N

N.A. An abbreviation for *"non allocatur"*; it is not allowed. Also sometimes used as abbreviation for "not available" or "not applicable".

Naam /næm/. Sax. The attaching or taking of movable goods and chattels, called *"vif"* or *"mort"* according as the chattels were living or dead.

Naif /nayíyf/. L. Fr. A villein; a born slave; a bondwoman.

Nail. A lineal measure of two inches and a quarter.

Naked. Bare; wanting in necessary conditions; incomplete, as a naked contract *(nudum pactum), i.e.,* a contract devoid of consideration, and therefore invalid; or, simple, unilateral, comprising but a single element, as a naked authority, *i.e.,* one which is not coupled with any interest in the agent, but subsists for the benefit of the principal alone.

As to naked Confession; Deposit; Possession; Possibility; Power; Promise; and Trust, see those titles.

Nam /næm/. In old English law, a distress or seizure of chattels.

As a Latin conjunction, for; because. Often used by the old writers in introducing the quotation of a Latin maxim.

Namare /nəmériy/. L. Lat. In old English law, to take, seize or distrain.

Namatio /nəméysh(iy)ow/. L. Lat. In old English and Scotch law, a distraining or taking of a distress; an impounding.

Name. The designation of an individual person, or of a firm or corporation.

A person's "name" consists of one or more Christian or given names and one surname or family name. It is the distinctive characterization in words by which one is known and distinguished from others, and description, or abbreviation, is not the equivalent of a "name."

See also Alias; Christian name; Corporate name; Fictitious name; Full name; Generic *(Generic name);* Legal name; Nickname; Street name; Surname; Tradename.

Corporate name. Most states require corporations doing business under an assumed or fictitious name to register, record, or register and record, the name with state, county, or state and county officials.

Distinctive name. As used in regulation of United States Department of Agriculture, a trade, arbitrary, or fancy name which clearly distinguishes a food product, mixture, or compound from any other food product, mixture, or compound. U. S. v. Forty Barrels and Twenty Kegs of Coca Cola, 241 U.S. 265, 36 S.Ct. 573, 580, 60 L.Ed. 995.

Generic name. The general or nontrademark name of a product. For example, the trade names of a particular type of fiber may be Antron, Cantrece, Qiana; but the generic name of that fiber is nylon.

Name and arms clause. The popular name in English law for the clause, sometimes inserted in a will or settlement by which property is given to a person, for the purpose of imposing on him the condition that he shall assume the surname and arms of the testator or settlor, with a direction that, if he neglects to assume or discontinues the use of them, the estate shall devolve on the next person in remainder, and a provision for preserving contingent remainders.

Named insured. In insurance, the person specifically designated in the policy as the one protected and, commonly, it is the person with whom the contract of insurance has been made.

Namely. A difference, in grammatical sense, in strictness exists between the words namely and including. Namely imports interpretation, *i.e.,* indicates what is included in the previous term; but including imports addition, *i.e.,* indicates something not included.

Namium /néymiyəm/. L. Lat. In old English law, a taking; a distress. Things, goods, or animals taken by way of distress. *Simplex namium,* a simple taking or pledge.

Namium vetitum /néymiyəm védədəm/. An unjust taking of the cattle of another and driving them to an unlawful place, pretending damage done by them.

Nantissement /nòntismón/. In French law, the contract of pledge; if of a movable, it is called *"gage;"* and if of an immovable, it is called *"antichrèse."*

Narcoanalysis. Process whereby a subject is put to sleep, or into a semi-somnolent state by means of chemical injections and then interrogated while in this dreamlike state.

Narcotic. Generic term for any drug which dulls the senses or induces sleep and which commonly becomes addictive after prolonged use.

NAR. National Association of Realtors.

Narr. A common abbreviation of *"narratio" (q.v.).* A declaration in an action.

Narr and cognovit law. Law providing that judgment may be had for plaintiff on notes by confession of any attorney that amount shown on notes, together with interest and costs, constitutes legal and just claim; word "narr" being an abbreviation of Latin word "narratio," meaning complaint or petition, and word "cognovit" meaning that defendant has confessed judgment and justice of claim. Dyer v. Johnson, Tex.Civ.App., 19 S.W.2d 421, 422. See **Judgment** *(Confession of judgment).*

Narratio /nəréysh(iy)ow/. Lat. One of the common law names for a plaintiff's count or declaration, as being a narrative of the facts on which he relies.

Narrative evidence. Testimony from a witness which he is permitted to give without the customary questions and answers; *e.g.* when witness explains in detail what happened without interruption.

Narrator. A countor; a pleader who draws *narrs. Serviens narrator,* a serjeant at law.

Narrow seas. Those seas which run between two coasts not far apart. The term is sometimes applied to the English channel.

NASA. National Aeronautics and Space Administration.

Nasciturus /næsət(y)úrəs/. Lat. That shall hereafter be born. A term used in marriage settlements to designate the future issue of the marriage, as distinguished from *"natus,"* a child already born.

NASD. The National Association of Securities Dealers, Inc. An association of brokers and dealers in the over-the-counter securities business. The Association has the power to expel members who have been declared guilty of unethical practices.

Natale /nətéyliy/. The state and condition of a man acquired by birth.

Nati et nascituri /néyday èt næsət(y)úray/. Born and to be born. All heirs, near and remote.

Natio /néysh(iy)ow/. In old records, a native place.

Nation. A people, or aggregation of men, existing in the form of an organized jural society, usually inhabiting a distinct portion of the earth, speaking the same language, using the same customs, possessing historic continuity, and distinguished from other like groups by their racial origin and characteristics, and generally, but not necessarily, living under the same government and sovereignty. Montoya v. U. S., 180 U.S. 261, 21 S.Ct. 358, 45 L.Ed. 521; Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 8 L.Ed. 483.

In American constitutional law the word "state" is applied to the several members of the American Union, while the word "nation" is applied to the whole body of the people embraced within the jurisdiction of the federal government.

National. Pertaining or relating to a nation as a whole. Commonly applied in American law to institutions, laws, or affairs of the United States or its government, as opposed to those of the several states. "National" contemplates an activity with a nationwide scope. In re National Foundation for Diarrheal Diseases, 8 Misc.2d 12, 164 N.Y.S.2d 177, 178. See also **Federal.**

The term "national" as used in the phrase "national of the United States" is broader than the term "citizen". Brassert v. Biddle, D.C.Conn., 59 F.Supp. 457, 462.

National bank. A bank incorporated and doing business under the laws of the United States, as distinguished from a *state* bank, which derives its powers from the authority of a particular state. Most such banks are members of the Federal Reserve System and the Federal Deposit Insurance Corporation.

National currency. Legal tender; that which circulates as money. Notes issued by national banks, and by the United States government. See **Currency; Federal Reserve notes; Legal tender.**

National debt. The money owing by government to some of the public or to financial institutions, the interest of which is paid out of the taxes raised by the whole of the public (*i.e.* out of general revenues).

National defense. A generic concept and refers to the military and naval establishments and the related activities of national preparedness and includes all matters directly and reasonably connected with the defense of the nation against its enemies. Gorin v. United States, 312 U.S. 19, 61 S.Ct. 429, 434, 436, 85 L.Ed. 488.

National domain. See **Domain.**

National domicile. See **Domicile.**

National emergency. A state of national crisis; a situation demanding immediate and extraordinary national or federal action. Congress has made little or no distinction between a "state of national emergency" and a "state of war". Brown v. Bernstein, D.C.Pa., 49 F.Supp. 728, 732.

National Environmental Policy Act. Federal Act setting forth declaration of national environmental policy and goals. Major provision requires that every federal agency submit an environmental impact statement with every legislative recommendation or program affecting the quality of the environment. See **Environmental impact statements.**

National government. The government of a whole nation, as distinguished from that of a state, local or territorial division of the nation, and also as distinguished from that of a league or confederation. Commonly referred to as the "federal government".

National Guard. Organization of men maintained as a reserve for the U.S. Army and Air Force. Members serve on a state-wide basis but are subject to being activated for federal service as well as for state emergencies.

Nationality. That quality or character which arises from the fact of a person's belonging to a nation or state. Nationality determines the political *status* of the individual, especially with reference to allegiance;

while domicile determines his civil *status*. Nationality arises either by birth or by naturalization. See also **Naturalization.**

Nationality Act. Shortened name for Immigration and Nationality Act which is a comprehensive federal statute embracing such matters as immigration, naturalization and admission of aliens. 8 U.S.C.A. § 1101 *et seq.*

Nationalization. The acquisition and control of privately owned business by government. See also **Denationalization.**

National Labor Relations Act. A federal statute known as the Wagner Act of 1935 and amended by the Taft-Hartley Act of 1947; it is comprehensive legislation regulating the relations between employers and employees, and establishing National Labor Relations Board. 29 U.S.C.A.

National Labor Relations Board. The National Labor Relations Board is an independent agency created by the National Labor Relations Act of 1935 (Wagner Act), as amended by the acts of 1947 (Taft-Hartley Act) and 1959 (Landrum-Griffin Act).

The Board has two principal functions under the act: preventing and remedying unfair labor practices by employers and labor organizations or their agents, and conducting secret ballot elections among employees in appropriate collective-bargaining units to determine whether or not they desire to be represented by a labor organization. The Board also conducts secret ballot elections among employees who have been covered by a union-shop agreement to determine whether or not they wish to revoke their union's authority to make such agreements; in jurisdictional disputes, decides and determines which competing group of workers is entitled to perform the work involved; and conducts secret ballot elections among employees concerning employers' final settlement offers in national emergency labor disputes.

National Mediation Board. The National Mediation Board was created on June 21, 1934, by an act of Congress amending the Railway Labor Act (48 Stat. 1185, 45 U.S.C.A. §§ 151–58, 160–62).

The Board's major responsibilities are: (1) the mediation of disputes over wages, hours, and working conditions which arise between rail and air carriers and organizations representing their employees, and (2) the investigation of representation disputes and certification of employee organizations as representatives of crafts or classes of carrier employees.

National origin. Term "national origin," within equal employment provision prohibiting discrimination based upon national origin, refers not to alienage, but to country where a person was born, or, more broadly, country from which his or her ancestors came. Jones v. United Gas Imp. Corp., D.C.Pa., 68 F.R.D. 1, 20.

National Service Life Insurance. Special type of life insurance for military and naval personnel during and after their service created by the National Service Life Insurance Act of 1940 and containing highly favorable rates and terms.

Nations, law of. See **International law.**

Native. A natural-born subject or citizen; a citizen by birth; one who owes his domicile or citizenship to the fact of his birth within the country referred to. The term may also include one born abroad, if his parents were then citizens of the country, and not permanently residing in foreign parts. U. S. v. Wong Kim Ark, 169 U.S. 649, 18 S.Ct. 456, 42 L.Ed. 890.

The word "natives", as used in Alien Enemy Act, refers to person's place of birth, so that a person remains a native of country of his birth, though he has moved away therefrom. United States ex rel. D'Esquiva v. Uhl, C.C.A.N.Y., 137 F.2d 903, 905.

Native born. See **Native.**

Nativi conventionarii /nətáyvay kənvènsh(iy)ənériyay/. Villeins or bondmen by contract or agreement.

Nativi de stipite /nətáyvay dìy stípədiy/. Villeins or bondmen by birth or stock.

Nativitas /nətívətæs/. Villenage; that state in which men were born slaves.

Nativo habendo /nətáyvow həbéndow/. In old English law, a writ which lay for a lord when his villein had run away from him. It was directed to the sheriff, and commanded him to apprehend the villein, and to restore him together with his goods to the lord.

Nativus /nətáyvəs/. Lat. In old English law, a native; specifically, one born into a condition of servitude; a born serf or villein.

Natura appetit perfectum; ita et lex /nəchúrə əpédət pərféktəm; áydə èst léks/. Nature covets perfection; so does law also.

Naturæ vis maxima; natura bis maxima /nəchúriy vís mæksəmə; nəchúrə bís mæksəmə/. The force of nature is greatest; nature is doubly great.

Natura fide jussionis sit strictissimi juris et non durat vel extendatur de re ad rem, de persona ad personam, de tempore ad tempus /nətyúrə fáydiy jəsiyównəs sìt striktísəmay júrəs èt nòn dyúrət vèl èkstendéydər dìy ríy æd rém, dìy pərsównə æd pərsównəm, dìy témpəriy æd témpəs/. The nature of the contract of suretyship is *strictissimi juris*, and cannot endure nor be extended from thing to thing, from person to person, or from time to time.

Natural. The juristic meaning of this term does not differ from the vernacular, except in the cases where it is used in opposition to the term "legal;" and then it means proceeding from or determined by physical causes or conditions, as distinguished from positive enactments of law, or attributable to the nature of man rather than to the commands of law, or based upon moral rather than legal considerations or sanctions.

As to natural Allegiance; Boundary; Channel; Child; Day; Death; Domicile; Equity; Fruit; Guardian; Heirs; Infancy; Liberty; Obligation; Person; Possession; Presumption; Rights; Succession; Watercourse, and Year, see those titles.

Natural affection. Such as naturally subsists between near relatives, as a father and child, brother and sister, husband and wife. This is regarded in law as a good consideration.

Natural and probable consequences. Those consequences that a person by prudent human foresight can anticipate as likely to result from an act, because they happen so frequently from the commission of such an act that in the field of human experience they may be expected to happen again. Pope v. Pinkerton-Hays Lumber Co., Fla.App., 120 So.2d 227, 230.

Natural-born subject. In English law, one born within the dominions, or rather within the allegiance, of the king of England.

Naturale est quidlibet dissolvi eo modo quo ligatur /nǽchəréyliy èst kwídləbət dəzólvay íyow mówdow kwów ləgéydər/. It is natural for a thing to be unbound in the same way in which it was bound.

Natural flood channel. A channel beginning at some point on banks of stream and ending at some other point lower down stream, through which flood waters naturally flow at times of high water. C. M. Bott Furniture Co. v. City of Buffalo, 131 Misc. 624, 227 N.Y.S. 660, 665.

Naturalization. The process by which a person acquires nationality after birth and becomes entitled to the privileges of citizenship. 8 U.S.C.A. § 1101 *et seq.*

In the United States collective naturalization occurs when designated groups are made citizens by treaty (as Louisiana Purchase), or by a law of Congress (as in annexation of Texas and Hawaii). Individual naturalization must follow certain steps: (a) petition for naturalization by a person of lawful age who has been a lawful resident of the United States for 5 years; (b) investigation by the Immigration and Naturalization Service to determine whether the applicant can speak and write the English language, has a knowledge of the fundamentals of American government and history, is attached to the principles of the Constitution and is of good moral character; (c) hearing before a U.S. District Court or certain State courts of record; and (d) after a lapse of at least 30 days a second appearance in court when the oath of allegiance is administered.

Naturalization clause. The Fourteenth Amendment to the U.S. Constitution, Section 1, provides that 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.

Naturalization courts. Both federal and state courts of record have jurisdiction over naturalization matters. 8 U.S.C.A. § 1421.

Naturalized citizen. One who, being an alien by birth, has received citizenship under naturalization laws.

Natural law. This expression, "natural law," or *jus naturale,* was largely used in the philosophical speculations of the Roman jurists of the Antonine age, and was intended to denote a system of rules and principles for the guidance of human conduct which, independently of enacted law or of the systems peculiar to any one people, might be discovered by the rational intelligence of man, and would be found to grow out of and conform to his *nature,* meaning by that word his whole mental, moral, and physical constitution. The point of departure for this conception was the Stoic doctrine of a life ordered "according to nature," which in its turn rested upon the purely supposititious existence, in primitive times, of a "state of nature;" that is, a condition of society in which men universally were governed solely by a rational and consistent obedience to the needs, impulses, and promptings of their true nature, such nature being as yet undefaced by dishonesty, falsehood, or indulgence of the baser passions. In ethics, it consists in practical universal judgments which man himself elicits. These express necessary and obligatory rules of human conduct which have been established by the author of human nature as essential to the divine purposes in the universe and have been promulgated by God solely through human reason.

Natural life. The period of a person's existence considered as continuing until terminated by physical dissolution or death occurring in the course of nature; used in contradistinction to that juristic and artificial conception of life as an aggregate of legal rights or the possession of a legal personality, which could be terminated by "civil death" *(q.v.),* that is, that extinction of personality which resulted from entering a monastery or being attainted of treason or felony.

Natural monument. Objects permanent in character which are found on the land as they were placed by nature, such as streams, lakes, ponds, shores, and beaches; sometimes including highways and streets, walls, fences, trees, hedges, springs, and rocks, and the like.

Natural object of testator's bounty. In testamentary law, term comprises whoever would take, in the absence of a will, because they are the persons whom the law has so designated, and in the ordinary case the law follows the normal condition of near relationship.

Natural objects. In interpretation of boundaries term includes mountains, lakes, rivers, etc. See also **Natural monument.**

Natural premium. Actual sum necessary to meet maturing death claims each year and is necessarily exceeded by the "net premium". Fox v. Mutual Ben. Life Ins. Co., C.C.A.Mo., 107 F.2d 715, 718.

Natural resources. Any material in its native state which when extracted has economic value. Timberland, oil and gas wells, ore deposits, and other products of nature that have economic value. The cost of natural resources is subject to depletion. Often called "wasting assets."

The term includes not only timber, gas, oil, coal, minerals, lakes, and submerged lands, but also, features which supply a human need and contribute to the health, welfare, and benefit of a community, and are essential to the well-being thereof and proper enjoyment of property devoted to park and recreational purposes.

Natural rights. Those which grow out of nature of man and depend upon his personality and are distinguished from those which are created by positive laws enacted by a duly constituted government to create an orderly civilized society. In re Gogabashvele's Estate, 195 Cal.App.2d 503, 16 Cal.Rptr. 77, 91.

Natura non facit saltum; ita nec lex /nəchúrə nòn féysət sóltəm; aýdə nèk léks/. Nature makes no leap [no sudden or irregular movement]; so neither does law. Applied in old practice to the regular observance of the degrees in writs of entry, which could not be passed over *per saltum.*

Natura non facit vacuum, nec lex supervacuum /nəchúrə nòn féysət vækyuwəm, nèk léks s(y)úwpərvækyuwəm/. Nature makes no vacuum, the law nothing purposeless.

Natus /néydəs/. Lat. Born, as distinguished from *nasciturus,* about to be born. *Ante natus,* one born before a particular person or event, *e.g.,* before the death of his father, before a political revolution, etc. *Post natus,* one born after a particular person or event.

Nauclerus /nòklírəs/. Lat. In the civil law, the master or owner of a merchant vessel.

Naulage /nólèyj/. The freight of passengers in a ship.

Naulum /nóləm/. In the civil law, the freight or fare paid for the transportation of cargo or passengers over the sea in a vessel. This is a Latinized form of a Greek word.

Nauta /nódə/. Lat. In the civil and maritime law, a sailor; one who works a ship. Any one who is on board a ship for the purpose of navigating her. The employer of a ship.

Nautical. Pertaining to ships or to the art of navigation or the business of carriage by sea. See also **Marine.**

Nautical assessors. Experienced shipmasters, or other persons having special knowledge of navigation or nautical affairs, who are called to the assistance of a court of admiralty, in difficult cases involving questions of negligence, and who sit with the judge during the argument, and give their advice upon questions of seamanship or the weight of testimony.

Nautical mile. See **Mile.**

Nautica pecunia /nódəkə pəkyúwn(i)yə/. A loan to a shipowner, to be repaid only upon the successful termination of the voyage, and therefore allowed to be made at an extraordinary rate of interest *(nauticum fœnus).*

Nauticum fœnus /nódəkəm fíynəs/. Lat. In the civil law, nautical or maritime interest; an extraordinary rate of interest agreed to be paid for the loan of money on the hazard of a voyage; corresponding to interest on contracts of bottomry or respondentia in English and American maritime law.

Navagium /nævéyj(iy)əm/. In old English law, a duty on certain tenants to carry their lord's goods in a ship.

Naval. Appertaining to the navy *(q.v.).*

Naval base. See **Base.**

Naval law. The system of regulations and principles for the government of the navy. See also **Code of Military Justice.**

Navarchus /nævárkəs/. In the civil law, the master or commander of a ship; the captain of a man-of-war.

Navicularius /nəvikyəlériyəs/. In the civil law, the master or captain of a ship.

Navigable. Capable of being navigated; that which may be navigated or passed over by ships or vessels. Natcher v. City of Bowling Green, 264 Ky. 584, 95 S.W.2d 255, 259. The term at common law was understood in a more restricted sense, viz., subject to the ebb and flow of the tide. Luscher v. Reynolds, 153 Or. 625, 56 P.2d 1158, 1162. See also **Navigable waters.**

Navigable in fact. Streams or lakes are navigable in fact when they are used or are susceptible of being used in their natural and ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water. Taylor Fishing Club v. Hammett, Tex.Civ.App., 88 S.W.2d 127, 129. See also **Navigable waters.**

Navigable river or **stream.** At common law, a river or stream in which the tide ebbs and flows, or as far as the tide ebbs and flows. But as to the definition in American law, see **Navigable,** *supra.*

Navigable waters. Those waters which afford a channel for useful commerce.

Any body of water, navigable in fact, which by itself or by uniting with other waters forms a continued highway over which commerce may be carried on with other states or countries. United States v. Appalachian Electric Power Co., 311 U.S. 377, 61 S.Ct. 291, 85 L.Ed. 243, rehearing denied 312 U.S. 712, 61 S.Ct. 548, 85 L.Ed. 1143, petition denied 317 U.S. 594, 63 S.Ct. 67, 87 L.Ed. 487. Waters are navigable in fact when used or susceptible of use in their ordinary condition as highways for commerce. United States v. Oregon, 295 U.S. 1, 55 S.Ct. 610, 79 L.Ed. 1663.

A water is "navigable," for purposes of admiralty jurisdiction, provided that it is used or susceptible of being used as an artery of commerce. Adams v. Montana Power Co., C.A.Mont., 528 F.2d 437, 440. Rivers are "navigable" in fact when they are used, or are susceptible of being used, in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water. Madole v. Johnson, D.C.La., 241 F.Supp. 379, 381.

Navigable waters of the United States. Waters are "navigable waters of the United States" when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other states or foreign countries in the customary modes in which such commerce is conducted by water. United States v. Appalachian Electric Power Co., D.C.Va., 23 F.Supp. 83. Navigable waters of the United States are only those waters in or adjacent to states and territories and the District of Columbia. 33 U.S.C.A. § 902(9).

Navigate. To journey by water; to go in a vessel; to sail or manage a vessel; to use the waters as a highway for commerce or communication; to ply. To direct one's course through any medium; to steer, especially to operate an airplane or airship. United States v. Monstad, C.C.A.Cal., 134 F.2d 986, 987, 988.

Navigation. The act or the science or the business of traversing the sea or other navigable waters in ships or vessels. The Silvia, 171 U.S. 462, 19 S.Ct. 7, 43 L.Ed. 241.

Regular navigation. In this phrase, the word "regular" may be used in contradistinction to "occasional," rather than to "unlawful," and refer to vessels that, alone or with others, constitute lines, and not merely to such as are regular in the sense of being properly documented under the laws of the country to which they belong.

Rules of navigation. Rules and regulations adopted by commercial nations to govern the steering and management of vessels approaching each other at sea so as to avoid the danger of collision or fouling.

Navigational visibility. Visibility as affecting speed with reference to distance within which boat in fog could be brought to stop, before any course of any vessel emerging from fog on either side would cross her projected course alongside the fog bank at its nearest point. The Silver Palm, C.C.A.Cal., 94 F.2d 754, 767.

Navigation servitude. Public right of navigation for the use of the people at large. United States v. 412.715 Acres of Land, Contra Costa County, Cal., D.C.Cal., 53 F.Supp. 143, 148, 149.

Navis /néyvəs/. Lat. A ship; a vessel.

Navy. A fleet of ships; the aggregate of vessels of war belonging to a nation. In a broader sense, and as equivalent to "naval forces," the entire corps of officers and men enlisted in the naval service and who man the public ships of war, including in this sense, in the United States, the officers and men of the Marine Corps. Wilkes v. Dinsman, 48 U.S. (7 How.) 89, 12 L.Ed. 618; U. S. v. Dunn, 120 U.S. 249, 7 S.Ct. 507, 30 L.Ed. 667. One of the Armed Forces of the United States.

Navy Department. Part of the Department of Defense, presided over by the Secretary of the Navy, who is responsible to the Secretary of Defense for the operation and efficiency of the Navy. (10 U.S.C.A. § 5031). The primary mission of the Navy is to protect the United States, as directed by the President or the Secretary of Defense, by the effective prosecution of war at sea including, with its Marine Corps component, the seizure or defense of advanced naval bases; to support, as required, the forces of all military departments of the United States; and maintain freedom of the seas.

Nazeranna /nèzərénə/. In old English law, a sum paid to government as an acknowledgment for a grant of lands, or any public office.

N.B. An abbreviation for *"nota bene,"* mark well, observe; also *"nulla bona,"* no goods.

N.C.D. *Nemine contra dicente.* No one dissenting.

N.D. An abbreviation for "Northern District," *e.g.* U.S. District Court for Northern District of N.Y.

Ne admittas /níy ədmídəs/. Lat. In ecclesiastical law, the name of a prohibitory writ, directed to the bishop, at the request of the plaintiff or defendant, where a *quare impedit* is pending, when either party fears that the bishop will admit the other's clerk pending the suit between them.

Neap tide /níyp táyd/. When the moon is in its first and third quarters, the tides do not rise as high, nor fall as low, as on the average; at such times the tides are known as "neap tides." Borax Consolidated v. City of Los Angeles, Cal., 296 U.S. 10, 56 S.Ct. 23, 80 L.Ed. 9.

Near. Proximate; close-by; about; adjacent; contiguous; abutting. The word as applied to space is a relative term without positive or precise meaning, depending for its signification on the subject-matter in relation to which it is used and the circumstances under which it becomes necessary to apply it to surrounding objects. Closely akin or related by blood; as, a near relative. Close to one's interests and affections, etc.; touching or affecting intimately, as one's near affairs, friends. Not far distant in time, place or degree; not remote; adjoining. Zeigenfus v. Snelbaker, 38 N.J.Super. 304, 118 A.2d 876, 879.

Near money. Liquid assets which are readily convertible into money.

Neat, net. The clear weight or quantity of an article, without the bag, box, keg, or other thing in which it may be enveloped.

Ne baila pas /nə béylə pá/. L. Fr. He did not deliver. A plea in detinue, denying the delivery to the defendant of the thing sued for.

Necation. The act of killing.

Nec curia deficeret in justitia exhibenda /nék kyúriyə dəfísərət in jàstísh(iy)ə ègzəbéndə/. Nor should the court be deficient in showing justice.

Necessaries. An article which a party actually needs. State v. Earnest, Mo.App., 162 S.W.2d 338, 341. Things indispensable, or things proper and useful, for the sustenance of human life.

