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**T.Hist.** 1. A letter branded on the base of the thumb of a person who claimed the benefit of clergy to prevent the person from claiming it again. • This practice was formally abolished by the Criminal Statutes (England) Repeal Act of 1827. 2. In Pennsylvania, a letter sewn onto the left sleeve of a convicted thief. • This letter — required by a 1698 statute — had to be at least four inches high and of a different color from the rest of the garment.

**TAB**

**TAB.abbr.**TAX-ANTICIPATION BILL.

**TABLE**

**table,n.1.** A synopsis representation, esp. in columnar form, of the particulars of a subject, usu. to present diverse items in a way that can be more easily understood. • Examples include actuarial tables, genealogical tables (which show the names and relationships of all the persons constituting a family), and interest tables. 2. A formulation of laws inscribed on tablets, such as the Twelve Tables of Roman law. See **TWELVE TABLES** . 3.Parliamentary law. The secretary's desk.

**table,vb.** Parliamentary law. (Of a deliberative assembly) to set aside the pending business until the assembly votes to resume its consideration. • A matter that has been tabled may be brought up again by a vote of the assembly. — Also termed *lay on the table*; *postpone temporarily*.

“The early name of the motion to postpone temporarily was ‘lay on the table.’ (In American usage the phrase has been shortened, and the motion is now generally referred to as the motion ‘to table.’) The term grew out of the legislative custom of literally laying a bill awaiting further consideration on the clerk's table.

“The reference to ‘laying the motion on the table’ or ‘tabling’ is still widely used, but the more precise term, ‘postpone temporarily,’ is preferred when that is its purpose, because the term is self-explanatory.

“Sometimes, however, the purpose of the motion is not merely to postpone temporarily, but to set the motion aside indefinitely — in effect, to ‘kill’ it ....” Alice Sturgis, *The Standard Code of Parliamentary Procedure* 70 (4th ed. 2001).

**TABLEAU OF DISTRIBUTION**

**tableau of distribution.**Civil law. A list of creditors of an estate, stating what each is entitled to. See *judgment homologating the tableau* under **JUDGMENT**.

**TABLEAUX VIVANTS**

**tableaux vivants.**Copyright. A performance by actors dressed as characters in a painting and acting out the event portrayed in the painting.

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**TABLE OF AUTHORITIES**

table of authorities. See INDEX OF AUTHORITIES.

**TABLE OF CASES**

table of cases. 1. An alphabetical list of the cases cited in a brief or lawbook, usu. prefixed or appended to it, with one or more page or section numbers showing where in the text each case is cited. 2. INDEX OF AUTHORITIES .

**TABLETS OF AMALFI**

Tablets of Amalfi. See AMALPHITAN CODE.

**TABULA IN NAUFRAGIO**

tabula in naufragio. [Latin “the last plank from the shipwreck”] Something added to a lawsuit, often on appeal, as a last-ditch argument or as an afterthought.

**TABULA RASA**

tabula rasa (tab-y<<schwa>>-l<<schwa>> rah-s<<schwa>> or -z<<schwa>>). [Latin “scraped tablet”] A blank tablet ready for writing; a clean slate. Pl. tabulae rasae (tab-y<<schwa>>-lee-rah-s-I).

**TABULAR FORM**

tabular form. See SUBPARAGRAPH FORM.

**TABULIS EXHIBENDIS**

tabulis exhibendis. See DE TABULIS EXHIBENDIS.

**T-ACCOUNT**

T-account. An accounting form shaped like the letter T, with the account's name above the horizontal line, debits listed to the left of the vertical line, and credits to the right.

**TACERE PER QUADRIENNIUM UTILE**

tacere per quadriennium utile (t<<schwa>>-seer-ee p<<schwa>>r kwod-ree-en-ee-<<schwa>>m yoo-t<<schwa>>-lee). [Law Latin] Hist. To be silent throughout the four years after majority. • A person is estopped from challenging a deed made when that person was a minor if the right is not exercised within the four years after the person reaches the age of majority.

**TACIT**

tacit (tas-it), adj. 1. Implied but not actually expressed; implied by silence or silent acquiescence <a tacit understanding> <a tacit admission>. 2. Civil law. Arising by operation of law; constructive <a tacit mortgage> <tacit relocation>. La. Civ. Code art. 3506(30). — tacitly, adv.

**TACIT ACCEPTANCE**

tacit acceptance.Civil law. 1. An acceptance of an offer indicated by circumstances or operation of law rather than express words. La. Civ. Code art. 1927. 2. An acceptance of an inheritance, indicated by the heir's doing some act that shows an intent to accept it and that the heir would have no right to do except in that capacity. [Cases: Descent and Distribution 72, 119(2). C.J.S. Descent and Distribution §§ 69, 77, 116.]

#### TACIT ADMISSION

tacit admission.See implied admission under ADMISSION(1).

#### TACIT COLLUSION

tacit collusion.See CONSCIOUS PARALLELISM.

#### TACIT CONTRACT

tacit contract.See CONTRACT.

#### TACIT DEDICATION

tacit dedication.See DEDICATION.

#### TACIT HYPOTHECATION

tacit hypothecation.See HYPOTHECATION.

#### TACIT LAW

tacit law.See LAW.

#### TACIT MORTGAGE

tacit mortgage.See legal mortgage under MORTGAGE.

#### TACIT PROROGATION

tacit prorogation.See PROROGATION.

#### TACIT RELOCATION

tacit relocation.The implied or constructive renewal of a lease, usu. on a year-to-year basis, when the landlord and tenant have failed to indicate their intention to have the lease terminated at the end of the original term. [Cases: Landlord and Tenant 115(1).]

#### TACIT-RELOCATION DOCTRINE

tacit-relocation doctrine.The principle under which a lease is presumed to continue (usu. for a one-year period) beyond its expiration date because of the parties' failure to indicate that the agreement should terminate at the stipulated date. [Cases: Landlord and Tenant 115(1).]

#### TACIT REMISSION

tacit remission.See REMISSION.

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**TACK**

tack,n. Scots law. A deed creating a lease of land or other immovable property for an annual rent payable in money, services, or fruits produced on the land. • The lessee may be referred to as a tacksman or tackswoman. — tack,vb.

tack,vb.1. To add (one's own period of land possession) to a prior possessor's period to establish continuous adverse possession for the statutory period. [Cases: Adverse Possession 43. C.J.S. Adverse Possession § 154.] 2. To annex (a junior lien) to a first lien to acquire priority over an intermediate lien.

“It is the established doctrine in the English law, that if there be three mortgages in succession, and all duly registered, or a mortgage, and then a judgment, and then a second mortgage upon the estate, the junior mortgagee may purchase in the first mortgage, and tack it to his mortgage, and by that contrivance ‘squeeze out’ the middle mortgage and gain preference over it. The same rule would apply if the first as well as the second incumbrance was a judgment; but the incumbrancer who tacks must always be a mortgagee, for he stands in the light of a bonâ fide purchaser, parting with his money upon the security of the mortgage.” 4 James Kent, Commentaries on American Law \*176 (George Comstock ed., 11th ed. 1866).

3.Scots law. To lease land or another immovable for an annual rent payable in money, services, or fruits produced on the land.

**TACKING**

tacking. 1. The joining of consecutive periods of possession by different persons to treat the periods as one continuous period; esp., the adding of one's own period of land possession to that of a prior possessor to establish continuous adverse possession for the statutory period. See ADVERSE POSSESSION . [Cases: Adverse Possession 39–56. C.J.S. Adverse Possession §§ 144, 149–205, 332.] 2. The joining of a junior lien with the first lien in order to acquire priority over an intermediate lien. [Cases: Mortgages 151(2). C.J.S. Mortgages §§ 204, 206, 209, 214.]

**TAFT–HARTLEY ACT**

Taft–Hartley Act.See LABOR–MANAGEMENT RELATIONS ACT.

**TAFT–HARTLEY FUND**

Taft–Hartley fund.See joint-welfare fund under FUND(1).

**TAIL**

tail,n. The limitation of an estate so that it can be inherited only by the fee owner's issue or class of issue. See FEE TAIL; ENTAIL. — Also termed (in Scots law) tailzie (tay-lee). [Cases: Descent and Distribution 29; Estates in Property 12; Wills 604. C.J.S. Estates §§ 22–27; Wills § 1258.]

several tail.A tail that designates two separate heirs or classes of heirs who are eligible to inherit.

tail female.A limitation to female heirs. [Cases: Estates in Property 12; Wills 605. C.J.S. Estates §§ 22–27; Wills § 1259.]

tail general. 1. A tail limited to the issue of a particular person, but not to that of a particular couple. — Also termed general tail. 2. See tail male. [Cases: Estates in Property 12; Wills 604. C.J.S. Estates §§ 22–27; Wills § 1258.]

tail male.A limitation to male heirs. — Also termed tail general. [Cases: Estates in Property 12; Wills 604. C.J.S. Estates §§ 22–27; Wills § 1258.]

tail special.A tail limited to specified heirs of the donee's body. — Also termed special tail. [Cases: Estates in Property 12; Wills 604. C.J.S. Estates §§ 22–27; Wills § 1258.]

“Estates-tail are either general, or special.... Tenant in tail-special is where the gift is restrained to certain heirs ... and does not go to all of them in general. And this may happen in several ways. I shall instance in only one: as where lands and tenements are given to a man and the heirs of his body, on Mary his now wife to be begotten; here no issue can inherit, but such special issue as is engendered, between them two; not such as the husband may have by another wife: and therefore it is called special tail.” 2 William Blackstone, Commentaries on the Laws of England 113–14 (1766).

#### TAILZIE

tailzie (tay-lee), n. Scots law. 1.ENTAIL. 2.TAIL.

#### TAINT

taint,n.1. A conviction of felony. 2. A person so convicted. See ATTAINDER.

taint,vb.1. To imbue with a noxious quality or principle. 2. To contaminate or corrupt. 3. To tinge or affect slightly for the worse. — taint,n.

#### TAINTED EVIDENCE

tainted evidence.See EVIDENCE.

#### TAINTED STOCK

tainted stock.See STOCK.

#### TAKE

take,vb.1. To obtain possession or control, whether legally or illegally <it's a felony to take that property without the owner's consent>.2. To seize with authority; to confiscate or apprehend <take the suspect into custody>.3. To acquire (property) for public use by eminent domain; (of a governmental entity) to seize or condemn property <the state took the land under its eminent-domain powers>. [Cases: Eminent Domain 1–65. C.J.S. Eminent Domain §§ 2–70, 82–83, 87–97, 104, 106–108, 115; Zoning and Land Planning §§ 24, 47.] 4. To acquire possession by virtue of a grant of title, the use of eminent domain, or other legal means; esp., to receive property by will or intestate succession <the probate code indicates the proportions according to

which each heir will take>. See TAKING. 5. To claim one's rights under <she took the Fifth Amendment>.

#### TAKE A DEFAULT JUDGMENT

take a default judgment.To reduce to final judgment a defendant's failure to timely answer a lawsuit. • The process usu. involves informing the court of the defendant's failure to answer, proving damages, and submitting a proposed judgment for the judge to sign. See DEFAULT JUDGMENT.

#### TAKE A DEPOSITION

take a deposition.To obtain the testimony of a witness by deposition. See DEPOSITION(1).

#### TAKE AWAY

take away,vb. Hist. To entice or persuade (a female under the age of 18) to leave her family for purposes of marriage, prostitution, or illicit sex. See ABDUCTION(2).

#### TAKE BACK

take back,vb. To revoke; to retract.

#### TAKE BY STEALTH

take by stealth.To steal (personal property); to pilfer or filch. [Cases: Larceny 1, 12. C.J.S. Larceny §§ 1(1, 2), 4–7, 9, 33–35, 50.]

#### TAKE CARE OF

take care of. 1. To support or look after (a person).2. To pay (a debt).3. To attend to (some matter).

#### TAKE DELIVERY

take delivery.To receive something purchased or ordered; esp., to receive a commodity under a futures contract or spot-market contract, or to receive securities recently purchased.

#### TAKE EFFECT

take effect,vb.1. To become operative or executed. 2. To be in force; to go into operation.

#### TAKE FROM THE TABLE

take from the table.Parliamentary law. To resume consideration of (business previously tabled). — Also termed resume consideration.

#### TAKE-HOME PAY

take-home pay.Gross wages or salary reduced by deductions such as income taxes, social-security taxes, voluntary contributions, and union dues; the net amount of a paycheck.

#### TAKE-IT-OR-LEAVE-IT CONTRACT

take-it-or-leave-it contract. See adhesion contract under CONTRACT.

#### TAKE-NOTHING JUDGMENT

take-nothing judgment. See JUDGMENT.

#### TAKE-OR-PAY CONTRACT

take-or-pay contract. See CONTRACT.

#### TAKEOVER

takeover. The acquisition of ownership or control of a corporation. • A takeover is typically accomplished by a purchase of shares or assets, a tender offer, or a merger. [Cases: Securities Regulation 52.10–52.26. C.J.S. Securities Regulation §§ 121, 123–127, 129–130, 138–139.]

friendly takeover. A takeover that is approved by the target corporation's board of directors.

hostile takeover. A takeover that is resisted by the target corporation's board of directors. [Cases: Corporations 310(1). C.J.S. Corporations §§ 475, 477–484, 487–489.]

#### TAKEOVER AGREEMENT

takeover agreement. See AGREEMENT.

#### TAKEOVER BID

takeover bid. An attempt by outsiders to wrest control from the incumbent management of a target corporation. See TENDER OFFER.

#### TAKEOVER DEFENSE

takeover defense. A measure taken by a corporation to discourage hostile takeover attempts. — Often shortened to defense. — Also termed shark repellent.

structural takeover defense. A legal mechanism adopted by a corporation to thwart any future takeover bid without having any financial or operational effect on the target corporation.

transactional takeover defense. A financial or operational transaction designed to make a present or future takeover bid more difficult by raising a company's share price, paying off the bidder, or reducing a bidder's profit. • Examples include issuing new shares of stock, acquiring expensive assets, and adopting a poison-pill defense. See POISON PILL; PORCUPINE PROVISION.

#### TAKEOVER OFFER

takeover offer. See TENDER OFFER.

#### TAKER

taker, n. A person who acquires; esp., one who receives property by will, by power of appointment, or by intestate succession. [Cases: Wills 492–495. C.J.S. Wills §§ 902–905, 928, 956, 964–966.]

first taker.A person who receives an estate that is subject to a remainder or executory devise.

presumptive taker.A person who would take under the applicable provisions if the takers were to be finally ascertained at the present moment.

taker in default.A person who will receive property not effectively appointed; esp., a person designated by a donor to receive property under a power of appointment if the donee fails to exercise that power.

#### TAKE THE FIFTH

take the Fifth.To assert one's right against self-incrimination under the Fifth Amendment. • A common but loose variant of the phrase is plead the Fifth: invoking the right is not a plea. See RIGHT AGAINST SELF-INCRIMINATION N. [Cases: Witnesses 297. C.J.S. Witnesses § 522.]

#### TAKE THE WITNESS

take the witness.You may now question the witness. • This phrase is a lawyer's courtroom announcement that ends one side's questioning and prompts the other side to begin its questioning. Synonymous phrases are your witness and pass the witness.

#### TAKE UP

take up,vb.1. To pay or discharge (a note). [Cases: Bills and Notes 428, 436. C.J.S. Bills and Notes; Letters of Credit §§ 100, 231, 234–236, 238, 240, 242, 244–248.] 2. To retire (a negotiable instrument); to discharge one's liability on (a negotiable instrument), esp. the liability of an indorser or acceptor. 3. To purchase (a note).

#### TAKING

taking,n.1.Criminal & tort law. The act of seizing an article, with or without removing it, but with an implicit transfer of possession or control.

constructive taking.An act that does not equal an actual appropriation of an article but that does show an intention to convert it, as when a person entrusted with the possession of goods starts using them contrary to the owner's instructions.

2.Constitutional law. The government's actual or effective acquisition of private property either by ousting the owner or by destroying the property or severely impairing its utility. • There is a taking of property when government action directly interferes with or substantially disturbs the owner's use and enjoyment of the property. — Also termed constitutional taking. See CONDEMNATION(2); EMINENT DOMAIN. [Cases: Eminent Domain 2. C.J.S. Eminent Domain §§ 6–8, 13, 82–83, 87–88, 106–107.]

actual taking.See physical taking.

de facto taking (di fak-toh).1. Interference with the use or value or marketability of land in anticipation of condemnation, depriving the owner of reasonable use and thereby triggering the obligation to pay just compensation. 2. A taking in which an entity clothed with eminent-domain power substantially interferes with an owner's use, possession, or enjoyment of property. [Cases:

Eminent Domain 2. C.J.S. Eminent Domain §§ 6–8, 13, 82–83, 87–88, 106–107.]

permanent taking.A government's taking of property with no intention to return it. • The property owner is entitled to just compensation.

physical taking.A physical appropriation of an owner's property by an entity clothed with eminent-domain authority. — Also termed actual taking. [Cases: Eminent Domain 2. C.J.S. Eminent Domain §§ 6–8, 13, 82–83, 87–88, 106–107.]

temporary taking.A government's taking of property for a finite time. • The property owner may be entitled to compensation and damages for any harm done to the property.

#### TAKING A CASE FROM THE JURY

taking a case from the jury.See directed verdict under VERDICT.

#### TAKINGS CLAUSE

Takings Clause.The Fifth Amendment provision that prohibits the government from taking private property for public use without fairly compensating the owner. — Also termed Just Compensation Clause. See EMINENT DOMAIN. [Cases: Eminent Domain 69, 70. C.J.S. Eminent Domain §§ 71–72, 198–199.]

#### TAKING THE FIFTH

taking the Fifth.See TAKE THE FIFTH.

#### TALES

tales (tay-leez or taylz). [Latin, pl. of talis “such,” in the phrase tales de circumstantibus “such of the bystanders”] 1. A supply of additional jurors, usu. drawn from the bystanders at the courthouse, summoned to fill a panel that has become deficient in number because of juror challenges or exemptions. 2. A writ or order summoning these jurors.

#### TALES-JUROR

tales-juror. See TALESMAN.

#### TALESMAN

talesman (taylz-m<<schwa>>n ortay-leez-m<<schwa>>n).Archaic. 1. A person selected from among the bystanders in court to serve as a juror when the original jury panel has become deficient in number. [Cases: Jury 72.C.J.S. Juries §§ 333–334, 337.] 2.VENIREMEMBER. — Also termed tales-juror.

#### TALISMAN

talisman (tal-is-m<<schwa>>n), n. A charm, amulet, or other physical thing supposedly capable of working wonders <private property is not some sacred talisman that can never be touched by the state — it can be taken for public use as long as the owner is justly compensated>. — talismanic (tal-is-man-ik), adj.

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**TALIS QUALIS**

talis qualis (tay-lis kway-lis). [Latin] Hist. Such as it is. • A purchaser who accepts title as it stands at the time of sale takes the title talis qualis.

**TALLAGE**

tallage. 1.Hist. An arbitrary tax levied by the monarch on towns and lands belonging to the crown. • Royal tallages were abolished in the 14th century when Parliament gained the power to approve or disapprove the monarch's direct-taxation schemes. 2.Hist. A levy demanded by a feudal lord from tenants in lieu of the tenants' provision of goods and services. • The timing and amount of the levy varied according to local custom, type of tenure, and caprice. 3.TOLLAGE.

**TALLY**

tally. 1.Hist. A stick cut into two parts and marked with notches to show what was due between a debtor and creditor.

“The tally, used as a receipt for money or chattels, was a narrow wooden stick with notches of varying dimensions to represent the amount received. After the notches had been cut, the stick was split lengthwise into two unequal pieces. The longer, which contained a stump or handle and was called the ‘stock,’ was given to the person making the payment, and the shorter, a flat strip called the ‘foil,’ to the other party. If the sum involved was disputed, the two pieces could be fitted one to the other to see if they would ‘tally.’ ” C.H.S. Fifoot, *History and Sources of the Common Law: Tort and Contract* 223 (1949).

“A thousand pounds was marked by cutting out the thickness of the palm of the hand, a hundred by the breadth of the thumb, a score by the breadth of the little finger, one pound by that of a swelling barley-corn .... The terminology has left a permanent imprint on our language. If you lent money to the Bank of England, tallies were cut for the amount: the Bank kept the foil and you received the stock; you thus held ‘Bank Stock’ of the amount recorded upon it. When the form of cheque was adopted, it was not indeed called a foil, but the part retained by the payer is still the counterfoil; and the word ‘cheque’ itself goes back ultimately to the same root as ‘exchequer.’ ” Reginald L. Poole, *The Exchequer in the Twelfth Century* 86–93 (1912).

“From early times tallies were used in the Exchequer and this lasted until 1826. The burning of a large quantity of old tallies led to the burning down of the old Houses of Parliament.” David M. Walker, *The Oxford Companion to Law* 1207 (1980).

2. Anything used to record an account. 3. An account; a score.

**TALMUD**

Talmud (tahl-muud ortal-m<<schwa>>d), n. A work embodying the civil and canonical law of the Jewish people. — Talmudic (tahl-moo-dik or tal-), adj.

**TALWEG**

talweg. See THALWEG.

## TAM

TAM.abbr.TECHNICAL ADVICE MEMORANDUM.

## TAME

tame,adj. (Of an animal) domesticated; accustomed to humans. See domestic animal under ANIMAL. [Cases: Animals 1. C.J.S. Animals §§ 2–8.]

## TAM FACTI QUAM ANIMI

tam facti quam animi (tam fak-tI kwam an-<<schwa>>-mI). [Latin] Hist. In deed as well as in intention.

## TAMPER

tamper,vb.1. To meddle so as to alter (a thing); esp., to make changes that are illegal, corrupting, or perverting. 2. To interfere improperly; to meddle.

## TAMPERING

tampering,n.1. The act of altering a thing; esp., the act of illegally altering a document or product, such as written evidence or a consumer good. See Model Penal Code §§ 224.4, 241.8; 18 USCA § 1365. 2. The act or an instance of engaging in improper or underhanded dealings, esp. in an attempt to influence. • Tampering with a witness or jury is a criminal offense. See WITNESS-TAMPERING; OBSTRUCTION OF JUSTICE; EMBRACERY.

## TAN

TAN. See tax-anticipation note under NOTE(1).

## TANF

TANF.abbr.TEMPORARY ASSISTANCE TO NEEDY FAMILIES.

