be a positive repugnancy between the provisions of the new law and the old, to work it repeal by implication; and even then the old law is repealed only to the extent of such repugnancy; 16 Pet. 342. This rule is supported by a vast variety of cases. There is, however, a qualification to be observed in the case of a revised law. When the new statute is in effect a revision of the old, it may be treated as superseding the former, though not expressly so declared; 7 Mass. 140; 12 *id.* 537, 545; 1 Pick. 43, 154; 9 *id.* 97; 31 Me. 34; 42 *id.* 53; 16 Barb. 15; 5 E. L. & E. 588; 37 N. H. 295; 30 Vt. 344; 8 Tex. 62; 14 Ill. 334; 6 B. Monr. 146. But compare 9 Ind. 337; 10 *id.* 566. A mere change of phraseology in the revision does not, however, necessarily imply a change in the law; 21 Wend. 316; 7 Barb. 191; 33 N. H. 246; 6 Tex. 34.

Where a new statute expressly repeals the former statute, and the new and the repeal of the old are to take effect at the same time, a provision in the old statute which is embodied in the new is deemed to have continued in force without suspension; 3 Wisc. 667; 15 Ill. 595. But it has been held that where the new law does not go into effect until a time subsequent to that at which the repeal takes effect, such a provision is to be deemed repealed meantime; 12 La. An. 593. But see 1 Pick. 33.

When one statute is repealed by another, the unqualified repeal of the repealing statute revives the original; 21 Pick. 492; 1 Gray, 163; 7 W. & S. 263; 1 Ga. 32. This is the common-law rule; but the contrary is provided by statute in some of the United States. Where a repealing act is unconstitutional, the repeal clause is nevertheless operative; 11 Ind. 489; *contra*, 26 Ala. 165; 3 Gray, 476; 14 Mich. 276.

It is not to be presumed in the courts of any state that statutes which have been enacted in that state have also been enacted in other states. The courts assume that the common law still prevails, unless it is shown to have been modified. 22 Barb. 118; *contra*, where the law of the forum has been changed; 70 Penn. 252. See FOREIGN LAWS.

Some laws, such as charters, or other statutes granting franchises, if accepted or acted upon by the persons concerned, acquire some of the qualities of a contract between them and the state; 4 Wheat. 518; 6 Cra. 87; 10 How. 190, 218, 224, 511.

As to the titles of statutes, see TITLES.

—*Bouvier's Law Dictionary*, 1889

[STATUTE

[Statute. *n.* An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed

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according to the forms necessary to constitute it the law of the state. Such may be public or private, declaratory, mandatory, directory, or enabling, in nature. For mandatory and directory statutes, see **Directory** and **Mandatory statutes**.

Depending upon its context in usage, a statute may mean a single act of a legislature or a body of acts which are collected and arranged according to a scheme or for a session of a legislature or parliament.

This word is used to designate the legislatively created laws in contradistinction to court decided or unwritten laws. See **Common law**.

See also Codification; Mandatory statutes; Revised statutes; Slip law; Slip law print; Special law.

Affirmative statute. See **Affirmative**.

Criminal statute. An act of the Legislature as an organized body relating to crime or its punishment. See **Crime; Criminal law; Penal code; Penal laws**.

Declaratory statute. See **Declaratory**.

Enabling statute. See that title.

Expository statute. See that title.

General statute. A statute relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute.

Local statute. See **Local law**.

Negative statute. A statute expressed in negative terms; a statute which prohibits a thing from being done, or declares what shall *not* be done.

Penal statute. See **Crime; Criminal law; Penal code; Penal laws; Punitive statute**.

Perpetual statute. One which is to remain in force without limitation as to time; one which contains no provision for its repeal, abrogation, or expiration at any future time.

Personal statutes. In foreign and modern civil law, those statutes which have principally for their object the *person*, and treat of property only incidentally. A personal statute, in this sense of the term, is a law, ordinance, regulation, or custom, the disposition of which affects the person and clothes him with a capacity or incapacity, which he does not change with every change of abode, but which, upon principles of justice and policy, he is assumed to carry with him wherever he goes. The term is also applied to statutes which, instead of being general, are confined in their operation to one person or group of persons.

Private statute. A statute which operates only upon particular persons, and private concerns. An act which relates to certain individuals, or to particular classes of men. See **Special law**.

Public statute. A statute enacting a universal rule which regards the whole community, as distinguished from one which concerns only particular individuals and affects only their private rights. See also *General statute*, *supra*.

Punitive statute. See that title.

Real statutes. In the civil law, statutes which have principally for their object property, and which do not speak of persons, except in relation to property.

Reference statutes. See that title.

Remedial statute. See **Remedial**.

Revised statutes. See that title.

Special statute. One which operates only upon particular persons and private concerns. A private statute. Distinguished from a general or public statute. See **Special law**.

Statute fair. In old English law, a fair at which laborers of both sexes stood and offered themselves for hire; sometimes called also "Mop."

Statute-merchant. In old English law, a security for a debt acknowledged to be due, entered into before the chief magistrate of some trading town, pursuant to the statute 13 Edw. I, *De Mercatoribus*, by which not only the body of the debtor might be imprisoned, and his goods seized in satisfaction of the debt, but also his lands might be delivered to the creditor till out of the rents and profits of them the debt be satisfied. Now fallen into disuse.

Statute of accumulations. In old English law, the statute 39 & 40 Geo. III, c. 98, forbidding the accumulation, beyond a certain period, of property settled by deed or will.

Statute of allegiance de facto. An act of 11 Hen. VII, c. 1, requiring subjects to give their allegiance to the actual king for the time being, and protecting them in so doing.

Statute of distributions. See **Distribution**.

Statute of Elizabeth. In old English law, the statute 13 Eliz., c. 5, against conveyances made in fraud of creditors.

Statute of frauds. See **Frauds, Statute of**.

Statute of Gloucester. In old English law, the statute 6 Edw. I, c. 1, A.D. 1278. It takes its name from the place of its enactment, and was the first statute giving costs in actions. 3 Bl.Comm. 399.

Statute of laborers. See **Laborer**.

Statute of limitations. See **Limitation**.

Statute of uses. See **Use**.

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Statute of wills. In old English law, the statute 32 Hen. VIII, c., 1, which enacted that all persons being seised in fee-simple (except *femes covert*, infants, idiots, and persons of non-sane memory) might, by will and testament in writing, devise to any other person, except to bodies corporate, two-thirds of their lands, tenements, and hereditaments, held in chivalry, and the whole of those held in socage. 2 Bl.Comm. 375.

Statute roll. A roll upon which an English statute, after receiving the royal assent, was formerly entered.

Statutes at large. An official compilation of the acts and resolutions of each session of Congress published by the Office of the Federal Register in the National Archives and Records Service. It consists of two parts, the first comprising public acts and joint resolutions, the second, private acts and joint resolutions, concurrent resolutions, treatises, proposed and ratified amendments to Constitution, and Presidential proclamations. The arrangement is currently by Public Law number, and by chapter number in pre-1951 volumes. This is the official print of the law for citation purposes where titles of the United States Code have not been enacted into positive law.

Statutes of amendments and jeofailes. Formerly, statutes whereby a pleader who perceived any slip in the form of his proceedings, and acknowledged the error (jeofaile), was permitted to amend.

Statute staple. See **Staple**.

Temporary statute. One which is limited in its duration at the time of its enactment. It continues in force until the time of its limitation has expired, unless sooner repealed. A statute which by reason of its nature has only a single and temporary operation — *e.g.* an appropriation bill — is also called a temporary statute.