The word has no hard and fast meaning, but varies with the accustomed manner of living of the parties. Smitti v. Roth Cadillac Co., 145 Pa.Super. 292, 21 A.2d 127, 130. Word includes not only those services which are proper and required to sustain life but also those suitable for the individual involved according to his circumstances and condition in life. Trask v. Davis, Mo.App., 297 S.W.2d 792.

Necessaries consist of food, drink, clothing, medical attention, and a suitable place of residence, and they are regarded as necessaries in the absolute sense of the word. However, liability for necessaries is not limited to articles required to sustain life; it extends to articles which would ordinarily be necessary and suitable, in view of the rank, position, fortune, earning capacity, and mode of living of the husband or father.

Whether attorney's services are to be considered "necessaries" depends on whether there is necessity therefor. Fenn v. Hart Dairy Co., 231 Mo.App. 1005, 83 S.W.2d 120, 124. But such services are usually "necessaries". Leonard v. Alexander, 50 Cal.App.2d 385, 122 P.2d 984, 986.

What constitutes "necessaries" for which an admiralty lien will attach depends upon what is reason-

ably needed in the ship's business, regard being had to the character of the voyage and the employment in which the vessel is being used. Walker Skageth Food Stores v. The Bavois, D.C.N.Y., 43 F.Supp. 109, 110, 111.

See also **Necessary; Necessitous circumstances; Support.**

Necessaries, doctrine of. One who sells goods to a wife or child may charge the husband or father if the goods are required for their sustenance or support.

Necessarily included offense. For a lesser offense to be "necessarily included" in offense charged, within lesser included offense rule, it must be such that the greater offense cannot be committed without also committing the lesser. Kelly v. U. S., 125 U.S.App. D.C. 205, 370 F.2d 227, 228. Necessarily included offense is that which occurs when offense cannot be committed without necessarily committing another offense. People v. Doolittle, 23 C.A.3d 14, 99 Cal. Rptr. 810, 814.

Necessarium est quod non potest aliter se habere /nèsəsériyəm èst kwòd nòn pówdəst ælədər síy həbíriy/. That is necessary which cannot be otherwise.

Necessarius /nèsəsériyəs/. Lat. Necessary; unavoidable; indispensable; not admitting of choice or the action of the will; needful.

Necessary. This word must be considered in the connection in which it is used, as it is a word susceptible of various meanings. It may import absolute physical necessity or inevitability, or it may import that which is only convenient, useful, appropriate, suitable, proper, or conducive to the end sought. It is an adjective expressing degrees, and may express mere convenience or that which is indispensable or an absolute physical necessity. It may mean something which in the accomplishment of a given object cannot be dispensed with, or it may mean something reasonably useful and proper, and of greater or lesser benefit or convenience, and its force and meaning must be determined with relation to the particular object sought. Kay County Excise Board v. Atchison, T. & S. F. R. Co., 185 Okl. 327, 91 P.2d 1087, 1088.

In eminent domain proceedings, it means land reasonably requisite and proper for accomplishment of end in view, not absolute necessity of particular location. State v. Whitcomb, 94 Mont. 415, 22 P.2d 823.

With respect to taxation, means appropriate and helpful in furthering the taxpayer's business or income producing activity. I.R.C. §§ 162(a) and 212. See also **Ordinary.**

As to necessary Damages; Deposit; Domicile; Implication; Intromission; Repairs; and Way, see those titles. See also **Necessaries; Necessity.**

Necessary and proper. Words "necessary and proper" mean appropriate and adapted to carrying into effect given object. Petition of Public Service Coordinated Transport, 103 N.J.Super. 505, 247 A.2d 888, 891.

Necessary and proper clause. Art. I, § 8, par. 18 of U.S. Constitution, which authorizes Congress to make all laws necessary and proper to carry out the enumerated powers of Congress and all other powers vested in the government of the United States or any department or officer thereof. See **Penumbra doctrine.**

Necessary inference. One which is inescapable or unavoidable from the standpoint of reason. Taylor v. Twiner, 193 Miss. 410, 9 So.2d 644, 646.

Necessary parties. In pleading and practice, those persons who must be joined in an action because, *inter alia,* complete relief cannot be given to those already parties without their joinder. Fed.R.Civil P. 19(a).

Necessary parties are those who must be included in action either as plaintiffs or defendants, unless there is a valid excuse for their nonjoinder. City of Hutchinson for Human Relations Commission of Hutchinson v. Hutchinson, Kansas Office of Kansas State Employment Service, 213 Kan. 399, 517 P.2d 117, 122. Those persons who have such an interest in controversy that a final judgment or decree cannot be made without either affecting their interests or leaving the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience. Royal Petroleum Corp. v. Dennis, 160 Tex. 392, 332 S.W.2d 313, 314. A "necessary party" is one whose joinder is required in order to afford the plaintiff the complete relief to which he is entitled against the defendant who is properly suable in that county. Orange Associates, Inc. v. Albright, Tex.Civ.App., 548 S.W.2d 806, 807.

See also **Indispensable parties; Joinder; Parties.**

Necessitas /nəsésətæs/. Lat. Necessity; a force, power, or influence which compels one to act against his will.

Necessitas culpabilis /nəsésətæs kàlpéybələs/. Culpable necessity; unfortunate necessity; necessity which, while it excuses the act done under its compulsion, does not leave the doer entirely free from blame. The necessity which compels a man to kill another in self-defense is thus distinguished from that which requires the killing of a felon.

Necessitas est lex temporis et loci /nəsésətæs èst léks témpərəs èt lówsay/. Necessity is the law of time and of place.

Necessitas excusat aut extenuat delictum in capitalibus, quod non operatur idem in civilibus /nəsésətæs əkskyúwzət òd əkstényuwət dəlíktəm ìn kæpətéyləbəs kwòd nón opəréydər áydəm ən səvíləbəs/. Necessity excuses or extenuates a delinquency in capital cases, which has not the same operation in civil cases.

Necessitas facit licitum quod alias non est licitum /nəsésətæs féysət lísədəm kwòd éyliyəs nón èst lísədəm/. Necessity makes that lawful which otherwise is not lawful.

Necessitas inducit privilegium quoad jura privata /nəsésətæs ənd(y)úwsət privəlíyj(i)yəm kwówæd júrə prəvéydə/. Necessity gives a privilege with reference to private rights. The necessity involved in this maxim is of three kinds, viz.: (1) Necessity of self-preservation; (2) of obedience; and (3) necessity resulting from the act of God, or of a stranger.

Necessitas non habet legem /nəsésətæs nòn héybət líyjəm/. Necessity has no law.

Necessitas publica major est quam privata /nəsésətæs pəbləkə méyjər èst kwæm prəvéydə/. Public necessity is greater than private. "Death," it has been ob-

served, "is the last and furthest point of particular necessity, and the law imposes it upon every subject that he prefer the urgent service of his king and country before the safety of his life."

Necessitas quod cogit, defendit /nəsésətæs kwòd kówjət dəféndət/. Necessity defends or justifies what it compels. Applied to the acts of a sheriff, or ministerial officer, in the execution of his office.

Necessitas sub lege non continetur, quia quod alias non est licitum necessitas facit licitum /nəsésətæs səb líyjiy nòn kòntəníydər, kwáyə kwòd éyliyəs nón èst lísədəm nəsésətæs féysət lísədəm/. Necessity is not restrained by law, since what otherwise is not lawful, necessity makes lawful.

Necessitas vincet legem; legum vincula irridet /nəsésətæs vínsət líyjəm; líygəm víŋkyələ írədet/. Necessity overcomes law; it derides the fetters of laws.

Necessitas vincit legem /nəsésətæs vínsət líyjəm/. Necessity overrules the law.

Necessities. See **Necessaries.**

Necessitous /nəsésədəs/. Indigent or pressed by poverty. See **Indigent.**

Necessitous circumstances /nəsésədəs sə́rkəmstæn(t)səz/. Needing the necessaries of life, which cover not only primitive physical needs, things absolutely indispensable to human existence and decency, but those things, also, which are in fact necessary to the particular person left without support. In the civil code of Louisiana the words are used relative to the fortune of the deceased and to the condition in which the claimant lived during the marriage. See also **Necessaries; Non-support.**

Necessitudo /nəsèsət(y)úwdow/. Lat. In the civil law, an obligation; a close connection; relationship by blood.

Necessity. Controlling force; irresistible compulsion; a power or impulse so great that it admits no choice of conduct. That which makes the contrary of a thing impossible. The quality or state of being necessary, in its primary sense signifying that which makes an act or event unavoidable. Quality or state of fact of being in difficulties or in need, a condition arising out of circumstances that compels a certain course of action. Bykofsky v. Borough of Middletown, D.C.Pa., 401 F.Supp. 1242, 1250. See **Irresistible impulse.**

A person is excused from criminal liability if he acts under a duress of circumstances to protect life or limb or health in a reasonable manner and with no other acceptable choice. See **Self-defense.**

The word "necessity", within certificate of public convenience and necessity, is not used in the sense of being essential or absolutely indispensable but merely that certificate is reasonably necessary for public good. Alabama Public Service Commission v. Crow, 247 Ala. 120, 22 So.2d 721, 724. To fulfill requirements for easement of right of way of necessity, the necessity must be actual, real, and reasonable, as distinguished from inconvenience, but it need not be absolute and irresistible necessity. When used in relation to power of eminent domain does not mean absolute necessity, but only reasonable necessity. The "necessity" of and appurtenance for the beneficial use of leased premises, which will entitle the lessee thereto, is not an absolute necessity in the sense that it must be completely indispensable, but is a real necessity and not a mere convenience or advantage.

See also **Necessaries; Necessary.**

Neck-verse. The Latin sentence, *"Miserere mei, Deus,"* was so called, because the reading of it was made a test for those who claimed benefit of clergy.

Necrophilism /nəkrófəlìzəm/. See **Insanity.**

Necropsy /nékròpsiy/. An autopsy, or *post-mortem* examination of a human body.

Nec tempus nec locus occurrit regi /nèk témpəs nèk lówkəs əkə́hrət ríyjay/. Neither time nor place affects the king.

Nec veniam effuso sanguine casus habet /nèk víyniyəm, əfyúwzow sǽŋgwəniy, kéysəs héybət/. Where blood is spilled, the case is unpardonable.

Nec veniam, læso numine, casus habet /nèk víyniyəm, líyzow n(y)úwməniy, kéysəs héybət/. Where the Divinity is insulted the case is unpardonable.

Ne disturba pas /nə dəstə́rbə pá/. L. Fr. (Does or did not disturb.) In old English practice, the general issue or general plea in *quare impedit.*

Ne dona pas, or **non dedit** /nə dównə pá/nòn díydət/. The general issue in a formedon, now abolished. It denied the gift in tail to have been made in manner and form as alleged; and was therefore the proper plea, if the tenant meant to dispute the fact of the gift, but did not apply to any other case.

Need. A relative term, the conception of which must, within reasonable limits, vary with the personal situation of the individual employing it. Term means to have an urgent or essential use for (something lacking); to want, require. City of Dayton v. Borchers, 13 Ohio Misc. 273, 232 N.E.2d 437, 440. See **Necessaries.**

Needful. Necessary, requisite, essential, indispensable. See **Necessaries.**

Needless. In a statute against "needless" killing or mutilation of any animal, this term denotes an act done without any useful motive, in a spirit of wanton cruelty, or for the mere pleasure of destruction.

Needy. Indigent, necessitous, very poor. Moore v. State Social Security Commission, 233 Mo.App. 536, 122 S.W.2d 391, 393; Nichols v. State Social Security Commission of Missouri, 349 Mo. 1148, 164 S.W.2d 278, 280. See **Indigent.**

Ne exeat /níy éksiyət/. A writ which forbids the person to whom it is addressed to leave the country, the state, or the jurisdiction of the court. Available in some cases to keep a defendant within the reach of the court's process, where the ends of justice would be frustrated if he should escape from the jurisdiction. Sometimes a ne exeat writ is issued only to restrain a person from leaving the jurisdiction, and sometimes it is issued against a person who is removing or attempting to remove property beyond the

jurisdiction. August v. August, 65 Ga.App. 883, 16 S.E.2d 784, 785.

Ne exeat regno /níy éksiyət régnow/. Lat. In English practice, a writ which issues to restrain a person from leaving the kingdom. It was formerly used for political purposes, but is now only resorted to in equity when the defendant is about to leave the kingdom; it is only in cases where the intention of the party to leave can be shown that the writ is granted.

Ne exeat republica /níy éksiyət rəpəbləkə/. Lat. In American practice, a writ similar to that of *ne exeat regno (q.v.),* available to the plaintiff in a civil suit, under some circumstances, when the defendant is about to leave the state.

Nefas /níyfæs/. Lat. That which is against right or the divine law. A wicked or impious thing or act.

Nefastus /nəfæstəs/. Lat. Inauspicious. Applied, in the Roman law, to a day on which it was unlawful to open the courts or administer justice.

Negatio conclusionis est error in lege /nəgéysh(iy)ow kənklùwz(h)iyowńəs èst éhrər ìn líyjiy/. The denial of a conclusion is error in law.

Negatio destruit negationem, et ambæ faciunt affirmationem /nəgéysh(iy)ow déstruwət nəgèyshiyównəm èd ámbiy féyshiyənt æfərmèyshiyównəm/. A negative destroys a negative, and both make an affirmative.

Negatio duplex est affirmatio /nəgéysh(iy)ow d(y)úwplèks èst æfərméysh(iy)ow/. A double negative is an affirmative.

Negative. A denial; a proposition by which something is denied; a statement in the form of denial. Two negatives do not make a good issue.

As to negative Covenant; Easement; Servitude; Statute; and Testimony, see those titles.

Negative averment. As opposed to the traverse or simple denial of an affirmative allegation, a negative averment is an allegation of some substantive fact, *e.g.,* that premises are not in repair, which, although negative in form, is really affirmative in substance, and the party alleging the fact of non-repair must prove it. An averment in some of the pleadings in a case in which a negative is asserted. U. S. v. Eisenminger, D.C.Del., 16 F.2d 816, 819.

Negative condition. One by which it is stipulated that a given thing shall not happen.

Negative covenant. A provision in an employment agreement or a contract of sale of a business which prohibits the employee or seller from competing in the same area or market. Such restriction must be reasonable in scope and duration.

Negative easement. A right in owner of dominant tenement to restrict owner of servient tenement in exercise of general and natural rights of property. Fort Dodge, D. M. & S. Ry. v. American Community Stores Corp., 256 Iowa 1344, 131 N.W.2d 515, 521. A negative easement is one effect of which is not to authorize doing of act by person entitled to easement, but merely to preclude owner of land subject to easement from doing of an act which, if no easement existed, he would be entitled to do. McLaughlin v. Neiger, Mo.App., 286 S.W.2d 380, 383.

Negative evidence. Testimony that an alleged fact did not exist. See **Rebuttal evidence.**

Negative pregnant. In pleading, a negative implying also an affirmative. Such a form of negative expression as may imply or carry within it an affirmative. A denial in such form as to imply or express an admission of the substantial fact which apparently is controverted; or a denial which, although in the form of a traverse, really admits the important facts contained in the allegations to which it relates. Cramer v. Aiken, 63 App.D.C. 16, 68 F.2d 761, 762.

Neggildare. To claim kindred.

Neglect. May mean to omit, fail, or forbear to do a thing that can be done, or that is required to be done, but it may also import an absence of care or attention in the doing or omission of a given act. And it may mean a designed refusal or unwillingness to perform one's duty. In re Perkins, 234 Mo.App. 716, 117 S.W.2d 686, 692.

The term is used in the law of bailment as synonymous with "negligence." But the latter word is the closer translation of the Latin *"negligentia."*

Failure to pay money which the party is bound to pay without demand. An omission to do or perform some work, duty, or act. Failure to perform or discharge a duty, covering positive official misdoing or official misconduct as well as negligence.

See also **Excusable neglect; Negligence.**

Culpable neglect. Such neglect which exists where the loss can fairly be ascribed to the party's own carelessness, improvidence, or folly. State ex rel. Fulton v. Coburn, 133 Ohio St. 192, 12 N.E.2d 471, 477, 10 O.O. 249.

Willful neglect. The neglect of the husband to provide for his wife the common necessaries of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy, or dissipation.

Neglected child. A child is "neglected" when his parent or custodian, by reason of cruelty, mental incapacity, immorality or depravity, is unfit properly to care for him, or neglects or refuses to provide necessary physical, affectional, medical, surgical, or institutional or hospital care for him, or he is in such condition of want or suffering, or is under such improper care or control as to endanger his morals or health. In re DuMond, 196 Misc. 16, 17, 92 N.Y.S.2d 805.

Neglected minor. One suffering from neglect and in state of want. People v. De Pue, 217 App.Div. 321, 217 N.Y.S. 205, 206. See **Neglected child.**

Negligence. The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to

do what a person of ordinary prudence would have done under similar circumstances. Amoco Chemical Corp. v. Hill, Del.Super., 318 A.2d 614, 617. Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances. Pence v. Ketchum, La., 326 So.2d 831, 836.

The term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. It is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like, while "wantonness" or "recklessness" is characterized by willfulness. The law of negligence is founded on reasonable conduct or reasonable care under all circumstances of particular case. Doctrine of negligence rests on duty of every person to exercise due care in his conduct toward others from which injury may result.

See also Actionable negligence; Active negligence; Cause; Comparative negligence; Concurrent negligence; Fault; Imputed negligence; Invitation; Joint negligence; Laches; Legal negligence; Palsgraph doctrine; Parental liability; Product liability; Reasonable man doctrine; Reckless; Simple negligence; Standard of care; Strict liability; Supervening negligence.

Actionable negligence. See **Actionable negligence.**

Active negligence. See **Active negligence.**

Collateral negligence. In the law relating to the responsibility of an employer or principal for the negligent acts or omissions of his employee, the term "collateral" negligence is sometimes used to describe negligence attributable to a contractor employed by the principal and for which the latter is not responsible, though he would be responsible for the same thing if done by his servant. Weber v. Buffalo Railway Co., 20 App.Div. 292, 47 N.Y.S. 7.

Comparative negligence. See **Comparative negligence.**

Concurrent negligence. Arises where the injury is proximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. See also **Concurrent negligence.**

Contributory negligence. The act or omission amounting to want of ordinary care on part of complaining party, which, concurring with defendant's negligence, is proximate cause of injury. Honaker v. Crutchfield, 247 Ky. 495, 57 S.W.2d 502. Conduct by a plaintiff which is below the standard to which he is legally required to conform for his own protection and which is a contributing cause which cooperates with the negligence of the defendant in causing the plaintiff's harm. Li v. Yellow Cab Co. of California, 13 Cal.3d 804, 119 Cal.Rptr. 858, 864, 532 P.2d 1226.

Conduct for which plaintiff is responsible amounting to a breach of duty which law imposes on persons to protect themselves from injury, and which, concurring and cooperating with actionable negligence for which defendant is responsible, contributes to injury complained of as a proximate cause. Cowan v. Dean, 81 S.D. 486, 137 N.W.2d 337, 341.

The defense of contributory negligence has been replaced by the doctrine of comparative negligence *(q.v.)* in many states. See also *Exceptions and limitations, infra.*

An affirmative defense which must be pleaded and proved by defendant. Fed.R.Civil P., Rule 8(c).

Doctrine is also applicable to one who through his own negligence has contributed to material alteration of a negotiable instrument. U.C.C. § 3–406.

Criminal negligence. Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection.

Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless disregard of the safety of others, or wilful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death.

That species of want of care by which a person may be criminally liable. It varies from jurisdiction to jurisdiction and is called culpable negligence in some. However, it generally refers to conduct which is not intentional and ordinarily not wilful, wanton and reckless.

See **Negligent homicide; Negligently; Negligent manslaughter.**

Culpable negligence. Failure to exercise that degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted.

Degrees of negligence. While there are degrees of care, and failure to exercise proper degree of care is "negligence," most courts hold that there are no degrees (*e.g.* slight, ordinary, gross) of negligence, except in bailment cases or under automobile guest statutes. Murray v. De Luxe Motor Stages of Illinois, Mo.App., 133 S.W.2d 1074, 1078. The prevailing view is that there are no "degrees" of care in negligence, as a matter of law; there are only different amounts of care as a matter of fact. To the extent that the degrees of negligence survive, they are described below.

Exceptions and limitations. The general rule in automobile accident cases that contributory negligence bars recovery for the injuries sustained is subject to various exceptions and limitations. Thus the defense of contributory negligence may be inapplicable where defendant's negligence is of a gross or willful character. Moreover, application of the doctrine of contributory negligence is limited by the last clear chance doctrine or similar doctrines, or by comparative negligence statutes.

Gross negligence. The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.

It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the wilful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from wilful and intentional conduct which is or ought to be known to have a tendency to injure.

Gross negligence consists of conscious and voluntary act or omission which is likely to result in grave injury when in face of clear and present danger of which alleged tortfeasor is aware. Glaab v. Caudill, Fla.App., 236 So.2d 180, 182, 183, 185. That entire want of care which would raise belief that act or omission complained of was result of conscious indifference to rights and welfare of persons affected by it. Claunch v. Bennett, Tex.Civ.App., 395 S.W.2d 719, 724; Snyder v. Jones, Tex.Civ.App., 392 S.W.2d 504, 505, 507. Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence.

Hazardous negligence. Such careless or reckless conduct as exposes one to very great danger of injury or to imminent peril.

Imputed negligence. Refers to doctrine that places upon one person responsibility for the negligence of another; such responsibility or liability is imputed by reason of some special relationship of the parties, such as parent and child, husband and wife, driver and passenger, owner of vehicle and driver, bailor and bailee, master and servant, joint enterprise, and parent and custodian of a child. Schmidt v. Martin, 212 Kan. 373, 510 P.2d 1244, 1246.

Generally the doctrine of imputed negligence, as applied to automobile accidents, visits on one person legal responsibility for the negligent conduct of another. The doctrine applies only in limited classes of cases, as where there is a right to control in the relationship of master and servant, principal and agent, or a joint enterprise. The independent negligence of one person ordinarily is not imputable to another person except where the relation between the persons gives rise to an express or implied agency in the person committing the act of negligence.

Legal negligence. See **Legal negligence.**

Ordinary negligence. The omission of that care which a man of common prudence usually takes of his own concerns. Briggs v. Spaulding, 141 U.S. 132, 11 S.Ct. 924, 35 L.Ed. 662. Failure to exercise care of an ordinarily prudent person in same situation. A want of that care and prudence that the great majority of mankind exercise under the same or similar circumstances. Wherever distinctions between gross, ordinary and slight negligence are observed, "ordinary negligence" is said to be the want of ordinary care.

Ordinary negligence is based on fact that one ought to have known results of his acts, while "gross negligence" rests on assumption that one knew results of his acts, but was recklessly or wantonly indifferent to results. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure.

Passive negligence. Failure to do something that should have been done. It is negligence which permits defects, obstacles, or pitfalls to exist on premises; that is, negligence which causes dangers arising from physical condition of land. Pachowitz v. Milwaukee & Suburban Transport Corp., 56 Wis.2d 383, 202 N.W.2d 268, 275.

Difference between "active" and "passive" negligence is that one is only passively negligent if he merely fails to act in fulfillment of duty of care which law imposes upon him, while one is actively negligent if he participates in some manner in conduct or omission which caused injury. King v. Timber Structures, Inc. of Cal., 240 Cal.App.2d 178, 49 Cal.Rptr. 414, 417.

Per se negligence. The unexcused violation of a statute which is applicable is per se or automatic negligence in some states. See also **Negligence per se.**

Slight negligence. A failure to exercise great care. Slight negligence is defined to be only an absence of that degree of care and vigilance which persons of extraordinary prudence and foresight are accustomed to use. Briggs v. Spaulding, 141 U.S. 132, 11 S.Ct. 924, 35 L.Ed. 662.

Subsequent negligence. Exists where defendant sees plaintiff in a position of danger and fails to exercise due and proper precaution to prevent injury to plaintiff. Holman v. Brady, 241 Ala. 487, 3 So.2d 30, 33.

Wilful, wanton or reckless negligence. These terms are customarily treated as meaning essentially the same thing. The usual meaning assigned to "wilful," "wanton" or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow; and it has been said that this is indispensable. See for example Tyndall v. Rippon, 5 Del.Super. 458, 61 A.2d 422; Wolters v. Venhaus, 350 Ill.App. 322, 112 N.E.2d 747; Clarke v. Storchak, 384 Ill. 564, 52 N.E.2d 229, appeal dismissed 322 U.S. 713, 64 S.Ct. 1270, 88 L.Ed. 1555; Tighe v. Diamond, 149

Ohio St. 520, 80 N.E.2d 122, 37 O.O. 243. The result is that "wilful," "wanton" or "reckless" conduct tends to take on the aspect of highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. As a result there is often no clear distinction at all between such conduct and "gross" negligence, and the two have tended to merge and take on the same meaning, of an aggravated form of negligence, differing in quality rather than in degree from ordinary lack of care. It is at least clear, however, that such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.

"Wantonness" constituting gross and wanton negligence within automobile guest statute indicates a realization of imminence of danger and a reckless disregard, complete indifference, and unconcern of probable consequences of the wrongful act. Mann v. Good, 202 Kan. 631, 451 P.2d 233, 236.

Negligence, estoppel by. An estoppel which occurs when one who is under a legal duty, either to the person injured or to the public, to act with due care, fails to do so, and such failure is the natural and proximate cause of misleading that person to alter his position. An estoppel arises when one by acts, representations, intentionally or negligently, induces another to change his position for the worse. Smith v. Vara, 136 Misc. 500, 241 N.Y.S. 202, 209.

An estoppel arises when one by acts, representations, or admissions, or by silence when he ought to speak, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief so that he will be prejudiced if the former is permitted to deny the existence of such facts.

Estoppel may exist where a party has led another into the belief of a certain state of facts by conduct of culpable negligence, calculated to have that result, and the other party has acted upon such belief to his prejudice. Scott v. First Nat. Bank, 343 Mo. 77, 119 S.W.2d 929, 938.

Negligence in law. "Actionable negligence" or "negligence in law" grows out of nonobservance of a duty prescribed by law. See also **Negligence per se.**

Negligence per se. Conduct, whether of action or omission, which may be declared and treated as negligence without any argument or proof as to the particular surrounding circumstances, either because it is in violation of a statute or valid municipal ordinance, or because it is so palpably opposed to the dictates of common prudence that it can be said without hesitation or doubt that no careful person would have been guilty of it. As a general rule, the violation of a public duty, enjoined by law for the protection of person or property, so constitutes. See also **Strict liability.**

Negligent. See **Negligence.**

Negligent escape. Where prisoner escapes through officer's negligence. Hershey v. People, 91 Colo. 113, 12 P.2d 345, 347.