## TANGIBLE

tangible,adj.1. Having or possessing physical form; CORPOREAL. 2. Capable of being touched and seen; perceptible to the touch; capable of being possessed or realized. 3. Capable of being understood by the mind.

## TANGIBLE ASSET

tangible asset.See ASSET.

## TANGIBLE CHATTEL PAPER

tangible chattel paper.See CHATTEL PAPER.

## TANGIBLE COST

tangible cost.See COST(1).

## TANGIBLE DAMAGES

tangible damages. See actual damages under DAMAGES.

#### TANGIBLE EVIDENCE

tangible evidence. See EVIDENCE.

#### TANGIBLE MEDIUM OF EXPRESSION

tangible medium of expression. Copyright. Any material form in which a work can be expressed and communicated, either directly or through a machine. • A requirement for copyright is that the work be fixed in a tangible medium of expression. [Cases: Copyrights and Intellectual Property 12(1).]

#### TANGIBLE PERSONAL PROPERTY

tangible personal property. See PROPERTY.

#### TANGIBLE-PERSONAL-PROPERTY MEMORANDUM

tangible-personal-property memorandum. A handwritten or signed document that lists items of tangible personal property (such as jewelry, artwork, or furniture) and the persons who should receive the property upon the owner's death. • This memorandum is a separate document from the property owner's will, and if referred to by the will, it is a valid testamentary disposition. Unif. Probate Code § 2-513. — Abbr. TPPM.

#### TANGIBLE PROPERTY

tangible property. See PROPERTY.

#### TANGIBLE THING

tangible thing. See corporeal thing under THING.

#### TANQUAM BONUS VIR

tanquam bonus vir (tan-kwam boh-n<<schwa>>s veer). [Law Latin] Scots law. As an honest or honorable man. • A tenant was required to run his farm tanquam bonus vir. — Also spelled tamquam bonus vir.

#### TANQUAM DOMINUS

tanquam dominus (tan-kwam dom-<<schwa>>-n<<schwa>>s). [Law Latin] Hist. As owner.

#### TANQUAM IN LIBELLO

tanquam in libello (tan-kwam in l<<schwa>>-bel-oh). [Law Latin] Hist. As if alleged in the libel.

#### TANQUAM INTERIM DOMINUS

tanquam interim dominus (tan-kwam in-t<<schwa>>r-im dom-<<schwa>>-n<<schwa>>s). [Law Latin] Hist. As the temporary owner.

## TANQUAM JURE DEVOLUTO

tanquam jure devoluto (tan-kwam joor-ee dee-v<<schwa>>-loo-toh). [Law Latin] Hist. As if the right had devolved. See JUS DEVOLUTUM.

## TANQUAM OPTIMUM MAXIMUM

tanquam optimum maximum (tan-kwam op-t<<schwa>>-m<<schwa>>m mak-s<<schwa>>-m<<schwa>>m). [Law Latin] Hist. At its best and fullest. • The phrase was often used in the conveyance of an estate.

## TANQUAM QUILIBET

tanquam quilibet (tan-kwam kwI-l<<schwa>>-bet). [Law Latin] Hist. Like any other person. • The phrase usu. referred to certain transactions of the sovereign.

## TANTUM ET TALE

tantum et tale (tan-t<<schwa>>m et tay-lee). [Latin] Hist. So much and of such a kind.

“When a purchaser accepts a subject from the seller tantum et tale as it stands in the person of the latter, he accepts it with all its advantages and all its faults; he comes precisely into the right and place of the seller: if the subject or the right sold turns out to be more valuable than was thought, the purchaser has the advantage; if otherwise, he bears the loss.” John Trayner, Trayner's Latin Maxims 595 (4th ed. 1894).

## TAPPER

tapper, n. 1. A person who approaches another for money; a beggar. 2. By extension, a thief.

## TAPPING

tapping, n. See WIRETAPPING.

## TARDE VENIT

tarde venit. A return of a writ that was delivered to the sheriff too late to be executed before the return day. See return day under DAY.

## TARE

tare (tair), n. 1. A deficiency in the weight or quantity of merchandise resulting from including its container's weight in the total. 2. An allowance or abatement of a certain weight or quantity that a seller makes to the buyer because of the container's weight. Cf. TRET.

## TARGET BENEFIT PLAN

target benefit plan. See EMPLOYEE BENEFIT PLAN.

## TARGET CORPORATION

target corporation. See CORPORATION.

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**TARGET OFFENSE**

target offense. See object offense under OFFENSE(1).

**TARGET PRICE**

target price. See PRICE.

**TARGET WITNESS**

target witness. See WITNESS.

**TARIFF**

tariff, n. 1. A schedule or system of duties imposed by a government on imported or exported goods. • In the United States, tariffs are imposed on imported goods only. [Cases: Customs Duties 23–38. C.J.S. Customs Duties §§ 38, 40–55.] 2. A duty imposed on imported or exported goods under such a system. See DUTY(4).

ad valorem tariff. A tariff set as a percentage of the imported goods' value. • This is the primary method used to calculate customs duties.

antidumping tariff. A tariff equaling the difference between the price at which the product is sold in the exporting country and the price at which the importer will sell the product in the importing country. • These tariffs are designed to prevent foreign businesses from artificially lowering their prices and gaining unfair advantages outside their home market. See ANTIDUMPING LAW. [Cases: Customs Duties 21.5. C.J.S. Customs Duties §§ 135–152.]

autonomous tariff. A tariff set by legislation rather than by commercial treaty.

common external tariff. A tariff rate that members of a customs union, common market, or economic union uniformly apply to imports from nonmember nations. — Abbr. CXT. — Also termed tariff exterior commun (TEC).

discriminatory tariff. A tariff containing duties that are applied unequally to different countries or manufacturers.

preferential tariff. A tariff that favors the products of one country over those of another. Cf. MOST-FAVORED-NATION CLAUSE.

protective tariff. A tariff designed primarily to give domestic manufacturers economic protection against price competition from abroad, rather than to generate revenue.

retaliatory tariff. A tariff imposed to pressure another country into removing its own tariffs or making trade concessions.

revenue tariff. A tariff enacted solely or primarily to raise revenue.

tariff exterior commun. [French] See common external tariff.

3. A fee that a public utility or telecommunications company may assess for its services. • The tariffs that a provider may charge are limited by statute. [Cases: Public Utilities 119.1;

Telecommunications 306. C.J.S. Telegraphs, Telephones, Radio, and Television §§ 73, 77, 81.] 4. A schedule listing the rates charged for services provided by a public utility, the U.S. Postal Service, or a business (esp. one that must by law file its rates with a public agency). [Cases: Public Utilities 119.1.] 5. A scale of sentences and damages for crimes and injuries, arranged by severity. — tariff,vb.

joint tariff.A rate schedule established by two or more carriers covering shipments between places requiring the use of facilities owned by those carriers. [Cases: Carriers 193. C.J.S. Carriers § 482.]

#### TARIFF ACT OF 1930

Tariff Act of 1930.See SMOOT–HAWLEY TARIFF ACT.

#### TARNISHMENT

tarnishment.Trademarks. A form of dilution that occurs when a trademark's unauthorized use degrades the mark and diminishes its distinctive quality. Cf. BLURRING. [Cases: Trade Regulation 366. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 79.]

#### TAX

tax,n. A monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. • Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money. [Cases: Internal Revenue 3001; Taxation 1, 856.1, 906.11, 931, 1201. C.J.S. Internal Revenue § 2; Taxation §§ 1–3, 5–6, 1693, 1783–1785, 1792, 1990, 1993.] — tax,vb.

“Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs. This definition of taxes, often referred to as ‘Cooley's definition,’ has been quoted and indorsed, or approved, expressly or otherwise, by many different courts. While this definition of taxes characterizes them as ‘contributions,’ other definitions refer to them as ‘imposts,’ ‘duty or impost,’ ‘charges,’ ‘burdens,’ or ‘exactions’; but these variations in phraseology are of no practical importance.” 1 Thomas M. Cooley, *The Law of Taxation* § 1, at 61–63 (Clark A. Nichols ed., 4th ed. 1924).

accrued tax.A tax that has been incurred but not yet paid or payable.

accumulated-earnings tax.A penalty tax imposed on a corporation that has retained its earnings in an effort to avoid the income-tax liability arising once the earnings are distributed to shareholders as dividends. — Also termed undistributed-earnings tax. [Cases: Internal Revenue 3843–3845. C.J.S. Internal Revenue §§ 381–382.]

additional tax.See stopgap tax.

admission tax.A tax imposed as part of the price of being admitted to a particular event.

[Cases: Theaters and Shows 3. C.J.S. Entertainment and Amusement; Sports §§ 18–19, 22, 25–37.]

**ad valorem tax.** A tax imposed proportionally on the value of something (esp. real property), rather than on its quantity or some other measure. [Cases: Taxation 1. C.J.S. Taxation §§ 1–3, 5–6.]

“[A]n ad valorem tax is a tax of a fixed proportion of the value of the property with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to estimate the value of such property before the amount due from each taxpayer can be determined.” 71 Am. Jur. 2d State and Local Taxation §§ 20, at 355 (1973).

**alternative minimum tax.** A tax, often a flat rate, potentially imposed on corporations and higher-income individuals to ensure that those taxpayers do not avoid too much (or all) income-tax liability by legitimately using exclusions, deductions, and credits. — Abbr. AMT. — Also termed minimum tax. [Cases: Internal Revenue 3550. C.J.S. Internal Revenue §§ 358–361.]

**amusement tax.** A tax on a ticket to a concert, sporting event, or the like. • The tax is usu. expressed as a percentage of the ticket price. [Cases: Theaters and Shows 3, 3.40, 3.60. C.J.S. Entertainment and Amusement; Sports §§ 18–19, 22, 24–37, 48.]

**betterment tax.** See BETTERMENT TAX.

**capital-gains tax.** A tax on income derived from the sale of a capital asset. • The federal income tax on capital gains typically has a more favorable tax rate — for example, 20% for an individual and 34% for a corporation — than the otherwise applicable tax rate on ordinary income. See CAPITAL GAIN. [Cases: Internal Revenue 3230.1–3260. C.J.S. Internal Revenue §§ 127–145, 490–491.]

**capital-stock tax.** 1. A tax on capital stock in the hands of a stockholder. [Cases: Taxation 119.] 2. A state tax for conducting business in the corporate form, usu. imposed on out-of-state corporations for the privilege of doing business in the state. • The tax is usu. assessed as a percentage of the par or assigned value of a corporation's capital stock.

**capitation tax.** See poll tax.

**classified tax.** A tax system in which different rates are assessed against different types of taxed property.

**collateral-inheritance tax.** A tax levied on the transfer of property by will or intestate succession to a person other than the spouse, a parent, or a descendant of the decedent. Cf. legacy tax. [Cases: Taxation 856.1. C.J.S. Taxation §§ 1783–1785, 1792.]

**commutation tax.** 1. A combination of two or more taxes that is or can be substituted for something else that could be imposed, such as a demand for other taxes or the performance of personal services. • For example, an excise or franchise tax may be combined with a local tax in

lieu of all other taxes related to the subject matter. 2.Hist. A tax imposed on shipowners, requiring them to post a bond or remit a payment per foreign passenger. • In the 19th-century, the tax was used to discourage immigration and to raise revenue to defray the costs of supporting indigent immigrants who had remained in the U.S. 3.Hist. A 1784 tax intended to reduce tea-smuggling and increase tax revenue by cutting the tax on tea and raising the tax on windows. • To avoid payment of the tax, many people boarded up their windows.

consumption tax.A tax imposed on sale of goods or services to be consumed. [Cases: Taxation 1201.1.]

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

delinquent tax.A tax not paid when due. [Cases: Internal Revenue 4827; Taxation 526, 903, 906.20, 1096, 1331. C.J.S. Internal Revenue §§ 725–726; Taxation §§ 883–884, 1777–1778, 1976, 1978–1981, 2055.]

direct tax.A tax that is imposed on property, as distinguished from a tax on a right or privilege. • A direct tax is presumed to be borne by the person upon whom it is assessed, and not “passed on” to some other person. Ad valorem and property taxes are direct taxes. [Cases: Internal Revenue 3059–3064; Taxation 1. C.J.S. Internal Revenue § 4; Taxation §§ 1–3, 5–6.]

documentary-stamp transfer tax.See stamp tax.

erroneous tax. 1. A tax levied without statutory authority. [Cases: Taxation 498, 536, 608(2). C.J.S. Social Security and Public Welfare § 208; Taxation §§ 801–804, 915, 1093.] 2. A tax on property not subject to taxation. 3. A tax levied by an officer who lacks authority to levy the tax. — Also termed illegal tax.

estate tax.A tax imposed on the transfer of property by will or by intestate succession. — Also termed death tax; death duty. Cf. inheritance tax. [Cases: Internal Revenue 4145; Taxation 856.1. C.J.S. Internal Revenue §§ 500–502; Taxation §§ 1783–1785, 1792.]

estimated tax.A tax paid quarterly by a taxpayer not subject to withholding (such as a self-employed person) based on either the previous year's tax liability or an estimate of the current year's tax liability. [Cases: Internal Revenue 4827, 4832, 5219.40; Taxation 1096. C.J.S. Internal Revenue §§ 725–726, 733, 821; Taxation §§ 1777–1778.]

excess-profits tax.A tax levied on profits that are beyond a business's normal profits. • This type of tax is usu. imposed only in times of national emergency (such as war) to discourage profiteering. [Cases: Internal Revenue 4130–4136. C.J.S. Internal Revenue § 670.]

excise lieu property tax.A tax on the gross premiums received and collected by designated classes of insurance companies. [Cases: Taxation 140. C.J.S. Taxation §§ 217–218.]

excise tax.See EXCISE.

export tax.A tax levied on merchandise and goods shipped or to be shipped out of a country.

flat tax.A tax whose rate remains fixed regardless of the amount of the tax base. • Most sales

taxes are flat taxes. — Also termed proportional tax. Cf. progressive tax; regressive tax. [Cases: Taxation 1281. C.J.S. Taxation §§ 2035–2036.]

floor tax.A tax imposed on distilled spirits stored in a warehouse. [Cases: Internal Revenue 4314. C.J.S. Internal Revenue § 597.]

franchise tax.A tax imposed on the privilege of carrying on a business (esp. as a corporation), usu. measured by the business's income. See FRANCHISE. [Cases: Taxation 117. C.J.S. Taxation §§ 177–180, 199.]

general tax. 1. A tax that returns no special benefit to the taxpayer other than the support of governmental programs that benefit all. [Cases: Taxation 1, 22. C.J.S. Taxation §§ 1–3, 5–6.] 2. A property tax or an ad valorem tax that is imposed for no special purpose except to produce public revenue. Cf. special assessment under ASSESSMENT.

generation-skipping tax.A tax on a property transfer that skips a generation. • The tax limits the use of generation-skipping techniques as a means of avoiding estate taxes. [Cases: Internal Revenue 4220. C.J.S. Internal Revenue §§ 576–578.]

generation-skipping transfer tax.A gift or estate tax imposed on a generation-skipping transfer or a generation-skipping trust. — Sometimes shortened to generation-skipping tax; transfer tax. IRC (26 USCA) §§ 2601–2663. See DIRECT SKIP; GENERATION-SKIPPING TRANSFER; generation-skipping trust under TRUST; TAXABLE DISTRIBUTION. [Cases: Internal Revenue 4220–4228. C.J.S. Internal Revenue §§ 576–578.]

gift tax.A tax imposed when property is voluntarily and gratuitously transferred. • Under federal law, the gift tax is imposed on the donor, but some states tax the donee. [Cases: Internal Revenue 4200; Taxation 906.10. C.J.S. Internal Revenue §§ 493–494, 499, 557–565, 573–575; Taxation §§ 1783–1784.]

graduated tax.A tax employing a rate schedule with higher marginal rates for larger taxable bases (income, property, transfer, etc.) — Also termed progressive tax.

gross-income tax.A tax on gross income, possibly after deduction for costs of goods sold, rather than on net profits; an income tax without allowance for expenses or deductions. See gross income under INCOME. [Cases: Internal Revenue 3110; Taxation 979, 1202.5. C.J.S. Internal Revenue §§ 59–60; Taxation § 1991.]

gross-receipts tax.A tax on a business's gross receipts, without a deduction for costs of goods sold, or allowance for expenses or deductions. See GROSS RECEIPTS.

head tax. 1. See poll tax. 2.HEAD MONEY(3).

hidden tax.A tax that is paid, often unknowingly, by someone other than the person or entity on whom it is levied; esp., a tax imposed on a manufacturer or seller (such as a gasoline producer) who passes it on to consumers in the form of higher prices.

highway tax.A tax raised to pay for the construction, repair, and maintenance of highways. [Cases: Highways 123.]

**holding-company tax.**A federal tax imposed on undistributed personal-holding-company income after allowing deductions for such things as dividends paid. IRC (26 USCA) § 545. — Also termed **personal-holding-company tax**. [Cases: Internal Revenue 3850.1–3858. C.J.S. Internal Revenue §§ 383–386.]

**illegal tax.**A tax that violates the law, esp. the constitution. • For an example, see **poll tax**. See **erroneous tax**.

**income tax.**A tax on an individual's or entity's net income. • The federal income tax — set forth in the Internal Revenue Code — is the federal government's primary source of revenue, and most states also have income taxes. Cf. **property tax**; **EXCISE**. [Cases: Internal Revenue 3065–4122; Taxation 931–1104. C.J.S. Indians § 131; Internal Revenue §§ 12–14, 16–492, 501, 638–639, 670–673, 797–800; Taxation §§ 1693–1782.]

**indirect tax.**A tax on a right or privilege, such as an occupation tax or franchise tax. • An indirect tax is often presumed to be partly or wholly passed on from the nominal taxpayer to another person. [Cases: Licenses 1. C.J.S. Architects § 8; Licenses §§ 2–4.]

**inheritance tax.** 1. A tax imposed on a person who inherits property from another (unlike an estate tax, which is imposed on the decedent's estate). • There is no federal inheritance tax, but some states have an inheritance tax (though it is creditable or deductible under the federal estate tax). — Also termed **succession tax**; **death tax**. Cf. **estate tax**. [Cases: Taxation 856.1–906. C.J.S. Taxation §§ 1783–1989.] 2. Loosely, an estate tax.

**in lieu tax.**A tax imposed as a substitute for another.

**intangible tax.**A state tax imposed on the privilege of owning, transferring, devising, or otherwise dealing with intangible property. [Cases: Taxation 1. C.J.S. Taxation §§ 1–3, 5–6.]

**interest-equalization tax.**A tax imposed on a U.S. citizen's acquisition of stock issued by a foreign issuer or a debt obligation of a foreign obligor, but only if the obligation did not mature within a year. • This tax was repealed in the mid-1970s. IRC (26 USCA) § 4911.

**kiddie tax.**Slang. A federal tax imposed on a child's unearned income (above an exempt amount) at the parents' tax rate if the parents' rate is higher and if the child is under 14 years old. — Also termed **child's income tax**.

**land tax.**See **property tax**.

**legacy tax.**A tax on a legacy, often with the provision that the rate increases as the relationship of the legatee becomes more remote from the testator. • In English law, this tax was known as a legacy duty; it was abolished in 1949. Cf. **collateral-inheritance tax**. [Cases: Taxation 856.1. C.J.S. Taxation §§ 1783–1785, 1792.]

**luxury tax.**An excise tax imposed on high-priced items that are not deemed necessities (such as cars costing more than a specified amount). Cf. **sin tax**. [Cases: Taxation 1201.1–1345. C.J.S. Indians § 131; Steam § 4; Taxation §§ 1990–2071.]

**minimum tax.**See **alternative minimum tax**.

nanny tax.Slang. A federal social-security tax imposed on the employer of a domestic employee if the employer pays that employee more than a specified amount in total wages in a year. • The term, which is not a technical legal phrase, was popularized in the mid-1990s, when several of President Clinton's nominees were found not to have paid the social-security tax for their nannies.

occupation tax.An excise tax imposed for the privilege of carrying on a business, trade, or profession. • For example, many states require lawyers to pay an occupation tax. — Also termed occupational tax. [Cases: Licenses 1. C.J.S. Architects § 8; Licenses §§ 2–4.]

payroll tax. 1. A tax payable by an employer based on its payroll (such as a social-security tax or an unemployment tax). [Cases: Internal Revenue 4849; Taxation 1100. C.J.S. Internal Revenue §§ 740–741; Taxation§ 1779.] 2. A tax collected by an employer from its employees' gross pay (such as an income tax or a social-security tax). See withholding tax.

per capita tax.See poll tax.

personal-holding-company tax.See holding-company tax.

personal-property tax.A tax on personal property (such as jewelry or household furniture) levied by a state or local government. [Cases: Taxation 67. C.J.S. Taxation §§ 114, 120, 122, 125, 129–130.]

pickup tax.Slang. A state death tax levied in an amount equal to the federal death-tax credit. — Also termed sponge tax.

poll tax.A fixed tax levied on each person within a jurisdiction. • The 24th Amendment prohibits the federal and state governments from imposing poll taxes as a condition for voting. — Also termed per capita tax; capitation tax; capitation; head tax. [Cases: Elections 83; Taxation 106. C.J.S. Elections § 29; Taxation §§ 1671–1672.]

premium tax.A state tax paid by an insurer on premiums paid by the insured. [Cases: Taxation 140. C.J.S. Taxation §§ 217–218.]

privilege tax.A tax on the privilege of carrying on a business or occupation for which a license or franchise is required. [Cases: Licenses 1. C.J.S. Architects § 8; Licenses §§ 2–4.]

progressive tax.A tax structured so that the effective tax rate increases more than proportionately as the tax base increases, or so that an exemption remains flat or diminishes. • With this type of tax, the percentage of income paid in taxes increases as the taxpayer's income increases. Most income taxes are progressive, so that higher incomes are taxed at a higher rate. But a tax can be progressive without using graduated rates. — Also termed graduated tax. Cf. regressive tax; flat tax. [Cases: Internal Revenue 3545–3552; Taxation 1061–1065. C.J.S. Internal Revenue §§ 331–333, 335, 358–361, 797; Taxation § 1698.]

property tax.A tax levied on the owner of property (esp. real property), usu. based on the property's value. • Local governments often impose property taxes to finance school districts, municipal projects, and the like. — Also termed (specif.) land tax. Cf. income tax; EXCISE.