Validating statute. See that title. —*Black's Law Dictionary*, 1979
[Statute

[statute n.... 1. *Law.* A law enacted by a legislature. **2.** A decree or an edict, as of a ruler. **3.** An established law or rule, as of a corporation....

—*The American Heritage Dictionary of the English Language*, 1992
[statute

[statute law n. A law established by legislative enactment.

—*The American Heritage Dictionary of the English Language*, 1992
[statute law

[subduction.... n. A geologic process in which one edge of one crustal plate is forced below the edge of another....

—*The American Heritage Dictionary of the English Language*, 1992
[subduction

[SUBJECT. In Scotch Law. The thing which is the object of an agreement.

In Governmental Law. An individual member of a nation, who is subject to the laws. This term is used in contradistinction to *citizen*, which is applied to the same individual when considering his political rights.

In monarchical governments, by subject is meant one who owes permanent allegiance to the monarch. See Greenl. Ev. § 286; Phill. Ev. 732, n. 1 ; Morse, Citizenship; ALLEGIANCE; CITIZEN; NATURALIZATION

—*Bouvier's Law Dictionary*, 1889

[SUBJECT

[SUBJECT, ...*adj.* under the power of another: liable, exposed: subordinate: subservient. —*n.* one under the power of another: one under allegiance to a sovereign: that on which any operation is performed: that which is treated or handled: (*anat.*) a dead body for dissection: (*art*) that which it is the object of the artist to express: matter, materials....

—*The American Dictionary of the English Language*, 1899

[SUBJECT

[**Subject.** *Constitutional law.* One that owes allegiance to a sovereign and is governed by his laws. The natives of Great Britain are *subjects* of the British government. Men in free governments are subjects as well as *citizens*; as citizens they enjoy rights and franchises; as subjects they are bound to obey the laws. The term is little used, in this sense, in countries enjoying a republican form of government. *Swiss Nat. Ins. Co. v. Miller*, 267 U.S. 42, 45 S.Ct. 213, 214, 69 L.Ed. 504.

Legislation. The matter of public or private concern for which law is enacted. Thing legislated about or matters on which legislature operates to accomplish a definite object or objects reasonably related one to the other. *Crouch v. Benet*, 198 S.C. 185, 17 S.E.2d 320, 322. The matter or thing forming the groundwork of the act. *McCombs v. Dallas County, Tex. Civ.App.*, 136 S.W.2d 975, 982.

The constitutions of several of the state's require that every act of the legislature shall relate to but one *subject*, which shall be expressed in the title of the statute. But term "subject" within such constitutional provisions is to be given a broad and extensive meaning so as to allow legislature full scope to include in one act all matters having a logical or natural connection. *Jaffee v. State*, 76 Okl.Cr. 95, 134 P.2d 1027, 1032.

—*Black's Law Dictionary*, 1979

[**Subject**

[**subject** ... *adj.* **1.** Being in a position or in circumstances that place one under the power or authority of another or others: *All citizens in this nation are subject to the law.* **2.** Prone; disposed: *a child who is subject to colds.* **3.** Likely to incur or receive; exposed: *a directive that could be subject to misinterpretation.* **4.** Contingent or dependent: *Your vacation is subject to the changing weather patterns.* —**subject** *n.* **Abbr. subj.** **1.** One who is under the rule of another or others, especially one who owes allegiance to a government or ruler. **2.a.** One concerning which something is said or done: *She is a subject of gossip in the office.* **b.**

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Something that is treated or indicated in a work of art. **c.** *Music.* A theme of a composition, especially a fugue. **3.** A course or area of study: *Math is her best subject.* **4.** A basis for action; a cause. **5.a.** One that experiences or is subjected to something: *They made him the subject of ridicule.* **b.** One that is the object of clinical study: *The experiment involved 12 subjects.* **c.** One who is under surveillance: *The subject was observed leaving the scene of the murder.* **d.** A corpse intended for study and dissection. **6.** *Grammar.* The noun, noun phrase, or pronoun in a sentence or clause that denotes the doer of the action or what is described by the predicate and that in some languages, such as English, can be identified by its characteristic position in simple sentences and in other languages, such as Latin, by inflectional endings. **7.** *Logic.* The term of a proposition about which something is affirmed or denied. **8.** *Philosophy.* **a.** The essential nature or substance of something as distinguished from its attributes. **b.** The mind or thinking part as distinguished from the object of thought. — **subject** ... *tr.v.* ... **1.** to submit for consideration. **2.** To submit to the authority of. **3.** To expose to something: *The patients on that ward were subjected to infection.* **4.** To cause to experience: *The campers were subjected to extreme weather.* **5.** To subjugate; subdue.....

SYNONYMS: *subject, matter, topic, theme.* These nouns denote the principal idea or point of a speech, a piece of writing, or an artistic work. *Subject* is the most general: “*Well, honor is the subject of my story*” (Shakespeare). *Matter* refers to the material that is the object of thought or discourse: “*This distinction seems to me to go to the root of the matter*” (William James). A *topic* is a subject of discussion, argument, or conversation: “*They would talk of nothing but high life ... with other fashionable topics, such as pictures, taste, Shakespeare*” (Oliver Goldsmith). *Theme* refers especially to a subject, an idea, a point of view, or a perception that is developed and expanded on in a work of art: “*To produce a mighty book, you must choose a mighty theme*” (Herman Melville). See also Synonyms at **citizen, dependent.**

—*The American Heritage Dictionary of the English Language, 1992*

[**subject**

[**submit** **1 a** : to yield to governance or authority **b** : to subject to a condition, treatment, or operation <the metal was *submitted* to analysis> **2** : to present or propose to another for review, consideration, or decision <~ a question to the court> < ~ a bid on a contract> < ~ a report>; also : to deliver formally < *submitted* my resignation> **3** : to put forward as an opinion or contention < we ~ that the charge is not proved> ~ *vi* **1 a** : to yield oneself to the authority or will of another : SURRENDER **b** : to permit oneself to be subjected to something < had to ~ to surgery> **2** : to defer to or consent to abide by the opinion or authority of another

—*Webster's Ninth New Collegiate Dictionary, 1987*

[**submit**

[**sufficient** enough; as much as is needed 2 competent; able

—*Thorndike Century Senior Dictionary*, 1941

[**sufficient**

[**Sufficient**. Adequate, enough, as much as may be necessary, equal or fit for end proposed, and that which may be necessary to accomplish an object. Of such quality, number, force, or value as to serve a need or purpose. *Nissen v. Miller*, 44 N.M. 487, 105 P.2d 324, 326. As to sufficient Consideration see that title.

—*Black's Law Dictionary*, 1979

[**Sufficient**

[**Suffrage** A vote; the act of voting; the right or privilege of casting a vote at public elections. The last is the meaning of the term in such phrases as “the extension of the suffrage,” “universal suffrage,” etc. Right of “suffrage” is right of a man to vote for whom he pleases. *Waterbury Homeowners Ass'n v. City of Waterbury*, 28 Conn.Sup. 295, 259 A.2d 650, 654. —*Black's Law Dictionary*, 1979

[**Suffrage**

[**supernova** ... *n.*, *pl.* **-vae** ... or **-vas**. A rare celestial phenomenon involving the explosion of most of the material in a star, resulting in an extremely bright, short-lived object that emits vast amounts of energy.