Negligent homicide. The criminal offense committed by one whose negligence is the direct and proximate cause of another's death. The crime of negligent homicide consists of three component elements: (1) death of human being (2) by instrumentality of motor vehicle (3) operated on highway in negligent manner. State v. Colombo, 4 Conn.Cir. 671, 238 A.2d 806, 808. See also **Homicide** *(Vehicular homicide).*

Negligentia /nègləjénsh(iy)ə/. Lat. In the civil law, carelessness; inattention; the omission of proper care or forethought. The term is not exactly equivalent to our "negligence," inasmuch as it was not any *negligentia,* but only a high or gross degree of it, that amounted to *culpa* (actionable or punishable fault).

Negligentia semper habet infortunium comitem /nègləjénsh(iy)ə sémpər héybəd ìnforchúwn(i)yəm kómədəm/. Negligence always has misfortune for a companion.

Negligently. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation. Model Penal Code, § 2.02. See also **Negligence.**

Negligently done. The doing of an act where ordinary care required that it should not have been done at all, or that it should have been done in some other way, and where the doing of the act was not consistent with the exercise of ordinary care under the circumstances. See **Negligence.**

Negligent manslaughter. A statutory crime in some jurisdictions consisting of an unlawful and unjustified killing of a person by negligence but without malice.

Negligent offense. One which ensues from a defective discharge of a duty, which defect could have been avoided by the exercise of that care which is usual, under similar circumstances, with prudent persons of the same class. People v. Gaydica, 122 Misc. 31, 203 N.Y.S. 243, 258.

Negligent violation of statute. One occasioned by or accompanied with negligent conduct.

Negoce /nəgóws/. Fr. Business; trade; management of affairs.

Negotiability /nəgòwsh(iy)əbílədiy/. Legal character of being negotiable *(q.v.).*

Negotiable /nəgówsh(iy)əbəl/. Legally capable of being transferred by endorsement or delivery. Usually said of checks and notes and sometimes of stocks and bearer bonds. See **Commercial paper; Negotiable instruments; Non-negotiable.**

Negotiable bond. Type of bond which may be transferred by negotiation from original holder to another.

Negotiable document of title. A document is negotiable if by its terms the goods are to be delivered to "bearer", or to the order of a named party, or, where

recognized in overseas trade, to a named person "or assigns". U.C.C. § 7–104(1).

Negotiable instruments. To be negotiable within the meaning of U.C.C. Article 3, an instrument must meet the requirements set out in Section 3–104: (1) it must be a writing signed by the maker or drawer; it must contain an (2) unconditional (3) promise (example: note) or order (example: check) (4) to pay a sum certain in money; (5) it must be payable on demand or at a definite time; (6) it must be payable to the bearer or to order (examples of instruments payable to order are (a) "Pay to the order of Daniel Dealer," and (b) "Pay Daniel Dealer or order"); and (7) it must not contain any other promise, order, obligation, or power given by the maker or drawer except as authorized by Article 3. See also **Commercial paper; Negotiation.**

Negotiable words. Words and phrases which impart the character of negotiability to bills, notes, checks, etc., in which they are inserted; for instance, a direction to pay to A. "or order" or "bearer". See **Negotiable instruments.**

Negotiate /nəgówshiyèyt/. To transact business; to bargain with another respecting a purchase and sale; to conduct communications or conferences with a view to reaching a settlement or agreement. It is that which passes between parties or their agents in the course of or incident to the making of a contract and is also conversation in arranging terms of contract.

To communicate or confer with another so as to arrive at the settlement of some matter. To meet with another so as to arrive through discussion at some kind of agreement or compromise about something. Al Herd, Inc. v. Isaac, 271 Cal.App.2d 749, 76 Cal.Rptr. 697, 699. To discuss or arrange a sale of bargain; to arrange the preliminaries of a business transaction. Also to sell or discount negotiable paper, or assign or transfer it by indorsement and delivery. To conclude by bargain, treaty, or agreement.

See also **Negotiation.**

Negotiated plea. The effect of plea bargaining in which the criminal defendant agrees to plead guilty to the charge or to a reduced charge in return for a recommendation from the prosecutor of a disposition less severe than possible under the particular statute. See **Plea bargaining.**

Negotiation /nəgòws(h)iyéyshən/. The transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery. U.C.C. § 3–202(1). The act by which a check or promissory note is put into circulation by being passed by one of the original parties to another person.

Negotiation is process of submission and consideration of offers until acceptable offer is made and accepted. Gainey v. Brotherhood of Ry. and S. S. Clerks, Freight Handlers, Exp. & Station Emp., D.C. Pa., 275 F.Supp. 292, 300. The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction.

See also **Negotiate.**

Negotiorum gestio /nəgòwshiyórəm jés(h)ch(iy)òw/. Lat. In the civil law, literally, a doing of business or businesses. A species of spontaneous agency, or an interference by one in the affairs of another, in his absence, from benevolence or friendship, and without authority.

Negotiorum gestor /nəgòwshiyórəm jéstòr/. Lat. In the civil law, a transactor or manager of business; a person voluntarily constituting himself agent for another; one who, without any mandate or authority, assumes to take charge of an affair or concern for another person, in the latter's absence, but for his interest.

One who spontaneously, and without the knowledge or consent of the owner, intermeddles with his property, as to do work on it, or to carry it to another place, etc.

N.E.I. An abbreviation for *"non est inventus,"* he is not found.

Neife, naif, nativus /níyf/nayíyf/nətáyvəs/. In old English law, a woman who was born a villein, or a bond-woman.

Neighbor. One who lives in close proximity to another.

Neighborhood. A place near; an adjoining or surrounding district; a more immediate vicinity; vicinage. Connally v. General Const. Co., 269 U.S. 385, 46 S.Ct. 126, 129, 70 L.Ed. 322.

It is not synonymous with territory or district, but is a collective noun, with the suggestion of proximity, and refers to the units which make up its whole, as well as to the region which comprehends those units. A district or locality, especially when considered with relation to its inhabitants or their interests. In ordinary and common usage "locality" is synonymous in meaning with "neighborhood," and neither connote large geographical areas with widely diverse interests. Lukens Steel Co. v. Perkins, 70 App.D.C. 354, 107 F.2d 627, 631.

As used with reference to a person's reputation, "neighborhood" means in general any community or society where person is well known and has established a reputation.

Ne injuste vexes /níy ənjəstiy véksiyz/. Lat. In old English practice, a prohibitory writ, commanding a lord not to demand from the tenant more services than were justly due by the tenure under which his ancestors held.

Neither party. An abbreviated form of docket entry, meaning that, by agreement, neither of the parties will further appear in court in that suit used as a form of judgment in some states where a case has been settled.

Ne luminibus officiatur /níy l(y)uwmínəbəs əfishiyéydər/. Lat. In the civil law, the name of a servitude which restrains the owner of a house from making such erections as obstruct the light of the adjoining house.

Nemine contradicente /néməniy kòntrədəséntiy/. Lat. No one dissenting; no one voting in the negative. A phrase used to indicate the unanimous consent of a court or legislative body to a judgment, resolution, vote, or motion. Commonly abbreviated *"nem. con."*

Neminem lædit qui jure suo utitur /némənəm líydət kwày júriy s(y)úwow yúwdədər/. He who stands on his own rights injures no one.

Neminem oportet esse sapientiorem legibus /némənəm əpórdəd ésiy sæpiyènshiyórəm líyjəbəs/. No man ought to be wiser than the laws.

Nemo /níymow/. Lat. No one; no man. The initial word of many Latin phrases and maxims, among which are the following:

Nemo admittendus est inhabilitare seipsum /níymow ædməténdəs èst ìnhəbìlətériy siyípsəm/. No man is to be admitted to incapacitate himself.

Nemo agit in seipsum /níymow éyjəd ən siyípsəm/. No man acts against himself. A man cannot be a judge and a party in his own cause.

Nemo alienæ rei, sine satisdatione, defensor idoneus intelligitur /níymow æliyíyniy ríyay, sáyniy sædəsdèyshiyówniy, dəfén(t)sòr ədówniyəs ìntəlíjədər/. No man is considered a competent defender of another's property, without security. A rule of the Roman law, applied in part in admiralty cases.

Nemo alieno nomine lege agere potest /níymow æliyíynow nómənìy líyjiy æjəriy pówdəst/. No one can sue in the name of another.

Nemo aliquam partem recte intelligere potest, antequam totum iterum atque iterum perlegerit /níymow æləkwəm párdəm réktiy intəlíjəriy pówdəst, æntəkwəm tówdəm ídərəm pərlíyjərət/. No one can properly understand any part of a thing till he has read through the whole again and again.

Nemo allegans suam turpitudinem audiendus est /níymow æləgæn(d)z s(y)úwəm tərpət(y)úwdənəm òdiyéndəsést/. No one alleging his own turpitude is to be heard as a witness. This is not a rule of evidence, but applies to a party seeking to enforce a right founded on an illegal consideration.

Nemo bis punitur pro eodem delicto /níymow bís pyúwnədər pròw iyówdəm dəlíktow/. No man is punished twice for the same offense.

Nemo cogitationis pœnam patitur /níymow kòjətèyshiyównəs píynəm pædədər/. No one suffers punishment on account of his thoughts.

Nemo cogitur rem suam vendere, etiam justo pretio /níymow kó(w)jədər rém s(y)úwəm véndəriy, íysh(iy)əm jástow présh(iy)ow/. No man is compelled to sell his own property, even for a just price.

Nemo contra factum suam venire potest /níymow kóntrə fæktəm s(y)úwəm vənáyriy pówdəst/. No man can contravene or contradict his own deed. The principle of estoppel by deed.

Nemo damnum facit, nisi qui id fecit quod facere jus non habet /níymow dæmnow féysət, náysay kwày íd fíysət kwòd fæsəriy jás nòn héybət/. No one is considered as doing damage, unless he who is doing what he has no right to do.

Nemo dare potest quod non habet /níymow dériy pówdəst kwód nòn héybət/. No man can give that which he has not.

Nemo dat qui non habet /níymow dæt kwày nòn héybət/. He who hath not cannot give.

Nemo debet aliena jactura locupletari /níymow débəd æliyíynə jækt(y)úrə lòk(y)əplətéray/. No one ought to gain by another's loss.

Nemo debet bis puniri pro uno delicto /níymow débət bís pyənáyray pròw yúwnow dəlíktow/. No man ought to be punished twice for one offense. No man shall be placed in peril of legal penalties more than once upon the same accusation.

Nemo debet bis vexari pro eadem causa /níymow débət bís vekséray pròw iyéydəm kózə/. No one should be twice harassed for the same cause.

Nemo debet bis vexari [si constet curiæ quod sit] pro una et eadem causa /níymow débət bis vekséray (sáy kónstət kyúriyiy kwòd sít) pròw yúwnə èd iyéydəm kózə/. No man ought to be twice troubled or harassed [if it appear to the court that it is] for one and the same cause. No man can be sued a second time for the same cause of action, if once judgment has been rendered. No man can be held to bail a second time at the suit of the same plaintiff for the same cause of action.

Nemo debet esse judex in propria causa /níymow débəd ésiy júwdeks ìn prówpriyə kózə/. No man ought to be a judge in his own cause. A maxim derived from the civil law.

Nemo debet immiscere se rei ad se nihil pertinenti /níymow débəd əmísəriy síy ríyay æd siy náy(h)əl pərdənéntay/. No one should intermeddle with a thing that in no respect concerns him.

Nemo debet in communione invitus teneri /níymow débəd ìn kəmyùwniyówniy ənváydəs tənìray/. No one should be retained in a partnership against his will.

Nemo debet locupletari aliena jactura /níymow débət lòk(y)əplətéray æliyíynə jækt(y)úrə/. No one ought to be enriched by another's loss.

Nemo debet locupletari ex alterius incommodo /níymow débət lòk(y)əplətéray èks oltíriyəs ìnkómədow/. No one ought to be made rich out of another's loss.

Nemo debet rem suam sine facto aut defectu suo amittere /níymow débət rém s(y)úwəm sáyniy fæktow òt dəfékt(y)uw əmídəriy/. No man ought to lose his property without his own act or default.

Nemo de domo sua extrahi potest /níymow dìy dówmow s(y)úwə ekstréyhay pówdəst/. No one can be dragged out of his own house. In other words, every man's house is his castle.

Nemo duobus utatur officiis /níymow d(y)uwówbəs yuwtéydər əfís(h)iyəs/. No one should hold two offices, *i.e.*, at the same time.

Nemo ejusdem tenementi simul potest esse hæres et dominus /níymow əjásdəm tènəméntay sáyməl pówdəst ésiy híriyz èt dómənəs/. No one can at the same time be the heir and the owner of the same tenement.

Nemo enim aliquam partem recte intelligere possit antequam totum iterum atque iterum perlegerit /níymow

ínyнm ǽlәkwәm párdәm réktiy ìntәlíjәriy pósәt ǽntәkwәm tówdәm ídәrәm ǽtkwiy ídәrәm pәrlíyjәrәt/. No one is able rightly to understand one part before he has again and again read through the whole.

Nemo est hæres viventis /níymow èst híriyz vәvéntәs/. No one is the heir of a living person. No one can be heir during the life of his ancestor. No person can be the actual complete heir of another till the ancestor is previously dead.

Nemo est supra leges /níymow èst s(y)úwprә líyjiyz/. No one is above the law.

Nemo ex alterius facto prægravari debet /níymow èks oltíriyәs fǽktow prìygrәvéray débәt/. No man ought to be burdened in consequence of another's act.

Nemo ex consilio obligatur /níymow èks kәnsíl(i)yow òblәgéydәr/. No man is bound in consequence of his advice. Mere advice will not create the obligation of a mandate.

Nemo ex dolo suo proprio relevetur, aut auxilium capiat /níymow èks dówlow s(y)úwow prówpriyow rèlәvíydәr, òd ògzíl(i)yәm kǽpiyәt/. Let no one be relieved or gain an advantage by his own fraud. A civil law maxim.

Nemo ex proprio dolo consequitur actionem /níymow èks prówpriyow dówlow kәnsékwәdәr ækshiyównәm/. No one maintains an action arising out of his own wrong.

Nemo ex suo delicto meliorem suam conditionem facere potest /níymow èks s(y)úwow dәlíktow mìyliyórәm s(y)úwәm kәndìshiyównәm fǽsәriy pówdәst/. No one can make his condition better by his own misdeed.

Nemo inauditus condemnari debet si non sit contumax /níymow inódәdәs kòndәmnéray débәt sáy nòn sìt kóntyuwmæks/. No man ought to be condemned without being heard unless he be contumacious.

Nemo in propria causa testis esse debet /níymow ìn prówpriyә kózә téstәs ésiy débәt/. No one ought to be a witness in his own cause.

Nemo jus sibi dicere potest /níymow jás síbay dísәriy pówdәst/. No one can declare the law for himself. No one is entitled to take the law into his own hands.

Nemo militans deo implicetur secularibus negotiis /níymow mílәtæn(d)z díyow ìmplәsíydәr sèkyәlérәbәs nәgówshiyәs/. No man who is warring for [in the service of] God should be involved in secular matters. A principle of the old law that men of religion were not bound to go in person with the king to war.

Nemo nascitur artifex /níymow nǽsәdәr árdәfèks/. No one is born an artificer.

Nemo patriam in qua natus est exuere, nec ligeantiæ debitum ejurare possit /níymow pǽtriyәm ìn kwéy néydәs èst әgz(y)úwәriy, nèk lijiyǽnshiyiy débәdәm iyjәrériy pósәt/. No man can renounce the country in which he was born, nor abjure the obligation of his allegiance.

Nemo plus commodi hæredi suo relinquit quam ipse habuit /níymow plás kómәwday hәríyday s(y)úwow rәlíŋkwәt kwǽm ípsiy hǽbyuwәt/. No one leaves a greater benefit to his heir than he had himself.

Nemo plus juris ad alium transferre potest quam ipse habet /níymow plás júrәs æd éyliyәm trænsfériy pówdәst kwǽm ípsiy héybәt/. No one can transfer more right to another than he has himself.

Nemo potest contra recordum verificare per patriam /níymow pówdәst kóntrә rәkórdәm vèhrәfәkériy pәr pǽtriyәm/. No one can verify by the country against a record. The issue upon matter of record cannot be to the jury. A maxim of old practice.

Nemo potest esse dominus et hæres /níymow pówdәst ésiy dómәnәs èt híriyz/. No man can be both owner and heir.

Nemo potest esse simul actor et judex /níymow pówdәst ésiy sáyml ǽktәr èt júwdèks/. No one can be at once suitor and judge.

Nemo potest esse tenens et dominus /níymow pówdәst ésiy ténen(d)z èt dómәnәs/. No man can be both tenant and lord [of the same tenement].

Nemo potest exuere patriam /níymow pówdest әgz(y)úwәriy pǽtriyәm/. No man can renounce his own country.

Nemo potest facere per alium quod per se non potest /níymow pówdәst fǽsәriy pәr ǽliyәm kwód pәr síy nòn pówdәst/. No one can do that by another which he cannot do of himself. A rule said to hold in original grants, but not in descents; as where an office descended to a woman, in which case, though she could not exercise the office in person, she might by deputy.

Nemo potest facere per obliquum quod non potest facere per directum /níymow pówdәst fǽsәriy pàr әbláykwәm kwód nòn pówdәst fǽsәriy pàr dәréktәm/. No man can do that indirectly which he cannot do directly.

Nemo potest mutare consilium suum in alterius injuriam /níymow pówdәst myuwtériy kәnsíl(i)yәm s(y)úwәm ìn oltíriyәs әnjúriyәm/. No man can change his purpose to another's injury.

Nemo potest nisi quod de jure potest /níymow pówdәst náysay kwód diy júriy pówdәst/. No one is able to do a thing, unless he can do it lawfully.

Nemo potest plus juris ad alium transferre quam ipse habet /níymow pówdәst plás júrәs æd ǽliyәm trænsfériy kwǽm ípsәm héybәt/. No one can transfer a greater right to another than he himself has.

Nemo potest sibi debere /níymow pówdәst síbay dәbíriy/. No one can owe to himself.

Nemo præsens nisi intelligat /níymow príyzәn(d)z náysay әntélәgәt/. One is not present unless he understands.

Nemo præsumitur alienam posteritatem suæ prætulisse /níymow prәz(y)úwmәdәr ǽliyínәm pәstèrәtéydәm s(y)úwiy prìydәlísiy/. No man is presumed to have preferred another's posterity to his own.

Nemo præsumitur donare /níymow prәz(y)úwmәdәr dәnériy/. No one is presumed to give.

Nemo præsumitur esse immemor suæ æternæ salutis, et maxime in articulo mortis /níymow prәz(y)úwmәdәr

ésiy ímәmòr s(y)úwiy ətárniy səl(y)úwdəs, èt mæksəmiy ìn artíkyəlow mórdəs/. No one is presumed to be forgetful of his own eternal welfare, and particularly at the point of death.

Nemo præsumitur ludere in extremis /níymow prəz(y)úwmədər l(y)úwdəriy in əkstríyməs/. No one is presumed to trifle at the point of death.

Nemo præsumitur malus /níymow prəz(y)úwmədər mæləs/. No one is presumed to be bad.

Nemo prohibetur plures negotiationes sive artes exercere /níymow pròw(h)əbíydər pl(y)úriyz nəgòwshiyèyshiyówniyz sáyviy árdiyz ègzərsíriy/. No one is prohibited from following several kinds of business or several arts. The common law doth not prohibit any person from using several arts or mysteries at his pleasure.

Nemo prohibetur pluribus defensionibus uti /níymow pròw(h)əbíydər pl(y)úrəbəs dəfènsiyównəbəs yúwtay/. No one is prohibited from making use of several defenses.

Nemo prudens punit ut præterita revocentur, sed ut futura præveniantur /níymow prúwdèn(d)z pyúwnəd ət prətéhrədə rìyvəséntər, séd ət f(y)əchúrə prəvìyniyéntər/. No wise man punishes in order that past things may be recalled, but that future wrongs may be prevented.

Nemo punitur pro alieno delicto /níymow pyúwnədər pròw æliyínow dəlíktow/. No one is punished for another's wrong.

Nemo punitur sine injuria, facto, seu defalta /níymow pyúwnədər sáyniy ənjúriyə, fæktow, syúw dəfóltə/. No one is punished unless for some wrong, act, or default.

Nemo qui condemnare potest, absolvere non potest /níymow kwày kòndəmnériy pówdəst, əbzólvəriy nòn pówdəst/. No one who may condemn is unable to acquit.

Nemo sibi esse judex vel suis jus dicere debet /níymow síbay ésiy júwdèks vèl s(y)úwəs jəs dísəriy débət/. No man ought to be his own judge, or to administer justice in cases where his relations are concerned.

Nemo sine actione experitur, et hoc non sine breve sive libello conventionali /níymow sáyniy ækshiyówniy əkspérədər, èt hók nòn sáyniy bríyviy sáyviy ləbélow kənvénshənéylay/. No one goes to law without an action, and no one can bring an action without a writ or bill.

Nemo tenetur ad impossibile /níymow təníydər æd ìmposíbəliy/. No one is bound to an impossibility.

Nemo tenetur armare adversarium contra se /níymow təníydər armériy ædvərsériyəm kóntrə síy/. No one is bound to arm his adversary against himself.

Nemo tenetur divinare /níymow təníydər dìvənériy/. No man is bound to divine, or to have foreknowledge of, a future event.

Nemo tenetur edere instrumenta contra se /níymow təníydər íydəriy ìnstrəméntə kóntrə síy/. No man is bound to produce writings against himself. A rule of the Roman law, adhered to in criminal prosecutions, but departed from in civil questions.

Nemo tenetur informare qui nescit, sed quisquis scire quod informat /níymow təníydər ìnfərmériy kwày nésət, séd kwískwis sáyriy kwód infórmət/. No one is bound to give information about things he is ignorant of, but every one is bound to know that which he gives information about.

Nemo tenetur jurare in suam turpitudinem /níymow təníydər jurériy ìn s(y)úwəm tərpət(y)úwdənəm/. No one is bound to swear to the fact of his own criminality; no one can be forced to give his own oath in evidence of his guilt.

Nemo tenetur prodere seipsum /níymow təníydər prówdəriy sìyípsəm/. No one is bound to betray himself. In other words, no one can be compelled to criminate himself.

Nemo tenetur seipsum accusare /níymow təníydər sìyípsəm ækyəzériy/. No one is bound to accuse himself.

Nemo tenetur seipsum infortuniis et periculis exponere /níymow təníydər sìyípsəm ìnforchúwniyəs èt pəríkyələs ekspównəriy/. No one is bound to expose himself to misfortunes and dangers.

Nemo tenetur seipsum prodere /níymow təníydər sìyípsəm prówdəriy/. No one is bound to betray himself.

Nemo unquam judicet in se /níymow áŋkwəm júwdəsət ìn síy/. No one can ever be a judge in his own cause.

Nemo unquam vir magnus fuit, sine aliquo divino afflatu /níymow áŋkwəm vír mægnəs f(y)úwət, sáyniy æləkwow dəváynow əfléyt(y)uw/. No one was ever a great man without some divine inspiration.

Nemo videtur fraudare eos qui sciunt et consentiunt /níymow vədíydər frodíriy íyows kwày sáyənt èt kənsénshiyənt/. No one seems [is supposed] to defraud those who know and assent [to his acts].

Nephew. The son of one's brother or sister, or one's brother-in-law or sister-in-law.

Nepos /népos/níypòws/. Lat. A grandson.

Nepotism /népədizəm/. Bestowal of patronage by public officers in appointing others to positions by reason of blood or marital relationship to appointing authority.

Neptis /néptəs/. Lat. A granddaughter; sometimes great-granddaughter.

Neque leges neque senatus consulta ita scribi possunt ut omnis casus qui quandoque in sediriunt comprehendatur; sed sufficit ea quae plaerumque accidunt contineri /nékwiy líyjiyz nékwiy sənéydəs kənsáltə áydə skráybay pósənt ət ómnəs kéysəs kwày kwondówkwiy ìn sədíriyənt kòmprəhendéydər; sèd səfəsəd íyə kwìy plərəmkwiy æksədənt kòntəníray/. Means that neither laws nor acts of a parliament can be so written as to include all actual or possible cases; it is sufficient if they provide for those things which frequently or ordinarily may happen.

Ne quid in loco publico vel itinere fiat /níy kwíd ìn lówkow pəblakow vèl aytínəriy fáyət/. Lat. That nothing shall be done (put or erected) in a public place or way. The title of an interdict in the Roman law.

Ne recipiatur /níy rəsìpiyéydər/. Lat. That it be not received. A *caveat* or warning given to a law officer, by a party in a cause, not to receive the next proceedings of his opponent.

Ne relessa pas /nə rəlésə pá/. L. Fr. Did not release. Where the defendant had pleaded a release, this was the proper replication by way of traverse.

Net. That which remains after all allowable deductions, such as charges, expenses, discounts, commissions, taxes, etc., are made.

Net assets. A bookkeeping balance obtained by subtracting company's liabilities from its gross assets. Commonwealth v. Union Trust Co. of Pittsburgh, 345 Pa. 298, 27 A.2d 15, 17. Model Bus. Corp. Act § 2(i).

Net asset value. Term used in evaluating stock of investment company and arrived at by deducting total liabilities from total market value of all assets of company. Net asset value of corporation, for stock appraisal purpose, is share which stock represents in value of net assets of corporation, including every kind of property and value, whether realty or personalty, tangible or intangible, good will, and corporation's value as going concern. In re Watt & Shand, 452 Pa. 287, 304 A.2d 694, 698.

Net balance. The proceeds of sale, after deducting expenses.

Net cost. The actual cost of an item after deductions of all income and financial gain from the gross cost. As used in insurance, it represents the total premiums paid less the dividends paid and cash surrender value.

Net earnings. See **Earnings.**

Net estate. Under estate tax statute the term means that which is left of the gross estate after the deduction of proper and lawful items in the course of settlement. United States Tust Co. of New York v. Sears, D.C.Conn., 29 F.Supp. 643, 649. In general, the net estate is the gross estate less the following allowable deductions: (a) funeral expenses; (b) claims against the estate; and (c) unpaid mortgages or indebtedness on property which is included in the gross estate.

Nether house of Parliament. A name given to the English house of commons in the time of Henry VIII.

Net income. Income subject to taxation after allowable deductions and exemptions have been subtracted from gross or total income. The excess of all revenues and gains for a period over all expenses and losses of the period.

Net income for income tax purposes is what remains out of gross income after subtracting ordinary and necessary expenses incurred in efforts to obtain or to keep it. Walling's Estate v. C. I. R., C.A.Pa., 373 F.2d 190, 193.

See also **Distributable net income.**

Net interest. Pure interest which is theoretical and excludes overhead and risks from cost of capital.