[Cases: Taxation 57–111. C.J.S. Taxation §§ 4, 79–168, 283, 1671–1672, 1674, 1681–1692.]

proportional tax. See flat tax.

regressive tax. A tax structured so that the effective tax rate decreases as the tax base increases. • With this type of tax, the percentage of income paid in taxes decreases as the taxpayer's income increases. A flat tax (such as the typical sales tax) is usu. considered regressive — despite its constant rate — because it is more burdensome for low-income taxpayers than high-income taxpayers. A growing tax exemption also produces a regressive tax effect. Cf. progressive tax; flat tax. [Cases: Internal Revenue 3545–3552; Taxation 1061–1065. C.J.S. Internal Revenue §§ 331–333, 335, 358–361, 797; Taxation § 1698.]

repressive tax. See sin tax.

sales tax. A tax imposed on the sale of goods and services, usu. measured as a percentage of their price. — Also termed retail sales tax. See flat tax. [Cases: Taxation 1201.1–1345. C.J.S. Indians § 131; Steam § 4; Taxation §§ 1990–2071.]

“While the term ‘sales tax’ encompasses a large variety of levies, the term often refers to the ‘retail sales tax,’ where the tax is separately stated and collected on a transaction-by-transaction basis from the consumer; although the economic burden of the sales tax falls upon the consumer, the seller has the statutory duty to collect the tax for the taxing jurisdiction.” 68 Am. Jur. 2d Sales and Use Tax § 1, at 11 (1993).

self-employment tax. The social-security tax imposed on the net earnings of a self-employed person. [Cases: Internal Revenue 4381. C.J.S. Internal Revenue §§ 579–580, 582; Social Security and Public Welfare § 33.]

service-occupation tax. A tax imposed on persons who sell services, usu. computed as a percentage of net cost of the tangible personal property (e.g., materials and goods) transferred as an incident to the sale. [Cases: Taxation 1237. C.J.S. Taxation § 2018.]

severance tax. A tax imposed on the value of oil, gas, timber, or other natural resources extracted from the earth. [Cases: Logs and Logging 4; Mines and Minerals 87. C.J.S. Logs and Logging § 26; Mines and Minerals §§ 334, 373–374.]

sinking-fund tax. A tax to be applied to the repayment of a public loan.

sin tax. An excise tax imposed on goods or activities that are considered harmful or immoral (such as cigarettes, liquor, or gambling). — Also termed repressive tax. Cf. luxury tax.

special tax. 1. A tax levied for a unique purpose. 2. A tax (such as an inheritance tax) that is levied in addition to a general tax. [Cases: Taxation 24. C.J.S. Taxation §§ 22, 25.]

specific tax. A tax imposed as a fixed sum on each article or item of property of a given class or kind without regard to its value.

sponge tax. See pickup tax.

stamp tax. A tax imposed by requiring the purchase of a revenue stamp that must be affixed to

a legal document (such as a deed or note) before the document can be recorded. — Also termed documentary-stamp transfer tax. [Cases: Internal Revenue 4390–4409.]

state tax. 1. A tax — usu. in the form of a sales or income tax — earmarked for state, rather than federal or municipal, purposes. [Cases: Taxation 1. C.J.S. Taxation §§ 1–3, 5–6.] 2. A tax levied under a state law.

stock-transfer tax. A tax levied by the federal government and by some states on the transfer or sale of shares of stock. — Often shortened to transfer tax. [Cases: Internal Revenue 4404; Taxation 105.5. C.J.S. Taxation §§ 167, 1681–1692.]

“Some state statutes impose special taxes, usually in the form of a stamp tax, upon sales and agreements for sale and other transfers of stock in corporations. Such a tax is in the nature of an excise tax on the transfer. Taxes on the issuance and transfer of corporate stock, commonly known as ‘stock transfer taxes’ and payable by means of stamps, are constitutional, as within the power of state governments.” 71 Am. Jur. 2d State and Local Taxation § 643, at 896 (1973).

stopgap tax. A tax, usu. temporary, levied during the term of a budget to cover an unexpected deficit. — Also termed additional tax.

succession tax. See inheritance tax (1).

surtax. An additional tax imposed on something being taxed or on the primary tax itself. [Cases: Taxation 1061. C.J.S. Taxation § 1698.]

tonnage tax. See tonnage duty under DUTY(4).

transfer tax. 1. A tax imposed on the transfer of property, esp. by will, inheritance, or gift. [Cases: Internal Revenue 4220–4228; Taxation 856–898. C.J.S. Internal Revenue §§ 576–578; Taxation §§ 1783–1792, 1794–1944, 1948, 1988.] 2. See stock-transfer tax. 3. See generation-skipping transfer tax.

undistributed-earnings tax. See accumulated-earnings tax.

unemployment tax. A tax imposed on an employer by state or federal law to cover the cost of unemployment insurance. • The Federal Unemployment Tax Act (FUTA) provides for a tax based on a percentage of employee earnings but allows a credit for amounts paid in state unemployment taxes. [Cases: Internal Revenue 4305. C.J.S. Internal Revenue §§ 596, 606.]

unified transfer tax. The federal transfer tax imposed equally on property transferred during life or at death. • Until 1977, gift-tax rates were lower than estate taxes. — Also termed unified estate-and-gift tax.

unitary tax. A tax of income earned locally by a business that transacts business through an affiliated company outside the state or country. See UNITARY BUSINESS. [Cases: Taxation 1005. C.J.S. Taxation § 1719.]

unrelated-business-income tax. A tax levied on a not-for-profit organization's taxable income,

such as advertising revenue from a publication. [Cases: Internal Revenue 4068; Taxation 1018. C.J.S. Internal Revenue §§ 473–474; Taxation § 1706.]

use tax.A tax imposed on the use of certain goods that are bought outside the taxing authority's jurisdiction. • Use taxes are designed to discourage the purchase of products that are not subject to the sales tax. [Cases: Taxation 1202. C.J.S. Taxation § 1992.]

value-added tax.A tax assessed at each step in the production of a commodity, based on the value added at each step by the difference between the commodity's production cost and its selling price. • A value-added tax — which is popular in several European countries — effectively acts as a sales tax on the ultimate consumer. — Abbr. VAT. [Cases: Taxation 1201.1.]

windfall-profits tax.A tax imposed on a business or industry as a result of a sudden increase in profits. • An example is the tax imposed on oil companies in 1980 for profits resulting from the Arab oil embargo of the 1970s. [Cases: Internal Revenue 4338.]

window tax.Hist. English law. A tax imposed on a house containing a certain number of windows (usu. more than six). • It was established under the Taxation Act of 1695 and replaced with a tax on inhabited houses established under the House Tax of 1851. See HOUSE-DUTY.

withholding tax.A portion of income tax that is subtracted from salary, wages, dividends, or other income before the earner receives payment. • The most common example is the income tax and social-security tax withheld by an employer from an employee's pay. [Cases: Internal Revenue 4849; Taxation 1100. C.J.S. Internal Revenue §§ 740–741; Taxation § 1779.]

#### TAXABLE

taxable,adj.1. Subject to taxation <interest earned on a checking account is taxable income>. [Cases: Internal Revenue 3110; Taxation 978.C.J.S. Internal Revenue §§ 59–60; Taxation §§ 1715–1716, 1721–1722, 1727.] 2. (Of legal costs or fees) assessable <expert-witness fees are not taxable court costs>. [Cases: Costs 146–194; Federal Civil Procedure 2742. C.J.S. Costs §§ 6, 94–97, 99–101, 105–124.]

#### TAXABLE COST

taxable cost.See COST(3).

#### TAXABLE DISTRIBUTION

taxable distribution.A generation-skipping transfer from a trust to the beneficiary (i.e., the skip person) that is neither a direct skip nor a taxable termination. See GENERATION-SKIPPING TRANSFER; generation-skipping transfer tax under TAX; generation-skipping trust under TRUST; SKIP PERSON. [Cases: Internal Revenue 4224.]

#### TAXABLE ESTATE

taxable estate.See ESTATE(3).

#### TAXABLE GIFT

taxable gift. See GIFT.

#### TAXABLE INCOME

taxable income. See INCOME.

#### TAXABLE TERMINATION

taxable termination. A taxable event that occurs when (1) an interest in a generation-skipping trust property terminates (as on the death of a skip person's parent who possessed the interest), (2) no interest in the trust is held by a nonskip person, and (3) a distribution may be made to a skip person. • Before the creation of taxable terminations in 1976, a taxpayer could create a trust that paid income to a child for life, then to that child's child for life, and so on without incurring an estate or gift tax liability at the death of each generation's beneficiary. See GENERATION-SKIPPING TRANSFER R; generation-skipping transfer tax under TAX; generation-skipping trust under TRUST; SKIP PERSON. [Cases: Internal Revenue 4224.]

#### TAXABLE YEAR

taxable year. See tax year under YEAR.

#### TAX ACCOUNTING

tax accounting. The accounting rules and methods used in determining a taxpayer's liability.

#### TAX-ANTICIPATION BILL

tax-anticipation bill. A short-term obligation issued by the U.S. Treasury to meet the cash-flow needs of the government. • Corporations can tender these bills at par value to make quarterly tax payments. — Abbr. TAB.

#### TAX-ANTICIPATION NOTE

tax-anticipation note. See NOTE(1).

#### TAX-ANTICIPATION WARRANT

tax-anticipation warrant. See WARRANT(2).

#### TAX-APPORTIONMENT CLAUSE

tax-apportionment clause. A testamentary provision directing how inheritance and estate taxes should be paid.

#### TAX ASSESSMENT

tax assessment. See ASSESSMENT(3).

#### TAX ASSESSOR

tax assessor. See ASSESSOR(1).

#### TAXATION

taxation. 1. The imposition or assessment of a tax; the means by which the state obtains the revenue required for its activities. [Cases: Internal Revenue 3001–3007; Taxation 1. C.J.S. Internal Revenue §§ 2, 4; Taxation §§ 1–3, 5–6.]

double taxation. 1. The imposition of two taxes on the same property during the same period and for the same taxing purpose. [Cases: Taxation 47. C.J.S. Taxation §§ 61–72.] 2. The imposition of two taxes on one corporate profit; esp., the structure of taxation employed by Subchapter C of the Internal Revenue Code, under which corporate profits are taxed twice, once to the corporation when earned and once to the shareholders when the earnings are distributed as dividends. 3. Int'l law. The imposition of comparable taxes in two or more states on the same taxpayer for the same subject matter or identical goods. — Also termed duplicate taxation; (in sense 3) juridical double taxation.

duplicate taxation. See double taxation.

equal and uniform taxation. A tax system in which no person or class of persons in the taxing district — whether it be a state, city, or county — is taxed at a different rate from others in the same district on the same value or thing. [Cases: Taxation 39. C.J.S. Taxation § 26.]

pass-through taxation. The taxation of an entity's owners for the entity's income without taxing the entity itself. • Partnerships and S corporations are taxed under this method. So are limited liability companies and limited liability partnerships unless they elect to be taxed as corporations by “checking the box” on their income tax returns. The election is made on Form 8832 (Entity Classification Election). See Treas. Reg. § 301.7701–(3)(b)(1). — Also termed conduit taxation. [Cases: Internal Revenue 3896, 3920–3924. C.J.S. Internal Revenue §§ 376–377, 427, 429.]

2. The act of determining and charging to a litigant the costs of a legal proceeding.

#### TAXATION OF COSTS

taxation of costs. The process of fixing the amount of litigation-related expenses that a prevailing party is entitled to be awarded.

#### TAX AUDIT

tax audit. See AUDIT.

#### TAX AVOIDANCE

tax avoidance. The act of taking advantage of legally available tax-planning opportunities in order to minimize one's tax liability. Cf. TAX EVASION. [Cases: Internal Revenue 3056–3058; Taxation 108. C.J.S. Internal Revenue §§ 3, 14–16; Taxation § 88.]

#### TAX BASE

tax base. The total property, income, or wealth subject to taxation in a given jurisdiction; the aggregate value of the property being taxed by a particular tax. Cf. BASIS(2).

#### TAX BASIS

tax basis. See BASIS(2).

#### TAX-BENEFIT RULE

tax-benefit rule. The principle that if a taxpayer recovers a loss or expense that was deducted in a previous year, the recovery must be included in the current year's gross income to the extent that it was previously deducted. — Also termed tax-benefit doctrine. [Cases: Internal Revenue 3089, 3138. C.J.S. Internal Revenue § 78.]

#### TAX BRACKET

tax bracket. A categorized level of income subject to a particular tax rate under federal or state law <28% tax bracket>. [Cases: Internal Revenue 3545–3552; Taxation 1061–1065. C.J.S. Internal Revenue §§ 331–333, 335, 358–361, 797; Taxation § 1698.]

#### TAX CERTIFICATE

tax certificate. An instrument issued to the buyer of property at a tax sale, certifying the sale and entitling the buyer to a tax deed and possession of the property upon the expiration of the redemption period. • If the property is redeemed, the tax certificate is voided. See REDEMPTION PERIOD; tax sale under SALE. Cf. tax deed under DEED. [Cases: Taxation 730, 731. C.J.S. Taxation §§ 1365–1369.]

#### TAX COURT

tax court. 1. TAX COURT, U.S. 2. In some states, a court that hears appeals in nonfederal tax cases and can modify or change any valuation, assessment, classification, tax, or final order that is appealed. [Cases: Taxation 492.6, 1085.5, 1318.5. C.J.S. Taxation §§ 729, 1770–1772, 2048–2054.]

#### TAX COURT, U.S

Tax Court, U.S. A federal court that hears appeals by taxpayers from adverse IRS decisions about tax deficiencies. • The Tax Court was created in 1942, replacing the Board of Tax Appeals. — Abbr. T.C. [Cases: Internal Revenue 4645–4655. C.J.S. Internal Revenue §§ 680–687.]

#### TAX CREDIT

tax credit. An amount subtracted directly from one's total tax liability, dollar for dollar, as opposed to a deduction from gross income. — Often shortened to credit. Cf. DEDUCTION(2). [Cases: Internal Revenue 3520–3537; Taxation 1047. C.J.S. Internal Revenue §§ 58, 336–357, 489–492; Taxation § 1758.]

child- and dependent-care tax credit. A tax credit available to a person who is employed full-time and who maintains a household for a dependent child or a disabled spouse or dependent. [Cases: Internal Revenue 3520, 3534; Taxation 1047. C.J.S. Internal Revenue §§ 58, 336–338, 341–343, 345, 347, 354, 489; Taxation § 1758.]

earned-income credit. A refundable federal tax credit on the earned income of a low-income worker with dependent children. • The credit is paid to the taxpayer even if it exceeds the total tax

liability. [Cases: Internal Revenue 3532. C.J.S. Internal Revenue § 346.]

foreign tax credit. A tax credit against U.S. income taxes for a taxpayer who earns income overseas and has paid foreign taxes on that income. See FOREIGN-EARNED-INCOME EXCLUSION. [Cases: Internal Revenue 4098. C.J.S. Internal Revenue § 481.]

“Since direct foreign investments and business operations of United States persons often attract foreign income taxes along with the baseline U.S. tax, the specter of double taxation is bound to haunt the pursuit of foreign income. The principal accommodation of the U.S. tax system to the possibility of source-based taxation by other countries is the foreign tax credit. From a simple idea — a dollar-for-dollar reduction of U.S. tax for income taxes paid to foreign countries — the foreign tax credit has evolved into an elaborate statutory structure capable of engulfing an entire professional career.” Joseph Isenbergh, *International Taxation* 14 (2000).

investment tax credit. A tax credit intended to stimulate business investment in capital goods by allowing a percentage of the purchase price as a credit against the taxpayer's income taxes. • The Tax Reform Act of 1986 generally repealed this credit retroactively for most property placed in service after January 1, 1986. — Abbr. ITC. [Cases: Internal Revenue 3523; Taxation 1047. C.J.S. Internal Revenue §§ 348, 492; Taxation § 1758.]

unified credit. See unified estate-and-gift tax credit.

unified estate-and-gift tax credit. A tax credit applied against the federal unified transfer tax. IRC (26 USCA) § 2001(c)(2). — Often shortened to unified credit. — Also termed applicable exclusion credit. [Cases: Internal Revenue 4182.30. C.J.S. Internal Revenue § 541.]

#### TAX DEDUCTION

tax deduction. See DEDUCTION(2).

#### TAX DEED

tax deed. See DEED.

#### TAX-DEFERRED

tax-deferred, adj. Not taxable until a future date or event <a tax-deferred retirement plan>. [Cases: Internal Revenue 3575–3615. C.J.S. Internal Revenue §§ 160, 206–208, 291, 294–295, 299–327.]

#### TAX-DEFERRED ACCOUNT

tax-deferred account. See ACCOUNT.

#### TAX-DEFERRED ANNUITY

tax-deferred annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

#### TAX DEFICIENCY

tax deficiency. See DEFICIENCY.

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**TAX-DEFICIENCY NOTICE**

tax-deficiency notice. See NINETY-DAY LETTER.

**TAX EVASION**

tax evasion. The willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability. • Tax evasion is punishable by both civil and criminal penalties. — Also termed tax fraud. Cf. TAX AVOIDANCE. [Cases: Internal Revenue 5263; Taxation 1103. C.J.S. Internal Revenue § 847; Taxation § 1782.]

**TAX-EXEMPT**

tax-exempt, adj. 1. By law not subject to taxation <a tax-exempt charity>. [Cases: Internal Revenue 4045–4071; Taxation 211–250. C.J.S. Internal Revenue §§ 327, 462–474, 670, 798; Taxation §§ 266, 275, 277–282, 287–289, 291–298, 300, 303–383, 1736–1737.] 2. Bearing interest that is free from income tax <tax-exempt municipal bonds>. — Also termed tax-free.

**TAX-EXEMPT BOND**

tax-exempt bond. See BOND(3).

**TAX FERRET**

tax ferret. A private person engaged in the business of searching for taxable property that has somehow not been taxed. [Cases: Internal Revenue 4442. C.J.S. Internal Revenue § 610.]

**TAX FORECLOSURE**

tax foreclosure. See FORECLOSURE.

**TAX FRAUD**

tax fraud. See TAX EVASION.

**TAX-FREE**

tax-free, adj. See TAX-EXEMPT.

**TAX-FREE EXCHANGE**

tax-free exchange. A transfer of property for which the tax law specifically defers (or possibly exempts) income-tax consequences. • For example, a transfer of property to a controlled corporation under IRC (26 USCA) § 351(a) and a like-kind exchange under IRC (26 USCA) § 1031(a). [Cases: Internal Revenue 3184; Taxation 996. C.J.S. Internal Revenue §§ 120–121, 124; Taxation §§ 1732–1733.]

**TAX HAVEN**

tax haven. A jurisdiction, esp. a country, that imposes little or no tax on the profits from transactions carried on there or on persons resident there.

“Among the reasons for this complexity [in international taxation] is the elusive nature of tax

havens. A tax haven is not always immediately obvious. What makes a particular environment a tax haven is not invariably a low rate of tax, but relations with other tax regimes that permit the ultimate deflection of income to a low-tax environment with which the income may have little indigenous connection.” Joseph Isenbergh, *International Taxation* 16 (2000).

#### TAX HOME

tax home. A taxpayer's principal business location, post, or station. • Travel expenses are tax-deductible only if the taxpayer is traveling away from home. [Cases: Internal Revenue 3343.]

#### TAX INCENTIVE

tax incentive. A governmental enticement, through a tax benefit, to engage in a particular activity, such as the contribution of money or property to a qualified charity.

#### TAX-INCREMENT FINANCING

tax-increment financing. A technique used by a municipality to finance commercial developments usu. involving issuing bonds to finance land acquisition and other up-front costs, and then using the additional property taxes generated from the new development to service the debt. — Abbr. TIF. [Cases: Municipal Corporations 953.]

#### TAXING DISTRICT

taxing district. See DISTRICT.

#### TAXING POWER

taxing power. See POWER(3).

#### TAX INJUNCTION ACT

tax injunction act. A federal law prohibiting a federal court from interfering with the assessment or collection of any state tax where the state affords a plain, speedy, and efficient remedy in its own courts. 28 USCA § 1341. [Cases: Federal Courts 27.]

#### TAX LAW

tax law. 1. INTERNAL REVENUE CODE. 2. The statutory, regulatory, constitutional, and common-law rules that constitute the law applicable to taxation. 3. The area of legal study dealing with taxation.

#### TAX LEASE

tax lease. See LEASE.

#### TAX LEVY

tax levy. See LEVY(1).

#### TAX LIABILITY

tax liability.The amount that a taxpayer legally owes after calculating the applicable tax; the amount of unpaid taxes.

**TAX LIEN**

tax lien.See LIEN.

**TAX LIST**

tax list.An official schedule listing the taxable items within a jurisdiction; ROLL(2).

**TAX LOOPHOLE**

tax loophole.See LOOPHOLE.

**TAX-LOSS CARRYBACK**

tax-loss carryback.See CARRYBACK.

**TAX-LOSS CARRYFORWARD**

tax-loss carryforward.See CARRYOVER.

**TAX-LOSS CARRYOVER**

tax-loss carryover.See CARRYOVER.

**TAX NEGLIGENCE**

tax negligence.See NEGLIGENCE.

**TAX-OPTION CORPORATION**

tax-option corporation.See S corporation under CORPORATION.

**TAXPAYER**

taxpayer. One who pays or is subject to a tax. [Cases: Internal Revenue 3560; Taxation 57, 1011. C.J.S. Internal Revenue §§ 17, 70, 87, 362; Taxation §§ 4, 79, 85, 1701.]

**TAXPAYERS' BILL OF RIGHTS**

taxpayers' bill of rights.Federal legislation granting taxpayers specific rights when dealing with the Internal Revenue Service, such as the right to have representation and the right to receive written notice of a levy 30 days before enforcement.

**TAXPAYERS' LISTS**

taxpayers' lists.Written exhibits required of taxpayers in some taxing districts, listing all property owned by them and subject to taxation, used as a basis for assessment and valuation. Cf. ROLL(2). [Cases: Taxation 328, 366. C.J.S. Taxation §§ 483, 535–536, 541, 544.]