—*The American Heritage Dictionary of the English Language*, 1992

[**supernova**

[**support** **1**: to endure bravely or quietly : BEAR **2 a** (1) : to promote the interests or cause of (2) : to uphold or defend as valid or right : ADVOCATE (3) : to argue or vote for **b** (1) : ASSIST, HELP (2) : to act with a (a star actor) (3) : to bid in bridge so as to show support for **c** : to provide with substantiation : CORROBORATE <~ an alibi> **3 a** : to pay the costs of : MAINTAIN **b** : to provide a basis for the existence or subsistence of <the island could probably ~ three - A. B. C. Whipple> **4 a** : to hold up or serve as a foundation or prop for **b** : to maintain (a price) at a desired level by purchases or loans; *also* : to maintain the price of by purchases or loans **5** : to keep from fainting, yielding, or losing courage : COMFORT **6** : to keep (something) going

—*Webster's Ninth New Collegiate Dictionary*, 1987

[**support**

[**Suspicion**. The act of suspecting, or the state of being suspected; imagination, generally of something ill; distrust; mistrust; doubt The apprehension of something without proof or upon slight evidence. Suspicion implies a belief or opinion based upon facts or circumstances which do not amount to proof.—*Black's Law Dictionary*, 1979

[**Suspicion**

[**sylllogism** **1**: **a** deductive scheme of a formal argument consisting of a major and a minor premise and a conclusion (as in “every virtue is laudable; kindness is a virtue; therefore kindness is laudable”) **2**: deductive reasoning **3**: a subtle, specious, or crafty argument

—*Webster's New Collegiate Dictionary*, 1973

[**sylllogism**

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[**syllogism**.... *n*....**1** : **a** deductive scheme of a formal argument consisting of a major and a minor premise and a conclusion (as in “every virtue is laudable; kindness is a virtue; therefore kindness is laudable”) **2**: a subtle, specious, or crafty argument **3**: deductive reasoning....

—*Webster’s Ninth New Collegiate Dictionary*, 1987

[**syllogism**

— T —

[**take** **1.** To get into one's possession by force, skill, or artifice, especially: **a.** To capture physically; seize: *take an enemy fortress.* **b.** To seize with authority; confiscate. **c.** To kill, snare, or trap (fish or game, for example). **d.** *Sports & Games.* To acquire in a game or competition; win: *took the crown in horseracing.* **e.** *Sports & Games.* To defeat: *Our team took the visitors three to one.* **f.** *Sports.* To catch (a ball in play), especially in baseball: *The player took it on the fly.* **g.** *Baseball.* To refrain from swinging at (a pitched ball). **2.** To grasp with the hands; grip: *Take your partner's hand.* **3.** To be affected with; come down with; contract: *The child has taken the flu.* **4.** To encounter or catch in a particular situation; come upon; discover: *Your actions took me by surprise.* **5.** To deal a blow to; strike or hit: *The boxer took his opponent a sharp jab to the ribs.* **6.** To affect favorably or winsomely; charm or captivate: *She was taken by the puppy.* **7.a.** To put (food or drink, for example) into the body; eat or drink: *took a little soup for dinner.* **b.** To draw in; inhale: *took a deep breath.* **8.** To expose one's body to (healthful or pleasurable treatment, for example): *take the sun; take the waters at a spa.* **9.** To bring or receive into a particular relation, association, or other connection: *take a new partner into the firm; take a company national.* **10.** To engage in sex with. **11.** To accept and place under one's care or keeping. **12.** To appropriate for one's own or another's use or benefit; obtain by purchase; secure or buy: *We always take season tickets.* **13.** To assume for oneself: *take all the credit.* **a.** To charge or oblige oneself with the fulfillment of (a task or duty, for example); commit oneself to: *She took the position of chair of the committee.* **b.** To pledge one's obedience to; impose (a vow or promise) upon oneself. **c.** To subject oneself to: *We took extra time to do the job properly.* **d.** To accept or adopt for one's own. **e.** To put forth or adopt as a point of argument, defense, or discussion. **f.** To require or have as a fitting or proper accompaniment: *Intransitive verbs take no direct object.* **14.** To pick out; select or choose: *take any card.* **a.** To choose for one's own use; avail oneself of the use of: *We took a rented car.* **b.** To use (something) as when in operation: *This camera takes 35mm film.* **c.** To use (something) as a means of conveyance or transportation: *take a train to Pittsburgh.* **d.** To use (something) as a means of safety or refuge: *take shelter from the storm.* **e.** To choose and then adopt (a particular route or direction) while on foot or while operating a vehicle: *Take a right at the next corner. The driver downshifted to take the corner.* **15.** To assume occupancy of: *take a seat.* **16.** To require (something) as a basic necessity: *It takes money to live in that town.* **17.** To obtain from a source; derive or draw: *The book takes its title from the Bible.* **18.** To obtain, as through measurement or a specified procedure: *took the patient's temperature.* **19.** To put down in shorthand or cursive writing: *take a letter.* **20.** To put down an image, a likeness, or a representation of by or as by drawing, painting, or photography: *took a picture of us.* **21.a.** To accept (something owed, offered, or given) either reluctantly or willingly: *take criticism.* **b.** To submit to (something inflicted); endure: *didn't take his punishment very well.* **c.** To withstand: *The dam took the heavy flood waters.* **22.a.** To accept or believe (something put forth) as true: *I'll take your word.* **b.** To follow (advice, a

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suggestion, or a lead, for example). **c.** To accept, handle, or deal with in a particular way: *He takes things in stride.* **d.** To consider in a particular relation or from a particular viewpoint: *take the bitter with the sweet.* **23.** To make or perform: *Many crucial decisions were taken as the path of the hurricane was plotted.* **24.a.** To allow to come in; give access or admission to; admit: *The boat took a lot of water but remained afloat.* **b.** To provide room for; accommodate: *We can't take more than 100 guests.* **c.** To become saturated or impregnated with (dye, for example). **25.a.** To understand or interpret: *May I take your smile as an indication of approval?* **b.** To consider; assume: *Take the matter as settled.* **c.** To consider to be equal to; reckon: *We take their number at 1,000.* **d.** To perceive or feel; experience: *I take pleasure in informing you that you have won the prize.* **26.** To carry, convey, lead, or cause to go along to another place: *Don't forget to take your umbrella. This bus takes you to New York.* See Usage Note at **bring.** **27.** To remove from a place: *take the dishes from the sink.* **28.** To secure by removing: *The dentist took two molars.* **29.** To cause to die; kill or destroy: *The blight took these tomatoes.* **30.** To subtract: *take 15 from 30.* **31.a.** To commit and apply oneself to the study of: *take art lessons; take Spanish.* **b.** To study for with success: *took a degree in law.* **32. Informal.** To swindle, defraud, or cheat: *You've really been taken.* —*intr.* **1.** To acquire possession. **2.** To engage or mesh; catch, as gears or other mechanical parts. **3.** To start growing; root or germinate: *Have the seeds taken?* **4.** To have the intended effect; operate or work: *The transfusion apparently took.* **5.** To gain popularity or favor: *The television series, which didn't take, was later canceled.* **6.** To become: *He took sick.* —**take n.** **1.a.** The act or process of taking. **b.** That which is taken. **2.a.** A quantity collected at one time, especially the amount of profit or receipts taken on a business arrangement or venture. **b.** The number of fish, game birds, or other animals killed or captured at one time. **3. Sports.** The amount of money collected as admission to a sporting event; the gate. **4.** The uninterrupted running of a movie or television camera or a set of recording equipment in filming a movie or television program or cutting a record. **5.a.** A scene filmed or televised without interrupting the run of the camera. **b.** A recording made in a single session. **6.a.** A physical reaction, such as a rash, indicating a successful vaccination. **b.** A successful graft. **7. Slang.** An attempt or a try: *He got the answer on the third take.* —**phrasal verbs.** **take after.** **1.** To follow as an example. **2.** To resemble in appearance, temperament, or character. **take apart.** **1.** To divide into parts after disassembling. **2.** To dissect or analyze (a theory, for example), usually in an effort to discover hidden or innate flaws or weaknesses. **3. Slang.** To beat up; thrash. **take back.** To retract (something stated or written). **take down.** **1.** To bring to a lower position from a higher one. **2.** To take apart; dismantle: *take down the Christmas tree.* **3.** To lower the arrogance or the self-esteem of (a person): *really took him down during the debate.* **4.** To put down in writing. **take for.** **1.** To regard as: *Do you take me for a fool?* **2.** To consider mistakenly: *Don't take silence for approval.* **take in.** **1.** To grant admittance to; receive as a guest or an employee. **2.** To reduce in size; make smaller or shorter: *took in the waist on the pair of pants.* **3.** To include or