Net lease. Lease in which provision is made for the lessee to pay, in addition to rent, the taxes, insurance and maintenance charges. See also **Escalator clause; Net rent.**

Net level annual premium. An amount which, if exacted from a group of policyholders and increased by interest, will yield a sum sufficient to satisfy all death claims. The result is generally referred to as the "net" or "net level premium" of the policy. Fox v. Mutual Ben. Life Ins. Co., C.C.A.Mo., 107 F.2d 715, 718.

Net listing. A type of listing contract whereby the broker is only entitled to a commission to the extent that sales price exceeds the given amount. For example, a net listing of $15,000 where the property sold for $18,000 would result in a $3,000 commission. See also **Listing; Multiple listing; Net sale contract.**

Net loss. Any deficit from operations, plus any shrinkage in value of plant investment. Ickes v. U. S. ex rel. Chestatee Pyrites & Chemical Corporation, D.C., 289 U.S. 510, 53 S.Ct. 700, 77 L.Ed. 1352. The excess of all expenses and losses for a period over all revenues and gains of the period. Negative net income.

Net national product. In a given period of time, the gross national product less allowance for capital consumption. See also **Gross National Product.**

Net operating assets. The assets, net of depreciation and bad debts, employed in the ordinary course of business. Hence excludes investments in stocks and bonds owned by a manufacturing company, for example.

Net operating income. Income before interest and income taxes but after depreciation produced by operating assets.

Net operating loss. Loss before interest and income taxes but after depreciation produced by operating assets. In income taxation term means the excess of the deductions allowed over the gross income. I.R.C. § 172(c).

Net position. In securities and commodity trading, the difference between contracts long and contracts short held by a trader.

Net premium. In life insurance, this term is used to designate that portion of the premium which is intended to meet the cost of the insurance, both current and future. Its amount is calculated upon the basis of the mortality tables and upon the assumption that the company will receive a certain rate of interest upon all its assets; it does not include the entire premium paid by the assured, but does include a certain sum for expenses.

Net price. The lowest price, after deducting all deductions, discounts, etc.

Net proceeds. Gross proceeds, less charges which may be rightly deducted. Pflueger v. United States, 73 App.D.C. 364, 121 F.2d 732, 736.

Net profits. Profits after deduction of all expenses; may be classified as net before or after taxes. Deducting the cost of goods sold from sales gives the *gross profit.* Deducting the operating expenses (overhead) from gross profit gives the *operating profit.* Deducting income taxes from operating profits gives the *net profit.* See also **Net income.**

Net rent. Basic rent charge plus additional monthly charges for taxes, utilities and maintenance. See also **Net lease.**

Net return. See **Net income; Net profits.**

Net revenues. See **Net income; Net profits.**

Net sale contract. One in which the principal agrees to accept a specified net price for property to be sold, and the agent's compensation for negotiating a sale is to be any amount received in excess of the specified figure. Loughlin v. Idora Realty Co., 259 Cal.App.2d 619, 66 Cal.Rptr. 747, 751, 752. See also **Net listing.**

Net sales. Gross sales minus returns, allowances, rebates, and discounts.

Net single premium. Aggregate of future yearly costs of insurance, severally discounted to age from which computation is made. Magers v. Northwestern Mut. Life Ins. Co., 348 Mo. 96, 152 S.W.2d 148, 152.

Premium which, if exacted from a group of policyholders and immediately invested at the assumed rate of interest, will yield in the aggregate a sum exactly sufficient to pay all death claims as they mature providing the mortality rate is in accord with the table used. Fox v. Mutual Ben. Life Ins. Co., C.C.A. Mo., 107 F.2d 715, 718.

Net tonnage. The cubic contents of the interior of a vessel, when the spaces occupied by the crew and by propelling machinery are deducted, numbered in tons. Kiessig v. San Diego County, 51 Cal.App.2d 47, 124 P.2d 163, 165.

Net value. In insurance, accumulation of balances of past net premiums not absorbed in carrying risk. Fox v. Mutual Ben. Life Ins. Co., C.C.A.Mo., 107 F.2d 715, 718, 719. Policy "reserve". Magers v. Northwestern Mut. Life Ins. Co., 348 Mo. 96, 152 S.W.2d 148, 152, 153.

Net weight. The weight of an article or collection of articles, after deducting from the gross weight the weight of the boxes, coverings, casks, etc., containing the same. The weight of an animal dressed for sale, after rejecting hide, offal, etc.

Net worth. Remainder after deduction of liabilities from assets. W. H. Miner, Inc. v. Peerless Equipment Co., C.C.A.Ill., 115 F.2d 650, 655. Difference between total assets and liabilities of individual, corporation, etc.

The total assets of a person or business less the total liabilities (amounts due to creditors). In the case of a corporation net worth includes both capital stock and surplus; in the case of a partnership or single proprietorship it is the original investment plus accumulated and reinvested profits.

Net worth of corporation may be determined by subtracting liabilities from assets or by adding the capital account and surplus account as reflected in general ledger of corporation. Eastern Capital Corp. v. Freeman, 10 Misc.2d 412, 168 N.Y.S.2d 834, 838.

Net worth method. An approach used by the Internal Revenue Service to reconstruct the income of a taxpayer who fails to maintain adequate records. Under this approach, the gross income for the year is the increase in net worth of the taxpayer (*i.e.,* assets in excess of liabilities) with appropriate adjustment for nontaxable receipts and nondeductible expenditures. The net worth method often is used when tax fraud is suspected.

Net yield. The return on an investment after deducting all costs, losses and charges for management.

Ne unques accouple /niyáŋkwiyz əkápəl/. L. Fr. Never married. More fully, *ne unques accouple en loiall matrimonie,* never joined in lawful marriage. The name of a plea in the action of dower *unde nihil habet,* by which the tenant denied that the dowress was ever lawfully married to the decedent.

Ne unques executor /niyáŋkwiyz əgzékyədər/. L. Fr. Never executor. The name of a plea by which the defendant denies that he is an executor, as he is alleged to be; or that the plaintiff is an executor, as he claims to be.

Ne unques seise que dower /niyáŋkwiyz síyziy kə dáwər/. L. Fr. (Never seised of a dowable estate.) In pleading, the general issue in the action of dower *unde nil habet,* by which the tenant denies that the demandant's husband was *ever seised* of an estate of which dower might be had.

Ne unques son receiver /niyáŋkwiyz sòn rəsíyvər/. L. Fr. In old pleading, the name of a plea in an action of account-render, by which the defendant denies that he ever was receiver of the plaintiff.

Neurasthenia /n(y)ùrəsθíyniyə/. Neurosis manifested chiefly by exhaustion, mental and physical fatigue, irritability and poorly localized symptoms without any underlying physical disorder.

Neurology. Branch of medicine dealing with nervous system and its disorders.

Neutral. Indifferent; unbiased; impartial; not engaged on either side; not taking an active part with either of the contending sides. In an international war, the principal hostile powers are called "belligerents;" those actively co-operating with and assisting them, their "allies;" and those taking no part whatever, "neutrals."

Neutrality. The state of a nation which takes no part between two or more other nations at war. U. S. v. The Three Friends, 166 U.S. 1, 17 S.Ct. 495, 41 L.Ed. 897.

Neutrality laws. Acts of Congress which forbid the fitting out and equipping of armed vessels, or the enlisting of troops, for the aid of either of two belligerent powers with which the United States is at peace.

Neutrality proclamation. A proclamation by the President of the United States, issued on the outbreak of a war between two powers with both of which the

United States is at peace, announcing the neutrality of the United States and warning all citizens to refrain from any breach of the neutrality laws.

Neutralization. Erasure or cancellation of unexpected harmful testimony by showing either by cross-examination or other witnesses that the witness has made a statement in conflict with his testimony. State v. Gallicchio, 44 N.J. 540, 210 A.2d 409, 412. See also **Impeachment.**

Neutral property. Property which belongs to citizens of neutral powers, and is used, treated, and accompanied by proper *insignia* as such.

Ne varietur /níy vèriyíydər/. Lat. It must not be altered. A phrase sometimes written by a notary upon a bill or note, for the purpose of establishing its identity, which, however, does not affect its negotiability.

Never indebted, plea of. In common law pleading, a species of traverse which occurs in actions of debt on simple contract, and is resorted to when the defendant means to deny in point of fact the existence of any express contract to the effect alleged in the declaration, or to deny the matters of fact from which such contract would by law be implied.

New. As an element in numerous compound terms and phrases of the law, this word may denote novelty, or the condition of being previously unknown or of recent or fresh origin, but ordinarily it is a purely relative term and is employed in contrasting the date, origin, or character of one thing with the corresponding attributes of another thing of the same kind or class.

In order to be "new", as that word is used in the patent laws, the achievement must be either one that produces an unusual or improved or advanced result, which was unknown to the same prior art at the time of the claimed invention; or the achievement must be one that produces an old result in an unusual and substantially more efficient, or more economical way.

New acquisition. An estate derived from any source other than descent, devise, or gift from father or mother or any relative in the paternal or maternal line. Webb v. Caldwell, 198 Ark. 331, 128 S.W.2d 691, 694.

New and useful. The phrase used in the patent laws to describe the two qualities of an invention or discovery which are essential to make it patentable, viz., novelty, or the condition of having been previously unknown, and practical utility. To accomplish a new and useful result it is not necessary that result before unknown should be brought about, but it is sufficient if an old result is accomplished in a new and more effective way. Hirschy v. Wisconsin-Minnesota Gas & Electric Household Appliances Co., D.C.Minn., 18 F.2d 347, 354. An invention achieves a new result, where a function which had been performed by other means was performed to an efficient degree by an association of means never before combined, though all of them were old, and some of the changes seemed to be only in degree.

New assets. In the law governing the administration of estates, this term denotes assets coming into the hands of an executor or administrator after the expiration of the time when, by statute, claims against the estate are barred so far as regards recourse against the assets with which he was originally charged.

New assignment. Under common law practice, where the declaration in an action is ambiguous, and the defendant pleads facts which are literally an answer to it, but not to the real claim set up by the plaintiff, the plaintiff's course is to reply by way of new assignment; *i.e.*, allege that he brought his action not for the cause supposed by the defendant, but for some other cause to which the plea has no application.

New cause of action. With reference to the amendment of pleadings, this term may refer to a new state of facts out of which liability is claimed to arise, or it may refer to parties who are alleged to be entitled under the same state of facts, or it may embrace both features. Amended and supplemental pleadings are permitted under Fed.R.Civil P. 15.

New for old. In making an adjustment of a partial loss under a policy of marine insurance, the rule is to apply the old materials towards the payment of the new, by deducting the value of them from the gross amount of the expenses for repairs, and to allow the deduction of one-third *new for old* upon the balance.

New inn. An inn of chancery. See **Inns of Chancery.**

Newly-discovered evidence. Evidence of a new and material fact, or new evidence in relation to a fact in issue, discovered by a party to a cause after the rendition of a verdict or judgment therein. Testimony discovered after trial, not discoverable before trial by exercise of due diligence. Kash N'Karry Wholesale Supermarkets, Inc. v. Garcia, Fla.App., 221 So.2d 786, 788.

Newly discovered evidence such as will support motion for new trial or to reopen for amended findings refers to evidence of facts existing at the time of trial of which the aggrieved party was excusably ignorant. Chromalloy Am. Corp. v. Alloy Surfaces Co., D.C.Del., 55 F.R.D. 406, 409. To constitute newly discovered evidence for which new trial may be granted, evidence must pertain to facts in existence at time of trial, and not to facts that have occurred subsequently. U. S. v. DePugh, D.C.Mo., 266 F.Supp. 417, 434.

Motions for new trial based on newly discovered evidence must generally be made within a specified time period; see *e.g.* Fed.R.Crim.P. 33.

New matter. In pleading, matter of fact not previously alleged by either party in the pleadings. Amended and supplemental pleadings are permitted under Fed. R.Civil P. 15.

New promise. See **Promise.**

Newsman's privilege. The alleged constitutional right (freedom of speech and press) of a newsman to refuse to disclose the sources of his information. See **Shield law.**

Newspaper. A publication, usually in sheet form, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest.

Official newspaper. One designated by a state or municipal legislative body, or agents empowered by them, in which the public acts, resolves, advertisements, and notices are required to be published. See also **Legal newspaper.**

New trial. See **Motion for new trial; Plain error rule; Trial.**

New York interest. System of computing interest by using the exact number of days in a month and not 30 days uniformly.

New York Stock Exchange. An unincorporated association of member firms which handle the purchase and sale of securities for themselves and customers. It is the largest stock exchange in the country.

New York Times v. Sullivan. Landmark case in which the U.S. Supreme Court held that the constitutional guarantee of a free press and free speech require a public official who sues for defamation to prove malice on the part of the defendant in the publication of the matter. Malice in this context is the publishing of the material knowing it to be false or with a reckless disregard of its falsity. 376 U.S. 254, 279–280, 84 S.Ct. 710–726, 11 L.Ed.2d 686. See also **Libel.**

Nexi /néksay/. Lat. In Roman law, bound; bound persons. A term applied to such insolvent debtors as were delivered up to their creditors, by whom they might be held in bondage until their debts were discharged.

Next. Nearest; closest; immediately following.

Next devisee /nékst dəvàyzíy/°dèvəzíy/. Person to whom remainder is given by will.

Next eventual estate. Estate taking effect upon happening of the event terminating accumulation. In re Shupack's Estate, 158 Misc. 873, 287 N.Y.S. 184, 196.

Next friend. One acting for benefit of infant, married woman, or other person not sui juris, without being regularly appointed guardian. In re Boulware's Will, 144 Misc. 235, 258 N.Y.S. 522. A "next friend" is not a party to an action, but is an officer of the court, especially appearing to look after the interests of the minor whom he represents. Youngblood v. Taylor, Fla., 89 So.2d 503, 505. See also **Parens Patriæ.**

"Next friend" or "prochein ami" is one admitted to court to prosecute for infant. Crawford v. Amusement Syndicate Co., Mo., 37 S.W.2d 581, 584.

Next of kin. In the law of descent and distribution, this term properly denotes the persons nearest of kindred to the decedent, that is, those who are most nearly related to him by blood; but it is sometimes construed to mean only those who are entitled to take under the statute of distributions, and sometimes to include other persons. The term "next of kin" is used with two meanings; (1) nearest blood relations according to law of consanguinity and (2) those entitled to take under statutory distribution of intestate's estates, and term is not necessarily confined to relatives by blood, but may include a relationship existing by reason of marriage, and may well embrace persons, who in natural sense of word, and in contemplation of Roman law, bear no relation of kinship at all. In re Kyle's Autopsy, Okl., 309 P.2d 1070, 1073.

Within wrongful death statutes, means those who inherit from decedent under law of descents and distributions. Ellis v. Sill, 190 Kan. 300, 374 P.2d 213, 215.

Next presentation. In the law of advowsons, the right of next presentation is the right to present to the first vacancy of a benefice.

Nexum /néksəm/. Lat. In Roman law, in ancient times the *nexum* seems to have been a species of formal contract, involving a loan of money, and attended with peculiar consequences, solemnized with the "copper and balance." Later, it appears to have been used as a general term for any contract struck with those ceremonies, and hence to have included the special form of conveyance called *"mancipatio."* In a general sense it means the obligation or *bond* between contracting parties.

In Roman law, this word expressed the tie or obligation involved in the old conveyance by *mancipatio;* and came latterly to be used interchangeably with (but less frequently than) the word *"obligatio"* itself.

Nichills /níkəlz/. In old English practice, debts due to the exchequer which the sheriff could not levy, and as to which he returned *nil.* These sums were transcribed once a year by the clerk of the nichills, and sent to the treasurer's remembrancer's office, whence process was issued to recover the "nichill" debts. Both of these offices were abolished in 1833.

Nickname. A short name; one *nicked* or cut off for the sake of brevity, without conveying an idea of opprobrium, and frequently evincing the strongest affection or the most perfect familiarity.

Niece. The daughter of one's brother or sister, or of one's brother-in-law or sister-in-law.

Niefe /níyf/. In old English law, a woman born in vassalage; a bondwoman.

Nient /niy(ént)/. L. Fr. Nothing; not.

Nient comprise /niy(ént) kəmpríyz/. Not comprised; not included. An exception taken to a petition because the thing desired is not contained in that deed or proceeding whereon the petition is founded.

Nient culpable /niy(ént) kálpəbəl/. Not guilty. The name in French law of the general issue in tort or in a criminal action.

Nient dedire /niy(ént) dədír/. To say nothing; to deny nothing; to suffer judgment by default.

Nient le fait /niy(ént) ləféy(t)/. In pleading, not the deed; not his deed. The same as the plea of *non est factum.*

Nient seisi /niy(ént) síyziy/. In old pleading, not seised. The general plea in the writ of annuity.

NIFO. "Next-in, first-out" inventory valuation. See also **Last-in, First-out (LIFO),** and **First-in, First-out (FIFO).**

Nighttime. At common-law, that period between sunset and sunrise during which there is not daylight enough to discern a man's face. State v. Perkins, 342

Mo. 560, 116 S.W.2d 80, 81, 82. The rule is often followed that "nighttime" begins thirty minutes after sunset and ends thirty minutes before sunrise, Model Penal Code, § 221.01(2); State v. Perkins, 342 Mo. 560, 116 S.W.2d 80, 82; or, that period of time from one hour after sunset to one hour before sunrise, Com. v. Lavery, 255 Mass. 327, 333–334, 151 N.E. 466, 468.

The common-law definition is still adhered to in some states, but in others "night" has been defined by statute (see *e.g.* Model Penal Code definition above).

Night walkers. Described in the statute 5 Edw. III, c. 14, as persons who sleep by day and walk by night. Persons who prowl about at night, and are of a suspicious appearance and behavior. Persons whose habit is to be abroad at night for the purpose of committing some crime or nuisance or mischief or disturbing the peace; not now generally subject to the criminal laws except in respect to misdemeanors actually committed, or in the character of vagrants or suspicious persons. In a narrower or more popular sense, a night walker is a prostitute who walks the streets at night for the purpose of soliciting men for lewd purposes.

Nigrum nunquam excedere debet rubrum /náygrəm náŋkwəm əksíydəriy débət rúwbrəm/. The black should never go beyond the red [*i.e.*, the text of a statute should never be read in a sense more comprehensive than the rubric, or title].

Nihil /náy(h)əl/. Lat. Nothing. Often contracted to *"nil."* The word standing alone is the name of an abbreviated form of return to a writ made by a sheriff or constable, the fuller form of which would be *"nihil est"* or *"nihil habet,"* according to circumstances.

Nihil aliud potest rex quam quod de jure potest /náy(h)əl ǽl(i)yəd pówdəst réks kwǽm kwód diy júriy pówdəst/. The king can do nothing except what he can by law do.

Nihil capiat per breve /náy(h)əl kǽpiyət pər bríyviy/. In practice, that he take nothing by his writ. The form of judgment against the plaintiff in an action, either in bar or in abatement. When the plaintiff has commenced his proceedings by bill, the judgment is *nihil capiat per billam.*

Nihil consensui tam contrarium est quam vis atque metus /náy(h)əl kənsénshuwày tǽm kəntrériyəmést kwǽm vís ǽtkwiy míydəs/. Nothing is so opposed to consent as force and fear.

Nihil dat qui non habet /náy(h)əl dǽt kwày nòn héybət/. He gives nothing who has nothing.

Nihil de re accrescit ei qui nihil in re quando jus accresceret habet /náy(h)əl diy ríy əkrésəd íyay kwày náy(h)əl ìn ríy kwóndow jás əkrésərət héybət/. Nothing of a matter accrues to him who, when the right accrues, has nothing in that matter.

Nihil dicit /náy(h)əl dísət/°dáy°/. He says nothing. The name of the judgment which may be taken as of course against a defendant who omits to plead or answer the plaintiff's declaration or complaint within the time limited. In some jurisdictions it is otherwise known as judgment "for want of a plea."

Judgment taken against party who withdraws his answer is *judgment nihil dicit,* which amounts to confession of cause of action stated, and carries with it, more strongly than judgment by default, admission of justice of plaintiff's case. See also **Nil dicit judgment.**

Nihil dictum quod non dictum prius /náy(h)əl díktəm kwòd nón díktəm práyəs/. Nothing is said which was not said before. Said of a case where former arguments were repeated.

Nihil est /náy(h)əl èst/. There is nothing. A form of return made by a sheriff when he has been unable to serve the writ.

Nihil est enim liberale quod non idem justum /náy(h)əl èst íynəm lìbəréyliy kwód nòn áydəm jástəm/. For there is nothing generous which is not at the same time just.

Nihil est magis rationi consentaneum quam eodem modo quodque dissolvere quo conflatum est /náy(h)əl èst méyjəs rǽshiyównay kònsəntéyniyəm kwǽm iyówdəm mówdow kwódkwiy dəzólvəriy kwòw kənfléydəm èst/. Nothing is more consonant to reason than that a thing should be dissolved or discharged in the same way in which it was created.

Nihil facit error nominis cum de corpore constat /náy(h)əl féysəd éhrər nómənəs kǽm diy kórpəriy kón(t)stæ̀t/. An error as to a name is nothing when there is certainty as to the person.

Nihil habet /náy(h)əl héybət/. He has nothing. The name of a return made by a sheriff to a *scire facias* or other writ which he has been unable to serve on the defendant.

Nihil habet forum ex scena /náy(h)əl héybət fórəm èks síynə/. The court has nothing to do with what is not before it.

Nihil infra regnum subditos magis conservat in tranquilitate et concordia quam debita legum administratio /náy(h)əl ínfrə régnəm sábdədows méyjəs kənsárvəd in træŋkwìlətéytiy èt kənkórd(i)yə kwǽm débədə líygəm ədmìnəstréysh(iy)ow/. Nothing preserves in tranquillity and concord those who are subjected to the same government better than a due administration of the laws.

Nihil iniquius quam æquitatem nimis intendere /náy(h)əl ənîkwiyəs èst kwǽm ìykwətéydəm nímәs ənténdəriy/. Nothing is more unjust than to extend equity too far.

Nihil in lege intolerabilius est [quam] eandem rem diverso jure censeri /náy(h)əl ìn líyjiy ìntolərəbíliyəs èst kwǽm iyǽndəm rém dəvársow júriy sən(t)síray/. Nothing is more intolerable in law than that the same matter, thing, or case should be subject to different views of law. Applied to the difference of opinion entertained by different courts, as to the law of a particular case.

Nihilist /níy(h)ələst/náy°/. One advocating doctrine of nihilism. One devoted to the destruction of the present political, religious, and social institutions.

Nihil magis justum est quam quod necessarium est /náy(h)əl méyjəs jástəm èst kwǽm kwód nèsəsériyəm èst/. Nothing is more just than that which is necessary.

Nihil nequam est præsumendum /náy(h)əl nékwəm èst prìyz(y)əméndəm/. Nothing wicked is to be presumed.

Nihil perfectum est dum aliquid restat agendum /náy(h)əl pərféktəm èst dəm áləkwid réstəd əjéndəm/. Nothing is perfect while anything remains to be done.

Nihil peti potest ante id tempus quo per rerum naturam persolvi possit /náy(h)əl péday pówdəst ǽntiy íd témpəs kwòw pər rírəm nəchúrəm pərsólvay pósət/. Nothing can be demanded before the time when, by the nature of things, it can be paid.

Nihil possumus contra veritatem /náy(h)əl pósəməs kóntrə vèhrətéydəm/. We can do nothing against truth.

Nihil præscribitur nisi quod possidetur /náy(h)əl prəskríbədər náysay kwòd pòsədíydər/. There is no prescription for that which is not possessed.

Nihil quod est contra rationem est licitum /náy(h)əl kwód èst kóntrə ræshiyównəm èst lísədəm/. Nothing that is against reason is lawful.

Nihil quod est inconveniens est licitum /náy(h)əl kwód èst ìnkənvíyn(i)yən(d)z èst lísədəm/. Nothing that is inconvenient is lawful. A maxim very frequently quoted by Lord Coke, but to be taken in modern law with some qualification.

Nihil simul inventum est et perfectum /náy(h)əl sáyməl ənvéntəmést èt pərféktəm/. Nothing is invented and perfected at the same moment.

Nihil tam conveniens est naturali æquitati quam unumquodque dissolvi eo ligamine quo ligatum est /náy(h)əl tæm kənvíyn(i)yən(d)z èst nætchəréylay ìykwətéyday kwæm yùwnəmkwódkwiy dəzólvay íyow ləgéyməniy kwòw ləgéydəm èst/. Nothing is so consonant to natural equity as that a thing should be dissolved by the same means by which it was bound.

Nihil tam conveniens est naturali æquitati quam voluntatem domini rem suam in alium transferre ratam habere /náy(h)əl tæm kənvíyn(i)yən(d)z èst nætyuréylay èkwətéyday kwæm vòləntéydəm dòmənay rém s(y)úwəm ìn éyl(i)yəm trænsfériy réydəm həbíriy/. Nothing is so consonant to natural equity as to regard the intention of the owner in transferring his own property to another.

Nihil tam naturale est, quam eo genere quidque dissolvere, quo colligatum est; ideo verborum obligatio verbis tollitur; nudi consensus obligatio contrario consensu dissolvitur /náy(h)əl tæm nætyuréyliy èst, kwæm íyow jénəriy kwídkwiy dəzólvəriy, kwòw kòləgéydəm èst; ídiyow vərbórəm òbləgéysh(iy)ow vórbəs tóləder; n(y)úwday kən(t)sén(t)səs òbləgéysh(iy)ow kəntréríyow kən(t)sén(t)s(y)uw dəzólvədər/. Nothing is so natural as to dissolve anything in the way in which it was bound together; **therefore** the obligation of words is taken away by words; the obligation of mere consent is dissolved by the contrary consent.

Nihil tam proprium imperio quam legibus vivere /náy(h)əl tæm prówpriyəm impíriyow kwæm líyjəbəs váyvəriy/. Nothing is so becoming to authority as to live in accordance with the laws.

Nil /níl/. Lat. Nothing. A contracted form of *"nihil,"* which see.

Nil agit exemplum litem quod lite resolvit /níl éyjəd əgzémpləm láydəm kwòd láydiy rəzólvət/. An example does no good which settles one question by another.

Nil consensui tam contrarium est quam vis atque metus /níl kənsénshuway tæm kəntréríyəm èst kwæm vís ǽtkwiy míydəs/. Nothing is so opposed to consent as force and fear.

Nil debet /níl débət/. He owes nothing. The form of the general issue in all actions of debt on simple contract.

Nil dicit judgment. Judgment entered against defendant, in proceeding in which he is in court but has not filed an answer, is a "nil dicit judgment"; all error of pleading being waived, court examines petition only to determine if it attempts to state cause of action within court's jurisdiction. Gonzalez v. Regalado, Tex.Civ.App., 542 S.W.2d 689, 691. See also **Nihil dicit.**

Nil facit error nominis cum de corpore vel persona constat /níl féysəd éhrər nómənəs kàm dìy kórpəriy vél pərsównə kónstæt/. A mistake in the name does not matter when the body or person is manifest.