**TAXPAYER-STANDING DOCTRINE**

taxpayer-standing doctrine.Constitutional law. The principle that a taxpayer has no standing

to sue the government for allegedly mispending the public's tax money unless the taxpayer can demonstrate a personal stake and show some direct injury. [Cases: Constitutional Law 42.3(2); Municipal Corporations 987. C.J.S. Constitutional Law §§ 68–69, 76; Municipal Corporations §§ 1889–1890, 1893–1894, 1896–1897, 1900–1904.]

#### TAX-PREFERENCE ITEMS

tax-preference items. Certain items that, even though lawfully deducted in arriving at taxable income for regular tax purposes, must be considered in calculating a taxpayer's alternative minimum tax. See alternative minimum tax under TAX. [Cases: Internal Revenue 3550. C.J.S. Internal Revenue §§ 358–361.]

#### TAX RATE

tax rate. A mathematical figure for calculating a tax, usu. expressed as a percentage. [Cases: Internal Revenue 3545–3552; Taxation 1061–1065. C.J.S. Internal Revenue §§ 331–333, 335, 358–361, 797; Taxation § 1698.]

average tax rate. A taxpayer's tax liability divided by the amount of taxable income. — Also called effective tax rate.

marginal tax rate. In a tax scheme, the rate applicable to the last dollar of income earned by the taxpayer. • This concept is useful in calculating the tax effect of receiving additional income or claiming additional deductions. See TAX BRACKET.

#### TAX-RATE SCHEDULE

tax-rate schedule. A schedule used to determine the tax on a given level of taxable income and based on a taxpayer's status (for example, married filing a joint income-tax return). — Also termed tax table. [Cases: Internal Revenue 3545–3552; Taxation 1061–1065. C.J.S. Internal Revenue §§ 331–333, 335, 358–361, 797; Taxation § 1698.]

#### TAX REBATE

tax rebate. See TAX REFUND.

#### TAX REDEMPTION

tax redemption. See REDEMPTION.

#### TAX REFUND

tax refund. Money that a taxpayer overpaid and is thus returned by the taxing authority. — Also termed tax rebate. [Cases: Internal Revenue 4950; Taxation 535, 904, 1097. C.J.S. Internal Revenue § 780; Social Security and Public Welfare § 207; Taxation §§ 910–914, 919, 1679, 1690, 1764, 1978–1981.]

#### TAX RETURN

tax return. An income-tax form on which a person or entity reports income, deductions, and exemptions, and on which tax liability is calculated. — Often shortened to return. — Also termed

income-tax return. [Cases: Internal Revenue 4470; Taxation 1079.1, 1313. C.J.S. Internal Revenue §§ 547, 575, 631; Taxation § 2038.]

amended return. A return filed after the original return, usu. to correct an error in the original. [Cases: Internal Revenue 4479; Taxation 1079.1, 1313. C.J.S. Internal Revenue § 636; Taxation § 2038.]

consolidated return. A return that reflects combined financial information for a group of affiliated corporations. [Cases: Internal Revenue 3865–3880; Taxation 1080. C.J.S. Internal Revenue §§ 17–18, 638; Taxation § 1699.]

false return. See FALSE RETURN(2).

information return. A return, such as a W-2, filed by an entity to report some economic information related to, but other than, tax liability.

joint return. A return filed together by spouses. • A joint return can be filed even if only one spouse had income, but each spouse is usu. individually liable for the tax payment. [Cases: Internal Revenue 4481; Taxation 1079.1. C.J.S. Internal Revenue §§ 335, 637.]

separate return. A return filed by each spouse separately, showing income and liability. • Unlike with a joint return, each spouse is individually liable only for taxes due on the separate return. [Cases: Internal Revenue 4481; Taxation 1079.1. C.J.S. Internal Revenue §§ 335, 637.]

#### TAX-RETURN PRIVILEGE

tax-return privilege. See PRIVILEGE(3).

#### TAX ROLL

tax roll. See ROLL(2).

#### TAX SALE

tax sale. See SALE.

#### TAX SHELTER

tax shelter, n. A financial operation or investment strategy (such as a partnership or real-estate investment trust) that is created primarily for the purpose of reducing or deferring income-tax payments. • The Tax Reform Act of 1986 — by restricting the deductibility of passive losses — sharply limited the effectiveness of tax shelters. — Often shortened to shelter. — tax-sheltered, adj.

#### TAX-SHELTERED ANNUITY

tax-sheltered annuity. See 403(b) plan under EMPLOYEE BENEFIT PLAN.

#### TAX SITUS

tax situs (sI-t<<schwa>>s). A state or jurisdiction that has a substantial connection with assets that are subject to taxation. [Cases: Taxation 97. C.J.S. Taxation § 153.]

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**TAX-STRADDLE RULE**

tax-straddle rule. A rule preventing undue deferral of tax on income or conversion of ordinary income or short-term capital gain into long-term capital gain by disallowing the premature deduction of a loss on sale or disposition of one leg of a straddle position (e.g., a promise to sell offset by a promise to buy, such as in futures contracts) while retaining the other, offsetting leg or position. • This practice has been greatly restricted by the requirement that gains and losses on commodities transactions must be reported based on their value at year end. IRC (26 USCA) § 165(c)(2). See STRADDLE. [Cases: Internal Revenue 3397.]

**TAX TABLE**

tax table. See TAX-RATE SCHEDULE.

**TAX TITLE**

tax title. See TITLE(2).

**TAX WARRANT**

tax warrant. See WARRANT(1).

**TAX WRITE-OFF**

tax write-off. A deduction of depreciation, loss, or expense. [Cases: Internal Revenue 3310–3442, 3470–3505; Taxation 1031.1–1044. C.J.S. Internal Revenue §§ 33, 58, 140, 150–171, 173–180, 182–184, 186–190, 192–196, 198–205, 212, 215–249, 251–265, 267, 270–283, 286, 409, 489, 671, 673, 799–800; Taxation §§ 1738–1755.]

**TAX YEAR**

tax year. See YEAR.

**TBC**

TBC. abbr. Trial before the court. See bench trial under TRIAL.

**T-BILL**

T-bill. abbr. TREASURY BILL.

**T-BOND**

T-bond. abbr. TREASURY BOND.

**T.C.**

T.C. abbr. See TAX COURT, U.S.

**T.C.M.**

T.C.M. See T.C. MEMO.

**T.C. MEMO**

T.C. memo.abbr.A memorandum decision of the U.S. Tax Court. — Also abbreviated T.C.M.

TDA

TDA.abbr. UNITED STATES TRADE AND DEVELOPMENT AGENCY.

TEACH

teach,vb. Patents. 1. (Of a patent specification) to instruct (a person of ordinary skill in the art how to make and use an invention). [Cases: Patents 99. C.J.S. Patents § 139.] 2. (Of a prior-art reference) to anticipate (the invention's being examined) by discussing, describing, or analyzing the invention's essential elements or technology. • In this sense, prior art that discourages an inventor from pursuing an invention “teaches away from” that invention. A teaching raises a statutory bar to an invention's patentability. [Cases: Patents 65. C.J.S. Patents § 49.]

TEAMWORK

teamwork. Work done by a team; esp., work by a team of animals as a substantial part of one's business, such as farming, express carrying, freight hauling, or transporting material. • In some jurisdictions, animals (such as horses) that work in teams are exempt from execution on a civil judgment.

TEAR-ME-OPEN LICENSE

tear-me-open license.See shrink-wrap license under LICENSE.

TEAS

TEAS.abbr.TRADEMARK ELECTRONIC APPLICATION SYSTEM.

TEC

TEC.abbr.Tariff exterior commun. See common external tariff under TARIFF(2).

TECA

TECA (tee-k<<schwa>>).abbr.TEMPORARY EMERGENCY COURT OF APPEALS.

TECHNICAL ADJUSTMENT

technical adjustment.A brief change in the general upward or downward trend of stock-market prices, such as a short rally during a bear market.

TECHNICAL ADVICE MEMORANDUM

Technical Advice Memorandum.A publication issued by the national office of the IRS, usu. at a taxpayer's request, to explain some complex or novel tax-law issue. — Abbr. TAM. [Cases: Internal Revenue 3044, 3051.]

TECHNICAL ERROR

technical error.See harmless error under ERROR(2).

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**TECHNICAL ESTOPPEL**

technical estoppel. See ESTOPPEL.

**TECHNICAL MARK**

technical mark. See technical trademark under TRADEMARK.

**TECHNICAL MORTGAGE**

technical mortgage. See MORTGAGE.

**TECHNICAL TRADEMARK**

technical trademark. See TRADEMARK.

**TECHNICAL TRUST**

technical trust. See passive trust under TRUST.

**TECHNOLOGY ADMINISTRATION**

Technology Administration. A unit in the U.S. Department of Commerce responsible for working with industry on ways to use technology to stimulate economic growth. • The agency also carries out technology programs and disseminates information about technology. It has three offices: the Office of Technology Policy (OTP), the National Institute of Standards and Technology (NIST), and the National Technical Information Service (NTIS). It was established in 1988. 15 USCA § 3704.

**TECHNOLOGY TRANSFER**

technology transfer. 1. The sale or licensing of intellectual property. 2. The field involving the sale and licensing of intellectual property. • Many major universities have an office of technology transfer to control the university's intellectual property and generate income from it.

**TEEN COURT**

teen court. See COURT.

**TEIND**

teind (teend). Scots law. (usu. pl.) A tithe. teind, vb. — teindable, adj.

**TEIND COURT**

Teind Court. Scots law. A court that adjudicates questions relating to teinds, esp. increases in the stipends of parish ministers. • It includes one of the judges of the Court of Session, sitting as Commissioner of Teinds. — Also termed Court of Teinds.

**TELECOPIER**

telecopier. See FAX(2).

**TELEOLOGICAL INTERPRETATION**

teleological interpretation. See purposive construction under CONSTRUCTION.

#### TELLER

teller. 1. A bank clerk who deals directly with customers by receiving and paying out money. 2. Parliamentary law. A member of a tellers committee; esp., a vote-counter at an election. See tellers committee under COMMITTEE. [Cases: Elections 126(3), 209. C.J.S. Elections §§ 116, 192.]

#### TELLER IN PARLIAMENT

Teller in Parliament. One of the members of the British House of Commons — two from government and two from the opposition — appointed by the Speaker to count votes.

#### TELLER'S CHECK

teller's check. See CHECK.

#### TELLERS COMMITTEE

tellers committee. See COMMITTEE.

#### TELLER VOTE

teller vote. See lobby vote under VOTE(4).

#### TEMERARIUM PERJURIUM SUPER ASSISAM

temerarium perjurium super assisam (tem-⟨schwa⟩-rair-ee-⟨schwa⟩m p⟨schwa⟩r-juur-ee-⟨schwa⟩m s[y]oo-p⟨schwa⟩r ⟨schwa⟩-sI-z⟨schwa⟩m). [Law Latin] Hist. Rash perjury on an assize. • The phrase described a perverse verdict returned by a jury.

#### TEMERE JURANTES SUPER ASSISAM

temere jurantes super assisam (tem-⟨schwa⟩-ree juur-an-teez s[y]oo-p⟨schwa⟩r ⟨schwa⟩-sI-z⟨schwa⟩m). [Law Latin] Hist. Persons swearing rashly upon an assize. See TEMERARIUM PERJURIUM SUPER ASSISAM.

#### TEMERE LITIGARE

temere litigare (tem-⟨schwa⟩-ree lit-⟨schwa⟩-gair-ee), vb. [Latin] Hist. To litigate rashly.

#### TEMPERANCE

temperance. 1. Habitual moderation regarding the indulgence of the natural appetites and passions; restrained or moderate indulgence (esp. of alcoholic beverages). 2. Abstinence.

#### TEMPERATE DAMAGES

temperate damages. See DAMAGES.

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**TEMPESTIVE**

tempestive (tem-pes-tiv) adj. Scots law. Of or relating to the proper time; timely; timeous.

**TEMPLAR**

templar. A barrister who has chambers in the Temple of the Inns of Court. • The Middle and Inner Temples are so named because they are housed in buildings on land that once belonged to the Knights Templars.

**TEMPORALITY**

temporality. 1. Civil or political power, as distinguished from ecclesiastical power. 2. (usu. pl.) The secular properties or revenues of an ecclesiastic.

**TEMPORAL LORD**

temporal lord. See LORD.

**TEMPORARY**

temporary, adj. Lasting for a time only; existing or continuing for a limited (usu. short) time; transitory.

**TEMPORARY ADMINISTRATION**

temporary administration. See ADMINISTRATION.

**TEMPORARY ALIMONY**

temporary alimony. See ALIMONY.

**TEMPORARY ALLEGIANCE**

temporary allegiance. See ALLEGIANCE.

**TEMPORARY ASSISTANCE TO NEEDY FAMILIES**

Temporary Assistance to Needy Families. A combined state and federal program that provides limited financial assistance to families in need. 42 USCA §§ 601–603a. • This program replaced Aid to Families with Dependent Children. TANF differs from AFDC because families are limited to no more than five years of assistance, and states have more control over eligibility requirements. — Abbr. TANF.

**TEMPORARY-CESSATION-OF-PRODUCTION DOCTRINE**

temporary-cessation-of-production doctrine. Oil & gas. The rule that an oil-and-gas lease term “for so long thereafter as oil and gas are produced” will not terminate once production is attained unless the cessation of production is for an unreasonable length of time. See CESSATION-OF-PRODUCTION CLAUSE.

**TEMPORARY COMMITTEE**

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temporary committee.See special committee under COMMITTEE.

**TEMPORARY DAMAGES**

temporary damages.See DAMAGES.

**TEMPORARY DETENTION**

temporary detention.See pretrial detention under DETENTION.

**TEMPORARY DISABILITY**

temporary disability.See DISABILITY(2).

**TEMPORARY EMERGENCY COURT OF APPEALS**

Temporary Emergency Court of Appeals.Hist. A special U.S. court created in 1971 with exclusive jurisdiction over appeals from federal district courts in cases arising under the wage-and-price-control program of the Economic Stabilization Act of 1970. • The court consisted of nine district and circuit judges appointed by the Chief Justice. This court was abolished in 1992. — Abbr. TECA. Cf. EMERGENCY COURT OF APPEALS. [Cases: Federal Courts 1140.]

**TEMPORARY EXECUTOR**

temporary executor.See acting executor under EXECUTOR.

**TEMPORARY FIDUCIARY**

temporary fiduciary.See FIDUCIARY.

**TEMPORARY FRUSTRATION**

temporary frustration.See FRUSTRATION.

**TEMPORARY INJUNCTION**

temporary injunction.See preliminary injunction under INJUNCTION.

**TEMPORARY INJURY**

temporary injury.See INJURY.

**TEMPORARY INSANITY**

temporary insanity.See INSANITY.

**TEMPORARY INSIDER**

temporary insider.See INSIDER.

**TEMPORARY JUDGE**

temporary judge.See visiting judge under JUDGE.

**TEMPORARY NUISANCE**

temporary nuisance. See NUISANCE.

#### TEMPORARY ORDER

temporary order. See ORDER(2).

#### TEMPORARY PERFECTION

temporary perfection. See PERFECTION.

#### TEMPORARY RESTRAINING ORDER

temporary restraining order. 1. A court order preserving the status quo until a litigant's application for a preliminary or permanent injunction can be heard. • A temporary restraining order may sometimes be granted without notifying the opposing party in advance. Cf. emergency protective order under PROTECTIVE ORDER. [Cases: Injunction 150. C.J.S. Injunctions §§ 10, 16, 168, 189, 245.] 2. See ex parte injunction under INJUNCTION. — Abbr. TRO. — Often shortened to restraining order.

#### TEMPORARY STATUTE

temporary statute. See STATUTE.

#### TEMPORARY TAKING

temporary taking. See TAKING(2).

#### TEMPORARY TOTAL DISABILITY

temporary total disability. See DISABILITY(2).

#### TEMPORARY WARD

temporary ward. See WARD.

#### TEMPUS

tempus (tem-p<<schwa>>s), n. [Latin] Hist. Time; a specified duration.

tempus continuum (tem-p<<schwa>>s k<<schwa>>n-tin-yoo-<<schwa>>m), n. [Latin] Hist. Time continuing without interruption; a continuous period.

tempus deliberandi (tem-p<<schwa>>s di-lib-<<schwa>>-ran-dI), n. [Latin] Hist. The period allowed for deliberation; esp., the time during which an heir could consider whether to accept or reject an inheritance. Cf. JUS DELIBERANDI.

tempus lugendi (tem-p<<schwa>>s loo-gen-DI).n. See LUCTUS.

tempus semestre (tem-p<<schwa>>s si-mes-tr<<schwa>>), n. [Latin] A period of 182 days (half a year).

tempus utile (tem-p<<schwa>>s yoo-t<<schwa>>-lee), n. [Latin “useful time”] Hist. Time that one can use to exercise his or her legal rights; the period within which an action or proceeding

must be brought. • This is the period before prescription or limitation cuts off a right.

## TENANCY

tenancy. 1. The possession or occupancy of land under a lease; a leasehold interest in real estate. 2. The period of such possession or occupancy. See ESTATE(1). [Cases: Landlord and Tenant 20. C.J.S. Landlord and Tenant §§ 27, 202(1, 2, 3, 4, 5, 9, 10), 203.] 3. The possession of real or personal property by right or title, esp. under a conveying instrument such as a deed or will.

at-will tenancy. See tenancy at will.

common tenancy. See tenancy in common.

cotenancy. A tenancy with two or more coowners who have unity of possession. • Examples are a joint tenancy and tenancy in common. [Cases: Joint Tenancy 1; Tenancy in Common 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9; Tenancy in Common §§ 2–5.]

entire tenancy. A tenancy possessed by one person, as opposed to a joint or common tenancy. See estate by entirety under ESTATE(1).

general tenancy. A tenancy that is not of fixed duration under the parties' agreement. [Cases: Landlord and Tenant 114(3). C.J.S. Landlord and Tenant § 136(1, 2, 3, 4, 5).]

holdover tenancy. See tenancy at sufferance.

joint tenancy. A tenancy with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. • A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share (in some states, this right must be clearly expressed in the conveyance — otherwise, the tenancy will be presumed to be a tenancy in common). See RIGHT OF SURVIVORSHIP. Cf. tenancy in common. [Cases: Joint Tenancy 1. C.J.S. Estates § 19; Joint Tenancy §§ 2, 4, 7–9.]

“The rules for creation of a joint tenancy are these: The joint tenants must get their interests at the same time. They must become entitled to possession at the same time. The interests must be physically undivided interests, and each undivided interest must be an equal fraction of the whole — e.g., a one-third undivided interest to each of three joint tenants. The joint tenants must get their interests by the same instrument — e.g., the same deed or will. The joint tenants must get the same kinds of estates — e.g., in fee simple, for life, and so on.” Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 55 (2d ed. 1984).

life tenancy. See life estate under ESTATE(1).

periodic tenancy. A tenancy that automatically continues for successive periods — usu. month to month or year to year — unless terminated at the end of a period by notice. • A typical example is a month-to-month apartment lease. This type of tenancy originated through court rulings that, when the lessor received a periodic rent, the lease could not be terminated without reasonable notice. — Also termed tenancy from period to period; periodic estate; estate from period to period; (more specif.) month-to-month tenancy (or estate); year-to-year tenancy (or estate). [Cases: *Intoxicating Liquors* 160; Landlord and Tenant 114, 115. C.J.S. *Intoxicating Liquors* § 257;

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Landlord and Tenant §§ 132, 137, 146.]

several tenancy.A tenancy that is separate and not held jointly with another person.

tenancy at sufferance.A tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired. • A tenancy at sufferance takes the form of either a tenancy at will or a periodic tenancy. — Also termed holdover tenancy; estate at sufferance. See HOLDING OVER. [Cases: Landlord and Tenant 119, 120. C.J.S. Landlord and Tenant §§ 167–168, 172, 175–176, 182.]

“A tenancy at sufferance arises where a tenant, having entered upon land under a valid tenancy, holds over without the landlord's assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from a tenant at will in that his tenancy exists without the landlord's assent. No rent, as such, is payable, but the tenant is liable to pay compensation for his use and occupation of the land. The tenancy may be determined [i.e., terminated] at any time, and may be converted into a yearly or other periodic tenancy in the usual way, e.g., if rent is paid and accepted with reference to a year in circumstances where the parties intended there to be a tenancy.” Robert E. Megarry & M.P. Thompson, *A Manual of the Law of Real Property* 319 (6th ed. 1993).

tenancy attendant on the inheritance.A tenancy for a term that is vested in a trustee in trust for the owner of the inheritance. • The tenancy is a form of personal property to the trustee. — Also termed tenancy attendant on an inheritance; term attendant on the inheritance.

tenancy at will.A tenancy in which the tenant holds possession with the landlord's consent but without fixed terms (as for duration or rent); specif., a tenancy that is terminable at the will of either the transferor or the transferee and that has no designated period of duration. • Such a tenancy may be terminated by either party upon fair notice. — Also termed at-will tenancy; estate at will. [Cases: Landlord and Tenant 118, 120. C.J.S. Landlord and Tenant §§ 157, 166–168, 172, 182.]

tenancy by the entirety (en-tī-<<schwa>>r-tee). See estate by entirety under ESTATE(1). [Cases: Husband and Wife 14.2–14.11.]

“Tenancy by the entireties is a form of joint tenancy. It resembles joint tenancy in that upon the death of either husband or wife the survivor automatically acquires title to the share of the deceased spouse. Like a joint tenancy, also, it is necessary for the creation of a tenancy by the entireties that the husband and wife acquire title by the same deed or will.” Robert Kratovil, *Real Estate Law* 198 (6th ed. 1974).

“Where [tenancy by the entirety] is recognized, it may exist only between a husband and a wife. It resembles, in most respects, the joint tenancy. The only major difference is that a tenant by the entirety may not destroy the other spouse's right of survivorship by transferring his or her interest to another. Whether a tenant by the entirety may transfer any interest to a third party — for example, the right of present possession or the contingent right of survivorship — is a matter on which the states differ. Most take the view that no interest may be transferred. The husband and wife may, of course, together convey their estate to a third person. If they both wish to convert

their tenancy into a tenancy in common or a joint tenancy, they may do so. Upon the death of a tenant by the entirety, no interest passes, in theory, to the surviving spouse. As was true of the joint tenancy, the survivor's ownership is thought simply to expand to absorb the relinquished ownership of the decedent." Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 55 (2d ed. 1984).