constitute. **4.** To understand: *couldn't take in the meaning of the word.* **5.** To deceive or swindle: *was taken in by a confidence artist.* **6.** To look at thoroughly; view: *took in the sights.* **7.** To accept (work) to be done in one's house for pay: *took in typing.* **8.** To convey (a prisoner) to a police station. **take off.** **1.** To remove, as clothing: *take one's coat off; take off one's galoshes.* **2.** To release: *took the brake off.* **3.** To deduct as a discount: *took 20 percent off.* **4.** To carry off or away. **5.** *Slang.* **a.** To go off; leave: *took off in a hurry.* **b.** To achieve wide use or popularity: *a new movie that really took off.* **6.** To rise in flight: *The plane took off on time.* **7.** To discontinue: *took off the commuter special.* **8.** To withhold service due, as from one's work: *I'm taking off three days during May.* **take on.** **1.** To undertake or begin to handle: *took on extra responsibilities.* **2.** To hire; engage: *took on more workers during the harvest.* **3.** To oppose in competition: *a wrestler who took on all comers.* **4.** *Informal.* To display violent or passionate emotion: *Don't take on so!* **5.** To acquire (an appearance, for example) as or as if one's own: *Over the years he has taken on the look of a banker.* **take out.** **1.** To extract; remove: *took the splinter out.* **2.** To secure (a license, for example) by application to an authority. **3.** *Informal.* To escort, as a date. **4.** To give vent to: *Don't take your frustration out in such an aggressive manner.* **5.** To obtain as an equivalent in a different form: *took out the money owed in services.* **6.** *Informal.* To begin a course; set out: *The police took out after the thieves.* **7.** *Slang.* **a.** To kill; murder: *Two snipers took out an enemy platoon.* **b.** To search for and destroy in an armed attack or other such encounter: *Combat pilots, flying low to avoid radar, took out the guerrilla leader's bunker in a single mission.* **take over.** To assume the control or management of. **take to.** **1.** To have recourse to; go to, as for safety: *took to the woods.* **2.** To develop as a habit or a steady practice: *take to drink.* **3.** To become fond of or attached to: *"Two keen minds that they are, they took to each other"* (Jack Kerouac). **take up.** **1.** To raise; lift. **2.** To reduce in size; shorten or tighten: *take up a gown.* **3.** To pay off an outstanding debt, mortgage, or note. **4.** To accept (an option, a bet, or a challenge) as offered. **5.** To begin again; resume: *Let's take up where we left off.* **6.** To use up, consume, or occupy: *The extra duties took up most of my time.* **7.** To develop an interest in or devotion to. *take up mountain climbing.* **8.** To deal with: *Let's take up each problem one at a time.* **9.** To assume: *took up a friendly attitude.* **10.** To absorb or adsorb: *crops taking up nutrients.* **11.** To enter into (a profession or business): *took up engineering.* **—idioms. on the take.** *Informal.* Taking or seeking to take bribes or illegal income: *"There were policemen on the take"* (Scott Turow). **take a bath.** *Informal.* To experience serious financial loss: *"Small investors who latched on to hot new issues took a bath in Wall Street"* (Paul A. Samuelson). **take account of.** To take into consideration. **take away from.** To detract: *Her stringy hair takes away from her lovely face.* **take care.** To be careful: *Take care or you will slip on the ice.* **take care of.** To assume responsibility for the maintenance, support, or treatment of. **take charge.** To assume control or command. **take effect.** **1.** To become operative, as under law or regulation: *The curfew takes effect at midnight.* **2.** To produce the desired reaction: *The antibiotics at last began to take effect.* **take exception.** To express

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opposition by argument; object to: *took exception to the prosecutor's line of questioning.* **take five (or ten).** *Slang.* To take a short rest or break, as of five or ten minutes. **take for granted.** **1.** To consider as true, real, or forthcoming; anticipate correctly. **2.** To underestimate the value of: *a publisher who took the editors for granted.* **take heart.** To be confident or courageous. **take hold.** **1.** To seize, as by grasping. **2.** To become established: *The newly planted vines quickly took hold.* **take it.** **1.** To understand; assume: *As I take it, they won't accept the proposal.* **2. Informal.** To endure abuse, criticism, or other harsh treatment: *If you can dish it out, you've got to learn to take it.* **take it on the chin.** *Slang.* To endure punishment, suffering, or defeat. **take it or leave it.** To accept or reject unconditionally. **take it out on.** *Informal.* To abuse (someone) in venting one's own anger. **take kindly to.** **1.** To be receptive to: *take kindly to constructive criticism.* **2.** To be naturally attracted or fitted to; thrive on. **take lying down.** *Informal.* To submit to harsh treatment with no resistance: *refused to take the snub lying down.* **take notice of.** To pay attention to. **take (one's) breath away.** To put into a state of awe or shock. **take (one's) time.** To act slowly or at one's leisure. **take place.** To happen; occur. **take root.** **1.** To become established or fixed. **2.** To become rooted. **take shape.** To take on a distinctive form. **take sick.** *Chiefly Southern U. S.* To become ill. **take sides.** To associate with and support a particular faction, group, cause, or person. **take stock.** **1.** To take an inventory. **2.** To make an estimate or appraisal, as of resources or of oneself. **take stock in.** To trust, believe in, or attach importance to. **take the bench.** *Law.* To assume a judicial position. **take the cake.** **1.** To be the most outrageous or disappointing. **2.** To win the prize; be outstanding. **take the count.** **1.** To be defeated. **2. Sports.** To be counted out in boxing. **take the fall (or hit).** *Slang.* To incur blame or censure, either willingly or unwillingly: *a senior official who took the fall for the failed intelligence operation.* **take the floor.** To rise to deliver a formal speech, as to an assembly. **take the heat.** *Slang.* To incur and endure heavy censure or criticism: *had a reputation for being able to take the heat in a crisis.* **take to the cleaners.** *Slang.* **1.** To rob or swindle. **2.** To take all the money or possessions of, as in a divorce action. **3.** To subject to withering criticism. **take up for.** To support (a person or group, for example) in an argument. **take up the cudgels.** To join in a dispute, especially in defense of a participant. **take up with.** *Informal.* To begin to associate with; consort with: *took up with a fast crowd.*

—*The American Heritage Dictionary of the English Language*, 1992

[**take**

[**Tax court.** The United States Tax Court is a court of record under Article I of the Constitution of the United States (*see* I.R.C. § 7441). The Court was created originally as the United States Board of Tax Appeals by the Revenue Act of 1924 (43 Stat. 336), an independent agency in the executive branch, and continued by the Revenue Act of 1926 (44 Stat. 105), the Internal Revenue Code of 1939, and the Internal Revenue Code of 1954. A change in name to the Tax Court of the United States was made by the Revenue Act of 1942 (56 Stat. 957), and the Article I status

and change in name to United States Tax Court was made by the Tax Reform Act of 1969 (83 Stat. 730).