Nil habuit in tenementis /níl hǽbyuwəd ən tènəméntəs/. He had nothing [no interest] in the tenements. A plea in debt on a lease indented, by which the defendant sets up that the person claiming to be landlord had no title or interest.

Nil ligatum /níl ləgéydəm/. Nothing bound; that is, no obligation has been incurred.

Nil sine prudenti fecit ratione vetustas /níl sáyniy pruwdéntay féysət ræshiyówniy vətástæs/. Antiquity did nothing without a good reason.

Nil temere novandum /níl témpriy nəvǽndəm/. Nothing should be rashly changed.

Nimia certitudo certitudinem ipsam destruit /nímiyə sərdət(y)úwdow sərdət(y)úwdənəm ípsəm dəstrúwət/. Too great certainty destroys certainty itself.

Nimia subtilitas in jure reprobatur /nímiyə sə(b)tílətæs ìn júriy rèprəbéydər/. Too much subtlety in law is discountenanced.

Nimium altercando veritas amittitur /nímiyəm òltərkǽndow véhrətæs əmídədər/. By too much altercation truth is lost.

Nimmer /nímər/. A thief; a pilferer.

Nineteenth Amendment. Known as the women's suffrage amendment to the U.S. Const., it provides that the right of citizens of the U.S. to vote shall not be denied or abridged by the U.S. or by any state on account of sex. The 19th Amendment was ratified in 1920.

Ninety (90) day letter. Statutory notice sent by I.R.S. to taxpayer of tax deficiency. During the 90 day period after the mailing of such notice the taxpayer may either pay the tax and seek a refund or not pay the tax and challenge such alleged deficiency on peti-

tion to the Tax Court. I.R.C. §§ 6212, 6213. Notice of Commissioner's determination of tax liability must, absent jeopardy, precede assessment. Bromberg v. Ingling, C.A.Guam, 300 F.2d 859, 861. See also **Thirty-day letter.**

Ninth Amendment. This amendment to the U.S. Const. provides that the enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Nisei /níysèy/. Jap. Second generation. Particularly a person born in the United States of Japanese parents. See also **Kibei.**

Nisi /náysay/. Lat. Unless. The word is often affixed, as a kind of elliptical expression, to the words "rule," "order," "decree," "judgment," or "confirmation," to indicate that the adjudication spoken of is one which is to stand as valid and operative *unless* the party affected by it shall appear and show cause against it, or take some other appropriate step to avoid it or procure its revocation. Thus a "decree *nisi*" is one which will definitely conclude the defendant's rights unless, within the prescribed time, he shows cause to set it aside or successfully appeals. The word, in this sense, is opposed to "absolute." And when a rule *nisi* is finally confirmed, for the defendant's failure to show cause against it, it is said to be "made absolute." See also **Show cause order.**

Nisi decree. An interim decree or order which will ripen into a final decree unless something changes, or some event takes place. See also **Nisi.**

Nisi feceris /náysay físərəs/. The name of a clause commonly occurring in the old manorial writs, commanding that, if the lords failed to do justice, the king's court or officer should do it. By virtue of this clause, the king's court usurped the jurisdiction of the private, manorial, or local courts.

Nisi prius /náysay práyəs/. The *nisi prius* courts are such as are held for the trial of issues of fact before a jury and one presiding judge. In America the phrase was formerly used to denote the forum (whatever may be its statutory name) in which the cause was tried to a jury, as distinguished from the appellate court.

Nisi prius clause /nàysay práyəs klóz/. In practice, a clause entered on the record in an action at law, authorizing the trial of the cause at *nisi prius* in the particular county designated. It was first used by way of continuance.

Nisi prius roll /nàysay práyəs rówl/. In practice, the roll or record containing the pleadings, issue, and jury process of an action, made up for use in the *nisi prius* court.

NKA. Now known as.

N.L. An abbreviation of *"non liquet"* (which see).

N.L.R.A. National Labor Relations Act.

N.L.R.B. National Labor Relations Board.

No-action clause. Provision commonly found in liability insurance policies to the effect that the insurer is not liable to the insured and that no action may be brought against the insurer by the insured until an action has been brought and the insured has either paid the amount to the third person or until a judgment has been rendered fixing the amount due or until an agreement has been reached.

No-action letter. Letter written by attorney for governmental agency (*e.g.* S.E.C.) to effect that, if facts are as represented in request for ruling, he will advise agency not to take action because the facts do not warrant prosecution.

No arrival, no sale. Provision in sales contract that if goods do not arrive at destination buyer acquires no property therein and does not become liable for price.

No award. The name of a plea in an action on an award, by which the defendant traverses the allegation that an award was made.

Nobiles magis plectuntur pecunia; plebes vero in corpore /nówbəliyz méyjəs plèktántər pəkyúwn(i)yə, plíybiyz vírow ìn kórpəriy/. The higher classes are more punished in money; but the lower in person.

Nobiles sunt, qui arma gentilitia antecessorum suorum proferre possunt /nówbəliyz sənt kwày ármə jèntəlísh(iy)ə æntiysesórəm s(y)uwórəm prowféhriy pósənt/. The gentry are those who are able to produce **armorial** bearings derived by descent from their own ancestors.

Nobiliores et benigniores præsumptiones in dubiis sunt præferendæ /nəbìliyóriyz èt bənìgniyóriyz prəzàm(p)shiyówniz ìn d(y)úwbiyəs sənt prèfərændæ/. In cases of doubt, the more generous and more benign presumptions are to be preferred. A civil-law maxim.

Nobilitas est duplex, superior et inferior /nowbílətæs èst d(y)úwpleks, səpíriyər èd infíriyər/. There are two sorts of nobility, the higher and the lower.

Nobility. In English law, a division of the people, comprehending dukes, marquises, earls, viscounts, and barons. These had anciently duties annexed to their respective honors. They are created either by writ, *i.e.*, by royal summons to attend the house of peers, or by letters patent, *i.e.*, by royal grant of any dignity and degree of peerage; and they enjoy many privileges, exclusive of their senatorial capacity.

No bill. This phrase, endorsed by a grand jury on the indictment, is equivalent to "not found", "no indictment", or "not a true bill". It means that, in the opinion of the jury, evidence was insufficient to warrant the return of a formal charge. See **Indictment.**

No bonus clause. In states where applicable, a clause under the eminent domain section of a lease, giving the lessee the right to recover only the value of his physical improvements in the event of a taking, and not the value of his leasehold interest (the difference between the fixed rent of the lease and current market rental value).

Nocent /nówsənt/. From Latin *"nocere,"* guilty. "The *nocent* person."

No contest clause. Provision in a will to the effect that the legacy or devise is given on condition that no action is taken to contest the will; and if such action is initiated, the legacy or devise is forfeited.

Noctanter /noktǽntər/. By night; an abolished writ which issued out of chancery, and returned to the queen's bench, for the prostration of inclosures, etc.

Noctes and **noctem de firma** /nóktiyz diy fə́rmə /nóktəm°/. Entertainment of meat and drink for so many nights.

Nocumentum /nòkyəméntəm/. Lat. In old English law, a nuisance. *Nocumentum damnosum,* a nuisance occasioning loss or damage. *Nocumentum injuriosum,* an injurious nuisance. For the latter only a remedy was given.

No evidence. Under the rule that the court may render judgment non obstante veredicto if directed verdict would have been proper, the term "no evidence" does not mean literally no evidence at all; "no evidence" comprehends those situations wherein by the application of established principles of law the evidence is deemed legally insufficient to establish an asserted proposition of fact. Fields v. Burlison Packing Co., Tex.Civ.App., 405 S.W.2d 105, 106. "No evidence" points may be sustained only when (1) evidence of a vital fact is completely absent; (2) rules of law or evidence bar court from giving weight to only evidence offered to prove a vital fact; (3) no more than a mere scintilla of evidence is offered to prove a vital fact; and (4) the evidence conclusively establishes the opposite of the vital fact. State v. Vargas, Tex. Civ.App., 419 S.W.2d 926, 927.

No eyewitness rule. The "no eyewitness rule" is that where there is no obtainable direct evidence of what decedent did or failed to do immediately before injury, trier of facts may infer that decedent was in exercise of ordinary care for his own safety. Marean v. Petersen, 259 Iowa 557, 144 N.W.2d 906, 913.

No fault. A type of automobile insurance, in force in many states, in which each person's own insurance company pays for injury or damage up to a certain limit regardless of whether its insured was actually at fault. See **Insurance.** Also, popular name for a type of divorce in which a marriage can be ended on a mere allegation that it has "irretrievably" broken down or because of "irreconcilable" differences between the spouses. Under such statutory ground for dissolution of marriage, fault on the part of either spouse need not be shown or proved.

No fault insurance. See **Insurance; No fault.**

No funds. Endorsement marked on check when a check is drawn on bank in which the drawer has no funds with which to cover check. See also **Fund.**

No goods. This is the English equivalent of the Latin term *"nulla bona,"* being the form of the return made by a sheriff or constable, charged with an execution, when he has found no property of the debtor on which to levy.

N.O.I.B.N. Abbreviation, used under terms of tariffs, filed with Interstate Commerce Commission, meaning not otherwise indexed by name. Pennsylvania R. Co. v. U. S., Ct.Cl., 42 F.2d 600, 602.

Nolens volens /nówlèn(d)z vówlèn(d)z/. Lat. Whether willing or unwilling; consenting or not.

No limit order. An order to buy or sell securities in which there is no stipulation as to price.

Nolissement /nàlismón/. Fr. In French marine law, affreightment.

Nolle prosequi /nóliy prósəkwày/. Lat. A formal entry upon the record, by the plaintiff in a civil suit, or, more commonly, by the prosecuting officer in a criminal action, by which he declares that he "will no further prosecute" the case, either as to some of the defendants, or altogether. A nolle prosequi is a formal entry on the record by the prosecuting officer by which he declares that he will not prosecute the case further. State v. Gaskins, 263 S.C. 343, 210 S.E.2d 590, 592. Commonly called "nol pros".

No-load fund. A type of mutual fund which charges little or nothing for administrative and selling expenses in the sale of its shares. See **Mutual fund.**

Nolo contendere /nówlow kənténdəriy/. Latin phrase meaning "I will not contest it"; a plea in a criminal case which has a similar legal effect as pleading guilty. Hudson v. U. S., 272 U.S. 451, 455, 47 S.Ct. 127, 129, 71 L.Ed. 347. Type of plea which may be entered with leave of court to a criminal complaint or indictment by which the defendant does not admit or deny the charges, though a fine or sentence may be imposed pursuant to it. The principal difference between a plea of guilty and a plea of nolo contendere is that the latter may not be used against the defendant in a civil action based upon the same acts. As such, this plea is particularly popular in antitrust actions (*e.g.* price fixing) where the likelihood of civil actions following in the wake of a successful antitrust prosecution is very great.

A defendant may plead nolo contendere only with the consent of the court. Such a plea shall be accepted by the court only after due consideration of the views of the parties and the interest of the public in the effective administration of justice. Fed.R.Crim.P. 11(b).

Nomen /nówmən/. Lat. In the civil law, a name; the name, style, or designation of a person. Properly, the name showing to what *gens* or tribe he belonged, as distinguished from his own individual name *(the prœnomen),* from his surname or family name *(cognomen),* and from any name added by way of a descriptive title *(agnomen).* The name or style of a class or genus of persons or objects. A debt or a debtor.

Nomen collectivum /nówmən kòləktáyvəm/. A collective name or term; a term expressive of a class; a term including several of the same kind; a term expressive of the plural, as well as singular, number.

Nomen est quasi rei notamen /nówmən èst kwéysay ríyay nowtéymən/. A name is, as it were, the note of a thing.

Nomen generale /nówmən jènəréyliy/. A general name; the name of a *genus.*

Nomen generalissimum /nówmən jènərəlísəməm/. A name of the most general kind; a name or term of the most general meaning. By the name of "land," which is *nomen generalissimum,* everything terrestrial will pass.

Nomen juris /nówmən júrəs/. A name of the law; a technical legal term.

Nomen non sufficit, si res non sit de jure aut de facto /nówmən nòn səfəsət sày ríy nòn sít dìy júriy ót dìy fæktow/. A name is not sufficient if there be not a thing [or subject for it] *de jure* or *de facto*.

Nomen transcriptitium /nówmən trænskriptíshiyəm/. See **Nomina transcriptitia.**

Nominal. Titular; existing in name only; not real or substantial; connected with the transaction or proceeding in name only, not in interest. Park Amusement Co. v. McCaughn, D.C.Pa., 14 F.2d 553, 556. Not real or actual; merely named, stated, or given, without reference to actual conditions; often with the implication that the thing named is so small, slight, or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name; *e.g.*, a nominal price. Lehman v. Tait, C.C.A.Md., 58 F.2d 20, 23.

Nominal account. In accounting, a ledger account of expenses and income, closed into surplus when the books are balanced.

Nominal capital. Very small or negligible capital, whose use in particular business is incidental. Strayer's Business College v. Commissioner of Internal Revenue, C.C.A.Md., 35 F.2d 426, 429. Capital in name only and which is not substantial; not real or actual; merely named, stated, or given, without reference to actual conditions. Feeders' Supply Co. v. Commissioner of Internal Revenue, C.C.A.Mo., 31 F.2d 274, 276.

Nominal consideration. See **Consideration.**

Nominal damages. See **Damages.**

Nominal defendant. A person who is joined as defendant in an action, not because he is immediately liable in damages or because any specific relief is demanded as against him, but because his connection with the subject-matter is such that the plaintiff's action would be defective, under the technical rules of practice, if he were not joined. See also **Parties.**

Nominal interest rate. The rate of interest stated in a security as opposed to the actual interest yield that is based upon the price at which the interest-bearing property is purchased and the length of time to maturity of the obligation.

Nominal partner. A person who appears to be a partner in a firm, or is so represented to persons dealing with the firm, or who allows his name to appear in the style of the firm or to be used in its business, in the character of a partner, but who has no actual interest in the firm or business.

Nominal party. See **Nominal defendant; Parties.**

Nominal trust. A dry or passive trust in which the duties of the trustee are minimal and in which the beneficiary has virtual control.

Nomina mutabilia sunt, res autem immobiles /nómənə myùwdəbíl(i)yə sənt, ríyz ódəm əmówbəliyz/. Names are mutable, but things are immovable [immutable]. A name may be true or false, or may change, but the thing itself always maintains its identity.

Nomina si nescis perit cognitio rerum; et nomina si perdas, certe distinctio rerum perditur /nómənə sày nésəs párət kògníshiy)ow ríram èt nómənə sáy párdæs sárdiy dəstíŋksh(iy)ow ríram párdədər/. If you know not the names of things, the knowledge of things themselves perishes; and, if you lose the names, the distinction of the things is certainly lost.

Nomina sunt notæ rerum /nómənə sənt nówtiy ríram/. Names are the notes of things.

Nomina sunt symbola rerum /nómənə sənt símbələ ríram/. Names are the symbols of things.

Nominate. To name, designate by name, appoint, or propose for election or appointment.

Nominate contracts. In the civil law, contracts having a proper or peculiar name and form, and which were divided into four kinds, expressive of the ways in which they were formed, viz.: (1) Real, which arose *ex re*, from something done; (2) verbal, *ex verbis*, from something said; (3) literal, *ex literis*, from something written; and (4) consensual, *ex consensu*, from something agreed to.

Nominatim /nòmənéydəm/. Lat. By name; expressed one by one.

Nominating and reducing. A mode of obtaining a panel of special jurors in England, from which to select the jury to try a particular action.

Nominatio auctoris /nòmənéyshow òktórəs/. Lat. In Roman law, a form of plea or defense in an action for the recovery of real estate, by which the defendant, sued as the person apparently in possession, alleges that he holds only in the name or for the benefit of another, whose name he discloses by the plea, in order that the plaintiff may bring his action against such other.

Nomination. An appointment or designation of a person to fill an office or discharge a duty. The act of suggesting or proposing a person by name as a candidate for an office.

Nomination paper. A paper used for selection of candidates by a political body which is not a political party and is not entitled to use a "nomination petition". Commonwealth v. Antico, 146 Pa.Super. 293, 22 A.2d 204, 209.

Nomination to a living. In English ecclesiastical law, the rights of nominating and of presenting to a living are distinct, and may reside in different persons. Presentation is the offering a clerk to the bishop. Nomination is the offering a clerk to the person who has the right of presentation.

Nominativus pendens /nòmənətáyvəs péndèn(d)z/. Lat. A nominative case grammatically unconnected with the rest of the sentence in which it stands. The opening words in the ordinary form of a deed *inter partes*, "This indenture," etc., down to "whereas," though an intelligible and convenient part of the deed, are of this kind.

Nomina transcriptitia /nómənə trænskrəptísh(iy)ə/. In Roman law, obligations contracted by *literæ (i.e., literis obligationes)* were so called because they arose from a peculiar *transfer (transcriptio)* from the creditor's day-book *(adversaria)* into his ledger *(codex)*.

Nomina villarum /nómənə vəlérəm/. In English law, an account of the names of all the villages and the possessors thereof, in each county, drawn up by several sheriffs (9 Edw. II), and returned by them into the exchequer, where it is still preserved.

Nomine /nóməniy/. Lat. By name; by the name of; under the name or designation of.

Nominee /nòməníy/. One who has been nominated or proposed for an office. One designated to act for another in his or her place.

One designated to act for another as his representative in a rather limited sense. It is used sometimes to signify an agent or trustee. It has no connotation, however, other than that of acting for another, in representation of another, or as the grantee of another. Schuh Trading Co. v. Commissioner of Internal Revenue, C.C.A.Ill., 95 F.2d 404, 411.

Nominee trust. An arrangement for holding title to real property under which one or more persons or corporations, pursuant to a written declaration of trust, declare that they will hold any property that they acquire as trustees for the benefit of one or more undisclosed beneficiaries.

Nomine pœnæ /nómənіy píyniy/. In the name of a penalty.

In the civil law, a legacy was said to be left *nomine pœnæ* where it was left for the purpose of coercing the heir to do or not to do something.

The term has also been applied, in English law, to some kinds of covenants, such as a covenant inserted in a lease that the lessee shall forfeit a certain sum on non-payment of rent, or on doing certain things, as plowing up ancient meadow, and the like.

Nomocanon /nòwmokǽnən/. (1) A collection of canons and imperial laws relative or conformable thereto. The first nomocanon was made by Johannes Scholasticus in 554. Photius, patriarch of Constantinople, in 883, compiled another nomocanon, or collation of the civil laws with the canons; this is the most celebrated. Balsamon wrote a commentary upon it in 1180. (2) A collection of the ancient canons of the apostles, councils, and fathers, without regard to imperial constitutions.

Nomographer /nəmógrəfər/. One who writes on the subject of laws.

Nomography /nəmógrəfiy/. A treatise or description of laws.

Nomotheta /nòwməthíydə/. A lawgiver; such as Solon and Lycurgus among the Greeks, and Cæsar, Pompey, and Sylla among the Romans.

Non. Lat. Not. The common prefix of negation.

Non-ability. Want of ability to do an act in law, as to sue. A plea founded upon such cause.

Non-acceptance. A buyer's right under a contract of sale to reject the goods because of non-conformance with the contract. U.C.C. § 3–601(a). Failure or refusal of a drawee to accept a draft or bill. The refusal to accept anything.

Non acceptavit /nón ækseptéyvət/. In common law pleading, the name of a plea to an action of assumpsit brought against the drawee of a bill of exchange by which he denies that he *accepted* the same.

Non-access. Absence of opportunities for sexual intercourse between husband and wife; or the absence of such intercourse. Defense interposed by alleged father in paternity cases.

Non accipi debent verba in demonstrationem falsam, quæ competunt in limitationem veram /nòn æksəpay débənt várbə in dèmənstrèyshiyównəm fól(t)səm, kwìy kómpədənt in lìmətèyshiyównəm vírəm/. Words ought not to be taken to import a false demonstration which may have effect by way of true limitation.

Non accrevit infra sex annos /nón əkríyvət ínfrə séks ǽnows/. It did not accrue within six years. The name of a plea by which the defendant sets up the statute of limitations against a cause of action which is barred after six years.

Nonacquiescence. Disagreement by the I.R.S. on the result reached by the U.S. Tax Court in a regular decision. Sometimes abbreviated as non-acqu. or NA.

Non-admission. The refusal of admission.

Nonæ et decimæ /nówniy ét désəmiy/. In old European law, payments made to the church, by those who were tenants of churchfarms. The first was a rent or duty for things belonging to husbandry; the second was claimed in right of the church.

Non-age. Lack of requisite legal age. A minor. In general, the legal status of a person who is under eighteen years of age.

Nonagium or **nonage** /nownéyj(iy)əm/nównəj/. In old European law, a ninth part of movables which was paid to the clergy on the death of persons in their parish, and claimed on pretense of being distributed to pious uses.

Non alio modo puniatur aliquis quam secundum quod se habet condemnatio /nòn éyliyow mówdow pyùwniyéydər ǽləkwis kwǽm səkándəm kwòd sìy héybət kòndemnéysh(iy)ow/. A person may not be punished differently than according to what the sentence enjoins.

Non aliter a significatione verborum recedi oportet quam cum manifestum est, aliud sensisse testatorem /nòn éylədər èy sìgnəfəkèyshiyówniy vərbórəm rəsíyday əpórtət kwǽm kəm mænəféstəm èst, éyliyəd sèn(t)sísiy tèstətórəm/. We must never depart from the signification of words, unless it is evident that they are not conformable to the will of the testator.

Non-ancestral estate. Realty coming to deceased in any way other than by descent or devise from a now dead ancestor, or by deed of actual gift from a living one, there being no other consideration than that of blood. One acquired by purchase or by act or agreement of the parties, as distinguished from one acquired by descent or by operation of law.

Non-apparent easement. A non-continuous or discontinuous easement. See **Easement.**

Non-appearance. A failure of appearance; the omission of the defendant to appear within the time limited.

Non-assessable. This word, placed upon a certificate of stock, does not cancel or impair the obligation to pay the amount due upon the shares created by the acceptance and holding of such certificate. . At most its legal effect is a stipulation against liability from further assessment or taxation after the entire subscription of one hundred per cent. shall have been paid. Upton v. Tribilcock, 91 U.S. 45, 23 L.Ed. 203.

Non assumpsit /nón əsə́m(p)sət/. The general issue in the action of *assumpsit;* being a plea by which the defendant avers that "he did not undertake" or promise as alleged.

Non assumpsit infra sex annos /nón əsə́m(p)səd ínfrə séks ǽnows/. He did not undertake within six years. The name of the plea of the statute of limitations, in the action of *assumpsit.*

Non auditur perire volens /nón ódədər pəráyriy vówlèn(d)z/. He who is desirous to perish is not heard. He who confesses himself guilty of a crime, with the view of meeting death, will not be heard. A maxim of the foreign law of evidence.

Non-bailable. Not admitting of bail; not requiring bail.

Non bis in idem /nón bís ìn áydəm/. Not twice for the same; that is, a man shall not be twice tried for the same crime. This maxim of the civil law expresses the same principle as the familiar rule of our law that a man shall not be twice "put in jeopardy" for the same offense.

Non-cancellable /nón kǽn(t)sələbəl/. Such provision in insurance policy precludes insurer from cancelling policy after an illness or accident, so long as the premium has been paid. Dudgeon v. Mutual Ben. Health & Accident Ass'n, C.C.A.W.Va., 70 F.2d 49, 52.

Non cepit /nón síypət/. He did not take. The general issue in replevin, where the action is for the wrongful *taking* of the property; putting in issue not only the taking, but the *place* in which the taking is stated to have been made.

Non-claim. The omission or neglect of person who ought to claim his right within the time limited by law.

Covenant of non-claim. See **Covenant.**

Non-combatant. A person connected with an army or navy, but for purposes other than fighting; such as the surgeons and chaplains or conscientious objectors. Also a neutral.

Non-commissioned. A non-commissioned officer of the armed services is an officer who holds his rank, not by commission from the executive authority, but by appointment by a superior officer.

Non compos mentis /nón kómpəs méntəs/. Lat. Not sound of mind; insane. This is a very general term, embracing all varieties of mental derangement. See **Insanity.**

Non concedantur citationes priusquam exprimatur super qua re fieri debet citatio /nón kònsədǽntər sətèyshiyówniyz prayáskwəm èksprəméydər s(y)úwpər kwèy ríy fáyəray débət saytéysh(iy)ow/. Summonses should not be granted before it is expressed on what matter the summons ought to be made.

Non concessit /nón kənsésət/. Lat. He did not grant. The name of a common law plea denying a grant, which could be made only by a stranger.

Nonconforming lot. A lot the area, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but now fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision, or amendment.

Nonconforming use. A structure the size, dimension or location of which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment. A use which does not comply with present zoning provisions but which existed lawfully and was created in good faith prior to the enactment of the zoning provision. Camaron Apartments, Inc. v. Zoning Bd. of Adjustment of City of Philadelphia, 14 Pa.Cmwlth. 571, 324 A.2d 805, 807.

Uses permitted by zoning statutes or ordinances to continue notwithstanding that similar uses are not permitted in area in which they are located. Beyer v. Mayor and Council of Baltimore City, 182 Md. 444, 34 A.2d 765, 766.

See also **Variance.**

Non-conformist. One who refuses to comply with others; one who refuses to join in the established forms of custom, belief, styles, usages, rules, etc.

Non consentit qui errat /nón kənséntət kwày éhrət/. He who mistakes does not consent.

Non constat /nón kónstət/. Lat. It does not appear; it is not clear or evident. A phrase used in general to state some conclusion as not necessarily following although it may appear on its face to follow.

Non-contestable clause. A non-contestable clause secures to insured indemnity by way of short limitations by contract against belated charges of fraud and mistake and rescission therefor, when he has acted thereon to his detriment by payment of premiums and foregoing other insurance.

Non-continuous easement. "Continuous easement" is one which may be enjoyed without any act by party claiming it, while "noncontinuous easement," such as right of way, is one to enjoyment of which party's act is essential. A non-apparent or discontinuous easement. See **Easement.**

Noncontribution clause. In fire insurance policies, a provision that only the interests of the owner and first mortgagee are protected under the policy.

Non culpabilis /nón kəlpéybələs/. Lat. In pleading, not guilty. It is usually abbreviated *"non cul."*

Noncumulative dividends. Commonly incident to preferred stock if a dividend is "passed" (not paid) in a particular year or period; such passed dividends are gone forever and there is no obligation to pay such when the next dividend is paid.

Non damnificatus /nón dæmnəfəkéydəs/. Lat. Not injured.

A common law plea in an action of debt on an indemnity bond, or bond conditioned "to keep the plaintiff harmless and indemnified," etc. It is in the nature of a plea of performance, being used where the defendant means to allege that the plaintiff has been kept harmless and indemnified, according to the tenor of the condition.

Non dat qui non habet /nón dæt kwáy nòn héybət/. He who has not does not give.