"A tenancy by the entireties could exist in any estate, whether in fee, for life, for years or otherwise. The nature of the tenancy was virtually that of an unseverable joint tenancy; neither husband nor wife could dispose of any interest in the land without the concurrence of the other, nor could one of them cause a forfeiture of the land. The united of husband and wife was regarded as so complete that they were said to be seised 'per tout et non per mie,' the survivor being entitled to the whole of the land by force of the original limitation, discharged of the other's right to participate, and not, as in the case of joint tenancy, by virtue of survivorship on the death of the other tenant. Unlike joint tenants, neither tenant was regarded as having any potential share in the land; 'between husband and wife there are no moieties.' " Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 232–33 (4th ed. 1969) (quoting *Marquis of Winchester's Case*, 3 Co. Rep. 1a, 5a (1583)).

tenancy by the rod. See COPYHOLD.

tenancy by the verge. See COPYHOLD.

tenancy for a term. A tenancy whose duration is known in years, weeks, or days from the moment of its creation. — Also termed tenancy for a period; tenancy for years; term for years; term of years; estate for a term; estate for years; lease for years. [Cases: Landlord and Tenant 113–116. C.J.S. Landlord and Tenant §§ 130(1, 2), 131–135, 136(1, 2, 3, 4, 5), 137–141, 143, 145–148, 151–155.]

tenancy from period to period. See PERIODIC TENANCY.

tenancy in common. A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. — Also termed common tenancy; estate in common. [Cases: Tenancy in Common 1. C.J.S. Estates § 19; Tenancy in Common §§ 2–5.]

"The central characteristic of a tenancy in common is simply that each tenant is deemed to own by himself, with most of the attributes of independent ownership, a physically undivided part of the entire parcel." Thomas F. Bergin & Paul G. Haskell, Preface to *Estates in Land and Future Interests* 54 (2d ed. 1984).

tenancy in coparcenary. See COPARCENARY.

tenancy in fee. See FEE SIMPLE.

tenancy in gross. A tenancy for a term that is outstanding — that is, one that is unattached to or disconnected from the estate or inheritance, such as one that is in the hands of some third party having no interest in the inheritance.

tenancy in tail. See FEE TAIL.

tenancy par la verge. See COPYHOLD.

year-to-year tenancy. See periodic tenancy.

#### TENANT

tenant, n. 1. One who holds or possesses lands or tenements by any kind of right or title. See TENANCY. [Cases: Landlord and Tenant 1. C.J.S. Landlord and Tenant §§ 1, 2(1, 2), 6(1), 7, 202(5).]

copyhold tenant. See customary tenant.

customary tenant. A tenant holding by the custom of the manor. • Over time, customary tenants became known as copyhold tenants. See COPYHOLD.

“The lord has a court; in that court the tenant in villeinage, even though he be personally unfree, appears as no mere tenant at will, but as holding permanently, often heritably, on fairly definite terms. He is a customary tenant, customarius, consuetudinarius; he holds according to the custom of the manor.... Then gradually ... [d]ealings with villein tenements are set forth upon the rolls of the lord's court; the villein tenement is conceived to be holden ‘by roll of court,’ or even ‘by copy of court roll,’ and the mode of conveyance serves to mark off the most beneficial of villeinholds from the most onerous of freeholds .... In Henry III's time this process which secured for the tenant in villeinage a written, a registered title, and gave him the name of ‘copyholder,’ was but beginning ....” 2 Frederick Pollock & Frederic W. Maitland, *The History of English Law Before the Time of Edward I* 361, 375 (2d ed. 1899).

dominant tenant. The person who holds a dominant estate and therefore benefits from an easement. Cf. servient tenant. [Cases: Easements 2. C.J.S. Easements §§ 6, 21, 53–55.]

holdover tenant. A person who remains in possession of real property after a previous tenancy (esp. one under a lease) expires, thus giving rise to a tenancy at sufferance. — Sometimes shortened to holdover. See tenancy at sufferance under TENANCY. [Cases: Landlord and Tenant 114(3). C.J.S. Landlord and Tenant § 136(1, 2, 3, 4, 5).]

hypothetical tenant. See HYPOTHETICAL TENANT.

illusory tenant. 1. A fictitious person who, as the landlord's alter ego, subleases an apartment to permit the landlord to circumvent rent-law regulations. 2. A tenant whose business is to sublease rent-controlled apartments. [Cases: Landlord and Tenant 200.16. C.J.S. Landlord and Tenant § 551.11.]

joint tenant. See joint tenancy under TENANCY.

life tenant. See LIFE TENANT.

particular tenant. A tenant of a limited estate taken out of a fee. See particular estate under ESTATE(1).

prime tenant.A commercial or professional tenant with an established reputation that leases substantial, and usu. the most preferred, space in a commercial development. • A prime tenant is important in securing construction financing and in attracting other desirable tenants.

quasi-tenant. A sublessee that the new tenant or reversioner allows to hold over.

servient tenant.The person who holds a servient estate and is therefore burdened by an easement. Cf. dominant tenant. [Cases: Easements 2. C.J.S. Easements §§ 6, 21, 53–55.]

statutory tenant.A person who is legally entitled to remain on property after the tenancy expires.

tenant at sufferance.A tenant who has been in lawful possession of property and wrongfully remains as a holdover after the tenant's interest has expired. • The tenant may become either a tenant at will or a periodic tenant. — Also termed permissive tenant. See tenancy at will; periodic tenancy.

tenant by elegit.See ELEGIT.

tenant by the curtesy.A life tenant who receives the estate from his deceased wife by whom he has had legitimate children. • The children hold the remainder interest. See CURTESY.

tenant by the verge.See COPYHOLDER.

tenant for a term.A tenant whose tenancy is for a defined number of years, months, weeks, or days, set when the tenancy is created.

tenant for life.See LIFE TENANT.

tenant in chief.Hist. A person who held land directly of the king. — Also termed tenant in capite. See IN CAPITE.

tenant in common.One of two or more tenants who hold the same land by unity of possession but by separate and distinct titles, with each person having an equal right to possess the whole property but no right of survivorship. See tenancy in common under TENANCY. [Cases: Tenancy in Common 1. C.J.S. Estates § 19; Tenancy in Common §§ 2–5.]

tenant in demesne (di-maynor di-meen). A feudal tenant who holds land of, and owes services to, a tenant in service.

tenant in dower.A life tenant who is entitled to hold and use one-third of all the real property owned by her deceased husband. See DOWER.

tenant in fee.The owner of land held in fee. — Also termed tenant in fee simple.

“A tenant in fee simple is [one who owns] lands, tenements, or hereditaments, to hold to him and his heirs forever; generally, absolutely, and simply, without mentioning what heirs, but referring that to his own pleasure, or to the disposition of the law. An estate in fee simple is an estate of inheritance without condition, belonging to the owner, and alienable by him or transmissible to his heirs absolutely and simply; it is an estate or interest in land of one holding

absolute and exclusive control and dominion over it, no matter how acquired.” 31 C.J.S. Estates § 11, at 27 (1996).

tenant in service. A feudal tenant who grants an estate to another (a tenant in demesne) and is therefore entitled to services from the latter.

undertenant. See SUBLESSEE.

2. One who pays rent for the temporary use and occupation of another's land under a lease or similar arrangement. See LESSEE. 3. Archaic. The defendant in a real action (the plaintiff being called a demandant). See real action under ACTION(4).

#### TENANCY BY THE CURTESY

tenancy by the curtesy. See CURTESY.

#### TENANTABLE REPAIR

tenantable repair. A repair that will render premises fit for present habitation. See HABITABILITY. [Cases: Landlord and Tenant 150(1).]

#### TENANTLIKE

tenantlike, adj. In accordance with the rights and obligations of a tenant, as in matters of repairs, waste, etc.

#### TENANT PARAVAIL

tenant paravail. Archaic. A tenant's tenant; a sublessor.

#### TENANT PAR LA VERGE

tenant par la verge. See COPYHOLDER.

#### TENANT-RIGHT

tenant-right. English law. A tenant's right, upon termination of the tenancy, to payment for unexhausted improvements made on the holding. • This right is governed by the Agricultural Holdings Act of 1986.

#### TENANTRY

tenantry. A body or group of tenants.

#### TENANT'S FIXTURE

tenant's fixture. See FIXTURE.

#### TEND

tend, vb. 1. To be disposed toward (something). 2. To serve, contribute, or conduce in some degree or way; to have a more or less direct bearing or effect. 3. To be directed or have a tendency to (an end, object, or purpose).

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**TEN-DAY RULE**

ten-day rule. The doctrine that one who sells goods on credit and then learns that the buyer is insolvent has ten days after the buyer receives the goods to demand their return. • The seller has even longer to demand return if the buyer has made a written representation of solvency to the seller within three months before delivery. [Cases: Sales 316(1). C.J.S. Sales §§ 325–326, 339–343.]

**TENDER**

tender, n.1. A valid and sufficient offer of performance; specif., an unconditional offer of money or performance to satisfy a debt or obligation < a tender of delivery >. • The tender may save the tendering party from a penalty for nonpayment or nonperformance or may, if the other party unjustifiably refuses the tender, place the other party in default. Cf. OFFER OF PERFORMANCE ; CONSIGNATION. [Cases: Contracts 279; Sales 153, 185; Vendor and Purchaser 148, 170. C.J.S. Contracts § 548; Sales §§ 161–162, 164, 182; Vendor and Purchaser §§ 380–382, 409–416, 419.]

tender of delivery. A seller's putting and holding conforming goods at the buyer's disposition and giving the buyer any notification reasonably necessary to take delivery. • The manner, time, and place for tender are determined by the agreement and by Article 2 of the Uniform Commercial Code. [Cases: Sales 153. C.J.S. Sales §§ 161–162, 164, 182.]

tender of performance. An obligor's demonstration of readiness, willingness, and ability to perform the obligation; esp., a buyer's demonstration of readiness, willingness, and ability to pay the purchase money, or a seller's offer to deliver merchantable title. • An offer to perform is usually necessary to hold the defaulting party to a contract liable for breach. [Cases: Contracts 279. C.J.S. Contracts § 548.]

2. Something unconditionally offered to satisfy a debt or obligation. [Cases: Tender 1, 10. C.J.S. Tender §§ 2–3, 5, 7, 26–28.] 3. Contracts. Attempted performance that is frustrated by the act of the party for whose benefit it is to take place. • The performance may take the form of either a tender of goods or services, or a tender of payment. Although this sense is quite similar to sense 1, it differs in making the other party's refusal part of the definition itself.

perfect tender. A seller's tender that meets the contractual terms entered into with the buyer concerning the quality and specifications of the goods sold. See PERFECT-TENDER RULE. [Cases: Sales 153, 177. C.J.S. Sales §§ 161–162, 164, 182, 189, 194, 197–198.]

4. An offer or bid put forward for acceptance <a tender for the construction contract >. [Cases: Public Contracts 8. C.J.S. Public Administrative Law and Procedure §§ 7, 12–13.] 5. Something that serves as a means of payment, such as coin, banknotes, or other circulating medium; money <legal tender >. [Cases: Payment 10; United States 34. C.J.S. United States §§ 162–163.] — tender, vb.

**TENDER, PLEA OF**

tender, plea of. See PLEA OF TENDER.

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**TENDER OFFER**

tender offer. A public offer to buy a minimum number of shares directly from a corporation's shareholders at a fixed price, usu. at a substantial premium over the market price, in an effort to take control of the corporation. — Also termed takeover offer; takeover bid. Cf. public-exchange offer under OFFER. [Cases: Securities Regulation 52.30–52.50. C.J.S. Securities Regulation §§ 121–122, 127–128, 131–138, 140–141.]

“Broadly speaking, a direct solicitation of a corporation's stockholders to sell their shares to an acquirer is known as a tender offer (because the acquirer is asking the existing stockholders to tender their shares for sale).” Franklin A. Gevurtz, *Corporation Law* § 7.3, at 673 (2000).

cash tender offer. A tender offer in which the bidder offers to pay cash for the target's shares, as opposed to offering other corporate shares in exchange. • Most tender offers involve cash. [Cases: Securities Regulation 52.30–52.50. C.J.S. Securities Regulation §§ 121–122, 127–128, 131–138, 140–141.]

creeping tender offer. See creeping acquisition under ACQUISITION.

**TENDER OF ISSUE**

tender of issue. Common-law pleading. A form attached to a traverse, by which the traversing party refers the issue to the proper mode of trial. [Cases: Pleading 100, 112. C.J.S. Pleading §§ 183, 764, 769.]

“[I]t is the object of all pleadings to bring the parties, in the course of their mutual altercations, to an issue that is a single entire point, affirmed on the one side and denied on the other; and it is to effect this object that the above rule was established. There can be no arrival at this point until one or the other of the parties, by the conclusion of his pleading, offers an issue for the acceptance of his opponent, and this offer is called the ‘tender of issue.’ ” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 254, at 446 (Henry Winthrop Ballantine ed., 3d ed. 1923).

**TENDER-YEARS DOCTRINE**

tender-years doctrine. Family law. The doctrine holding that custody of very young children (usu. five years of age and younger) should generally be awarded to the mother in a divorce unless she is found to be unfit. • This doctrine has been rejected in most states and replaced by a presumption of joint custody. See MATERNAL-PREFERENCE PRESUMPTION; PRIMARY-CAREGIVER DOCTRINE . [Cases: Child Custody 457. C.J.S. Parent and Child § 114.]

**TENDER-YEARS HEARSAY EXCEPTION**

tender-years hearsay exception. See HEARSAY EXCEPTION.

**TENEMENT**

tenement. 1. Property (esp. land) held by freehold; an estate or holding of land.

dominant tenement. See dominant estate under ESTATE(4).

servient tenement (s<<schwa>>r-vee-<<schwa>>nt). See servient estate under ESTATE(4).

2. A house or other building used as a residence. 3. An apartment. 4. TENEMENT HOUSE.

#### TENEMENT HOUSE

tenement house. A low-rent apartment building, usu. in poor condition and at best meeting only minimal safety and sanitary conditions. — Sometimes shortened to tenement.

#### TENENDAS

tenendas (t<<schwa>>-nen-das), n. [Law Latin “to be held”] 1. Hist. The charter clause stating the nature of the tenure, so called because of the first word of the clause. 2. Scots law. TENENDUM.

#### TENENDUM

tenendum (t<<schwa>>-nen-d<<schwa>>m). [Latin “to be held”] A clause in a deed designating the kind of tenure by which the things granted are to be held. — Also termed tenendum clause; (in Scots law) tenendas. See HABENDUM ET TENENDUM . Cf. HABENDUM CLAUSE(1).

#### 10-K

10-K. A financial report filed annually with the SEC by a registered corporation. • The report typically includes an audited financial statement, a description of the corporation's business and financial condition, and summaries of other financial data. — Also termed Form 10-K. Cf. 8-k. [Cases: Securities Regulation 60.27(6). C.J.S. Securities Regulation § 176.]

#### TENNESSEE VALLEY AUTHORITY

Tennessee Valley Authority. A government-owned corporation, created in 1933, that conducts a unified program of resource development to advance economic growth in the Tennessee Valley region. • The Authority's activities include flood control, navigation development, electric-power production, fertilizer development, recreation improvement, and forestry-and-wildlife development. Though its power program is financially self-supporting, the Authority's other programs are financed primarily by congressional appropriations. — Abbr. TVA. [Cases: United States 53(6.1). C.J.S. United States §§ 83–89, 94–95.]

#### TENOR

tenor, n. 1. An exact copy of an instrument. 2. The exact words of a legal document, esp. as cited in a pleading. 3. The meaning of a legal document.

#### TEN-PERCENT BOND

ten-percent bond. See BOND(2).

#### 10-Q

10-Q. An unaudited financial report filed quarterly with the SEC by a registered corporation. • The 10-Q is less detailed than the 10-K. — Also termed Form 10-Q. [Cases: Securities Regulation 60.27(6). C.J.S. Securities Regulation § 176.]

#### TENTATIVE AGENDA

tentative agenda. See proposed agenda under AGENDA.

#### TENTATIVE TRUST

tentative trust. See Totten trust under TRUST.

#### TENTH AMENDMENT

Tenth Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, providing that any powers not constitutionally delegated to the federal government, nor prohibited to the states, are reserved for the states or the people. — Also termed Reserved Power Clause. [Cases: States 4.16. C.J.S. States §§ 25–26.]

#### TENURE

tenure (ten-y<<schwa>>r), n.1. A right, term, or mode of holding lands or tenements in subordination to a superior. • In feudal times, real property was held predominantly as part of a tenure system. 2. A particular feudal mode of holding lands, such as socage, gavelkind, villeinage, and frankalmoign.

“Most of the feudal incidents and consequences of socage tenure were expressly abolished in New York by the act of 1787; and they were [later] wholly and entirely annihilated by the New York Revised Statutes .... They were also abolished by statute in Connecticut, 1793; and they have never existed, or they have ceased to exist, in all essential respects, in every other state. The only feudal fictions and services to be retained in any part of the United States consist of the feudal principle, that the lands are held of some superior or lord, to whom the obligation of fealty, and to pay a determinate rent, are due.... The lord paramount of all socage land was none other than the people of the state, and to them, and them only, the duty of fealty was to be rendered ....” 3 James Kent, Commentaries on American Law \*509–10 (George Comstock ed., 11th ed. 1866).

base tenure. Hist. The holding of property in villeinage rather than by military service or free service. See VILLEINAGE.

copyhold tenure. See COPYHOLD.

lay tenure. Hist. Any tenure not held through religious service, such as a base tenure or a freehold tenure. • The three historical types of lay tenures are knight-service, socage, and serjeanty. See KNIGHT-SERVICE; SOCAGE; SERJEANTY. Cf. tenure by divine service.

military tenure. A tenure that bears some relation to military service, such as knight-service, grand serjeanty, and cornage. — Also termed tenure in chivalry.

spiritual tenure. A tenure that bears some relation to religious exercises, such as frankalmoign and tenure by divine service.

tenure ad furcam et flagellum (ad f<<schwa>>r-k<<schwa>>m et fl<<schwa>>-jel<<schwa>>m). [Latin] Hist. Tenure by gallows and whip. • This was the meanest of the servile tenures — the bondman was at the disposal of the lord for life and limb.

tenure by divine service.Hist. A tenure obligating the tenant to perform an expressly defined divine service, such as singing a certain number of masses or distributing a fixed sum of alms. Cf. lay tenure.

tenure in chivalry.See military tenure.

villein tenure.See VILLEINAGE.

3. A status afforded to a teacher or professor as a protection against summary dismissal without sufficient cause. • This status has long been considered a cornerstone of academic freedom. [Cases: Colleges and Universities 8.1(2); Schools 133.6. C.J.S. Colleges and Universities § 24; Schools and School Districts §§ 222–223, 226–228, 236–238.] 4. More generally, the legal protection of a long-term relationship, such as employment. [Cases: Officers and Public Employees 60. C.J.S. Officers and Public Employees §§ 119, 130, 134.] — tenurial (ten-yuur-ee-<<schwa>>l), adj.

#### TENURED FACULTY

tenured faculty.The members of a school's teaching staff who hold their positions for life or until retirement, and who may not be discharged except for cause. [Cases: Colleges and Universities 8.1(2). C.J.S. Colleges and Universities § 24.]

#### TENURE IN CAPITE

tenure in capite.See IN CAPITE.

#### TENURE IN CHIVALRY

tenure in chivalry.See military tenure under TENURE.

#### TERATOGEN

teratogen (t<<schwa>>-rat-<<schwa>>-j<<schwa>>n), n. An agent, usu. a chemical, that causes injury to a fetus or any of various birth defects <alcohol is a teratogen to the developing brain of a fetus>. — teratogenic (t<<schwa>>-rat-<<schwa>>-jen-ik), adj.

#### TERCE

terce.Hist. Scots law. A widow's interest in one-third of her husband's real property, if she has not accepted some other special provision. • The couple must have been married at least a year and a day or else have produced a living child together. See DOWER.

#### TERCE LAND

terce land.Hist. Scots law. Income-producing real property in which a widow has a pecuniary interest because it was owned by her husband.

## TERCER

tercer.Hist. Scots law. A widow who has an interest in one-third of her husband's real property. — Also spelled tiercear.

## TERGIVERSATIO

tergiversatio (t<<schwa>>r-jiv-<<schwa>>r-say-shee-oh), n. [Latin “being reluctant, hanging back”] Roman law. A delay tactic, esp. an accuser's failure to pursue a criminal charge, perhaps by not appearing at the trial. • To withdraw an accusation, it was necessary to obtain the court's permission for an annulment (abolitio). In A.D. 61, a law was passed by which anyone convicted of tergiversatio was subject to a fine. See CALUMNIA. Cf. PRAEVARICATIO. Pl. tergiversationes (t<<schwa>>r-jiv-<<schwa>>r-say-shee-oh-neeZ).

## TERM

term,n.1. A word or phrase; esp., an expression that has a fixed meaning in some field <term of art>.2. A contractual stipulation <the delivery term provided for shipment within 30 days>. See CONDITION(3).

essential term.See fundamental term.

fundamental term. 1. A contractual provision that must be included for a contract to exist; a contractual provision that specifies an essential purpose of the contract, so that a breach of the provision through inadequate performance makes the performance not only defective but essentially different from what had been promised. [Cases: Contracts 9(1), 15. C.J.S. Contracts §§ 33, 35–36, 38, 42–43.] 2. A contractual provision that must be included in the contract to satisfy the statute of frauds. — Also termed essential term; vital term. [Cases: Frauds, Statute of 113.]

implied term.A provision not expressly agreed to by the parties but instead read into the contract by a court as being implicit. • An implied term should not, in theory, contradict the contract's express terms. [Cases: Contracts 168. C.J.S. Contracts §§ 346–347.]

material term.A contractual provision dealing with a significant issue such as subject matter, price, payment, quantity, quality, duration, or the work to be done. [Cases: Contracts 9. C.J.S. Contracts § 42.]

nonessential term.See nonfundamental term.

nonfundamental term.Any contractual provision that is not regarded as a fundamental term. — Also termed nonessential term; nonvital term. [Cases: Contracts 9(1), 15. C.J.S. Contracts §§ 33, 35–36, 38, 42–43.]

vital term.See fundamental term.