The Tax Court tries and adjudicates controversies involving the existence of deficiencies or overpayments in income, estate, gift, and personal holding company surtaxes in cases where deficiencies have been determined by the Commissioner of Internal Revenue.

The U.S. Tax Court is one of three trial courts of original jurisdiction which decides litigation involving Federal income, death, or gift taxes. It is the only trial court where the taxpayer must not first pay the deficiency assessed by the IRS. The Tax Court will not have jurisdiction over a case unless the statutory notice of deficiency (*i.e.*, “90-day letter”) has been issued by the IRS and the taxpayer files the petition for hearing within the time prescribed.

State tax courts. Such courts exist in certain states, *e.g.* Maryland, New Jersey, Oklahoma, Oregon. Generally, court has jurisdiction to hear appeals in all tax cases and has power to modify or change any valuation, assessment, classification, tax or final order appealed from. Certain of these tax courts (*e.g.* Minnesota) have small claims sessions at which citizens can argue their own cases without attorneys.

—*Black’s Law Dictionary*, 1979

[Tax court

[teach ... —*tr.* **1.** To impart knowledge or skill to: *teaches children.* **2.** To provide knowledge of; instruct in: *teaches French.* **3.** To condition to a certain action or frame of mind: *teaching youngsters to be self-reliant.* **4.** To cause to learn by example or experience: *an accident that taught me a valuable lesson.* **5.** To advocate or preach: *teaches racial and religious tolerance.* **6.** To carry on instruction on a regular basis in: *taught high school for many years.* —*intr.* To give instruction, especially as an occupation

SYNONYMS: *teach, instruct, educate, train, school, discipline, drill.* These verbs mean to impart knowledge or skill. *Teach* is the most widely applicable: *teaching a child the alphabet; teaches political science.* “*We shouldn’t teach great books; we should teach a love of reading*” (B.F. Skinner). *Instruct* usually suggests methodical teaching: *A graduate student instructed the freshmen in the rudiments of music theory.* *Educate* often implies formal instruction but especially stresses the development of innate capacities that leads to wide cultivation: “*All educated Americans, first or last, go to Europe*” (Ralph Waldo Emerson). *Train* suggests concentration on particular skills intended to fit a person for a desired role: *The young woman attends vocational school, were she is being trained as a computer technician.* *School* often implies an arduous learning process: *The violinist had been schooled to practice slowly to assure accurate intonation.* *Discipline* usually refers to the teaching of control, especially self-control: *The writer has disciplined himself to work between breakfast and lunch every day.* *Drill* implies rigorous instruction or training, often by repetition of a routine: *The French instructor drilled the students in irregular verbs.*

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USAGE NOTE: Some grammarians have objected to the use of *teach* as a transitive verb when its object denotes an institution of learning, as in *Kim teaches grade school*. This usage has wide currency at all levels, however, and is supported by the analogy to phrases such as *grade-school teacher*. It should be regarded as entirely correct.

—*The American Heritage Dictionary of the English Language*, 1992

[**teach**

[**TERRITORY** A part of a country separated from the rest and subject to a particular jurisdiction.

The word is derived from *terreo*, and is said to be so called because the magistrate within his jurisdiction has the power of inspiring a salutary fear. *Dictum est ab eo quod magistratus intra fines ejus terendi jus habet*. Henrion de Pansy, Auth. Judiciaire, 98. In speaking of the ecclesiastical jurisdictions, Francis Duaren observes that the ecclesiastics are said not to have *territory*, nor the power of arrest or removal, and are not unlike the Roman magistrates of whom Gellius says *vocationem habebant non prehensionem*. De Sacris Eccles. Minist. lib. 1, cap. 4.

In American law. A portion of the country subject to and belonging to the United States which is not within the boundary of any state or the District of Columbia.

The constitution of the United States, art. 4, s. 3, provides that the congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property of the United States; and nothing in this constitution shall be construed so as to prejudice any claims of the United States or of any state.

Congress possesses the power to erect territorial governments within the territory of the United States: the power of congress over such territory is exclusive and universal, and their legislation is subject to no control, unless in the case of ceded territory, as far as it may be affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled. Story, Const. § 1322; Rawle, Const. 237; 1 Kent, 243, 359; 1 Pet. 511. See the articles on the various territories; STATE. As to whether a territory is a *state* under the judiciary act, see STATE.

—*Bouvier's Law Dictionary*, 1889

[**territory**

[**TERTIUS INTERVENIENS** (Lat.). **In Civil Law.** One who, claiming an interest in the subject or thing in dispute in action between other parties, asserts his right to act with the plaintiff, to be joined with him, and to recover the matter in dispute, because he has an interest in it; or to join the defendant, and with him oppose the interest of the plaintiff, which it is his interest to defeat. He differs from the intervenor, or he who interpleads in equity. 4 Bouvier, Inst. n. 3819, note.

—*Bouvier's Law Dictionary*, 1889

[**TERTIUS INTERVENIENS**

[**Tertius interveniens...** Lat. In the civil law, a third person intervening; a third person who comes in between the parties to a suit; one who interpleads.

—*Black's Law Dictionary*, 1979

[**Tertius interveniens**

[**thermodynamics** ... *n.* **1.** (*used with a sing. verb.*) Physics that deals with the relationships between heat and other forms of energy. **2.** (*used with a pl. verb.*) Thermodynamic phenomena and processes.

—*The American Heritage Dictionary of the English Language*, 1992

[**thermodynamics**

[**THING** no entry.

—*Bouvier's Law Dictionary*, 1889

[**thing** **1.** any object or substance. **2.** whatever is spoken or thought of; act; deed; fact; event; happening; idea; opinion. **3.** matter; subject; affair; business. **4.** person; creature.