Non debeo melioris conditionis esse, quam auctor meus a quo jus in me transit /nón débiyow mìyliyórəs kəndìshiyównəs ésiy kwæm óktər míyəs èy kwòw jəs ìn míy træn(d)zət/. I ought not to be in better condition than he to whose rights I succeed.

Non deberet alii nocere quod inter alios actum esset /nón débərət éyliyay nósəriy kwòd íntər éyliyows æktəm ésət/. No one ought to be injured by that which has taken place between other parties.

Non debet actori licere quod reo non permittitur /nón débəd æktóray ləsíriy kwòd ríyow nòn pərmídədər/. A plaintiff ought not to be allowed what is not permitted to a defendant. A rule of the civil law.

Non debet adduci exceptio ejus rei cujus petitur dissolutio /nón débəd əd(y)úwsay əksépsh(iy)ow íyjəs ríyay k(y)úwjəs pédədər dìsəl(y)úwsh(iy)ow/. A plea of the same matter the dissolution of which is sought [by the action] ought not to be brought forward.

Non debet alii nocere, quod inter alios actum est /nón débəd éyliyay nəsíriy, kwód íntər éyliyows æktəm èst/. A person ought not to be prejudiced by what has been done between others.

Non debet alteri per alterum iniqua conditio inferri /nón débəd óltəray pər óltərəm ənáykwə kəndísh(iy)ow inféhray/. A burdensome condition ought not to be brought upon one man by the act of another.

Non debet cui plus licet, quod minus est non licere /nón débət kwúway plás lísət, kwòd máynəs èst nón ləsíriy/. He to whom the greater is lawful ought not to be debarred from the less as unlawful.

Non debet dici tendere in præjudicium ecclesiasticæ liberatatis quod pro rege et republica necessarium videtur /nón débət dáysay téndəriy ìn prèjuwdísh(iy)əm əklìyziyæstəsiy lìbər(ə)téydəs kwòd pròw ríyjiy èt rəpábləkə nèsəsériyəm vədíydər/. That which seems necessary for the king and the state ought not to be said to tend to the prejudice of spiritual liberty.

Non decet homines dedere causa non cognita /nón désət hóməniyz dédəriy kózə nòn kógnədə/. It is unbecoming to surrender men when no cause is shown.

Non decimando /nón dèsəmændow/. See **De non decimando.**

Non decipitur qui scit se decipi /nón dəsípədər kwày sít síy désəpay/. He is not deceived who knows himself to be deceived.

Non dedit /nón díydət/. Lat. In old pleading, he did not grant. The general issue in formedon.

Non definitur in jure quid sit conatus /nón dəfínədər ìn júriy kwíd sìt kənéydəs/. What an attempt is, is not defined in law. See **Attempt.**

Non-delivery. Neglect, failure, or refusal to deliver goods, on the part of a carrier, vendor, bailee, etc.

Non demisit /nón dəmáyzət/. Lat. He did not demise.

Non-detachable facilities. Facilities which may not be put back into channels of commerce. Briggs Mfg. Co. v. U. S., D.C.Conn., 30 F.2d 962, 967.

Non detinet /nón dédənət/. Lat. He does not detain.

The name of the general issue in the action of detinue. The general issue in the action of replevin, where the action is for the wrongful detention only.

Non differunt quæ concordant re, tametsi non in verbis iisdem /nón dífərənt kwíy kənkórdænt riy, tæmétsay nón ìn vérbəs iyáysdəm/. Those things do not differ which agree in substance, though not in the same words.

Non dimisit /nón dəmáyzət/. L. Lat. He did not demise. A common law plea resorted to where a plaintiff declared upon a demise without stating the indenture in an action of debt for rent. Also, a plea in bar, in replevin, to an avowry for arrears of rent, that the avowant did not demise.

Non-direction. Omission on the part of a judge to properly instruct the jury upon a necessary conclusion of law.

Non-disclosure. A failure to reveal facts, which may exist when there is no "concealment." State v. Watson, 145 Kan. 792, 67 P.2d 515, 517. See **Fraud; Material fact; Misrepresentation.**

Non distringendo /nón dìstrinjéndow/. A writ not to distrain.

Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta, ex empto competere actionem /nón d(y)ùwbətéydər, étsay spèshiyéylədər véndədər əvìkshiyównəm nòn prəmísərət, ríy əvíktə, èks émptow kəmpédəriy ækshiyównəm/. It is certain that, although the vendor has not given a special guaranty, an action *ex empto* lies against him, if the purchaser is evicted.

Non efficit affectus nisi sequatur effectus /nón èfəsəd əféktəs náysay səkwéydər əféktəs/. The intention amounts to nothing unless the effect follow.

Non erit alia lex Romæ, alia Athænis; alia nunc, alia posthac; sed et omnes gentes, et omni tempore, una lex, et sempiterna, et immortalis continebit /nón éhrət éyliyə léks rówmiy, éyliyə əθíynəs, éyliyə náŋk, éyliyə pówsthæk; séd èt ómniyz jéntiyz èd ómnay témpəriy yúwnə léks, èt sèmpətárnə èt ìmortéyləs, kòntəníybət/. There will not be one law at Rome, another at Athens; one law now, another hereafter; but one eternal and immortal law shall bind together all nations throughout all time.

Nones /nówn(d)z/. In the Roman calendar, the fifth, and, in March, May, July, and October, the seventh, day of the month. So called because, counting inclusively, they were *nine* days from the ides.

Non est arctius vinculum inter homines quam jusjurandum /nón èst árkshiyəs víŋk(y)ələm íntər hómənіyz kwæm jəsjəréndəm/. There is no closer [or firmer] bond between men than an oath.

Non est certandum de regulis juris /nón èst sərténdəm dìy régyələs júrəs/. There is no disputing about rules of law.

Non est consonum rationi, quod cognitio accessorii in curia christianitatis impediatur, ubi cognitio causæ principalis ad forum ecclesiasticum noscitur pertinere /nón èst kónsənəm ræshiyównay kwòd kogníish(iy)ow ækksəsóriyay ìn kyúriyə krìs(h)chiyænətéydəs impìydiyéydər, yúwbay kogníish(iy)ow kóziy prìn(t)səpéyləs æd fórəm əklìyziyéstəkəm nósədər pərdəníriy/. It is unreasonable that the cognizance of an accessory matter should be impeded in an ecclesiastical court, when the cognizance of the principal cause is admitted to appertain to an ecclesiastical court.

Non est disputandum contra principia negantem /nón èst dispyəténdəm kóntrə prìnsípiyə nəgéntəm/. We cannot dispute against a man who denies first principles.

Non est factum /nón èst fáktəm/. Lat. A plea denying execution of instrument sued on. Blair v. Lockwood, 226 Ky. 412, 11 S.W.2d 107, 109.

Non est inventus /nón èst ìnvéntəs/. Lat. He is not found. The sheriff's return to process requiring him to arrest the body of the defendant, when the latter is not found within his jurisdiction. It is often abbreviated, "*n. e. i.*," or written, in English, "not found."

Non est justum aliquem antenatum post mortem facere bastardum qui toto tempore vitæ suæ pro legitimo habebatur /nón èst jástəm éləkwəm æntiynéydəm pòwst mórdəm féysəriy bæstárdəm kwày tówdow témpəriy váydiy s(y)úwiy pròw ləjídəmow hæbəbéydər/. It is not just to make an elderborn a bastard after his death, who during his lifetime was accounted legitimate.

Non est novum ut priores leges ad posteriores trahantur /nón èst nówvəm ət prayóriyz líyjiyz æd pəstìriyóriyz trəhéntər/. It is no new thing that prior statutes should give place to later ones.

Non est recedendum a communi observantia /nón èst rèsədéndəm éy kəmyúwnay òbzərvénsh(iy)ə/. There should be no departure from a common observance.

Non est regula quin fallet /nón èst régyələ kwìn fólət/. There is no rule but what may fail.

Non est reus nisi mens sit rea /nón èst ríyəs náysay mén(d)z sít ríyə/. One is not guilty unless his intention be guilty. This maxim is much criticized and is only applicable when the absence of intent reduces the seriousness of the crime. See **Actus non facit reum, etc.; Mens rea.**

Non est singulis concedendum, quod per magistratum publice possit fieri, ne occasio sit majoris tumultus faciendi /nón èst síŋgyələs kòn(t)sədéndəm kwòd pàr mæjəstréydəm pəbləsiy pósət fáyəray, níy əkéyzh(iy)ow sìt məjórəs təmáltəs fæshiyénday/. That is not to be conceded to private persons which can be publicly done by the magistrate, lest it be the occasion of greater tumults.

Non exemplis sed legibus judicandum est /nón əgzémpləs sèd líyjəbəs jùwdəkændəm èst/. Not by the facts of the case, but by the law must judgment be made.

Non ex opinionibus singulorum, sed ex communi usi, nomina exaudiri debent /nón èks əpìniyównəbəs síŋgyəlórəm sèd éks kəmyúwnay yúws(y)uw nómənə èksodáyray débənt/. The names of things ought to be understood, not according to the opinions of individuals, but according to common usage.

Non facias malum, ut inde fiat bonum /nón féysh(iy)əs mæləm àd índiy fáyət bównəm/. You are not to do evil, that good may be or result therefrom.

Nonfeasance /nónfíyzən(t)s/. Nonperformance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty. Desmarais v. Wachusett Regional School Dist., 360 Mass. 591, 276 N.E.2d 691, 693.

There is a distinction between "nonfeasance" and "misfeasance" or "malfeasance"; and this distinction is often of great importance in determining an agent's liability to third persons. "Nonfeasance" means the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he has agreed with his principal to do; "misfeasance" means the improper doing of an act which the agent might lawfully do, or, in other words, it is the performing of his duty to his principal in such a manner as to infringe upon the rights and privileges of third persons; and "malfeasance" is a doing of an act which he ought not to do at all.

See also **Malfeasance.**

Non fecit /nón fíysət/. Lat. He did not make it. A plea in an action of *assumpsit* on a promissory note.

Non fecit vastum contra prohibitionem /nón fíysət væstəm kóntrə pròw(h)əbíshiyównəm/. He did not commit waste against the prohibition. A plea to an action founded on a writ of estrepement for waste.

Non-forfeitable. Not subject to forfeiture. Columbian Nat. Life Ins. Co. v. Griffith, C.C.A.Mo., 73 F.2d 244, 246. See also **Non-leviable.**

Non-freehold estates. All estates in real property without seisin; hence, all estates except the fee simple, fee tail and life estates are non-freehold.

Non-functional. A feature of goods is "non-functional" if it does not affect their purpose, action or performance, or the facility or economy of processing, handling or using them. In effect a mere form of merchandising or a business method. J. C. Penney Co. v. H. D. Lee Mercantile Co., C.C.A.Mo., 120 F.2d 949, 954. A feature if, when omitted, nothing of substantial value in the goods is lost. Ainsworth v. Gill Glass & Fixture Co., D.C.Pa., 26 F.Supp. 183, 187.

Non hæc in fœdera veni /nón híyk ìn féd ərə víynay/. I did not agree to these terms.

Non impedit clausula derogatoria quo minus ad eadem potestate res dissolvantur a qua constituuntur /nón impíydət klóz(y)ələ dərògətóriyə kwòw máynəs æd iyéydəm pòwdəstéydiy ríyz dəzòlvæntər èy kwèy kənstit(y)uwántər/. A derogatory clause does not impede things from being dissolved by the same power by which they are created.

Non impedivit /nón impədáyvət/. Lat. He did not impede. The plea of the general issue in *quare impedit.* The Latin form of the law French *"ne disturba pas."*

Non implacitando aliquem de libero tenemento sine brevi /nón implæsətændow æləkwem diy líbərow tènəméntow sáyniy briyvay/. A writ to prohibit bailiffs, etc., from distraining or impleading any man touching his freehold without the king's writ.

Non infregit conventionem /nón infríyjət kənvènshiyównəm/. Lat. He did not break the contract. The name of a plea sometimes pleaded in the action of covenant, and intended as a general issue, but held to be a bad plea; there being, properly speaking, no general issue in that action.

Non in legendo sed in intelligendo legis consistunt /nón ìn ləjéndow sèd ìn intèləjéndow líyjiyz kənsístənt/. The laws consist not in being read, but in being understood.

Noninsurable risk. A hazard or risk for which insurance will not be written because not subject to evaluation by actuarial computations; such risk being too uncertain.

Non-intercourse. The refusal of one state or nation to have commercial dealings with another; similar to an embargo *(q.v.).*

The absence of access, communication, or sexual relations between husband and wife. See **Non-access.**

Non interfui /nón intérf(y)uwày/. I was not present. A reporter's note.

Non-intervention will. A term sometimes applied to a will which authorizes the executor to settle and distribute the estate without the intervention of the court and without giving bond.

Non intromittant clause /nón ìntrəmídənt klóz/. In English law, a clause of a charter of a municipal borough, whereby the borough is exempted from the jurisdiction of the justices of the peace for the county.

Non intromittendo, quando breve præcipe in capite subdole impetratur /nón ìntrəməténdow, kwóndow bríyviy présəpiy ìn kæpədiy səbdəliy ìmpətréydər/. In old English law, a writ addressed to the justices of the bench, or in eyre, commanding them not to give one, who, under color of entitling the king to land, etc., as holding of him *in capite*, had deceitfully obtained the writ called *"præcipe in capite,"* any benefit thereof, but to put him to his writ of right.

Non-issuable pleas. Those upon which a decision would not determine the action upon the merits, as a plea in abatement.

Non-joinder. See **Joinder.**

Non-judicial day. Day on which process cannot ordinarily issue or be executed or returned, and on which courts do not usually sit. Vidal v. Backs, 218 Cal. 99, 21 P.2d 952.

Non juridicus /nón jərídəkəs/. Not judicial; not legal. *Dies non juridicus* is a day on which legal proceedings cannot be had.

Non-jurors. In English law, persons who refuse to take the oaths, required by law, to support the government.

Non jus ex regula, sed regula ex jure /nón jás èks régyələ séd régyələ èks júriy/. The law does not arise from the rule (or maxim), but the rule from the law.

Non jus, sed seisina, facit stipitem /nón jás sèd síyzənə féysət stípədəm/. Not right, but seisin, makes a stock. It is not a mere *right* to enter on lands, but actual *seisin*, which makes a person the root or *stock* from which all future inheritance by right of blood must be derived.

Non-leviable /nón léviyəbəl/. Not subject to be levied upon. Property exempt from seizure, forfeiture or sale in bankruptcy, attachment, garnishment, etc. Non-leviable assets are assets upon which an execution cannot be levied. See also **Exemption; Homestead.**

Non licet quod dispendio licet /nón lísət kwód dəspéndiyow lísət/. That which may be [done only] at a loss is not allowed [to be done]. The law does not permit or require the doing of an act which will result only in loss. The law forbids such recoveries whose ends are vain, changeable, and unprofitable.

Non liquet /nón líkwət/°láykwət/. Lat. It is not clear.

In the Roman courts, when any of the judges, after the hearing of a cause, were not satisfied that the case was made clear enough for them to pronounce a verdict, they were privileged to signify this opinion by casting a ballot inscribed with the letters "N. L.," the abbreviated form of the phrase *"non liquet."*

Non-mailable. A term applied to all letters and parcels which are by law excluded from transportation in the United States mails, whether on account of the size of the package, the nature of its contents, its obscene character, or for other reasons.

Non-medical policy. Insurance policy issued without medical examination of an applicant. Reserve Loan Life Ins. Co. of Texas v. Brown, Tex.Civ.App., 159 S.W.2d 179, 180.

Non merchandizanda victualia /nón màrchəndəzændə vìkchuwéyl(i)yə/. An ancient writ addressed to justices of assize, to inquire whether the magistrates of a town sold victuals in gross or by retail during the time of their being in office, which was contrary to an obsolete statute; and to punish them if they did.

Non-merchantable title. The title to realty need not be bad in fact to render it "non-merchantable", but it is sufficient, if an ordinarily prudent man with knowledge of facts and aware of legal questions involved would not accept it in ordinary course of business. Ghormley v. Kleeden, 155 Kan. 319, 124 P.2d 467, 470. See **Merchantable title.**

Non molestando /nón mòwləstǽndow/. A writ that lay for a person who was molested contrary to the king's protection granted to him.

Non nasci, et natum mori, paria sunt /nón nǽsay èt néydəm móray pǽriyə sánt/. Not to be born, and to be dead-born, are the same.

Non-navigable. At common law, streams or bodies of water not affected by tide were "non-navigable". Luscher v. Reynolds, 153 Or. 625, 56 P.2d 1158, 1162. Bodies of water other than navigable waters *(q.v.)*.

Non-negotiable. Not negotiable; not capable of passing title or property by indorsement and delivery. An instrument which may not be transferred by indorsement and delivery or by delivery alone, though it may be assigned. The transferee does not become a holder unless it is negotiated.

Non obligat lex nisi promuigata /nón óbləgət léks náysay prómalgéydə/. A law is not obligatory unless it be promulgated.

Non obstante /nón əbstǽntiy/. Lat. Notwithstanding.

Words anciently used in public and private instruments, intended to preclude, in advance, any interpretation contrary to certain declared objects or purposes.

A clause frequent in old English statutes and letters patent (so termed from its initial words), importing a license from the crown to do a thing which otherwise a person would be restrained by act of parliament from doing. A power in the crown to dispense with the laws in any particular case. This was abolished by the bill of rights at the Revolution.

Non obstante veredicto /nón əbstǽntiy vèhrədíktow/. Notwithstanding the verdict. A judgment entered by order of court for the plaintiff (or defendant) although there has been a verdict for the defendant (or plaintiff). Judgment *non obstante veredicto* in its broadest sense is a judgment rendered in favor of one party notwithstanding the finding of a verdict in favor of the other party. A motion for a directed verdict is a prerequisite to a subsequent grant of judgment notwithstanding the verdict. Fed.R. Civil P. 50.

Judgment *non obstante veredicto* originally, at common law, was a judgment entered for plaintiff "notwithstanding the verdict" for defendant; which could be done only, after verdict and before judgment, where it appeared that defendant's plea confessed the cause of action and set up matters in avoidance which, although verified by the verdict, were insufficient to constitute a defense or bar to the action. But either by statutory enactment or because of relaxation of the early common-law rule, the generally prevailing rule now is that either plaintiff or defendant may have a judgment *non obstante veredicto* in proper cases.

Non-occupational. Not of or pertaining to an occupation, trade, or work. Morgan v. Equitable Life Assur. Soc. of U. S., La.App., 22 So.2d 595, 597.

Non officit conatus nisi sequatur effectus /nón ófəsət kənéydəs náysay səkwéydər əféktəs/. An attempt does not harm unless a consequence follow.

Non omittas /nón əmídəs/. A clause usually inserted in writs of execution, in England, directing the sheriff "not to omit" to execute the writ by reason of any liberty, because there are many liberties or districts in which the sheriff has no power to execute process unless he has special authority.

Non omne damnum inducit injuriam /nón ómniy dǽmnəm ənd(y)úwsəd ənjúriyəm/. It is not every loss that produces an injury.

Non omne quod licet honestum est /nón ómniy kwòd lísəd (h)ənéstəm èst/. It is not everything which is permitted that is honorable.

Non omnium quæ a majoribus nostris constituta sunt ratio reddi potest /nón ómniyəm kwìy èy məjórəbəs nóstrə kònstət(y)úwdə sànt rǽsh(iy)ow réday páwdəst/. There cannot be given a reason for all the things which have been established by our ancestors.

Nonpayment. The neglect, failure, or refusal of payment of a debt or evidence of debt when due.

Non-performance. Neglect, failure, or refusal to do or perform an act stipulated to be done. Failure to keep the terms of a contract or covenant, in respect to acts or doings agreed upon. The failure or neglect to render performance called for in a contract, rendering the non-performer liable in damages or subject to a decree or judgment of specific performance.

Non pertinet ad judicem secuiarem cognoscere de lis quæ sunt mere spiritualia annexa /nón pórdənət æd júwdəsəm sèkyəlérəm kə(g)nósəriy dìy áyəs kwìy sənt míriy spìrət(y)uwéyl(i)yə ənéksə/. It belongs not to the secular judge to take cognizance of things which are merely spiritual.

Non plevin /nón plévən/. In old English law, default in not replevying land in due time, when the same was taken by the king upon a default. The consequence thereof (loss of seisin) was abrogated by St. 9 Edw. III, c. 2.

Non ponendis in assisis et juratis /nón pənéndəs ìn əsáyzəs et jəréydəs/. A writ formerly granted for freeing and discharging persons from serving on assizes and juries.

Non possessori incumbit necessitas probandi possessiones ad se pertinere /nón pòwzəsóray inkámbət nəsésətæs prəbénday pəzèshiyówniyz æd síy pərdəníriy/. A person in possession is not bound to prove that the possessions belong to him.

Non potest adduci exceptio ejus rei cujus petitur dissolutio /nón pówdəst əd(y)úwsay əksépsh(iy)ow íyjəs ríyay kyúwjəs pédədər dìsəl(y)úwsh(iy)ow/. An exception of the same thing whose avoidance is sought cannot be made.

Non potest probari quod probatum non relevat /nón pówdəst prəbéray kwòd prəbéydəm nòn réləvət/. That cannot be proved which, if proved, is immaterial.

Non potest quis sine brevi agere /nón pówdəst kwís sáyniy bríyvay éjəriy/. No one can sue without a writ. A fundamental rule of old practice.

Non potest rex gratiam facere cum injuria et damno allorum /nón pówdəst réks gréysh(iy)əm féysəriy kæ̀m injúriyə èt dǽmnow èyliyórəm/. The king cannot confer a favor on one subject which occasions injury and loss to others.

Non potest rex subditum renitentem onerare impositionibus /nón pówdəst réks sábdədəm rènəténtəm òwnərériy ìmpəzìshiyównəbəs/. The king cannot load a subject with imposition against his consent.

Non potest videri desisse habere qui nunquam habuit /nón pówdəst vədíray dəsáyziy həbíriy kwày nə́ŋkwæm hǽbyuwət/. He cannot be considered as having ceased to have a thing who never had it.

Non præstat impedimentum quod de jure non sortitur effectum /nón príystət əmpèdəméntəm kwòd dìy júriy nòn sórdədər əféktəm/. A thing which has no effect in law is not an impediment.

Non procedendo ad assissam rege inconsulto /nón pròwsədéndəm æ̀d əsáyzəm ríyjiy ìnkənsə́ltow/. A writ to put a stop to the trial of a cause appertaining unto one who is in the king's service, etc., until the king's pleasure respecting the same be known.

Non-profit association. A group organized for purposes other than generating profit, such as a charitable, scientific, or literary organization. See also **Non-profit corporation.**

Non-profit corporation. A corporation no part of the income of which is distributable to its members, directors or officers. Corporations may be organized under the Model Non-Profit Corporation Act "for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry, and professional, commercial, industrial or trade association; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the insurance laws of this State may not be organized under this Act." Id. § 4. For purposes of federal income taxation, an organization may be exempt as an "exempt organization" if it is organized and operated exclusively for one or more of the following purposes: (a) religious, (b) charitable, (c) scientific, (d) testing for public safety, (e) literary, (f) educational, (g) prevention of cruelty to children or animals, or (h) to foster national or international sports. See I.R.C. § 501(c) for a list of exempt organizations.

Non pros /nón prós/. Abbreviation of non prosequitur *(q.v.).*

Non prosequitur /nón prəsékwədər/. Lat. He does not follow up, or pursue. If, in the proceedings in an action at law, the plaintiff neglects to take any of those steps which he ought to take within the time prescribed by the practice of the court for that purpose, the defendant may enter judgment of *non pros.* against him, whereby it is adjudged that the plaintiff does not follow up *(non prosequitur)* his suit as he ought to do, and therefore the defendant ought to have judgment against him. Under current rules practice, such failure would result in a dismissal of the action or in a default judgment for defendant. Fed.R. Civil P. 41, 55.

Non quieta movere /nón kwayíydə məvíriy/. Lat. Not to disturb what is settled. A rule expressing the same principle as that of *stare decisis (q.v.).*

Non quod dictum est, sed quod factum est inspicitur /nón kwòd díktəm èst séd kwòd fǽktəm èst inspísədər/. Not what is said, but what is done, is regarded.

Nonrecourse. Status of person who holds an instrument which gives him no legal right against prior endorsers or the drawer to compel payment if the instrument is dishonored.

Nonrecourse loan. Type of security loan which bars the lender from action against the borrower if the security value falls below the amount required to repay the loan. It is used by the U.S. in loans to farmers on surplus crops.

Non refert an quis assensum suum præfert verbis, aut rebus ipsis et factis /nón réfərt æ̀n kwís əsén(t)səm s(y)úwəm príyfərt várbəs òt ríybəs ípsəs èt fǽktəs/. It matters not whether a man gives his assent by his words or by his acts and deeds.

Non refert quid ex æquipollentibus fiat /nón réfərt kwíd èks èkwəpəléntəbəs fáyət/. It matters not which of [two] equivalents happen.

Non refert quid notum sit judici, si notum non sit in forma judicii /nón réfərt kwid nówdəm sít júwdəsay, sáy nówdəm nón sìd ìn fórmə júwdəsay/. It matters not what is known to a judge, if it be not known in judicial form.

Non refert verbis an factis fit revocatio /nón réfərt várbəs æ̀n fǽktəs fít rèvəkéysh(iy)ow/. It matters not whether a revocation is made by words or deeds.

Non-residence. Residence beyond the limits of the particular jurisdiction.

In ecclesiastical law, the absence of spiritual persons from their benefices.

Non-resident. One who does not reside within jurisdiction in question; not an inhabitant of the state of the forum. Special rules govern service of process on non-residents; *e.g.* Fed.R. Civil P. 4(e). See **Long arm statutes.**

For the distinction between "residence" and "domicile," see **Domicile.**

Non-resident alien. One who is neither a resident nor a citizen of this country.

Non-resident decedent. Decedent domiciled in another jurisdiction at the time of his death. Uniform Probate Code, § 1–201(26).

Non-resident motorist statutes. State laws governing the liability and obligations of non-residents who use the state's highways.

Non residentio pro clerico regis /nón rèzədénsh(iy)ow pròw kléhrəkow ríyjəs/. A writ, addressed to a bishop, charging him not to molest a clerk employed in the royal service, by reason of his nonresidence; in which case he is to be discharged.

Non respondebit minor nisi in causa dotis, et hoc pro favore doti /nón rəspòndíybət máynər náysay ìn kózə dówdəs èt hók prów fəvóriy dówday/. A minor shall not answer unless in a case of dower, and this in favor of dower.

Non sanæ mentis /nón séyniy méntəs/. Lat. Of unsound mind.

Non-sane. As "sane," when applied to the mind, means whole, sound, in a healthful state, "non-sane" means not whole, not sound, not in a healthful state; that is, broken, impaired, shattered, infirm, weak, diseased, unable, either from nature or accident, to perform the rational functions common to man upon the objects presented to it. See also **Insanity.**

Non sequitur /nón sékwədər/. Lat. It does not follow.