3. (pl.) Provisions that define an agreement's scope; conditions or stipulations <terms of sale>.4. A fixed period of time; esp., the period for which an estate is granted <term of years>.

attendant term.A long period (such as 1,000 years) specified as the duration of a mortgage,

created to protect the mortgagor's heirs' interest in the land by not taking back title to the land once it is paid for, but rather by assigning title to a trustee who holds the title in trust for the mortgagor and the mortgagor's heirs. • This arrangement gives the heirs another title to the property in case the interest they inherited proves somehow defective. These types of terms have been largely abolished. See tenancy attendant on the inheritance under TENANCY. [Cases: Mortgages 54. C.J.S. Mortgages § 102.]

“The advantage derived from attendant terms is the security which they afford to purchasers and mortgagees. If the bona fide purchaser or mortgagee should happen to take a defective conveyance or mortgage, by which he acquires a mere equitable title, he may, by taking an assignment of an outstanding term to a trustee for himself, cure the defect, so far as to entitle himself to the legal estate during the term, in preference to any creditor, of whose incumbrance he had not notice, at or before the time of completing his contract for the purchase or mortgage. He may use this term to protect his possessions, or to recover it when lost. This protection extends generally as against all estates and incumbrances created intermediately between the raising of the term and the time of the purchase or mortgage; and the outstanding term, so assigned to a trustee for the purchaser or mortgagee, will prevail over the intermediate legal title to the inheritance.” 4 James Kent, Commentaries on American Law \*87 (George Comstock ed., 11th ed. 1866).

satisfied term.A term of years in land that has satisfied the purpose for which it was created before the term's expiration.

term for deliberating.The time given a beneficiary to decide whether to accept or reject an inheritance or other succession.

term in gross.A term that is unattached to an estate or inheritance. See tenancy in gross under TENANCY.

term of years. 1. A fixed period covering a precise number of years. — Also termed tenancy for a term. 2.English law. A fixed period covering less than a year, or a specified number of years and a fraction of a year. • This sense applies under a seminal English statute — the Law of Property Act of 1925.

“In effect, ‘term of years’ seems to mean a term for any period having a fixed and certain duration as a minimum. Thus, in addition to a tenancy for a specified number of years (e.g., ‘to X for ninety-nine years’), such tenancies as a yearly tenancy or a weekly tenancy are ‘terms of years’ within the definition, for there is a minimum duration of a year or a week respectively. But a lease ‘for the life of X’ cannot exist as a legal estate, and the same, perhaps, applies to tenancies at will or at sufferance (if they are estates at all) for their duration is wholly uncertain.” Robert E. Megarry & M.P. Thompson, A Manual of the Law of Real Property 74 (6th ed. 1993).

5. The period or session during which a court conducts judicial business <the most recent term was busy indeed>. — Also termed (in sense 5) term of court. See SESSION. [Cases: Courts 63. C.J.S. Courts §§ 111–113, 120.]

additional term.A distinct, added term to a previous term. [Cases: Courts 64. C.J.S. Courts § 119.]

adjourned term.A continuance of a previous or regular term but not a separate term; the same term prolonged. [Cases: Courts 66. C.J.S. Courts § 115.]

appearance term.The regular judicial term in which a party is required to appear, usu. the first one after legal service has been made.

civil term.The period during which a civil court hears cases.

criminal term.A term of court during which indictments are found and returned, and criminal trials are held.

equity term.The period during which a court tries only equity cases.

general term.A regular term of court — that is, the period during which a court ordinarily sits. — Also termed stated term. [Cases: Courts 63. C.J.S. Courts §§ 111–113, 120.]

regular term.A term of court begun at the time appointed by law and continued, in the court's discretion, until the court lawfully adjourns. [Cases: Courts 63. C.J.S. Courts §§ 111–113, 120.]

special term.A term of court scheduled outside the general term, usu. for conducting extraordinary business. [Cases: Courts 64. C.J.S. Courts § 119.]

stated term.See general term.

term probatory.Eccles. law. 1. The period given to the promoter of an ecclesiastical suit to produce witnesses and prove the case. 2.Hist. The time assigned for taking testimony. — Sometimes termed (in sense 2) probatory term.

term to conclude.Eccles. law. A deadline imposed by the judge for all parties to renounce any further exhibits and allegations.

term to propound all things.Eccles. law. A deadline imposed by the judge for the parties to exhibit all evidence supporting their positions.

6.Hist. English law. One of the four periods in a year during which the courts are in session to conduct judicial business. • Terms came into use in the 13th century, and their dates varied. The four terms — Hilary, Easter, Trinity, and Michaelmas — were abolished by the Judicature Acts of 1873–1875, and the legal year was divided into sittings and vacations. Terms are still maintained by the Inns of Court to determine various time periods and dates, such as a call to the bar or observance of a Grand Day.

#### TERM ANNUITY

term annuity.See annuity certain under ANNUITY.

#### TERM ATTENDANT ON THE INHERITANCE

term attendant on the inheritance.See tenancy attendant on the inheritance under TENANCY.

#### TERM BOND

term bond.See BOND(3).

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**TERM CLAUSE**

term clause. See HABENDUM CLAUSE(2).

**TERM DAY**

term day. See quarter day under DAY.

**TERM FEE**

term fee. English law. A sum that a solicitor may charge a client, and that the client (if successful) may recover from the losing party, payable for each term in which any proceedings following the summons take place.

**TERM FOR DELIBERATING**

term for deliberating. See TERM(4).

**TERM FOR YEARS**

term for years. See tenancy for a term under TENANCY.

**TERMINABLE INTEREST**

terminable interest. See INTEREST(2).

**TERMINABLE PROPERTY**

terminable property. Property (such as a leasehold) whose duration is not perpetual or indefinite but that is limited in time or liable to terminate on the happening of an event.

**TERMINAL DISCLAIMER**

terminal disclaimer. See DISCLAIMER.

**TERMINATE**

terminate, vb. 1. To put an end to; to bring to an end. 2. To end; to conclude.

**TERMINATION**

termination, n. 1. The act of ending something; EXTINGUISHMENT <termination of the partnership by winding up its affairs>.

termination of conditional contract. The act of putting an end to all unperformed portions of a conditional contract. [Cases: Contracts 249. C.J.S. Contracts §§ 422, 424, 427–428, 456, 465–466, 484.]

termination of employment. The complete severance of an employer–employee relationship. [Cases: Master and Servant 21, 22. C.J.S. Apprentices § 10; Employer–Employee Relationship §§ 41–42, 45, 55.]

2. The end of something in time or existence; conclusion or discontinuance < the insurance policy's termination left the doctor without liability coverage>. — terminate, vb. — terminable, adj.

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**TERMINATION CLAUSE**

termination clause. See CANCELLATION CLAUSE.

**TERMINATION FEE**

termination fee. A fee paid if a party voluntarily backs out of a deal to sell or purchase a business or a business's assets. • Termination fees are usu. negotiated and agreed on as part of corporate merger or acquisition negotiations. The fee is designed to protect the prospective buyer and to deter the target corporation from entertaining bids from other parties. — Also termed break-up fee.

**TERMINATION-FOR-CONVENIENCE CLAUSE**

termination-for-convenience clause. A contractual provision allowing the government to terminate all or a portion of a contract when it chooses. • Among the governmental contracts that often include a termination-for-convenience clause are service contracts, research-and-development contracts, and fixed-price contracts. See 48 CFR § 52.249-1.

**TERMINATION HEARING**

termination hearing. See termination-of-parental-rights hearing under HEARING.

**TERMINATION OF PARENTAL RIGHTS**

termination of parental rights. Family law. The legal severing of a parent's rights, privileges, and responsibilities regarding his or her child. • Termination of a parent's rights frees the child to be adopted by someone else. — Abbr. TPR. See termination-of-parental-rights hearing under HEARING; PARENTAL RIGHTS.

**TERMINATION PROCEEDING**

termination proceeding. An administrative action to end a person's or entity's status or relationship. • For example, the International Banking Act authorizes the International Banking Board to institute a termination proceeding when a foreign bank or its U.S. agency or branch is convicted of money-laundering. 12 USCA § 3105(e).

**TERMINER**

terminer. See OYER AND TERMINER.

**TERM IN GROSS**

term in gross. See TERM(4).

**TERMINI HABILES**

termini habiles (t<<schwa>>r-mi-nIhab-<<schwa>>-leez), n. [Law Latin] Hist. Sufficient grounds. • The phrase usu. referred to the facts necessary to establish a prescriptive right.

**TERMINI SANCTORUM**

termini sanctorum (t<<schwa>>r-mi-nI sangk-tor-<<schwa>>m), n.[Law Latin] Hist. The limits of a sanctuary. See SANCTUARY(1).

#### TERM INTEREST

term interest.Oil & gas. A mineral interest or royalty interest that is not perpetual. • A term interest may be for a fixed term (e.g., for 25 years) or defeasible (e.g., for 25 years and so long thereafter as there is production from the premises).

#### TERMINUS AD QUEM

terminus ad quem (t<<schwa>>r-mi-n<<schwa>>s ad kwem). [Law Latin] Hist. The point to which. • The phrase appeared in reference to the point before which some action must be taken.

#### TERMINUS A QUO

terminus a quo (t<<schwa>>r-mi-n<<schwa>>s ay kwoh). [Law Latin] Hist. The point from which. • The phrase appeared in reference to the point from which something is calculated, or the earliest time at which some action is possible.

#### TERM LIFE INSURANCE

term life insurance.See LIFE INSURANCE.

#### TERM LOAN

term loan.See LOAN.

#### TERM OF ART

term of art. 1. A word or phrase having a specific, precise meaning in a given specialty, apart from its general meaning in ordinary contexts. • Examples in law include and his heirs and res ipsa loquitur. [Cases: Contracts 152; Statutes 192. C.J.S. Contracts §§ 307, 318–322, 327, 331; Statutes§ 322.] 2. Loosely, a jargonistic word or phrase. — Also termed word of art.

#### TERM-OF-ART CANON

term-of-art canon.In statutory construction, the principle that if a term has acquired a technical or specialized meaning in a particular context, the term should be presumed to have that meaning if used in that context. [Cases: Statutes 192.]

#### TERM OF COURT

term of court.See TERM(5).

#### TERM OF OFFICE

term of office.The period during which an elected officer or appointee may hold office, perform its functions, and enjoy its privileges and emoluments. [Cases: Officers and Public Employees 50–54. C.J.S. Officers and Public Employees §§ 86–99.]

#### TERM OF YEARS

term of years.1.TERM(4).2. See tenancy for a term under TENANCY.

#### TERMOR

termor (t<<schwa>>r-m<<schwa>>r). A person who holds lands or tenements for a term of years or for life.

#### TERM POLICY

term policy.See INSURANCE POLICY.

#### TERM PROBATORY

term probatory.See TERM(5).

#### TERMS

terms. See YEAR BOOKS.

#### TERM SHEET

term sheet.Securities. 1. A document setting forth all information that is material to investors about the offering but is not disclosed in the accompanying prospectus or the confirmation. 2.LETTER OF INTENT.

abbreviated term sheet.A term sheet that includes (1) the description of the securities as required by Item 202 of SEC Regulation S–K, or a good summary of that information; and (2) all material changes to the issuer's affairs required to be disclosed on SEC Form S–3 or F–3, as applicable.

#### TERMTIME

termtime. The time of the year when a court is in session. [Cases: Courts 63, 65. C.J.S. Courts §§ 111–114, 120.]

#### TERM TO CONCLUDE

term to conclude.See TERM(5).

#### TERM TO PROPOUND ALL THINGS

term to propound all things.See TERM(5).

#### TERRA NULLIUS

terra nullius (ter-<<schwa>> n<<schwa>>l-ee-<<schwa>>s), n.[Latin “the land of no one”] A territory not belonging to any particular country.

#### TERRE-TENANT

terre-tenant (tair ten-<<schwa>>nt).1. One who has actual possession of land; the occupant of land. 2. One who has an interest in a judgment debtor's land after the judgment creditor's lien has attached to the land (such as a subsequent purchaser). — Also spelled tertenant

(t<<schwa>>r-ten-<<schwa>>nt). — Also termed land-tenant. [Cases: Judgment 793, 794.C.J.S. Judgments §§ 593, 596.]

#### TERRITORIAL

territorial,adj. Having to do with a particular geographical area.

#### TERRITORIAL COURT

territorial court.See COURT.

#### TERRITORIALISM

territorialism. The traditional approach to choice of law, whereby the place of injury or of contract formation determines which state's law will be applied in a case. See CHOICE OF LAW.

#### TERRITORIALITY

territoriality.Int'l law. The principle that a nation has the right of sovereignty within its borders.

“Three maxims formulated by the seventeenth-century Dutch scholar Ulrich Huber undergird the modern concept of territoriality: (1) a state's laws have force only within the state's boundaries; (2) anyone found within the state's boundaries is subject to the state's authority; and (3) comity will discipline sovereign exercises of authority so that the territorial effect of each state's laws is respected.” Paul Goldstein, *International Copyright: Principles, Law, and Practice* 64 (2001).

#### TERRITORIAL JURISDICTION

territorial jurisdiction.See JURISDICTION.

#### TERRITORIAL LAW

territorial law.The law that applies to all persons within a given territory regardless of their citizenship or nationality. Cf. PERSONAL LAW.

“[T]he expression ‘territorial law’ ... is not confined to the positive rules that regulate acts and events occurring within the jurisdiction, but includes also rules for the choice of law. English rules for the choice of law are part of the law of England and when a court, for instance, tests the substantial validity of a contract made by two foreigners in Paris by reference to French law, it applies a rule imposed by the English sovereign and it may accurately be described as putting into force part of the territorial law of England.” G.C. Cheshire, *Private International Law* 32 (6th ed. 1961).

#### TERRITORIAL PROPERTY

territorial property.Land and water over which a state has jurisdiction and control, whether the legal title is held by the state or by a private individual or entity. • Lakes and waters wholly within a state are generally its property, as is the marginal sea within the three-mile limit, but bays and gulfs are not always recognized as state property. [Cases: States 11. C.J.S. States § 7.]

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**TERRITORIAL SEA**

territorial sea. See territorial waters under WATER.

**TERRITORIAL WATERS**

territorial waters. See WATER.

**TERRITORY**

territory, n. 1. A geographical area included within a particular government's jurisdiction; the portion of the earth's surface that is in a state's exclusive possession and control. Cf. INSULAR AREA. [Cases: International Law 5. C.J.S. International Law §§ 14–20.]

non-self-governing territory. Int'l law. A territory that is governed by another country. • These types of territories are rarely allowed representation in the governing country's legislature.

trust territory. Int'l law. A territory to which the United Nations' international trusteeship system formerly applied; a territory once administered by the United Nations or a member state for the political, economic, educational, and social advancement of its inhabitants. • All territories that were subject to this system either became independent nations or opted to become part of another nation.

2. A part of the United States not included within any state but organized with a separate legislature (such as Guam and the U.S. Virgin Islands). Cf. COMMONWEALTH(2); DEPENDENCY(1). [Cases: Territories 7. C.J.S. Territories §§ 2, 5, 7, 9–10.] — territorial, adj. “The United States has had territories from its inception. The Northwest Territory, along with the thirteen original states, was a part of the nation when the constitution was ratified. The original U.S. constitution expressly granted Congress the power to govern territories. Before the Civil War all of the territories were on the North American continent and contiguous with the states or the other territories. After the Civil War with the purchase of Alaska in 1867 (called ‘Seward's Folly’ or ‘Seward's Icebox’ by detractors) came the United States' first acquisition of non-contiguous territory. Alaska did, however, have certain basics in common with earlier U.S. territories. Alaska was on the North American continent and sparsely populated.... In the latter part of the 19th century, the U.S. became interested in various islands around the world.” Stanley K. Laughlin Jr., *The Law of United States Territories and Affiliated Jurisdictions* § 3.1, at 25–26 (1995).

**TERRITORY OF A JUDGE**

territory of a judge. The territorial jurisdiction of a particular court. See JURISDICTION(3). [Cases: Courts 29, 171; Judges 30. C.J.S. Courts §§ 67, 70; Judges §§ 71–74.]

**TERROREM CLAUSE**

terrorem clause. See NO-CONTEST CLAUSE.

**TERRORISM**

terrorism, n. The use or threat of violence to intimidate or cause panic, esp. as a means of

affecting political conduct. See 18 USCA § 2331. See also terroristic threat under THREAT; terrorism insurance under INSURANCE. [Cases: Extortion and Threats 25. C.J.S. Threats and Unlawful Communications §§ 2–20.] — terrorist, adj. & n.

cyberterrorism. Terrorism committed by using a computer to make unlawful attacks and threats of attack against computers, networks, and electronically stored information, and actually causing the target to fear or experience harm.

domestic terrorism. 1. Terrorism that occurs primarily within the territorial jurisdiction of the United States. 18 USCA § 2331(5). 2. Terrorism that is carried out against one's own government or fellow citizens.

international terrorism. Terrorism that occurs primarily outside the territorial jurisdiction of the United States, or that transcends national boundaries by the means in which it is carried out, the people it is intended to intimidate, or the place where the perpetrators operate or seek asylum. 18 USCA § 2331(1).

#### TERRORISM INSURANCE

terrorism insurance. See INSURANCE.

#### TERRORISTIC THREAT

terroristic threat. See THREAT.

#### TERRORIZING

terrorizing, n. Family law. A parent's or caregiver's act of orally assaulting, bullying, or frightening a child, or causing the child to believe that the world is a hostile place.

#### TERRY STOP

Terry stop. See STOP AND FRISK.

#### TERTENANT

tertenant. See TERRE-TENANT.

#### TERTIA

tertia (t<<schwa>>r-shee-<<schwa>>), n. Hist. A third. • A widow's terce was usu. referred to as *tertia rationabilis* (“a reasonable third”).

#### TERTIUM QUID

tertium quid (t<<schwa>>r-shee-<<schwa>>m kwid). [Latin] Scots law. A third thing that has qualities distinct from the prior two components.

“Thus where, by the confusion of liquids or commixture of solids, the subject produced is of a character different from that of either of its component parts, it is called a tertium quid.” John Trayner, *Trayner's Latin Maxims* 598 (4th ed. 1894).

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**TERTIUS GAUDENS**

tertius gaudens (t<<schwa>>r-shee-<<schwa>>s gaw-denz). [Latin "a rejoicing third"] A third party who profits when two others dispute.

**TESTABLE**

testable,adj.1. Capable of being tested <a testable hypothesis>.2. Capable of being transferred by will <today virtually all property is considered testable>.3. Capable of making a will <an 18-year-old person is testable in this state>.4. Legally qualified to testify as a witness or give evidence <the witness is testable about the statement>.

**TEST ACT**

Test Act.Hist. An English statute that required a person who occupied a public office or position of trust to be a member of the Church of England, to swear the Oath of Supremacy, and to sign a declaration against transubstantiation. 25 Car. 2, ch. 2 (1673). • The Act was repealed in 1828.

**TEST ACTION**

test action.See test case (2) under CASE.

**TESTAMENT**

testament (tes-t<<schwa>>-m<<schwa>>nt).1. Traditionally, a will disposing of personal property. Cf. DEVISE(4).2.WILL(2).

closed testament.See mystic will under WILL.

inofficious testament.Civil law. A will that does not dispose of property to the testator's natural heirs; esp., a will that deprives the heirs of a portion of the estate to which they are entitled by law. — Also termed inofficious will; unofficious will. See forced heir under HEIR. [Cases: Wills 82. C.J.S. Wills § 173.]

military testament.See soldier's will under WILL.

mutual testament.See mutual will under WILL.

mystic testament.See mystic will under WILL.

officious testament.Civil law. A will that disposes of property to the testator's family; a will that reserves the legitime for the testator's children and other natural heirs. — Also termed officious will. See LEGITIME.

secret testament.See mystic will under WILL.

sealed testament.See mystic will under WILL.

**TESTAMENTARY**

testamentary (tes-t<<schwa>>-men-t<<schwa>>-ree or -tree), adj.1. Of or relating to a will

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or testament <testamentary intent>. [Cases: Wills 1–20. C.J.S. Conflict of Laws § 72; Wills §§ 1–3, 53–87, 93–95, 97–98, 103–104, 106–132, 172, 174, 381.] 2. Provided for or appointed by a will <testamentary guardian>.3. Created by a will <testamentary gift>.

**TESTAMENTARY CAPACITY**

testamentary capacity. See CAPACITY(3).

**TESTAMENTARY CLASS**

testamentary class. See CLASS(3).

**TESTAMENTARY CONDITION**

testamentary condition. See CONDITION(2).

**TESTAMENTARY DISPOSITION**

testamentary disposition. See DISPOSITION(1).

**TESTAMENTARY GIFT**

testamentary gift. See GIFT.

**TESTAMENTARY GUARDIAN**

testamentary guardian. See GUARDIAN.

**TESTAMENTARY HEIR**

testamentary heir. See HEIR.

**TESTAMENTARY INSTRUMENT**

testamentary instrument. See WILL.

**TESTAMENTARY INTENT**

testamentary intent. See INTENT(1).

**TESTAMENTARY POWER**

testamentary power. See testamentary power of appointment under POWER OF APPOINTMENT .

**TESTAMENTARY SUCCESSION**

testamentary succession. See SUCCESSION(2).

**TESTAMENTARY TRANSFER**

testamentary transfer. See TRANSFER.

**TESTAMENTARY TRUST**

testamentary trust. See TRUST.

## TESTAMENTARY TRUSTEE

testamentary trustee. See TRUSTEE(1).

## TESTAMENTI FACTIO

testamenti factio (tes-t<<schwa>>-men-tifak-shee-oh). [Latin “right to make a testament”] Roman law. 1. Broadly, the capacity to take part in a will, as testator, heir, or witness. 2. The capacity to make a will, open to any citizen, male or female, sui juris, and over puberty. • This term is sometimes known as “active” testamenti factio or testamenti factio activa, though the latter phrase was not known to the Roman law. 3. The capacity to receive property by will. • Junian Latini and peregrini did not have this capacity. It is also known as “passive” testamenti factio or testamenti factio passiva, though the latter phrase was (like testamenti factio activa) unknown to the Roman law. See LATINI JUNIANI; PEREGRINUS<sup>4</sup>. The capacity to witness a will. • Women did not have this capacity. — Also termed factio testamenti.

“Under the civil law, this was a power ... vested only in the Roman citizen .... The testamenti factio was necessary to any participation whatever in a testament. Without it, no one could make a will, or take a legacy, or even be a witness to the execution of a will .... In Scotch law, this phrase can only signify the power of making a will, as any one may be a beneficiary under another's settlement.” John Trayner, Trayner's Latin Maxims 216–17 (4th ed. 1894).