—*Thorndike Century Senior Dictionary*, 1941

[**thing**

[**thing** **1 a:** a matter of concern: AFFAIR <many ~ s to do> **b pl:** state of affairs in general or within a specified or implied sphere <~ s are improving> **c:** a particular state of affairs: SITUATION <look at this ~ another way> **d:** EVENT, CIRCUMSTANCE <that shooting was a terrible ~> **2 a:** DEED, ACT, ACCOMPLISHMENT <do great ~ s> **b:** a product of work or activity <likes to build ~ s> **c:** the aim of effort or activity <the ~ is to get well> **3 a:** a separate and distinct individual quality, fact, idea, or usu. entity **b:** the concrete entity as distinguished from its appearances **c:** a spatial entity **d:** an inanimate object distinguished from a living being **4 a pl:** POSSESSIONS, EFFECTS <pack your ~ s> **b:** whatever may be possessed or owned or be the object of a right **c:** an article of clothing <not a ~ to wear> **d pl:** equipment or utensils esp. for a particular purpose <bring the tea ~ s> **5:** an object or entity not precisely designated or capable of being designated (use this ~> **6 a:** DETAIL, POINT <checks every little ~> **b:** a material or substance of a specified kind <avoid starchy ~ s> **7 a:** a spoken or written observation or point **b:** IDEA, NOTION <says the first ~ he thinks of> **c:** a piece of news or information <couldn't get a ~ out of him> **8:** INDIVIDUAL <not a living ~ in sight> **9:** the proper or fashionable way of behaving, talking, or dressing - used with *the* **10 a:** a mild obsession or phobia <has a ~ about driving>; *also:* the object of such an obsession or phobia **b:** something (as an activity) that makes a strong appeal to the individual: FORTE <letting students do their own ~ - *Newsweek* >

—*Webster's New Collegiate Dictionary*, 1973

[**thing**

[**Thing** no entry

—*Black's Law Dictionary*, 1979

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[**THINGS** By this word is understood every object, except man, which may become an active subject of right. Code du Canton de Berne, art. 332. In this sense it is opposed, in the language of the law, to the word persons. See CHOSE; PROPERTY; RES. —*Bouvier's Law Dictionary*, 1889

[**things**

[**things** no entry. —*Thorndike Century Senior Dictionary*, 1941

[**things** no entry. —*Webster's New Collegiate Dictionary*, 1973

[**Things**. The objects of dominion or property as contradistinguished from “persons.” *Western Union Telegraph Co. v Bush*, 191 Ark. 1085, 89 S.W.2d 723, 725; *Gayer v. Whelan*, 59 Cal.App.2d 255, 138 P.2d 763, 768. The object of a right; *i.e.* , whatever is treated by the law as the object over which one person exercises a right, and with reference to which another person lies under a duty.

The word “estate” in general is applicable to anything of which riches or fortune may consist. The word is likewise relative to the word “things,” which is the second object of jurisprudence, the rules of which are applicable to persons, things, and actions.. Civ.Code La. art. 448.

Such permanent objects, not being persons, as are sensible, or perceptible through the senses. Things are distributed into three kinds: (1) Things real or immovable, comprehending lands, tenements, and hereditaments; (2) things personal or movable, comprehending goods and chattels; and (3) things mixed, partaking of the characteristics of the two former, as a title-deed, a term for years. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*).

—*Black's Law Dictionary*, 1979

[**Things**

[**time dilatation** *n.* The relativistic slowing of a clock that moves with respect to a stationary observer. Also called *time dilation*.

—*The American Heritage Dictionary of the English Language*, 1992

[**time dilatation**

[**TITLE** **Estates**. The means whereby the owner of lands hath the just possession of his property. Co. Litt. 345; 2 Bla. Com. 195. See 1 Ohio, 349. This is the definition of title to lands only.

A *bad* title is one which conveys no property to the purchaser of an estate.

A *doubtful* title is one which the court does not consider to be so clear that it will enforce its acceptance by a purchaser, nor so defective as to declare it a bad title, but only subject to so much doubt that a purchaser ought not to be compelled to accept it; 1 J. & W. 568; 9 Cow. 344.

A *good* title is that which entitles a man by right to a property or estate, and to the lawful possession of the same.

A *marketable* title is one which a court of equity considers to be so clear that it will enforce its acceptance by a purchaser.

The ordinary acceptance of the term *marketable title* would convey but a very imperfect notion of its legal and technical import. To common apprehension, unfettered by the technical and conventional distinction of lawyers, all titles being either good or bad, the former would be considered marketable, the latter non-marketable. But this is not the way they are regarded in courts of equity, the distinction taken there being, not between a title which is absolutely good or absolutely bad, but between a title which the court considers to be so clear that it will enforce its acceptance by a purchaser, and one which the court will not go so far as to declare a bad title, but only that it is subject to so much doubt that a purchaser ought not to be compelled to accept it; 1 J. & W. 568 In short, whatever may be the private opinion of the court as to the goodness of the title, yet if there be a reasonable doubt either as to a matter of law or fact involved in it, a purchaser will not be compelled to complete his purchase; and such a title, though it may be perfectly secure and unimpeachable as a holding title, is said, in the current language of the day, to be unmarketable; Atkins, Tit. 2.

The doctrine of marketable titles is purely equitable and of modern origin; *id.* 26. At law every title not bad is marketable; 5 Taunt. 625; 6 *id.* 263; 1 Marsh. 258. See 2 Penn. L. J. 17.

There are several stages or degrees requisite to form a complete title to lands and tenements. The lowest and most imperfect degree of title is the *mere possession*, or actual occupation of the estate, without any apparent right to hold or continue such possession: this happens when one man disseises another. The next step to a good and perfect title is the *right of possession*, which may reside in one man while the actual possession is not in himself, but in another. This right of possession is of two sorts; an *apparent* right of possession, which may be defeated by proving a better, and an *actual* right of possession, which will stand the test against all opponents. The mere *right of property*, the *jus proprietatis*, without either possession or the right of possession. 2 Bla. Com. 195.

Title to real estate is acquired by two methods, namely, by *descent* and by *purchase*. See these words.

Title to personal property may accrue in three different ways; by *original acquisition*; by *transfer by act of law*; by *transfer by act of the parties*.

Title by original acquisition is acquired by *occupancy*, see OCCUPANCY; by *accession*, see ACCESSION; by *intellectual labor*. See PATENT; COPYRIGHT.

The title to personal property is acquired and lost by transfer by act of law, in various ways; by *forfeiture*; *succession*; *marriage*; *judgement*; *insolvency*; *intestacy*. See those titles.

Title is acquired and lost by transfer by the act of the party, by *gift*, by *contract* or *sale*.

In general, possession constitutes the criterion of title of personal property, because no other means exist by which a knowledge of the fact to whom it belongs can be

Miscellaneous Definitions

attained. A seller of a chattel is not, therefore, required to show the origin of his title, nor, in general, is a purchaser, without notice of the claim of the owner, compellable to make restitution; but it seems that a purchaser from a tenant for life of personal chattels will not be secure against the claims of those entitled in remainder; Cowp. 432; 1 Bro. C. C. 274; 2 Term, 376; 3 Atk. 44; 3 V. & B. 16.

As an exception to the rule that possession is the criterion of title of property may be mentioned the case of ships, the title of which can be ascertained by the register; 15 Ves. Ch. 60; 17 *id.* 251; 8 Price, 256, 277.

To convey a title, the seller must himself have a title to the property which is the subject of the transfer. But to this general rule there are exceptions. The lawful coin of the United States will pass the property along with the possession. A negotiable instrument indorsed in blank is transferable by any person holding it, so as by its delivery to give a good title "to any person honestly acquiring it;" 3 B. & C. 47; 3 Burr. 1516; 5 Term, 683

In Legislation ...