Non solent quæ abundant vitiare scripturas /nón sówlənt kwìy əbándænt vìshiyériy skrìpt(y)úrəs/. Superfluities [things which abound] do not usually vitiate writings.

Non solum quid licet, sed quid est conveniens, est considerandum; quia nihil quod est inconveniens est licitum /nón sówləm kwíd láysət sèd kwíd èst kənvíyn(i)yən(d)z,ést kən(t)sìdəréndəm, kwáyə náy(h)əl kwód èst ìnkənvíyn(i)yən(d)z èst lísədəm/. Not only what is lawful, but what is proper or convenient, is to be considered; because nothing that is inconvenient is lawful.

Non solvendo pecuniam ad quam clericus mulctatur pro non-residentia /nón solvéndow pəkyún(i)yəm æd kwæm kléhrəkəs màlktéydər pròw nónrezədénsh(iy)ə/. A writ prohibiting an ordinary to take a pecuniary mulct imposed on a clerk of the sovereign for nonresidence.

Non-stock corporation. Species of non-profit corporation in which the members hold no shares of stock as in the cases of religious and charitable corporations.

Non submissit /nón səbmísət/. Lat. He did not submit. A plea to an action of debt, on a bond to perform an award, to the effect that the defendant did not submit to the arbitration.

Non sui juris /nón s(y)úway júrəs/. Lat. Not his own master. The opposite of *sui juris (q.v.).* Lacking legal capacity to act for oneself as in the case of a minor or mentally incompetent person.

Nonsuit. A term broadly applied to a variety of terminations of an action which do not adjudicate issues on the merits. McColgan v. Jones, Hubbard & Donnell, 11 Cal.2d 243, 78 P.2d 1010, 1011. Name of a judgment given against the plaintiff when he is unable to prove a case, or when he refuses or neglects to proceed to trial and leaves the issue undetermined. Generally speaking, "nonsuit" is name of judgment rendered against party in legal proceeding on his inability to maintain his cause in court, or when he is in default in prosecuting his suit or in complying with orders of court. Jaquith v. Revson, 159 Conn. 427, 270 A.2d 559, 561.

Action in form of a judgment taken against a plaintiff who has failed to appear to prosecute his action or failed to prove his case. Under rules practice, the applicable term is "dismissal", not nonsuit. Fed.R. Civil P. 41.

See also **Default-judgment; Directed verdict.**

Judgment of nonsuit (*i.e.* "dismissal") is of two kinds,—*voluntary* and *involuntary*. When plaintiff abandons his case, and consents that judgment go against him for costs, it is *voluntary*. Fed.R. Civil P. 41(a). But when he, being called, neglects to appear, or when he has given no evidence on which a jury could find a verdict, or when his case is put out of court by some adverse ruling precluding a recovery, it is *involuntary*. Rule 41(b).

A *peremptory* nonsuit is a compulsory or involuntary nonsuit, ordered by the court upon a total failure of the plaintiff to substantiate his claim by evidence.

Non sum informatus /nón sám ìnfərméydəs/. Lat. I am not informed; I have not been instructed.

Non-summons, wager of law of. In common law pleading, the mode in which a tenant or defendant in a real action pleaded, when the summons which followed the original was not served within the proper time.

Non sunt longa ubi nihil est quod demere possis /nón sənt lóŋgə yúwbay náy(h)əl èst kwòd démәriy pósəs/. There is no prolixity where there is nothing that can be omitted.

Non-support. The failure or neglect unreasonably to support those to whom an obligation of support is due; *e.g.* duty of parents to support children; duty to support spouse. Such failure to support is a criminal offense in most states.

Nonsupport of a child is a parent's failure, neglect or refusal without lawful excuse to provide for the support and maintenance of his or her child in necessitous circumstances. Nonsupport of a spouse is an individual's failure without just cause to provide for the support of his or her spouse in necessitous circumstances.

See also **Necessitous circumstances; Reciprocal Enforcement of Support Act; Support.**

Non temere credere est nervus sapientiæ /nón témәriy krédəriy èst nárvəs sæpiyénshiyiy/. Not to believe rashly is the nerve of wisdom.

Non tenent insimul /nón ténənt ínsəməl/. Lat. In old pleading, a plea to an action in partition, by which the defendant denied that he and the plaintiff were joint tenants of the estate in question.

Non tenuit /nón tényuwət/. Lat. He did not hold. A plea in bar in replevin, by which the plaintiff alleges that he did not hold in manner and form as averred, being given in answer to an avowry for rent in arrear.

Non-tenure. A common law plea in a real action, by which the defendant asserts, either as to the whole or as to some part of the land mentioned in the plaintiff's declaration, that he does not hold it.

Non-term. The vacation between two terms of a court.

Non-terminus /nón tármənəs/. The vacation between term and term, formerly called the time of days of the king's peace.

Non-user. Neglect to use. Neglect to use a franchise; neglect to exercise an office. Neglect or omission to use an easement or other right. A right acquired by use may be lost by non-user.

Non usurpavit /nón yùwsərpéyvət/. Lat. He has not usurped. A form of traverse, in an action or proceeding against one alleged to have usurped an office or franchise, denying the usurpation charged.

Non valebit felonis generatio, nec ad hæreditatem paternam vel maternam; si autem ante feloniam generationem fecerit, talis generatio succedit in hæreditate patris vel matris a quo non fuerit felonia perpetrata /nón vəlíybət fəlównəs jènəréysh(iy)ow nèk æd hərèdətéydəm pətárnəm vèl mətárnəm; sáy òdəm æntiy fəlówniyəm jènərèysh(iy)ównəm fésərət téyləs jènəréysh(iy)ow səksíydəd in hərèdətéydiy pætrəs vèl méytrəs èy kwòw nón fyúwərət fəlówniyə pàrpətréydə/. The offspring of a felon cannot succeed either to a maternal or paternal inheritance; but, if he had offspring before the felony, such offspring may succeed as to the inheritance of the father or mother by whom the felony was not committed.

Non valentia agere /nón vəlénsh(iy)ə æjəriy/. Inability to sue.

Non valet confirmatio, nisi ille, qui confirmat, sit in possessione rei vel juris unde fieri debet confirmatio; et eodem modo, nisi ille cui confirmatio fit sit in possessione /nón vélət kònfərméysh(iy)ow, náysay íliy, kwày kənfármət, sìd in pəzèshiyówniy ríyay vèl júrəs ándiy fáyəray débət kònfərméysh(iy)ow; èd iyówdəm mówdow, náysay íliy k(yúw)ay kònfərméysh(iy)ow fit síd in pəzèshiyówniy/. Confirmation is not valid unless he who confirms is either in possession of the thing itself or of the right of which confirmation is to be made, and, in like manner, unless he to whom confirmation is made is in possession.

Non valet donatio nisi subsequatur traditio /nón vélət dənéysh(iy)ow náysay sàbsəkwéydər trədísh(iy)ow/. A gift is not valid unless accompanied by possession.

Non valet exceptio ejusdem rei cujus petitur dissolutio /nón vélad əksépsh(iy)ow iyjásdəm ríyay kyúwjəs pédədər dísəl(y)úwsh(iy)ow/. A plea of the same matter the dissolution of which is sought, is not valid. Called a "maxim of law and common sense."

Non valet impedimentum quod de jure non sortitur effectum /nón vélad əmpèdəméntəm kwód dìy júriy nón sórdədər əféktəm/. An impediment which does not derive its effect from law is of no force.

Non verbis, sed ipsis rebus, leges imponimus /nón vərbəs, sèd ípsəs ríybəs, líyjiyz impównəməs/. We impose laws, not upon words, but upon things themselves.

Non videntur qui errant consentire /nón vədéntər kwày éhrænt kònsəntáyriy/. They are not considered to consent who commit a mistake.

Non videntur rem amittere quibus propria non fuit /nón vədéntər rém əmídəriy kwíbəs prówpriyə nòn f(y)úwət/. They are not considered as losing a thing whose own it was not.

Non videtur consensum retinuisse si quis ex præscripto minantis aliquid immutavit. He does not appear to have retained consent, who has changed anything through menaces.

Non videtur perfecte cujusque id esse, quod ex casu auferri potest /nón vədíytər pərféktiy kyuwjáskwiy íd ésiy, kwòd èks kéysyuw oféhray, páwdəst/. That does not seem to be completely one's own which can be taken from him on occasion.

Non videtur quisquam id capere quod ei necesse est alii restitutere /nòn vədíydər kwískwæm íd kæpəriy kwòd íyay nəsésiy èst éyliyay rèstətyúwəriy/. No one is considered entitled to recover that which he must give up to another.

Non videtur vim facere, qui jure suo utitur et ordinaria actione experitur /nón vədíydər vím féysəriy kwày júriy s(y)úwow yúwdədər èd òrdənériyə ækshiyówniy ekspírədər/. He is not deemed to use force who exercises his own right, and proceeds by ordinary action.

Non vult /nón vált/. Lit. He does not wish (to contend). A plea similar to nolo contendere *(q.v.)* and carrying the implications of a plea of guilty.

Non vult contendere /nòn vált kənténdəriy/. Lat. He (the defendant in a criminal case) will not contest it. A plea legally equivalent to that of guilty, being a variation of the form *"nolo contendere" (q.v.),* and sometimes abbreviated *"non vult."*

Non-waiver agreement. Such agreement reserves to insurer every right under fire policy not previously waived, and to the insured every right which had not been forfeited. Ætna Ins. Co. of Hartford, Conn., v. Powers, 190 Okl. 116, 121 P.2d 599, 602.

Nook of land. In English law, twelve acres and a half.

No par. Said of stock without a par value.

No protest. Term used to describe the waiver of any right of protest when an instrument is not paid. Protest of dishonor is necessary, unless excused, to charge a drawer and endorser on any draft payable outside the United States. U.C.C. §§ 3–501(3), 509, 511.

No recourse. No access to; no return; no coming back upon; no assumption of any liability whatsoever; no looking to the party using the term for any reimbursement in case of loss or damage or failure of consideration in that which was the cause, the motive, or the object, of the undertaking or contract.

Normal. According to, constituting, or not deviating from an established norm, rule, or principle; conformed to a type, standard or regular form; performing the proper functions; regular; average; natural. Railroad Commission v. Konowa Operating Co., Tex. Civ.App., 174 S.W.2d 605, 609.

Normal law. A term employed by modern writers on jurisprudence to denote the law as it affects persons who are in a normal condition; *i.e., sui juris* and sound in mind.

Normally. As a rule; regularly; according to rule, general custom, etc.

Normal mind. One which in strength and capacity ranks reasonably well with the average of the great body of men and women who make up organized human society in general and are by common consent

recognized as sane and competent to perform the ordinary duties and assume the ordinary responsibilities of life.

Normal school. See **School.**

Norman French. The tongue in which several formal proceedings of state in England are still carried on. The language, having remained the same since the date of the Conquest, at which it was introduced into England, is very different from the French of this day, retaining all the peculiarities which at that time distinguished every province from the rest. A peculiar mode of pronunciation (considered authentic) is handed down and preserved by the officials who have, on particular occasions, to speak the tongue. Norman French was the language of English legal procedure till the 36 Edw. III (A.D. 1362).

Norris-La Guardia Act. Federal statute restricting the use of injunctions by federal courts in labor disputes.

Norroy. In English law, the title of the third of the three kings-at-arms, or provincial heralds.

North. Means due north; opposite direction of south. Same with word *northerly.*

Northwest territory. A name formerly applied to the territory northwest of the Ohio river.

Noscitur a sociis /nósədər èy sówsiyəs/. It is known from its associates. The meaning of a word is or may be known from the accompanying words. Under the doctrine of "noscitur a sociis", the meaning of questionable words or phrases in a statute may be ascertained by reference to the meaning of words or phrases associated with it. Wong Kam Wo v. Dulles, C.A.Hawaii, 236 F.2d 622, 626.

Noscitur ex socio, qui non cognoscitur ex se /nósədər èks sówsh(iy)ow kwày nón kəgnósədər èks síy/. He who cannot be known from himself may be known from his associate.

Nosocomi /nòsəkówmay/. In the civil law, persons who have the management and care of hospitals for paupers.

No-strike clause. Provision commonly found in public service labor-management agreements to the effect that the employees will not strike for any reason.

Nota /nówdə/. Lat. In the civil law, a mark or brand put upon a person by the law.

Notæ /nówdiy/. In civil and old European law, shorthand characters or marks of contraction, in which the emperors' secretaries took down what they dictated.

Notarial /nòwtériyəl/. Taken by a notary; performed by a notary in his official capacity; belonging to a notary and evidencing his official character, as, a notarial seal.

Notarial acts. Official acts of notary public *(q.v.).*

Notarial will. A will executed by the testator in the presence of a Notary Public and two witnesses.

Notarius /nòwtériyəs/. Lat. In old English law, a scribe or scrivener who made short draughts of writings and other instruments; a notary.

In Roman law, a draughtsman; an amanuensis; a shorthand writer; one who took notes of the proceedings in the senate or a court, or of what was dictated to him by another; one who prepared draughts of wills, conveyances, etc.

Notary public. A public officer whose function it is to administer oaths; to attest and certify, by his hand and official seal, certain classes of documents, in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgments of deeds and other conveyances, and certify the same; and to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts, and marine protests in cases of loss or damage. One who is authorized by the state or federal government to administer oaths, and to attest to the authenticity of signatures.

Notation credit. A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advise of credit. U.C.C. § 5–108(1).

Note, *v.* To make a brief written statement; to enter a memorandum, as to note an exception.

Note, *n.* An instrument containing an express and absolute promise of signer (*i.e.* maker) to pay to a specified person or order, or bearer, a definite sum of money at a specified time. Two party instrument made by the maker and payable to payee which is negotiable if signed by the maker and contains an unconditional promise to pay sum certain in money, on demand or at a definite time, to order or bearer. U.C.C. § 3–104(1). A note not meeting these requirements may be assignable but not negotiable.

An abstract; a memorandum; an informal statement in writing.

See also Balloon note; Coal note; Judgment note; Promissory note; Sold note; Treasury note.

Circular note. See **Letter of credit.**

Collateral note. Two party instrument containing promise to pay and secured by pledge of property such as securities, real estate, etc.

Demand note. Note payable on demand as contrasted with a time note which is payable at a definite time in the future.

Installment note. One of a series of notes payable at regular intervals or a single note calling for payment in installments at fixed periods of time.

Joint and several note. A note signed by persons as makers who agree to be bound both jointly and severally; *i.e.* they may be joined in a suit or they may be sued separately.

Joint note. Note evidencing an indebtedness in which two or more persons agree to be liable jointly and for payment of which all such persons must be joined in an action to recover.

Mortgage note. A note evidencing a loan for which real estate has been offered as security.

Negotiable note. To qualify as negotiable, the note must be signed by the maker, contain an unconditional

al promise to pay a sum certain in money and be payable on demand or at a definite time to order or bearer. U.C.C. § 3–104(1).

Secured note. A note for which security in the form of either real or personal property has been pledged or mortgaged. See also *Collateral note, supra.*

Time note. Note payable at a definite future time as contrasted with a demand note.

Unsecured note. Note evidencing an indebtedness for which no security has been pledged or mortgaged.

Note of a fine. In old English conveyancing, one of the parts of a fine of lands, being an abstract of the writ of covenant, and the concord; naming the parties, the parcels of land, and the agreement.

Note of allowance. In English practice, a note delivered by a master to a party to a cause, who alleged that there was error in law in the record and proceedings, allowing him to bring error.

Note of hand. A popular name (now obsolete) for a promissory note.

Note of protest. A memorandum of the fact of protest, indorsed by the notary upon the bill, at the time, to be afterwards written out at length.

Note or **memorandum.** Under statute of frauds, an informal minute or memorandum made on the spot. It must contain all the essential elements and substantial parts of the contract. Stanley v. A. Levy & J. Zentner Co., 60 Nev. 432, 112 P.2d 1047, 1053.

Notes payable. In bookkeeping, an account reflecting the aggregate indebtedness evidenced by promissory notes; the notes themselves are liabilities.

Notes receivable. In bookkeeping, an account containing evidence of indebtedness for which promissory notes have been given to the account of the party making the entry; the notes themselves are assets.

Not exceeding. Usually a term of limitation only, denoting uncertainty of amount. Stuyvesant Ins. Co. v. Jacksonville Oil Mill, C.C.A.Tenn., 10 F.2d 54, 56.

Not found. These words, indorsed on a bill of indictment by a grand jury, have the same effect as the indorsement "Not a true bill", "No bill," or *"Ignoramus."* See also **Non est inventus.**

Not guilty. A plea of the general issue in the actions of trespass and case.

Plea entered by the accused to criminal charge. See *e.g.* Fed.R.Crim.P. 11. The form of the verdict in criminal cases, where the jury acquits the defendant; *i.e.* finds him "not guilty".

Not guilty by statute. In old English practice, a plea of the general issue by a defendant in a civil action, when he intends to give special matter in evidence by virtue of some act or acts of parliament, in which case he must add the reference to such act or acts, and state whether such acts are public or otherwise. But, if a defendant so plead, he will not be allowed to plead any other defense, without the leave of the court or a judge.

Nothus /nówθəs/. Lat. In Roman law, a natural child or a person of spurious birth.

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. Baugh, 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 fail 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.*

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.

Notice of action. See **Lis pendens.**

Notice of appeal. A document giving notice of an intention to appeal filed with the appellate court and served on the opposing party. Fed.R.App.P. 3.

Notice of appearance. See **Appearance.**

Notice of dishonor. Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received. U.C.C. § 3–508(1). See also **Dishonor.**

Notice of issue. See **Notice of trial.**

Notice of lis pendens /nówdəs əv lís péndən(d)z/. See **Lis pendens.**

Notice of motion. A notice in writing, entitled in a cause, stating that on a certain day designated, a motion will be made to the court for the purpose or object stated. Such notice is required to be served upon all parties. Fed.R. Civil P. 5(a).

Notice of orders or judgments. Immediately upon the entry of an order or judgment the clerk shall serve notice of the entry by mail upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Fed.R. Civil P. 77(d).

Notice of protest. See **Protest.**

Notice of trial. A notice given by one of the parties in an action to the other, after an issue has been reached, that he intends to bring the cause forward for trial at the next term of the court.

Notice race statutes. In some jurisdictions, in recording of documents of title to real estate, the first grantee or mortgagee to record in the chain of title without actual notice of a prior unrecorded deed or mortgage prevails. Also known as Race-Notice Statute. See also **Notice recording statutes; Recording acts.**

Notice recording statutes. An unrecorded conveyance or other instrument is invalid as against a subsequent bona fide purchaser (creditor or mortgagee if the statute so provides) for value and without notice. Under this type of statute the subsequent bona fide purchaser prevails over the prior interest whether the subsequent purchaser records or not. Insofar as the subsequent purchaser is concerned, there is no premium on his race to the recorder's office. His priority is determined upon his status at the time he acquires his deed or mortgage. See also **Recording acts.**

Notice to appear. Shorthand expression for the form of summons or order of notice in which the defendant is ordered to appear and show cause why judgment should not be entered against him. Fed.R. Civil P. 4(b). See also **Show cause order; Summons.**

Notice to creditors. Formal notification in bankruptcy proceeding to creditors of the bankrupt that a meeting will be held, or that proof of claims must be filed on or before a certain date, or that an order for relief has been granted. See Bankruptcy Act, § 342.

Notice to plead. A notice which, in the practice of the federal courts, and most state courts, is prerequisite to the taking judgment by default. It proceeds from the plaintiff, and warns the defendant that he must plead to the declaration or complaint within a prescribed time. Such notice is required in the summons. Fed.R. Civil P. 4(b).

Notice to quit. A written notice given by a landlord to his tenant, stating that the former desires to repossess himself of the demised premises, and that the latter is required to quit and remove from the same at a time designated, either at the expiration of the term, if the tenant is in under a lease, or immediately, if the tenancy is at will or by sufferance. The term is also sometimes applied to a written notice given by the tenant to the landlord, to the effect that he intends to quit the demised premises and deliver possession of the same on a day named.

Notification. See **Notice.**

Notify. To give notice to; to inform by words or writing, in person or by message, or by any signs which are understood; to make known. To "notify" one of a fact is to make it known to him; to inform him by notice. Fast v. Scruggs, 164 Okl. 196, 23 P.2d 383. See **Notice.**

Notio /nówsh(iy)ow/. Lat. In the civil law, the power of hearing and trying a matter of fact; the power or authority of a *judex;* the power of hearing causes and of pronouncing sentence, without any degree of jurisdiction.

Notitia /nowtísh(iy)ə/. Lat. Knowledge; information; intelligence; notice.

Notitia dicitur a noscendo; et notitia non debet claudicare /nowtísh(iy)ə dísədər èy nòséndow èt nowtísh(iy)ə nòn débət klòdəkériy/. Notice is named from a knowledge being had; and notice ought not to halt (*i.e.,* be imperfect).

Not later than. "Within" or "not beyond" time specified.

Not less than. The words "not less than" signify in the smallest or lowest degree, at the lowest estimate; at least.

Notoriety /nòwdəráyədiy/. The state of being notorious or universally well known.

Notorious /nowtóriyəs/. Generally known and talked of; well or widely known; forming a part of common knowledge, or universally recognized. Mathis v. State, 60 Okl.Cr. 58, 61 P.2d 261, 267. Open; generally or commonly known and spoken of.

Notorious cohabitation. The statutory offense in some jurisdictions committed by two persons who live together openly while not being married to each other. Such laws are seldom enforced.

Notorious insolvency. A condition of insolvency which is generally known throughout the community or known to the general class of persons with whom the insolvent has business relations.

Notorious possession. As a requisite of adverse possession, such possession that is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood. Possession or character of holding in its nature having such elements of notoriety that the owner may be presumed to have notice of it and of its extent. See also **Adverse possession.**

Not possessed. A special traverse used in an action of trover, alleging that defendant was not possessed, at the time of action brought, of the chattels alleged to have been converted by him.

Not satisfied. A return sometimes made by sheriffs or constables to a writ of execution; but it is not a technical formula, and has been criticised by the courts as ambiguous and insufficient. See **Nulla bona.**

Not to be performed within one year. The clause "not to be performed within one year" includes any agreement which by a reasonable interpretation in view of all the circumstances does not admit of its performance, according to its language and intention, within one year from the time of its making.

N.O.V. See **Non obstante veredicto.**

Nova constitutio futuris formam imponere debet non præteritis /nówvə kònstət(y)úwsh(iy)ow fyuwtyúrəs fórməm ìmpównəriy débət nòn prətérədəs/. A new state of the law ought to affect the future, not the past.

Nova custuma /nówvə kástəmə/. The name of an imposition or duty. See **Antiqua custuma.**

Novæ narrationes /nówviy nərèyshiyówniyz/. New counts. The collection called *"Novæ Narrationes"* contains pleadings in actions during the reign of Edward III. It consists principally of declarations, as the title imports; but there are sometimes pleas and subsequent pleadings. The *Articuli ad Novas Narrationes* is usually subjoined to this little book, and is a small treatise on the method of pleading. It first treats of actions and courts, and then goes through each particular writ, and the declaration upon it, accompanied with directions, and illustrated by precedents.

Nova statuta /nówvə stət(y)úwdə/. New statutes. An appellation sometimes given to the statutes which have been passed since the beginning of the reign of Edward III.

Novation. Substitution of a new contract, debt, or obligation for an existing one, between the same or different parties. The substitution by mutual agreement of one debtor for another or of one creditor for another, whereby the old debt is extinguished. The requisites of a novation are a previous valid obligation, an agreement of all the parties to a new contract, the extinguishment of the old obligation, and the validity of the new one. Blyther v. Pentagon Federal Credit Union, D.C.Mun.App., 182 A.2d 892, 894.

A novation substitutes a new party and discharges one of the original parties to a contract by agreement of all three parties. A new contract is created with the same terms as the original one but only the parties are changed. Restatement of Contracts, §§ 423, 430.

In the civil law, there are three kinds of novation: where the debtor and creditor remain the same, but a new debt takes the place of the old one; where the debt remains the same, but a new debtor is substituted; where the debt and debtor remain, but a new creditor is substituted. Wheeler v. Wardell, 173 Va. 168, 3 S.E.2d 377, 380.

Novatio non præsumitur /nowvéysh(iy)ow nòn prəz(y)úwmədər/. Novation is not presumed.

Novel assignment. See **New assignment.**

Novel disseisin. See **Assise** *(Assise of novel disseisin).*

Novellæ (or **novellæ constitutiones)** /nowvéliy (kònstə-t(y)ùwshiyówniyz)/. New constitutions; generally translated in English, "Novels." The Latin name of those constitutions which were issued by Justinian after the publication of his Code; most of them being originally written in Greek. After his death, a collection of 168 Novels was made, 154 of which had been issued by Justinian, and the rest by his successors. These were afterwards included in the *Corpus Juris Civilis (q.v.),* and now constitute one of its four principal divisions.

Novellæ leonis /nowvéliy liyównəs/. The ordinances of the Emperor Leo, which were made from the year 887 till the year 893, are so called. These Novels changed many rules of the Justinian law. This collection contains 113 Novels, written originally in Greek, and afterwards, in 1560, translated into Latin by Agilæus.

Novels /nóvəlz/. The title given in English to the New Constitutions *(Novellæ Constitutiones)* of Justinian and his successors, now forming a part of the *Corpus Juris Civilis.* See **Novellæ.**

Novelty. In order that there may be "novelty" so as to sustain a patent, the thing must not have been known to any one before, mere novelty of form being insufficient. Seaver v. Wm. Filene's Sons Co., D.C.Mass., 37 F.Supp. 762, 765. An objection to a patent or claim for a patent on the ground that the invention is not new or original is called an objection "for want of novelty."

Noverca /nəvárkə/. Lat. In the civil law, a stepmother.

Noverint universi per præsentes /nówvərənt yùwnə-vársay pər prəzéntiyz/. Know all men by these presents. Formal words used at the commencement of deeds of release in the Latin forms.

Novigild /nówvəgìld/. In Saxon law, a pecuniary satisfaction for an injury, amounting to nine times the value of the thing for which it was paid.

Novi operis nunciatio /nówvay óprəs nànshiyéysh(iy)-ow/. Lat. Denunciation of, or protest against, a new work. This was a species of remedy in the civil law, available to a person who thought his rights or his property were threatened with injury by the act of his neighbor in erecting or demolishing any structure, which was called a "new work." In such case, he might go upon the ground, while the work was in progress, and publicly protest against or forbid its completion, in the presence of the workmen or of the owner or his representative.

Noviter perventa, or **noviter ad notitiam perventa** /nówvədər (æd nowtísh(iy)əm) pərvéntə/. In ecclesiastical procedure, facts "newly come" to the knowledge of a party to a cause. Leave to plead facts *noviter perventa* is generally given, in a proper case, even after the pleadings are closed.