## TESTAMENTUM

testamentum (tes-t<<schwa>>-men-t<<schwa>>m), n. [Latin] Roman law. A will. • In early and classical law, the mancipatory will was standard. It was still used in the Later Empire but in A.D. 446, the holographic will was accepted in the Western Empire. A will could also be made by registration on the court acta. See holographic will, mancipatory will under WILL.

testamentum calatis comitiis (k<<schwa>>-lay-tis k<<schwa>>-mish-ee-is). [Latin “will made before the comitia curiata”] Roman law. In early Rome, a will made before the comitia curiata, having an effect comparable to adrogation. • The comitia curiata was known as the comitia calata when it met twice a year for the purpose of making wills. See comitia curiata under COMITIA.

testamentum holografum (tes-t<<schwa>>-men-t<<schwa>>m hol-<<schwa>>-graf-<<schwa>>m). [Latin] See holographic will under WILL.

testamentum in procinctu (in pr<<schwa>>-singk-t[y]oo). [Latin “will made before the army”] Roman law. A will made by a soldier before a fellow soldiers while preparing for battle.

testamentum militum (tes-t<<schwa>>-men-t<<schwa>>m mil-<<schwa>>-t<<schwa>>m). [Latin] See soldier's will under WILL.

testamentum tripertitum (trI-p<<schwa>>-r-tI-t<<schwa>>m). [Latin “tripartite will”] Roman law. A will made without interruption, with seven witnesses to seal it, and signed by the testator. • This form of will was valid in Justinian's law. It was called “tripartite” because the authority for various parts of it derived from three sources: the civil law (requiring that the will be made at one

and the same time before witnesses); the praetor's edict (requiring that there be seven witnesses and that they must seal it); and imperial constitutions (requiring that the testator must sign at the end).

#### TESTATE

testate (tes-tayt), adj. Having left a will at death <she died testate>. Cf. INTESTATE. [Cases: Wills 1. C.J.S. Wills §§ 1, 3, 174.]

testate,n. See TESTATOR.

#### TESTATE SUCCESSION

testate succession.See SUCCESSION(2).

#### TESTATIO MENTIS

testatio mentis (tes-tay-shee-oh men-tis), n.[Latin] Hist. An expression of a testator's mind; a testament.

#### TESTATION

testation (te-stay-sh<<schwa>>n).1. The disposal of property by will; the power to dispose of property by will. 2.Archaic. Attestation; a witnessing. [Cases: Wills 1. C.J.S. Wills §§ 1, 3, 174.]

#### TESTATOR

testator (tes-tay-t<<schwa>>r also te-stay-t<<schwa>>r). A person who has made a will; esp., a person who dies leaving a will. • Because this term is usu. interpreted as applying to both sexes, testatrix has become archaic. — Also termed testate. Cf. INTESTATE. [Cases: Wills 21–55. C.J.S. Indians § 117; Wills §§ 2, 4–40.]

#### TESTATRIX

testatrix (te-stay-triks ortes-t<<schwa>>-triks).Archaic. A female testator. • In modern usage, a person who leaves a will is called a testator, regardless of sex. Pl. testatrixes, testatrices.

#### TESTATUM

testatum (tes-tay-t<<schwa>>m). [Latin “attested”] Hist. A writ issued in a county where a defendant or a defendant's property is located when venue lies in another county. • This writ, when issued after a ground writ, allowed the seizure of the defendant or the defendant's property in another county. — Also termed testatum bill; testatum writ; latitat (lat-<<schwa>>-tat). Cf. ground writ under WRIT.

“But if the defendant had removed into another county, the next process the plaintiff might sue out against him was a testatum bill, directed to the sheriff thereof, which soon gained the name of a latitat, from that word being within it.” 1 George Crompton, *Practice Common-Placed: Rules and Cases of Practice in the Courts of King's Bench and Common Pleas* xxxv (3d ed. 1787).

#### TESTATUM CLAUSE

testatum clause. See TESTIMONIUM CLAUSE.

#### TESTATUS

testatus (tes-tay-t<<schwa>>s), n. [Latin] Civil law. See TESTATOR.

#### TEST CASE

test case. See CASE.

#### TESTE

teste (tes-tee). [Latin teste meipso “I myself being a witness”] In drafting, the clause that states the name of a witness and evidences the act of witnessing. — Also termed teste of process; teste of writ.

#### TESTIFIER

testifier. One who testifies; WITNESS. — Also termed (archaically) testificator (tes-t<<schwa>>-fi-kay-t<<schwa>>r).

#### TESTIFY

testify, vb. 1. To give evidence as a witness <she testified that the Ford Bronco was at the defendant's home at the critical time>. [Cases: Witnesses 224. C.J.S. Witnesses §§ 390–392.] 2. (Of a person or thing) to bear witness <the incomplete log entries testified to his sloppiness>.

#### TESTIFYING EXPERT

testifying expert. See EXPERT.

#### TESTIMONIAL EVIDENCE

testimonial evidence. 1. TESTIMONY. 2. EVIDENCE.

#### TESTIMONIAL IMMUNITY

testimonial immunity. See IMMUNITY(3).

#### TESTIMONIAL INCAPACITY

testimonial incapacity. See INCAPACITY.

#### TESTIMONIAL PRIVILEGE

testimonial privilege. See PRIVILEGE(1).

#### TESTIMONIAL PROOF

testimonial proof. See PROOF.

#### TESTIMONIUM CLAUSE

testimonium clause. A provision at the end of an instrument (esp. a will) reciting the date when the instrument was signed, by whom it was signed, and in what capacity. • This clause

traditionally begins with the phrase “In witness whereof.” — Also termed testatum clause; witness clause. Cf. ATTESTATION CLAUSE. [Cases: Wills 111(2). C.J.S. Wills §§ 240–252.]

### TESTIMONY

testimony,n. Evidence that a competent witness under oath or affirmation gives at trial or in an affidavit or deposition. — Also termed personal evidence. [Cases: Federal Civil Procedure 2011; Trial 33; Witnesses 224. C.J.S. Trial §§ 141–142; Witnesses §§ 390–392.] — testimonial,adj.

affirmative testimony.Testimony about whether something occurred or did not occur, based on what the witness saw or heard at the time and place in question. — Also termed positive testimony; (formerly) statement of fact. See direct evidence under EVIDENCE. [Cases: Evidence 586. C.J.S. Evidence §§ 339, 1309, 1328.]

cumulative testimony.Identical or similar testimony by more than one witness, and usu. by several, offered by a party usu. to impress the jury with the apparent weight of proof on that party's side. • The trial court typically limits cumulative testimony. [Cases: Criminal Law 675; Federal Civil Procedure 2011; Trial 56. C.J.S. Criminal Law § 1212; Trial § 183.]

dropsy testimony.Slang. A police officer's false testimony that a fleeing suspect dropped an illegal substance that was then confiscated by the police and used as probable cause for arresting the suspect. • Dropsy testimony is sometimes given when an arrest has been made without probable cause, as when illegal substances have been found through an improper search.

“Before [Mapp v. Ohio, 367 U.S. 643 (1961)], the policeman typically testified that he had stopped the defendant for little or no reason, searched him, and found narcotics on his person. This had the ring of truth. It was an illegal search (not based upon ‘probable cause’), but the evidence was admissible because Mapp had not yet been decided. Since it made no difference, the policeman testified truthfully. After, the decision in Mapp it made a great deal of difference. [¶] For the first few months, New York policemen continued to tell the truth about the circumstances of their searches, with the result that evidence was suppressed. Then the police made the great discovery that if the defendant drops the narcotics on the ground, after which the policeman arrests him, then the search is reasonable and the evidence is admissible. Spend a few hours in the New York City Criminal Court nowadays and you will hear case after case in which a policeman testifies that the defendant dropped the narcotics on the ground whereupon the policeman arrested him. [¶] Usually the very language of the testimony is identical from one case to another. This is now known among defense lawyers and prosecutors as ‘dropsy’ testimony. The judge has no reason to disbelieve it in any particular case, and of course the judge must decide each case on its own evidence, without regard to the testimony in other cases. Surely, though, not in every case was the defendant unlucky enough to drop his narcotics.” Irving Younger, “The Perjury Routine,” *The Nation*, May 3, 1967, at 596–97.

expert testimony.See expert evidence under EVIDENCE.

false testimony.Testimony that is untrue. • This term is broader than perjury, which has a state-of-mind element. Unlike perjury, false testimony does not denote a crime. — Also termed

false evidence.

interpreted testimony. Testimony translated because the witness cannot communicate in the language of the tribunal. [Cases: Witnesses 230. C.J.S. Witnesses § 399.]

lay opinion testimony. Evidence given by a witness who is not qualified as an expert but who testifies to opinions or inferences. • In federal court, the admissibility of this testimony is limited to opinions or inferences that are rationally based on the witness's perception and that will be helpful to a clear understanding of the witness's testimony or the determination of a fact in issue. Fed. R. Evid. 701. [Cases: Criminal Law 449.1–467; Evidence 470–503.]

mediate testimony. See secondary evidence under EVIDENCE.

negative testimony. See negative evidence under EVIDENCE.

nonverbal testimony. A photograph, drawing, map, chart, or other depiction used to aid a witness in testifying. • The witness need not have made it, but it must accurately represent something that the witness saw. See demonstrative evidence under EVIDENCE. [Cases: Criminal Law 437; Evidence 358, 359. C.J.S. Criminal Law §§ 1039, 1049; Evidence §§ 985–987, 991.]

opinion testimony. Testimony based on one's belief or idea rather than on direct knowledge of the facts at issue. • Opinion testimony from either a lay witness or an expert witness may be allowed in evidence under certain conditions. See opinion evidence under EVIDENCE. [Cases: Criminal Law 448–494; Evidence 470–574. C.J.S. Criminal Law §§ 853, 1050–1088; Evidence §§ 223, 509–759, 800–812; Executions § 435.]

positive testimony. See affirmative testimony.

testimony de bene esse (dee bee-nee es-ee also day ben-ay es-ay). Testimony taken because it is in danger of being lost before it can be given at a trial or hearing, usu. because of the impending death or departure of the witness. • Such testimony is taken in aid of a pending case, while testimony taken under a bill to perpetuate testimony is taken in anticipation of future litigation. See deposition de bene esse under DEPOSITION. [Cases: Federal Civil Procedure 1291; Pretrial Procedure 61. C.J.S. Pretrial Procedure §§ 1, 3–4, 9.]

written testimony. 1. Testimony given out of court by deposition or affidavit. • The recorded writing, signed by the witness, is considered testimony. [Cases: Federal Civil Procedure 1932; Pretrial Procedure 201. C.J.S. Discovery § 69; Pretrial Procedure §§ 109–114, 122–124.] 2. In some administrative agencies and courts, direct narrative testimony that is reduced to writing, to which the witness swears at a hearing or trial before cross-examination takes place in the traditional way. [Cases: Administrative Law and Procedure 461; Federal Civil Procedure 2011; Trial 33. C.J.S. Public Administrative Law and Procedure § 129; Trial §§ 141–142.]

#### TESTING CLAUSE

testing clause. Scots law. The clause at the end of a formal written instrument or deed by which it is authenticated according to the forms of law. • Traditionally, the clause states the name and address of the writer, the number of pages in the instrument, any alterations or erasures, the

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names and addresses of the witnesses, the name and address of the person who penned the instrument, and the date and place of signing.

**TESTIS**

testis. [Latin] Hist. A witness. — testes,pl.

**TEST OATH**

test oath.See oath of allegiance under OATH.

**TEST PAPER**

test paper.A writing that has been proved genuine and submitted to a jury as a standard by which to determine the authenticity of other writings. • The court decides the test paper's authenticity as a matter of law before it is used by the jury. Direct evidence, such as a witness to the writing's creation or an admission by the party, is preferred, but strong circumstantial evidence is usu. acceptable. In Pennsylvania, a paper or instrument shown to the jury as evidence is still called a test paper (sometimes written test-paper).

**TEXAS BALLOT**

Texas ballot.See BALLOT(4).

**TEXTBOOK DIGEST**

textbook digest.A legal text whose aim is to set forth the law of a subject in condensed form, with little or no criticism or discussion of the authorities cited, and no serious attempt to explain or reconcile apparently conflicting decisions.

**TEXTUAL CITATION**

textual citation.See CITATION(4).

**TEXTUALISM**

textualism. See STRICT CONSTRUCTIONISM.

**THALWEG**

thalweg (tahl-vayk or -veg).1. A line following the lowest part of a (usu. submerged) valley. 2. The middle of the primary navigable channel of a waterway, constituting the boundary between states. — Also spelled talweg. — Also termed midway. [Cases: States 12.1.]

live thalweg.The part of a river channel that is most followed, usu. at the middle of the principal channel. *Louisiana v. Mississippi*, 466 U.S. 96, 104 S.Ct. 1645 (1984).

**THAYER PRESUMPTION**

Thayer presumption.A presumption that allows the party against whom the presumption operates to come forward with evidence to rebut the presumption, but that does not shift the burden of proof to that party. See James B. Thayer, *A Preliminary Treatise on Evidence* 31–44

(1898). • Most presumptions that arise in civil trials in federal court are interpreted in this way. Fed. R. Evid. 301. Cf. MORGAN PRESUMPTION. [Cases: Criminal Law 324; Evidence 85, 89. C.J.S. Criminal Law § 695; Evidence §§ 131, 135, 152–156, 160.]

## THEFT

theft, n.1. The felonious taking and removing of another's personal property with the intent of depriving the true owner of it; larceny. [Cases: Larceny 1. C.J.S. Larceny §§ 1(1, 2), 9.] 2. Broadly, any act or instance of stealing, including larceny, burglary, embezzlement, and false pretenses. • Many modern penal codes have consolidated such property offenses under the name “theft.” — Also termed (in Latin) *crimen furti*. See LARCENY.

“[T]he distinctions between larceny, embezzlement and false pretenses serve no useful purpose in the criminal law but are useless handicaps from the standpoint of the administration of criminal justice. One solution has been to combine all three in one section of the code under the name of ‘larceny.’ This has one disadvantage, however, because it frequently becomes necessary to add a modifier to make clear whether the reference is to common-law larceny or to statutory larceny. To avoid this difficulty some states have employed another word to designate a statutory offense made up of a combination of larceny, embezzlement, and false pretenses. And the word used for this purpose is ‘theft.’ ‘Theft’ is not the name of any common-law offense. At times it has been employed as a synonym of ‘larceny,’ but for the most part has been regarded as broader in its general scope. Under such a statute it is not necessary for the indictment charging theft to specify whether the offense is larceny, embezzlement or false pretenses.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 389–90 (3d ed. 1982).

cybertheft. See CYBERTHEFT.

petty theft. A theft of a small quantity of cash or of low-value goods or services. • This offense is usu. a misdemeanor.

theft by deception. The use of trickery to obtain another's property, esp. by (1) creating or reinforcing a false impression (as about value), (2) preventing one from obtaining information that would affect one's judgment about a transaction, or (3) failing to disclose, in a property transfer, a known lien or other legal impediment. Model Penal Code § 223. [Cases: False Pretenses 1.]

theft by extortion. Larceny in which the perpetrator obtains property by threatening to (1) inflict bodily harm on anyone or commit any other criminal offense, (2) accuse anyone of a criminal offense, (3) expose any secret tending to subject any person to hatred, contempt, or ridicule, or impair one's credit or business reputation, (4) take or withhold action as an official, or cause an official to take or withhold action, (5) bring about or continue a strike, boycott, or other collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act, (6) testify or provide information or withhold testimony or information with respect to another's legal claim or defense, or (7) inflict any other harm that would not benefit the actor. Model Penal Code § 223.4. — Also termed larceny by extortion. See EXTORTION. [Cases: Extortion and Threats 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.]

theft by false pretext.The use of a false pretext to obtain another's property. [Cases: False Pretenses 1.]

theft of property lost, mislaid, or delivered by mistake.Larceny in which one obtains control of property the person knows to be lost, mislaid, or delivered by mistake (esp. in the amount of property or identity of recipient) and fails to take reasonable measures to restore the property to the rightful owner. Model Penal Code § 223.5. — Also termed larceny of property lost, mislaid, or delivered by mistake. [Cases: Larceny 10. C.J.S. Larceny §§ 18, 49.]

theft of services.The act of obtaining services from another by deception, threat, coercion, stealth, mechanical tampering, or using a false token or device. See Model Penal Code § 223.7.

#### THEFTBOTE

theftbote (theft-boht). See BOTE(2).

#### THEFTUOUS

theftuous (thef-choo-<<schwa>>s), adj.1. (Of an act) characterized by theft. 2. (Of a person) given to stealing. — Also spelled theftous.

#### THENCE

thence,adv.1. From that place; from that time. • In surveying, and in describing land by courses and distances, this word, preceding each course given, implies that the following course is continuous with the one before it <south 240 feet to an iron post, thence west 59 feet>.2. On that account; therefore.

#### THENCE DOWN THE RIVER

thence down the river.With the meanders of a river. • This phrase appears in the field notes of patent surveyors, indicating that the survey follows a meandering river unless evidence shows that the meander line as written was where the surveyor in fact ran it. Meander lines show the general course of the river and are used in estimating acreage, but are not necessarily boundary lines. See MEANDER LINE. [Cases: Boundaries 12. C.J.S. Boundaries § 25.]

#### THEOCRACY

theocracy (thee-ok-r<<schwa>>-see).1. Government of a state by those who are believed to be or represent that they are acting under the immediate direction of God or some other divinity. 2. A state in which power is exercised by ecclesiastics.

#### THEODOSIAN CODE

Theodosian Code (thee-<<schwa>>-doh-sh<<schwa>>n).Roman law. A compilation of imperial enactments prepared at the direction of the emperor Theodosius II and published in A.D. 438. • The Theodosian Code replaced all other imperial legislation from the time of Constantine I (A.D. 306–337), and remained the basis of Roman law until it was superseded by the first Justinian Code in A.D. 529. — Also termed (in Latin) Codex Theodosianus (koh-deks thee-<<schwa>>-doh-shee-ay-n<<schwa>>s).

“As a literary work the Theodosian Code has a dismal reputation .... Some quaestors possessed an elegant, powerful, or agreeably ornate style.... Against these may be set others with literary pretensions whose prose is ponderous or marred by excessive alliteration, assonance, pleonasm, or fondness for technical terms, or whose compositions are in other ways inept.” Tony Honoré, *Law in the Crisis of the Empire 379–455 AD* 21 (1998).

#### THEOLONIO

theolonio. See DE THEOLONIO.

#### THEORY OF LAW

theory of law. The legal premise or set of principles on which a case rests.

#### THEORY-OF-PLEADING DOCTRINE

theory-of-pleading doctrine. The principle — now outmoded — that one must prove a case exactly as pleaded. • Various modern codes and rules of civil procedure have abolished this strict pleading-and-proof requirement. For example, Fed. R. Civ. P. 15 allows amendment of pleadings to conform to the evidence. [Cases: Federal Civil Procedure 881; Pleading 370. C.J.S. Pleading §§ 763, 766–768, 770.]

#### THEORY OF THE CASE

theory of the case. A comprehensive and orderly mental arrangement of principles and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant; the particular line of reasoning of either party to a suit, the purpose being to bring together certain facts of the case in a logical sequence and to correlate them in a way that produces in the decision-maker's mind a definite result or conclusion favored by the advocate. See CAUSE OF ACTION(1).

#### THERAPEUTIC ABORTION

therapeutic abortion. See ABORTION.

#### THERAPEUTIC RELIEF

therapeutic relief. See RELIEF.

#### THEREABOUTS

thereabouts, adv. Near that time or place <Schreuer was seen in Rudolf Place or thereabouts>. — Also termed thereabout.

#### THEREAFTER

thereafter, adv. Afterward; later <Skurry was thereafter arrested>.

#### THEREAT

thereat, adv. 1. At that place or time; there. 2. Because of that; at that occurrence or event.

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**THEREBY**

thereby,adv. By that means; in that way <Blofeld stepped into the embassy and thereby found protection>.

**THEREFOR**

therefor,adv. For it or them; for that thing or action; for those things or actions <she lied to Congress but was never punished therefor>.

**THEREFORE**

therefore,adv.1. For that reason; on that ground or those grounds <a quorum was not present; therefore, no vote was taken>.2. To that end <she wanted to become a tax lawyer, and she therefore applied for the university's renowned LL.M. program in taxation>. — Also termed thereupon.

**THEREFROM**

therefrom,adv. From that, it, or them <Hofer had several financial obligations to Ricks, who refused to release Hofer therefrom>.

**THEREIN**

therein,adv.1. In that place or time <the Dallas/Fort Worth metroplex has a population of about 3 million, and some 20,000 lawyers practice therein>.2. Inside or within that thing; inside or within those things <there were three school buses with 108 children therein>.3. In that regard, circumstance, or particular <therein lies the problem>.

**THEREINAFTER**

thereinafter,adv. Later in that thing (such as a speech or document) <the book's first reference was innocuous, but the five references thereafter were libelous per se>.

**THEREOF**

thereof,adv. Of that, it, or them <although the disease is spreading rapidly, the cause thereof is unknown>.

**THEREON**

thereon,adv. On that or them <Michaels found the online reports of the cases and relied thereon instead of checking the printed books>. — Also termed thereupon.

**THERETO**

thereto,adv. To that place, thing, issue, or the like <the jury awarded \$750,000 in actual damages, and it added thereto another \$250,000 in punitive damages>. — Also termed thereunto.

**THERETOFORE**

theretofore,adv. Until that time; before that time <theretofore, the highest award in such a

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case has been \$450,000>.

#### THEREUNDER

thereunder,adv. Under that or them <on the top shelf were three books, and situated thereunder was the missing banknote> <section 1988 was the relevant fee statute, and the plaintiffs were undeniably proceeding thereunder>.

#### THEREUNTO

thereunto,adv. See THERETO.

#### THEREUPON

thereupon,adv.1. Immediately; without delay; promptly <the writ of execution issued from the court, and the sheriff thereupon sought to find the judgment debtor>.2.THEREON. 3.THEREFORE.

#### THESAURI INVENTIO

thesauri inventio (thi-sawr-I in-ven-shee-oh). [Latin “discovery of treasure”] Roman law. The principle according to which the finder of treasure acquires full or partial ownership of it.