—*Bouvier's Law Dictionary*, 1889

[**TITLE**

[**title** 1. the name of a book, poem, picture, song, etc. 2. name showing rank, occupation, or condition in life. King, duke, lord, countess, captain, doctor, professor, Madame, and Miss are titles. 3. call by a title; name. 4. championship; first-place position; as, the tennis title. 5. legal right to the possession of property; the evidence showing such a right. 6. claim; right.—*Thorndike Century Senior Dictionary*, 1941

[**title**

[**title** **1 a obs** : INSCRIPTION **b**: written material introduced into a motion picture or television program to give credits, explain an action, or represent dialogue - usu. used in pl. **2 a**: the union of all the elements constituting legal ownership **b**: something that constitutes a legally just cause of exclusive possession **c**: the instrument (as a deed) that is evidence of a right **3 a**: something that justifies or substantiates a claim **b**: an alleged or recognized right **4 a**: a descriptive or general heading (as of a chapter in a book) **b**: the heading which names an act or statute **c**: the heading of a legal action or proceeding **5 a**: the distinguishing name of a written, printed, or filmed production **b**: a similar distinguishing name of a musical composition or a work of art **6**: a descriptive name: APPELLATION **7**: a division of an instrument, book, or bill; *esp* : one larger than a section or article **8 a**: an appellation of dignity, honor, distinction, or preeminence attached to a person or family by virtue of rank, office, precedent, privilege, attainment, or lands. **b**: a person holding a title *esp.* of nobility **9**: a literary work as distinguished from a particular copy <published 25 ~ s last year> **10**: CHAMPIONSHIP I <won the batting ~>

—*Webster's New Collegiate Dictionary*, 1973

[**title**

[**Title**. A mark, style, or designation; a distinctive appellation; the name by which anything is known. Thus, in the law of persons, a title is an appellation of dignity

or distinction, a name denoting the social rank of the person bearing it; as “duke” or “count.” So, in legislation, the title of a statute is the heading or preliminary part, furnishing the name by which the act is individually known. It is usually prefixed to the statute in the form of a brief summary of its contents; as “An act for the prevention of gaming.” Again, the title of a patent is the short description of the invention, which is copied in the letters patent from the inventor’s petition; *e.g.*, “a new and improved method of drying and preparing malt.”

The title of a book, or any literary composition, is its name; that is, the heading or caption prefixed to it, and disclosing the distinctive appellation by which it is to be known. This usually comprises a brief description of its subject-matter and the name of its author

See also Abstract of title; Action to quiet title; Color of title; Cloud on title; Defective title; Disparagement of title; Doubtful title; Good title; Indicia of title; Just title; Legal title; Marketable title; Marketable Title Acts; Merchantable title; Muniments of title; Non-merchantable title; Onerous title; Owner; Ownership; Paramount title; Possession; Recording acts; Torrens title system; Worthier title.

Law of Trade-Marks

A title may become a subject of property; as one who has adopted a particular title for a newspaper, or other business enterprise, may, by long and prior usage, or by compliance with statutory provisions as to registration and notice, acquire a right to be protected in the exclusive use of it.

Real Property Law.

Title is the means whereby the owner of lands has the just possession of his property. The union of all the elements which constitute ownership. Full independent and fee ownership. The right to or ownership in land; also, the evidence of such ownership. Such ownership may be held individually, jointly, in common, or in cooperate or partnership form.

One who holds vested rights in property is said to have title whether he holds them for his own benefit or for the benefit of another. Restatement, Second, Trusts, § 2, Comment d.

See also **Deed; Estate**

—*Black’s Law Dictionary*, 1979

[**Title**

Miscellaneous Definitions

[**Transact.** To “transact” means to prosecute negotiations; to carry on business; to have dealings; to carry through; bring about; perform; to carry on or conduct; to pass back and forth as in negotiations or trade; to bring into actuality or existence. *Knoepfle v. Suko*, N.D., 108 N.W.2d 456, 462. The word embraces in its meaning the carrying on or prosecution of business negotiations, but it is a broader term than the word “contract” and may involve business negotiations which have been either wholly or partly brought to a conclusion. *Bozied v. Edgerton*, 239 Minn. 227, 58 N.W.2d 313, 316. See also **Negotiate; Transaction.**

—*Black’s Law Dictionary*, 1979

[**Transact**

[**transact** —*tr.* to do, carry on, or conduct: *transact business over the phone; transacting trade agreements.* —*intr.* To conduct business: *transacting with foreign leaders....* —*The American Heritage Dictionary of the English Language*, 1992

[**transact**

[**TRANSACTION** (from Lat. *trans* and *ago*, to carry on). **In Civil Law.** An agreement between two or more persons, who, for the purpose of preventing or putting an end to a lawsuit, adjust their difference, by mutual consent, in the manner which they agree on. In Louisiana this contract must be reduced to writing. La. Civ. Code, art. 3038.

Transactions regulate only the differences which appear to be clearly comprehended in them by the intentions of the parties, whether they be explained in a general or particular manner, unless it be the necessary consequence of what is expressed; and they do not extend to differences which the parties never intended to include in them. La. Civ. Code, art. 3040.

To transact, a man must have the capacity to dispose of the things included in the transaction. I Domat. Lois Civiles, 1, 13, 1; Dig. 2. 15. 1; Code, 2. 4. 41. In the common law this is called a compromise. See COMPROMISE.

—*Bouvier’s Law Dictionary*, 1889

[**TRANSACTION**

[**Transaction.** Act of transacting or conducting any business; negotiation; management; proceeding; that which is done; an affair. It may involve selling, leasing, borrowing, mortgaging or lending. Something which has taken place, whereby a cause of action has arisen. It must therefore consist of an act or agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. It is a broader term than “contract”. *Hoffman Machinery Corporation v. Ebenstein*, 150 Kan. 790, 96 P.2d 661, 663. See also **Transact.**

Civil law. An agreement between two or more persons, who, for preventing or putting an end to a lawsuit, adjust their differences by mutual consent, in the manner which they agree on. This contract must be reduced into writing. Civ.Code La. art. 3071.

Miscellaneous Definitions

Evidence. A “transaction” between a witness and a decedent, within statutory provisions excluding evidence of such transactions, embraces every variety of affairs which can form the subject of negotiations, interviews, or actions between two persons, and includes every method by which one person can derive impressions or information from the conduct, condition, or language of another. An action participated in by witness and decedent and to which decedent could testify of his own personal knowledge, if alive. *Nelson v. Janssen*, 144 Neb. 811, 14 N.W.2d 662, 665. A personal or mutual transaction wherein deceased and witness actively participate.

—*Black’s Law Dictionary*, 1979

[Transaction

[**transaction** *n.* *Abbr.* **trans.** 1. The act of transacting or the fact of being transacted. 2. Something transacted, especially a business agreement or exchange. 3. Communication involving two or more people that affects all those involved; personal interaction: “*a rich sense of the transaction between writer and reader*” (William Zinsser). 4. **transactions.** A record of business conducted at a meeting; proceedings.... —*The American Heritage Dictionary of the English Language*, 1992

[transaction

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– U –

[**UNALIENABLE** Incapable of being sold.

Things which are not in commerce, as, public roads, are in their nature unalienable. Some things are unalienable in consequence of particular provisions in the law forbidding their sale or transfer: as, pensions granted by the government. The natural rights of life and liberty are unalienable. —*Bouvier's Law Dictionary*, 1889

[**unalienable**

[**Unalienable** Inalienable; incapable of being aliened, that is, sold and transferred.

Inalienable rights. Rights which can never be abridged because they are so fundamental. —*Black's Law Dictionary*, 1979

[**Unalienable**

[**unambiguous** *adj.* Having or exhibiting no ambiguity or uncertainty; clear: “As a horror, apartheid ... is absolutely unambiguous. There are ... no shades of interpretation or circumstances to weigh that might make coming to a moral judgment more difficult” (Mario Vargas Llosa)...