Novum judicium non dat novum jus, sed declarat antiquum; quia judicium est juris dictum et per judicium jus est noviter revelatum quod diu fuit velatum /nówvəm juwdísh(iy)əm nón dæt nówvəm jás, sèd dəklérəd æntáykwəm; kwáy juwdísh(iy)əm èst júrəs díktəm èt pər juwdísh(iy)əm jás èst nówvədər rèvəléydəm kwòd dáyuw f(y)úwət vəléydəm/. A new adjudication does not make a new law, but declares the old; because adjudication is the utterance of the law, and by adjudication the law is newly revealed which was for a long time hidden.

Novus homo /nówvəs hówmow/. Lat. A new man. This term is applied to a man who has been pardoned of a crime, and so made, as it were, a "new man."

Now. At this time, or at the present moment; or at a time contemporaneous with something done. At the present time.

"Now" as used in a statute ordinarily refers to the date of its taking effect, but the word is sometimes used, not with reference to the moment of speaking but to a time contemporaneous with something done, and may mean at the time spoken of or referred to as well as at the time of speaking.

Word "now" used in will normally refers to time of testator's death; but, in light of context, may apply to date of will.

N.O.W. Negotiable Order of Withdrawal. Form of interest bearing checking account; permitted only in certain states.

Noxa /nóksə/. Lat. In the civil law, any damage or injury done to persons or property by an unlawful act committed by a man's slave or animal. An action for damages lay against the master or owner, who, however, might escape further responsibility by delivering up the offending agent to the party injured. *"Noxa"* was also used as the designation of the offense committed, and of its punishment, and sometimes of the slave or animal doing the damage.

Noxalis actio /nokséyləs æksh(iy)ow/. Lat. In the civil law, an action which lay against the master of a slave, for some offense (as theft or robbery) committed or damage or injury done by the slave, which was called *"noxa."* Usually translated "noxal action."

Noxia /nóks(i)yə/. Lat. In the civil law, an offense committed or damage done by a slave.

Noxious. Hurtful; offensive; offensive to the smell. The word "noxious" includes the complex idea both of insalubrity and offensiveness. That which causes or tends to cause injury, especially to health or morals.

N.P. An abbreviation for "notary public."

N.R. An abbreviation for "New Reports;" also for "not reported," and for "nonresident."

N.S. An abbreviation for "New Series;" also for "New Style."

N.T.S.B. National Traffic Safety Board.

Nubilis /n(y)úwbələs/. Lat. In the civil law, marriageable; one who is of a proper age to be married.

Nuda pactio obligationem non parit /n(y)úwdə pǽksh(iy)ow òbləgèyshiyównəm nòn pǽrət/. A naked agreement [*i.e.*, without consideration] does not beget an obligation.

Nuda patientia /n(y)úwdə pæshiyénsh(iy)ə/. Lat. Mere sufferance.

Nuda possessio /n(y)úwdə pəzésh(iy)ow/. Lat. Bare or mere possession.

Nuda ratio et nuda pactio non ligant aliquem debitorem /n(y)úwdə rǽsh(iy)ow èt n(y)úwdə pǽksh(iy)ow nòn lígənt ǽləkwəm dèbətórəm/. Naked reason and naked promise do not bind any debtor.

Nude. Naked. This word is applied metaphorically to a variety of subjects to indicate that they are lacking in some essential legal requisite.

Nude contract. One made without any consideration; upon which no action will lie, in conformity with the maxim *"ex nudo pacto non oritur actio."* 2 Bl. Comm. 445.

Nude matter. A bare allegation of a thing done, unsupported by evidence.

Nude pact. One without consideration; an executory contract without a consideration; a naked promise.

Nudum pactum /n(y)úwdəm pǽktəm/. A voluntary promise, without any other consideration than mere goodwill, or natural affection.

A naked pact; a bare agreement; a promise or undertaking made without any consideration for it.

Roman law. Informal agreements not coming within any of the privileged classes. They could not be sued on. The term was sometimes used with a special and rather different meaning to express the rule that a contract without delivery will not pass property.

Nudum pactum est ubi nulla subest causa præter conventionem; sed ubi subest causa, fit obligatio, et parit actionem /n(y)úwdəm pǽktəm èst yúwbay nálə sábest kózə príydər kənvènshiyównəm, sèd yúwbay sábèst kózə fít òbləgéysh(iy)ow èt pǽrət ækshiyównəm/. A naked contract is where there is no consideration except the agreement; but, where there is a consideration, it becomes an obligation and gives a right of action.

Nudum pactum ex quo non oritur actio /n(y)úwdəm pǽktəm èks kwów nòn órədər ǽksh(iy)ow/. *Nudum pactum* is that upon which no action arises.

Nugatory /n(y)úwgətəriy/. Futile; ineffectual; invalid; destitute of constraining force or vitality. A legislative act may be "nugatory" because unconstitutional. Avery & Co. v. Sorrell, 157 Ga. 476, 121 S.E. 828, 829.

Nuisance. Nuisance is that activity which arises from unreasonable, unwarranted or unlawful use by a person of his own property, working obstruction or injury to right of another, or to the public, and producing such material annoyance, inconvenience and discomfort that law will presume resulting damage. State ex rel. Herman v. Cardon, 23 Ariz.App. 78, 530 P.2d 1115, 1118. That which annoys and disturbs one in possession of his property, rendering its ordinary use or occupation physically uncomfortable to him. Patton v. Westwood Country Club Co., 18 Ohio App.2d 137, 247 N.E.2d 761, 763, 47 O.O.2d 247. Everything that endangers life or health, gives offense to senses, violates the laws of decency, or obstructs reasonable and comfortable use of property. Annoyance; anything which essentially interferes with enjoyment of life or property. That class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, either real or personal, or from his own improper, indecent, or unlawful personal conduct, working an obstruction of or injury to the right of another or of the public, and producing such material annoyance, inconvenience, discomfort, or hurt, that the law will presume resulting damage. City of Phoenix v. Johnson, 51 Ariz. 115, 75 P.2d 30. An offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance, especially a continuing or repeated invasion or disturbance of another's right, or anything that works a hurt, inconvenience or damage. Renken v. Harvey Aluminum (Inc.), D.C.Or., 226 F.Supp. 169, 175.

Nuisance comprehends interference with an owner's reasonable use and enjoyment of his property by means of smoke, odors, noise, or vibration, obstruction of private easements and rights of support, interference with public rights, such as free passage along streams and highways, enjoyment of public parks and places of recreation, and, in addition, activities and structures prohibited as statutory nuisances. Awad v. McColgan, 357 Mich. 386, 98 N.W.2d 571, 573.

Nuisances are commonly classed as *public, private,* and *mixed.* A *public* nuisance is one which affects an indefinite number of persons, or all the residents of a particular locality, or all people coming within the extent of its range or operation, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Maintaining a *public* nuisance is by act, or by failure to perform a legal duty, intentionally causing or permitting a condition to exist which injures or endangers the public health, safety or welfare. An invasion of a person's interest in the private use and enjoyment of land by any type of liability-forming conduct is termed a *private* nuisance. It is a tort against a private person, and actionable by him as such. As distinguished from public nuisance, a *private* nuisance includes any wrongful act which destroys or deteriorates the property of an individual or of a few persons or interferes with their lawful use or enjoyment thereof, or any act which unlawfully hinders them in the enjoyment of a common or public right and causes them a special injury different from that sustained by the general public. Therefore, although the ground of distinction between public and private nuisances is still the injury to the community at large or, on the other hand, to a single individual, it is evident that the same thing or act may constitute a public nuisance and at the same time a private nuisance. A *mixed* nuisance is of the kind last described; that is, it is one which is both public and private in its effects,—public because it injures many persons or all the community, and private in that it also produces special injuries to private

rights. Kelley v. New York, 6 Misc. 516, 27 N.Y.S. 164.

See also Attractive nuisance; Common nuisance; Legalized nuisance; Offenseve; Private nuisance; Public nuisance.

Abatement of a nuisance. The removal, stoppage, prostration, or destruction of that which causes a nuisance, whether by breaking or pulling it down, or otherwise removing, destroying, or effacing it. See also **Abatable nuisance.**

Actionable nuisance. See **Actionable.**

Assize of nuisance. In old English practice, this was a judicial writ directed to the sheriff of the county in which a nuisance existed, in which it was stated that the party injured complained of some particular fact done *ad nocumentum liberi tenementi sui* (to the nuisance of his freehold), and commanding the sheriff to summon an assize (that is, a jury) to view the premises, and have them at the next commission of assizes, that justice might be done, etc. 3 Bl.Comm. 221.

Common nuisance. One which affects the public in general, and not merely some particular person; a public nuisance.

Continuing nuisance. An uninterrupted or periodically recurring nuisance; not necessarily a constant or unceasing injury, but a nuisance which occurs so often and is so necessarily an incident of the use of property complained of that it can fairly be said to be continuous.

Permanent nuisance. A nuisance of such a character that its continuance is necessarily an injury which will continue without change. One that cannot be readily abated at small expense.

Nuisance at law. See **Nuisance per se** *(q.v.).*

Nuisance in fact. Acts, occupations or structures which are not nuisances per se but may become nuisances by reason of the circumstances of the location and surroundings or manner in which it is performed or operated. Robichaux v. Happunbauer, 258 La. 139, 245 So.2d 385, 389.

Nuisance per accidens /n(y)úwsən(t)s pər æksədèn(t)s/. See **Nuisance in fact** *(q.v.).*

Nuisance per se /n(y)úwsən(t)s pər síy/. An act, occupation, or structure which is a nuisance at all times and under all circumstances, regardless of location or surroundings, Bluemer v. Saginaw Central Oil & Gas Service, Inc., 356 Mich. 399, 97 N.W.2d 90, 96; Koeber v. Apex-Albuq Phoenix Exp., 72 N.M. 4, 380 P.2d 14, 15, 16; as, things prejudicial to public morals or dangerous to life or injurious to public rights; distinguished from things declared to be nuisances by statute, and also from things which constitute nuisances only when considered with reference to their particular location or other individual circumstances. The difference between a "nuisance per se" and a "nuisance per accidens" is that in the former, injury in some form is certain to be inflicted, while in the latter, the injury is uncertain or contingent until it actually occurs. State ex rel. Cunningham v. Feezell, 218 Tenn. 17, 400 S.W.2d 716, 719.

Nul. No; none. A law French negative particle commencing many phrases.

Nul agard /nál əgárd/. No award. The name of a plea in an action on an arbitration bond, by which the defendant traverses the making of any legal award.

Nul charter, nul vente, ne nul done vault perpetualment, si le donor n'est seise al temps de contracts de deux droits, sc. del droit de possession et del droit de properite. No grant, no sale, no gift, is valid forever unless the donor, at the time of the contract, is seised of two rights, namely, the right of possession, and the right of property.

Nul disseisin /nál dəsíyzən/. In pleading, means no disseisin. A plea of the general issue in a real action, by which the defendant denies that there was any desseisin.

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.**

Nulla bona /nálə bównə/. Lat. No goods. The name of the return made by the sheriff to a writ of execution, when he has not found any goods of the defendant within his jurisdiction on which he could levy. Walter J. Klein Co. v. Kneece, 239 S.C. 478, 123 S.E.2d 870, 874.

Nulla curia quæ recordum non habet potest imponere finem neque allquem mandare carceri; quia ista spectant tantummodo ad curias de recordo /nálə kyúriyə kwìy rəkórdəm nòn héybət pówdəst impównəriy fáynəm nékwiy æləkwəm mændériy karsíray, kwáyə ístə spéktænt tæntəmówdow æd kyúriyəs dìy rəkórdow/. No court which has not a record can impose a fine or commit any person to prison; because those powers belong only to courts of record.

Nulla emptio sine pretio esse potest /nálə émpsh(iy)ow sáyniy présh(iy)ow ésiy pówdəst/. There can be no sale without a price.

Nulla impossibilia aut inhonesta sunt præsumenda; vera autem et honesta et possibilia /nálə impòsəbíl(i)yə òd ìn(h)onéstə sənt priyz(y)əméndə, vírə ódəm èd (h)onéstə èt pòsəbíl(i)yə/. No things that are impossible or dishonorable are to be presumed; but things that are true and honorable and possible.

Nulla pactione effici potest ut dolus præstetur /nálə pækshiyówniy éfəsay pówdəst àt dówləs prəstíydər/. By no agreement can it be effected that a fraud shall be practiced. Fraud will not be upheld, though it may seem to be authorized by express agreement.

Nulla virtus, nulla scientia, locum suum et dignitatem conservare potest sine modestia. Without modesty, no virtue, no knowledge, can preserve its place and dignity.

Nulle règle sans faute /nyúl réyglə sòn fówt/. There is no rule without a fault.

Nulle terre sans seigneur /nyúl tér sòn sèynyúr/. No land without a lord. A maxim of feudal law.

Nulli enim res sua servit jure servitutis /nálay ínyəm ríyz s(y)úwə sérvət júriy sərvət(y)úwdəs/. No one can have a servitude over his own property.

Nullification. The state or condition of being void; without legal effect or status. Also, the act which produces such effect.

Nullity. Nothing; no proceeding; an act or proceeding in a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.

Nullity of marriage. The entire invalidity of a supposed, pretended, or attempted marriage, by reason of relationship or incapacity of the parties or other diriment impediments. An action seeking a decree declaring such an assumed marriage to be null and void is called a suit of "nullity of marriage." It differs from an action for divorce, because the latter supposes the existence of a valid and lawful marriage. See **Annulment.**

Nullius filius /nəláyəs fíl(i)yəs/. Lat. The son of nobody; a bastard. A bastard is considered *nullius filius* as far as regards his right to inherit. But the rule of *nullius filius* does not apply in other respects, and has been changed by statute in most states so as to make him the child of his mother, in respect of inheritance. State v. Chavez, 42 N.M. 569, 82 P.2d 900, 902.

Nullius hominis auctoritas apud nos valere debet, ut meliora non sequeremur si quis attulerit /nəláyəs hómənəs októrətæs æpəd nówz vəlíriy débət, ət mìyliyórə non sèkwəríymər sày kwís ətálərət/. The authority of no man ought to prevail with us, so far as to prevent our following better [opinions] if any one should present them.

Nullius in bonis /nəláyəs ìn bównəs/. Lat. Among the property of no person.

Nullius juris /nəláyəs júrəs/. Lat. In old English law, of no legal force.

Nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam /nálay vendíyməs, nálay nəgéybəməs, ot difəríyməs réktəm vèl jəstísh(iy)əm/. We neither sell nor deny, nor delay, to any person, equity or justice. State ex rel. Macri v. City of Bremerton, 8 Wash.2d 93, 111 P.2d 612, 619.

Nullo est erratum plea /nálow èst əréydəm pliy/. Pleading interposed in a writ or assignment of error to the effect that there was no error and such a plea does not admit facts not well pleaded. Silverton v. Com., 314 Mass. 52, 49 N.E.2d 439.

Nullum arbitrium /náləm àrbítriyəm/. L. Lat. No award. The name of a plea in an action on an arbitration bond, for not fulfilling the award, by which the defendant traverses the allegation that there was an award made.

Nullum crimen majus est inobedientia /náləm kríman méyjəs èst ìnowbìydiyénsh(iy)ə/. No crime is greater than disobedience. Applied to the refusal of an officer to return a writ.

Nullum exemplum est idem omnibus /náləm əgzémpləm èst áydəm ómnəbəs/. No example is the same for all purposes. No one precedent is adapted to all cases. A maxim in conveyancing.

Nullum fecerunt arbitrium /náləm fəsírənt àrbítriyəm/. L. Lat. The name of a plea to an action of debt upon an obligation for the performance of an award, by which the defendant denies that he submitted to arbitration, etc.

Nullum iniquum est præsumendum in jure /náləm ənífkwəm èst prìyz(y)əméndəm ənjúriy/. No iniquity is to be presumed in law.

Nullum matrimonium, ibi nulla dos /náləm mætrəmówn(i)yəm, áybay nálə dówz/. No marriage, no dower. Wait v. Wait, 4 Barb. N.Y., 192, 194.

Nullum simile est idem nisi quatuor pedibus currit /náləm síməliy èst áydəm náysay kwóduwər pédəbəs káhrət/. No like is identical, unless it run on all fours.

Nullum simile quatour pedibus currit /náləm síməliy kwóduwər pédəbəs káhrət/. No simile runs upon four feet (or *all fours,* as it is otherwise expressed). No simile holds in everything.

Nullum Tempus Act /nàləm témpəs ækt/. A name given to the statute 3 Geo. III, c. 16, because that act, in contravention of the maxim *"Nullum tempus occurrit regi"* (no lapse of time bars the king), limited the crown's right to sue, etc., to the period of sixty years.

Nullum tempus aut locus occurit regi /náləm témpəs òt lówkəs əkáhrət ríyjay/. No time or place affects the king.

Nullum tempus occurrit regi /náləm témpəs əkáhrət ríyjay/. Time does not run against the king. The rule refers to the king in his official capacity as representing the sovereignty of the nation and not to the king as an individual. City of Bisbee v. Cochise County, 52 Ariz. 1, 78 P.2d 982, 984.

Nullum tempus occurrit reipublicæ /náləm témpəs əkáhrət rìyaypábləsiy/. No time runs [time does not run] against the commonwealth or state. State v. Mudd, 273 Ala. 579, 143 So.2d 171, 174.

Nullus alius quam rex possit episcopo demandare inquisitionem faciendam /náləs éyliyəs kwæm réks pósəd əpískəpow dìymændériy ìnkwəzìshiyównəm fæshiyéndəm/. No other than the king can command the bishop to make an inquisition.

Nullus commodum capere potest de injuria sua propria /náləs kómədəm kæpəriy pówdəst dìy ənjúriyə s(y)úwə prówpriyə/. No one can obtain an advantage by his own wrong. De Zotell v. Mutual Life Ins. Co. of New York, 60 S.D. 532, 245 N.W. 58, 59.

Nullus debet agere de dolo, ubi alia actio subest /náləs débəd æjəriy dìy dówlow, yúwbay éyliyə æksh(iy)ow sábèst/. Where another form of action is given, no one ought to sue in the action *de dolo.*

Nullus dicitur accessorius post feloniam, sed ille qui novit principalem feloniam fecisse, et illum receptavit et comfortavit /náləs dísədər æksəsóriyəs pòwst fəlówniyəm, sèd íliy kwày nówvət prìn(t)səpéyləm fəlówniyəm fəsísiy, èd íləm rèseptéyvət èt

kàmfərtéyvət/. No one is called an "accessory" after the fact but he who knew the principal to have committed a felony, and received and comforted him.

Nullus dicitur felo principalis nisi actor, aut qui præsens est, abettans aut auxilians ad feloniam faciendam /náləs dísədər fíylow prìn(t)səpéyləs náysay æktər òt kwày príyzənz èst, əbétænz òd ogzíl(i)yænz æd fəlówniyəm fæshiyéndəm/. No one is called a "principal felon" except the party actually committing the felony, or the party present aiding and abetting in its commission.

Nullus idoneus testis in re sua intelligitur /náləs ədówniyəs téstəs ìn ríy s(y)úwə ìntəlíjədər/. No person is understood to be a competent witness in his own cause.

Nullus jus alienum forisfacere potest /náləs jás æliyínəm fòrəsfésəriy pówdəst/. No man can forfeit another's right.

Nullus recedat e curia cancellaria sine remedio /náləs rəsíydəd iy kyúriyə kæn(t)səlériyə sáyniy rəmíydi yow/. No person should depart from the court of chancery without a remedy.

Nullus simile est idem, nisi quatuor pedibus currit /náləs símәliy èst áydem, náysay kwáduwor pédəbəs káhrət/. No like is exactly identical unless it runs on all fours.

Nullus videtur dolo facere qui suo jure utitur /náləs vədíydər dówlo fésəriy kwày s(y)úwow júriy yúwdədər/. No one is considered to act with guile who uses his own right.

Nul ne doit s'enrichir aux depens des autres /nál nə dwá sònriyshéy òwdəpón deyzówtrə/. No one ought to enrich himself at the expense of others.

Nul prendra advantage de son tort demesne /nál pròndrá àdvantázh də sówn tór dəmén/. No one shall take advantage of his own wrong.

Nul sans damage avera error ou attaint /nál són dàmázh àvehrá ehrór uw àtǽn/. No one shall have error or attaint unless he has sustained damage.

Nul tiel corporation /nál tíyl kòrpəréyshən/. No such corporation [exists]. The form of a plea denying the existence of an alleged corporation.

Nul tiel record /nál tíyl rékərd/. No such record. A plea denying the existence of any such record as that alleged by the plaintiff. It is the general plea in an action of debt on a judgment.

Judgment of *nul tiel record* occurs when some pleading denies the existence of a record and issue is joined thereon; the record being produced is compared by the court with the statement in the pleading which alleges it; and if they correspond, the party asserting its existence obtains judgment; if they do not correspond, the other party obtains judgment of *nul tiel record* (no such record).

Nul tort. In pleading, a plea of the general issue to a real action, by which the defendant denies that he committed any wrong.

Nul waste. No waste. The name of a plea in an action of waste, denying the committing of waste, and forming the general issue.

Numbers game. "Numbers" or the numbers game is that game wherein the player wagers or plays that on a certain day a certain series of digits will appear or "come out" in a series such as the United States Treasury balance or parimutuel payoff totals of particular races at a certain racetrack for the day used as a reference, and though number of digits is fixed, usually at three, any player is free to select any number or quantity of numbers within the range of those digits, and designate amount of his wager upon each, and in such game neither number of players nor amount of money wagered nor total amount of payoffs can be predicted in any one day. U. S. v. Baker, C.A.Pa., 364 F.2d 107, 111. See also **Lottery.**

Numerata pecunia /n(y)ùwməréydə pəkyúwn(i)yə/. Lat. In the civil law, money told or counted; money paid by tale.

Numerical lottery. See **Genoese lottery.**

Nummata /nəméydə/. The price of anything in money, as *denariata* is the price of a thing by computation of pence, and *librata* of pounds.

Nummata terræ /nəméydə téhriy/. An acre of land.

Nunciatio /nənshiyéysh(iy)ow/. Lat. In the civil law, a solemn declaration, usually in prohibition of a thing; a protest.

Nuncio /nánsh(iy)ow/. The permanent official representative of the Pope at a foreign court or seat of government. They are called "ordinary" or "extraordinary," according as they are sent for general purposes or on a special mission.

Nuncius /nánsh(iy)əs/. In international law, a messenger; a minister; the pope's legate, commonly called a "nuncio."

Nunc pro tunc /nánk pròw tánk/. Lat. Now for then. In re Peter's Estate, 175 Okl. 90, 51 P.2d 272, 274. A phrase applied to acts allowed to be done after the time when they should be done, with a retroactive effect, *i.e.,* with the same effect as if regularly done. Nunc pro tunc entry is an entry made now of something actually previously done to have effect of former date; office being not to supply omitted action, but to supply omission in record of action really had but omitted through inadvertence or mistake. Seabolt v. State, Okl.Cr., 357 P.2d 1014.

Nunc pro tunc merely describes inherent power of court to make its records speak the truth, *i.e.,* to record that which is actually but is not recorded. Simmons v. Atlantic Coast Line R. Co., D.C.S.C., 235 F.Supp. 325, 330. Nunc pro tunc signifies now for then, or, in other words, a thing is done now, which shall have same legal force and effect as if done at time when it ought to have been done. State v. Hatley, 72 N.M. 377, 384 P.2d 252, 254.

Nuncupare /nəŋk(y)əpériy/. Lat. In the civil law, to name; to pronounce orally or in words without writing.

Nuncupate /náŋkyəpèyt/. To declare publicly and solemnly.

Nuncupative will. An oral will declared or dictated by the testator in his last sickness before a sufficient

number of witnesses, and afterwards reduced to writing. A will made by the verbal declaration of the testator, and usually dependent merely on oral testimony for proof. Such wills are invalid in certain states, and in others are valid only under certain circumstances.

Nundinæ /nándəniy/. Lat. In the civil and old English law, a fair. *In nundinis et mercatis* /in nándənəs èt mərkéydəs/, in fairs and markets.

Nundination /nàndənéyshən/. Traffic at fairs and markets; any buying and selling.

Nunquam crescit ex post facto præteriti delicti æstimatio /náŋkwæm krésəd èks pòwst fáktow prətéhrəday dəlíktay èstəméysh(iy)ow/. The character of a past offense is never aggravated by a subsequent act or matter.

Nunquam decurritur ad extraordinarium sed ubi deficit ordinarium /náŋkwæm dəkáhrədər æd èkstr(ə)òrdə nériyəm sèd yúwbay défəsəd òrdənériyəm/. We are never to resort to what is extraordinary, but [until] what is ordinary fails.

Nunquam fictio sine lege /náŋkwæm fíksh(iy)ow sáyniy líyjiy/. There is no fiction without law.

Nunquam indebitatus /náŋkwæm indèbətéydəs/. Lat. Never indebted. The name of a plea in an action of *indebitatus assumpsit,* by which the defendant alleges that he is not indebted to the plaintiff.

Nunquam nimis dicitur quod nunquam satis dicitur /náŋkwæm nímas dísədər kwòd náŋkwæm séydəs dísədər/. What is never sufficiently said is never said too much.

Nunquam res humanæ prospere succedunt ubi negliguntur divinæ /náŋkwæm ríyz hyuwméyniy próspəriy səksíydənt yúwbay nègləgántər dəváyniy/. Human things never prosper where divine things are neglected.

Nuntius /nánshiyəs/. In old English practice, a messenger. One who was sent to make an excuse for a party summoned, or one who explained as for a friend the reason of a party's absence. An officer of a court; a summoner, apparitor, or beadle.

Nuper obiit /n(y)úwpər óbiyət/. Lat. In practice, the name of a writ (now abolished) which, in the English law, lay for a sister coheiress dispossessed by her coparcener of lands and tenements whereof their father, brother, or any common ancestor died seised of an estate in fee-simple.

Nuptiæ secundæ /nápshiyiy səkándiy/. Lat. A second marriage. In the canon law, this term included any marriage subsequent to the first.

Nuptial /nápshəl/. Pertaining to marriage; constituting marriage; used or done in marriage.

Nuptias non concubitus sed consensus facit /nápshiyəs nòn kənkyúwbədəs sèd kən(t)sén(t)səs féysət/. Not cohabitation but consent makes the marriage.

Nurture. To give nourishment to, to feed; to bring up, or train; to educate. The act of taking care of children, bringing them up, and educating them.

Nurus /n(y)úrəs/. Lat. In the civil law, a son's wife; a daughter-in-law.

Nycthemeron /nikθəméron/. The whole natural day, or day and night, consisting of twenty-four hours.

Nymphomania /nìmfəméyn(i)yə/. See **Insanity.**

N.Y.S.E. New York Stock Exchange.