—*The American Heritage Dictionary of the English Language*, 1992

[**unambiguous**

[**universe** ... *n.* **1.** All matter and energy, including Earth, the galaxies and all therein, and the contents of intergalactic space, regarded as a whole. **2.a.** The earth together with all its inhabitants and created things. **b.** The human race. **3.** The sphere or realm in which something exists or takes place. **4.** *Logic.* See **universe of discourse**. **5.** *Statistics.* See **population** (sense 5)....

—*The American Heritage Dictionary of the English Language*, 1992

[**universe**

[**Usurpation** The unlawful encroachment or assumption of the use of property, power or authority which belongs to another. An interruption or the disturbing a man in his right and possession.

The unlawful seizure or assumption of sovereign power. The assumption of government or supreme power by force or illegally, in derogation of the constitution and of the rights of the lawful ruler.

Usurpation for which writ of prohibition may be granted involves attempted exercise of power not possessed by inferior officer. —*Black's Law Dictionary*, 1979

[**Usurpation**

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— V —

[**Valid.** Having legal strength or force, executed with proper formalities, incapable of being rightfully overthrown or set aside. *Bennett v. State*, 46 Ala.App. 535, 245 So.2d 570, 572 Of binding force; legally sufficient or efficacious; authorized by law. Good or sufficient in point of law; efficacious; executed with the proper formalities; incapable of being rightfully overthrown or set aside; sustainable and effective in law, as distinguished from that which exists or took place in fact or appearance, but has not the requisites to enable it to be recognized and enforced by law. A deed, will, or other instrument, which has received all the formalities required by law, is said to be valid.

Meritorious, as, a *valid* defense.

See also **Legal.**

—*Black's Law Dictionary*, 1979

[**Valid**

[**vector**... *n.* **1. Mathematics.** **a.** A quantity, such as velocity, completely specified by a magnitude and a direction. **b.** A one-dimensional array. **c.** An element of a vector space. **2. Pathology.** An organism, such as a mosquito or tick, that carries disease-causing microorganisms from one host to another. **3. Genetics.** A bacteriophage, a plasmid, or another agent that transfers genetic material from one location to another. **4.** A force or an influence. —**vector** *tr.v.* **-tored, -toring, -tors.** To guide (a pilot or an aircraft, for example) by means of radio communication according to vectors....

—*The American Heritage Dictionary of the English Language*, 1992

[**vector**

[**velocity**... *n., pl.* **-ties.** **1. Abbr. vel.** Rapidity or speed of motion; swiftness. **2. Abbr. V** *Physics.* A vector quantity whose magnitude is a body's speed and whose direction is the body's direction of motion. **3.a.** The rate of speed of action or occurrence. **b.** The rate at which money changes hands in an economy....

—*The American Heritage Dictionary of the English Language*, 1992

[**velocity**

[**VEST** To give an immediate fixed right of present or future enjoyment. An estate is vested in possession when there exists a right of present enjoyment; and an estate is vested in interest when there is a present fixed right of future enjoyment. *Fearne, Cont. Rem.* 2. See *Roper, Leg.* 757; *Comyns, Dig. Vest*; *Vern.* 323, n.; 5 *Ves.* 511; 6 *McLean*, 422; 29 *N.C.* 321. —*Bouvier's Law Dictionary*, 1889

[**vest**

[**vest** **1.** To clothe; to cover, surround, or encompass closely; to dress.

2. To clothe, as with power; to furnish; to invest; followed by *with* ; as, to *vest* a man *with* authority; to *vest* a court *with* power to try cases.

3. To put in possession of a person to use and to hold; followed by *in* ; as, the supreme executive power in the United States is *vested in* the president.

Miscellaneous Definitions

4. To clothe with another form; to convert into another species of property; to invest; followed by *in* ; as, to *vest* money *in* goods. [Rare.]

—*Webster's Universal Dictionary of the English Language*, 1910

[**vest**

[**vest** **1a**: to place or give into the possession or discretion of some person or authority; *esp*: to give to a person a legally fixed immediate right of present or future enjoyment of (as an estate) **b**: to grant or endow with a particular authority, right, or property <the retirement plan ~s the workers absolutely with the company's contribution after 10 years of continuous employment> **2**: to clothe with or as if with a garment; *esp*: to robe in ecclesiastical vestments ~*vi* 1: to become legally vested **2**: to put on garments; *esp*: to put on ecclesiastical vestments

—*Webster's Ninth New Collegiate Dictionary*, 1987

[**vest**

[**vested interest** **1 a**: an interest (as a title to an estate) carrying a legal right of present or future enjoyment **b**: a right vested in an employee under a pension plan **2**: a special concern or stake in maintaining or influencing a condition, arrangement, or action *esp.* for selfish ends **3**: one having a vested interest in something; *specif*: a group enjoying benefits from an existing economic or political privilege.

—*Webster's Ninth New Collegiate Dictionary*, 1987

[**vested interest**

[**VIOLATION**. An act done unlawfully and with force. In the English statute of 25 Edw. III. st. 5, c. 2, it is declared to be high treason in any person who shall violate the king's companion; and it is equally high treason in her to suffer willingly such violation. This word has been construed under this statute to mean carnal knowledge; 3 Inst. 9; Bacon, Abr. Treason (E). —*Bouvier's Law Dictionary*, 1889

[**VIOLATION**

[**Violation**. Injury; infringement; breach of right, duty or law; ravishment; seduction.

—*Black's Law Dictionary*, 1979

[**Violation**

[**Void**. Null; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended. *Hardison v. Gledhill*, 72 Ga.App. 432, 33 S.E.2d 921, 924.

There is this difference between the two words "void" and "voidable": *void* in the strict sense means that an instrument or transaction is nugatory and ineffectual so that nothing can cure it; *voidable* exists when an imperfection or defect can be cured by the act or confirmation of him who could take advantage of it. The term "void," however, as applicable to conveyances or other agreements, has not at all times been used with technical precision, nor restricted to its peculiar and limited sense, as contradistinguished from "voidable"; it being frequently introduced, even by legal writers and jurists, when the purpose is nothing further than to indicate that a contract was invalid, and not binding in law. But the distinction between the terms "void" and "voidable," in their application to contracts, is often one of great

practical importance; and, whenever entire technical accuracy is required, the term “void” can only be properly applied to those contracts that are of no effect whatsoever, such as are a mere nullity, and incapable of confirmation or ratification.

The word “void,” in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of “voidable.”

The word “void” is used in statutes in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the Legislature intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only.

—*Black’s Law Dictionary*, 1979

[**Void**

[**VOW**. No entry.

—*Bouvier’s Law Dictionary*, 1889

[**VOW**

[**Vow**. No entry.

—*Black’s Law Dictionary*, 1979

[**Vow**

[**vow** *n.* **1.** An earnest promise to perform a specified act or behave in a certain manner, especially a solemn promise to live and act in accordance with the rules of a religious order: *take the vows of a nun.* **2.** A declaration or an assertion. —**vow** *v.* **vowed, vow•ing, vows.** —*tr.* **1.** To promise solemnly; pledge. See Synonyms at **promise.** **2.** To make a pledge or threat to undertake: *vowing revenge on their persecutors.* —*intr.* To make a vow; promise....

—*The American Heritage Dictionary of the English Language*, 1992

[**vow**

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– W –

[**willful** **1.** Said or done on purpose; deliberate. See Synonyms at **voluntary**.
2. Obstinate bent on having one's own way. See Synonyms at **unruly**.
–**willfully** *adv.*....

–*The American Heritage Dictionary of the English Language, 1992*

[**willful**

– X –

– Y –

– Z –

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