#### THESAURUS

thesaurus (thi-sawr-*<<schwa>>*s), n.[Latin] Roman law. 1. Treasure; specif., valuables that have been hidden for so long that the owner's identity can no longer be established. 2. A storehouse. Pl. thesauri.

#### THE THREE ESTATES

the three estates.See ESTATES OF THE REALM(1).

#### THIBODAux ABSTENTION

Thibodaux abstention (tib-*<<schwa>>*-doh). See ABSTENTION.

#### THIEF

thief. One who steals, esp. without force or violence; one who commits theft or larceny. See THEFT.

common thief.A thief who has been convicted of theft or larceny more than once. — Also termed common and notorious thief.

manifest thief.See FUR MANIFESTUS.

#### THIEVE

thieve,vb. To steal; to commit theft or larceny. See THEFT.

#### THIMBLERIG

thimblorig. See SHELL GAME.

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**THIMBLES AND BALLS**

thimbles and balls. See SHELL GAME.

**THIN CAPITALIZATION**

thin capitalization. See CAPITALIZATION.

**THIN CORPORATION**

thin corporation. See CORPORATION.

**THING**

thing. 1. The subject matter of a right, whether it is a material object or not; any subject matter of ownership within the sphere of proprietary or valuable rights. • Things are divided into three categories: (1) things real or immovable, such as land, tenements, and hereditaments, (2) things personal or movable, such as goods and chattels, and (3) things having both real and personal characteristics, such as a title deed and a tenancy for a term. The civil law divided things into corporeal (*tangi possunt*) and incorporeal (*tangi non possunt*). La. Civ. Code art. 461. [Cases: Property 1.C.J.S. Property §§ 2–10, 13.]

accessory thing. A thing that stands in a dependency relationship with another thing (the principal thing). • An accessory thing ordinarily serves the economic or other purpose of the principal thing and shares its legal fate in case of transfer or encumbrance.

corporeal thing. The subject matter of corporeal ownership; a material object. — Also termed *res corporales*; tangible thing.

immovable thing. See IMMOVABLE.

incorporeal thing. The subject matter of incorporeal ownership; any proprietary right apart from the right of full dominion over a material object. — Also termed *res incorporalis*; intangible thing.

movable thing. See MOVABLE(1).

real things. See REAL THINGS.

thing in action. See chose in action under CHOSE.

thing in possession. See chose in possession under CHOSE.

2. Anything that is owned by someone as part of that person's estate or property. — Also termed *res*; chose.

**THINGS MANCIPI**

things mancipi. See RES MANCIPI.

**THINGS NEC MANCIPI**

things nec mancipi. See RES NEC MANCIPI.

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**THINGS PERSONAL**

things personal. See personal property (1) under PROPERTY.

**THINGS REAL**

things real. See REAL THINGS.

**THIN MARKET**

thin market. See MARKET.

**THIN-SKULL RULE**

thin-skull rule. See EGGHELL-SKULL RULE.

**THIRD AMENDMENT**

Third Amendment. The constitutional amendment, ratified as part of the Bill of Rights in 1791, prohibiting the quartering of soldiers in private homes except during wartime.

**THIRD COUSIN**

third cousin. See COUSIN.

**THIRD DEGREE**

third degree, n. The process of extracting a confession or information from a suspect or prisoner by prolonged questioning, the use of threats, or physical torture <the police gave the suspect the third degree>.

**THIRD-DEGREE INSTRUCTION**

third-degree instruction. See ALLEN CHARGE.

**THIRD-DEGREE MURDER**

third-degree murder. See MURDER.

**THIRD OPPOSITION**

third opposition. Civil law. A species of intervention, usu. in a real-property case, in which the third party asserts a claim of ownership or other real right to seized property, and the claim does not depend on the outcome of the original suit between the plaintiff and the defendant. La. Code Civ. Proc. art. 1092. See, e.g., *Atkins v. Smith*, 15 So. 2d 855 (La. 1943). See INTERVENTION(1).

**THIRD PARTY**

third party, n. A person who is not a party to a lawsuit, agreement, or other transaction but who is usu. somehow implicated in it; someone other than the principal parties. — Also termed outside party; third person. See PARTY. [Cases: Federal Civil Procedure 281; Parties 49. C.J.S. Parties § 127.] — third-party, adj.

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**THIRD-PARTY**

third-party, vb. To bring (a person or entity) into litigation as a third-party defendant <seeking indemnity, the defendant third-partied the surety>. [Cases: Federal Civil Procedure 281; Parties 49. C.J.S. Parties § 127.]

**THIRD-PARTY ACTION**

third-party action. See ACTION(4).

**THIRD-PARTY BENEFICIARY**

third-party beneficiary. See BENEFICIARY.

**THIRD-PARTY-BENEFICIARY CONTRACT**

third-party-beneficiary contract. See CONTRACT.

**THIRD-PARTY CHECK**

third-party check. A check that the payee indorses to another party — for example, a customer check that the payee indorses to a supplier. • A person who takes a third-party check in good faith and without notice of a security interest can be a holder in due course.

**THIRD-PARTY COMPLAINT**

third-party complaint. See COMPLAINT.

**THIRD-PARTY CONSENT**

third-party consent. A person's agreement to official action (such as a search of premises) that affects another person's rights or interests. • To be effective for a search, third-party consent must be based on the consenting person's common authority over the place to be searched or the items to be inspected. See COMMON-AUTHORITY RULE.

**THIRD-PARTY DEFENDANT**

third-party defendant. A party brought into a lawsuit by the original defendant. [Cases: Federal Civil Procedure 281; Parties 49. C.J.S. Parties § 127.]

**THIRD-PARTY EQUITY LEASE**

third-party equity lease. See leveraged lease under LEASE.

**THIRD-PARTY INSURANCE**

third-party insurance. See liability insurance under INSURANCE.

**THIRD-PARTY LOGISTICAL SERVICE PROVIDER**

third-party logistical service provider. See FREIGHT FORWARDER. — Abbr. TPL.

**THIRD-PARTY PLAINTIFF**

third-party plaintiff. A defendant who files a pleading in an effort to bring a third party into the lawsuit. See third-party complaint under COMPLAINT. [Cases: Federal Civil Procedure 281; Parties 49. C.J.S. Parties § 127.]

#### THIRD-PARTY PRACTICE

third-party practice. See IMPLEADER.

#### THIRD-PARTY RECORD-CUSTODIAN SUMMONS

third-party record-custodian summons. See John Doe summons under SUMMONS.

#### THIRD-PARTY STANDING

third-party standing. See STANDING.

#### THIRD PERSON

third person. See THIRD PARTY.

#### THIRD POSSESSOR

third possessor. Civil law. A person who acquires mortgaged property but is not personally bound by the obligation secured by the mortgage. [Cases: Mortgages 177. C.J.S. Mortgages §§ 253, 256–257.]

#### THIRD WORLD

Third World. Int'l law. 1. DEVELOPING COUNTRY. 2. The group of nations (esp. in Africa and Asia) not aligned with major powers, whether Western democracies (i.e., the First — or Free — World) or countries that were formerly part of the Soviet bloc (i.e., the Second World). • Although Third World nations are often underdeveloped, the term Third World properly may denote only their political, not their economic, status.

#### THIRD WORLD COUNTRY

Third World country. See DEVELOPING COUNTRY.

#### THIRTEENTH AMENDMENT

Thirteenth Amendment. The constitutional amendment, ratified in 1865, that abolished slavery and involuntary servitude. [Cases: Constitutional Law 83(2). C.J.S. Constitutional Law §§ 482–486.]

“The thirteenth amendment is fairly unique in two respects. First, it contains an absolute bar to the existence of slavery or involuntary servitude; there is no requirement of ‘state action.’ Thus it is applicable to individuals as well as states .... Secondly, like the fourteenth and fifteenth amendments, it contains an enforcement clause, enabling Congress to pass all necessary legislation.” John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 15.6, at 918 (4th ed. 1991).

#### 30(B)(6) DEPOSITION

30(b)(6) deposition. See DEPOSITION.

#### THIRTY-DAY LETTER

thirty-day letter. A letter that accompanies a revenue agent's report issued as a result of an Internal Revenue Service audit or the rejection of a taxpayer's claim for refund and that outlines the taxpayer's appeal procedure before the Internal Revenue Service. • If the taxpayer does not request any such procedure within the 30-day period, the IRS will issue a statutory notice of deficiency. — Also written 30-day letter. Cf. NINETY-DAY LETTER. [Cases: Internal Revenue 5044.]

#### THREAT

threat, n. 1. A communicated intent to inflict harm or loss on another or on another's property, esp. one that might diminish a person's freedom to act voluntarily or with lawful consent <a kidnapper's threats of violence>. [Cases: Extortion and Threats 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.]

terroristic threat. A threat to commit any crime of violence with the purpose of (1) terrorizing another, (2) causing the evacuation of a building, place of assembly, or facility of public transportation, (3) causing serious public inconvenience, or (4) recklessly disregarding the risk of causing such terror or inconvenience. Model Penal Code § 211. See TERRORISM. [Cases: Extortion and Threats 25.1. C.J.S. Threats and Unlawful Communications §§ 2–20.]

2. An indication of an approaching menace <the threat of bankruptcy>. 3. A person or thing that might well cause harm <Mrs. Harrington testified that she had never viewed her husband as a threat>. — threaten, vb. — threatening, adj.

#### THREATENED SPECIES

threatened species. See SPECIES(1).

#### THREAT OF CONTINUING HARM

threat of continuing harm. See CONTINUING THREAT OF HARM.

#### THREAT OF CONTINUING INJURY

threat of continuing injury. See CONTINUING THREAT OF HARM.

#### THREE ESTATES, THE

three estates, the. See ESTATES OF THE REALM.

#### THREEFOLD ORDEAL

threefold ordeal. See triple ordeal under ORDEAL.

#### THREE-JUDGE COURT

three-judge court. See COURT.

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**THREE-MILE LIMIT**

three-mile limit. The distance of one marine league or three miles offshore, usu. recognized as the limit of territorial jurisdiction. [Cases: International Law 5. C.J.S. International Law §§ 14–20.]

**THREE-STEP TEST**

three-step test. Copyright. An analysis of an infringement defense under TRIPs and the Berne Convention, looking at whether the defendant's use of a protected work (1) is inherently limited to special cases, (2) did not conflict with the owner's normal exploitation of the work, and (3) did not unreasonably prejudice the legitimate interests of the owner. • The test is analogous to the analysis under the fair-use doctrine in U.S. law.

**THREE-STRIKES LAW**

three-strikes law. Slang. A statute prescribing an enhanced sentence, esp. life imprisonment, for a repeat offender's third felony conviction. • About half the states have enacted a statute of this kind. — Also termed three-strikes-and-you're-out law. [Cases: Sentencing and Punishment 1200–1219. C.J.S. Criminal Law §§ 1463, 1472, 1638–1643, 1645–1647, 1650–1653.]

**THREE WICKED SISTERS**

three wicked sisters. Slang. The three doctrines — contributory negligence, the fellow-servant rule, and assumption of the risk — used by 19th-century courts to deny recovery to workers injured on the job.

“These three common law defenses, contributory negligence, fellow servant rule, and assumption of the risk, became known as the ‘three wicked sisters,’ because of their preclusive effect on the ability of injured workers to recover.... By precluding application of the traditional respondeat superior concept for acts of fellow servants and by presuming that workers assumed the risks associated with their employment, courts made it extremely difficult for employees to recover from their employers for the increasing number of work-related injuries.... By the late 1800s, courts began to recognize the harsh results generated by rote application of the fellow servant, assumption of the risk, and contributory negligence doctrines.” Mark A. Rothstein et al., *Employment Law* § 7.2, at 404 (1994).

**THRESHOLD**

threshold. Parliamentary law. The number or proportion of votes needed for election.

**THRESHOLD CONFESSION**

threshold confession. See CONFESSION.

**THRIFT INSTITUTION**

thrift institution. See SAVINGS-AND-LOAN ASSOCIATION.

**THROUGH BILL OF LADING**

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through bill of lading. See BILL OF LADING.

#### THROUGH LOT

through lot. A lot that abuts a street at each end.

#### THROUGH RATE

through rate. The total shipping cost when two or more carriers are involved. • The carriers agree in advance on a through rate, which is typically lower than the sum of the separate rates. [Cases: Carriers 26. C.J.S. Carriers §§ 138–140.]

#### THROWAWAY

throwaway, n. Slang. 1. An unemancipated minor whose parent or caregiver has forced him or her to leave home. 2. A runaway whose parent or caregiver refuses to allow him or her to return home. Cf. RUNAWAY.

#### THROWBACK RULE

throwback rule. Tax. 1. In the taxation of trusts, a rule requiring that an amount distributed in any tax year that exceeds the year's distributable net income must be treated as if it had been distributed in the preceding year. • The beneficiary is taxed in the current year although the computation is made as if the excess had been distributed in the previous year. If the trust did not have undistributed accumulated income in the preceding year, the amount of the throwback is tested against each of the preceding years. IRC (26 USCA) §§ 665–668. [Cases: Internal Revenue 4019. C.J.S. Internal Revenue §§ 450–452.] 2. A taxation rule requiring a sale that would otherwise be exempt from state income tax (because the state to which the sale would be assigned for apportionment purposes does not have an income tax, even though the seller's state does) to be attributed to the seller's state and thus subjected to a state-level tax. • This rule applies only if the seller's state has adopted a throwback rule.

#### THROW OUT

throw out, vb. To dismiss (a claim or lawsuit).

#### THUMBPRINT

thumbprint. See FINGERPRINT.

#### TICKET

ticket, n. 1. A certificate indicating that the person to whom it is issued, or the holder, is entitled to some right or privilege <she bought a bus ticket for Miami>. 2. CITATION(2) <he got a speeding ticket last week>. 3. BALLOT (2) <they all voted a straight-party ticket>.

#### TICKET OF LEAVE

ticket of leave. Archaic. The English equivalent of parole.

#### TICKET-OF-LEAVE MAN

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ticket-of-leave man. A convict who has obtained a ticket of leave.

#### TICKET SPECULATOR

ticket speculator. A person who buys tickets and then resells them for more than their face value; in slang, a scalper. See SCALPER(1).

#### TIDAL

tidal, adj. Affected by or having tides. • For a river to be “tidal” at a given spot, the water need not necessarily be salt, but the spot must be one where the tide, in the ordinary and regular course of things, flows and reflows.

#### TIDE

tide. The rising and falling of seawater that is produced by the attraction of the sun and moon, uninfluenced by special winds, seasons, or other circumstances that create meteorological and atmospheric meteorological tides; the ebb and flow of the sea. • Tides are used to measure a shore's upland boundary.

mean high tide. The average of all high tides, esp. over a period of 18.6 years. — Also termed ordinary high tide.

mean lower low tide. The average of lower low tides over a fixed period.

mean low tide. The average of all low tides — both low and lower low — over a fixed period.

neap tide (neep). A tide, either high tide or low tide, that is lower than average because it occurs during the first or last quarter of the moon, when the sun's attraction partly counteracts the moon's.

ordinary high tide. See mean high tide.

spring tide. A tide, either high tide or low tide, that is higher than average because it occurs during the new moon and full moon.

#### TIDELAND

tideland. Land between the lines of the ordinary high and low tides, covered and uncovered successively by the ebb and flow of those tides; land covered and uncovered by the ordinary tides. [Cases: Navigable Waters 36(3).]

#### TIDESMAN

tidesman. English law. A customhouse officer appointed to watch or attend upon ships until the customs are paid. • A tidesman boards a ship at its arrival in the mouth of the Thames and comes up with the tide. See CUSTOMHOUSE.

#### TIDEWATER

tidewater. Water that falls and rises with the ebb and flow of the tide. • The term is not usu. applied to the open sea, but to coves, bays, and rivers.

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**TIDEWAY**

tideway. Land between high- and low-water marks. [Cases: Navigable Waters 36(3).]

**TIE**

tie,n.1. An equal number of votes for two candidates in an election. [Cases: Elections 238. C.J.S. Elections § 244.] 2. An equal number of votes cast for and against a particular measure by a legislative or deliberative body. • In the U.S. Senate, the Vice President has the deciding vote in the event of a tie. U.S. Const. art. I, § 3. See tie vote under VOTE(3).

**TIED PRODUCT**

tied product.See TYING ARRANGEMENT(1).

**TIE-IN ARRANGEMENT**

tie-in arrangement.See TYING ARRANGEMENT.

**TIEMPO INHABIL**

tiempo inhabil.Hist. Louisiana law. The time at which a person becomes insolvent.

**TIERCEAR**

tiercear. See TERCER.

**TIERED PARTNERSHIP**

tiered partnership.See PARTNERSHIP.

**TIE VOTE**

tie vote.See VOTE(3).

**TIF**

TIF.abbr.TAX-INCREMENT FINANCING.

**TIGHT**

tight,adj. Slang. (Of a note, bond, mortgage, lease, etc.) characterized by summary and stringent clauses providing the creditor's remedies in case of default.

**TILA**

TILA.abbr.Truth in Lending Act. See CONSUMER CREDIT PROTECTION ACT. [Cases: Consumer Credit 32. C.J.S. Interest and Usury; Consumer Credit § 318.]

**TILLAGE**

tillage (til-ij), n. A place tilled or cultivated; land under cultivation as opposed to land lying fallow or in pasture.

**TILL-TAPPING**

till-tapping.Slang. Theft of money from a cash register.

#### TIMBER EASEMENT

timber easement.See EASEMENT.

#### TIMBER LEASE

timber lease.See LEASE.

#### TIMBER RIGHTS

timber rights.See timber easement under EASEMENT.

#### TIME

time. 1. A measure of duration. 2. A point in or period of duration at or during which something is alleged to have occurred. 3.Slang.A convicted criminal's period of incarceration.

dead time.Time that does not count for a particular purpose, such as time not included in calculating an employee's wages or time not credited toward a prisoner's sentence. • The time during which a prisoner has escaped, for example, is not credited toward the prisoner's sentence. — Also termed nonrun time.

earned time.A credit toward a sentence reduction awarded to a prisoner who takes part in activities designed to lessen the chances that the prisoner will commit a crime after release from prison. • Earned time, which is usu. awarded for taking educational or vocational courses, working, or participating in certain other productive activities, is distinct from good time, which is awarded simply for refraining from misconduct. Cf. good time. [Cases: Prisons 15. C.J.S. Prisons and Rights of Prisoners § 153.]

flat time.A prison term that is to be served without the benefit of time-reduction allowances for good behavior and the like.

good time.The credit awarded to a prisoner for good conduct, which can reduce the duration of the prisoner's sentence. Cf. GOOD BEHAVIOR; earned time. [Cases: Prisons 15. C.J.S. Prisons and Rights of Prisoners § 153.]

jail-credit time.See JAIL CREDIT.

nonrun time.See dead time.

street time.The time that a convicted person spends on parole or on other conditional release. • If the person's parole is revoked, this time may or may not be credited toward the person's sentence, depending on the jurisdiction and the particular conditions of that person's parole. See dead time.

#### TIME AGREEMENT

time agreement.1. A pact made by the party leaders in the U.S. Senate to limit the time

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allowed for debate on a bill or amendment. 2.UNANIMOUS-CONSENT AGREEMENT .

**TIME ARBITRAGE**

time arbitrage.See ARBITRAGE.

**TIME-BAR**

time-bar,n. A bar to a legal claim arising from the lapse of a defined length of time, esp. one contained in a statute of limitations. [Cases: Limitation of Actions 1. C.J.S. Limitations of Actions §§ 2–4.] — time-barred,adj.

**TIME-BARGAIN**

time-bargain. See FUTURES CONTRACT.

**TIME BILL**

time bill.See time draft under DRAFT.

**TIME CERTAIN**

time certain. 1. A definite, specific date and time. Cf. DATE CERTAIN. 2.Parliamentary law. A specified time or condition for which a matter's consideration is scheduled or to which its consideration is postponed. See postpone definitely under POSTPONE(3); special order under ORDER(4).

**TIME CHARTER**

time charter.See CHARTER(8).

**TIME CHECK**

time check.See TIMESHEET.

**TIME DEPOSIT**

time deposit.See DEPOSIT(2).

**TIME DRAFT**

time draft.See DRAFT.

**TIME IMMEMORIAL**

time immemorial. 1. A point in time so far back that no living person has knowledge or proof contradicting the right or custom alleged to have existed since then. • At common law, that time was fixed as the year 1189, the year that Henry II of England died. — Also termed time out of memory; time out of mind; time of memory. 2. A point in time beyond which legal memory cannot go. See LEGAL MEMORY. 3. A very long time.

**TIME INSURANCE**

time insurance.See INSURANCE.

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**TIME IS OF THE ESSENCE**

time is of the essence. See OF THE ESSENCE.

**TIME-IS-OF-THE-ESSENCE CLAUSE**

time-is-of-the-essence clause. Contracts. A contractual provision making timely performance a condition.

**TIME LETTER OF CREDIT**

time letter of credit. See LETTER OF CREDIT.

**TIME LOAN**

time loan. See term loan under LOAN.

**TIME NOTE**

time note. See NOTE(1).

**TIME OF MEMORY**

time of memory. Archaic. See TIME IMMEMORIAL(1).

**TIME OPTION**

time option. See OPTION(2).

**TIME ORDER**

time order. See ORDER(8).

**TIME OUT OF MEMORY**

time out of memory. See TIME IMMEMORIAL.

**TIME OUT OF MIND**

time out of mind. See TIME IMMEMORIAL.

**TIME-PLACE-OR-MANNER RESTRICTION**

time-place-or-manner restriction. Constitutional law. A government's limitation on when, where, or how a public speech or assembly may occur, but not on the content of that speech or assembly. • As long as such restrictions are narrowly tailored to achieve a legitimate governmental interest, they do not violate the First Amendment. — Also written time, place, or manner restriction. — Also termed time-place-and-manner restriction. See PUBLIC FORUM .

**TIME POLICY**

time policy. See INSURANCE POLICY.

**TIME-PRICE DIFFERENTIAL**

time-price differential. 1. A figure representing the difference between the current cash price of an item and the total cost of purchasing it on credit. [Cases: Consumer Credit 4; Usury 32. C.J.S. Interest and Usury; Consumer Credit §§ 124–125, 280, 284–293.] 2. The difference between a seller's price for immediate cash payment and a different price when payment is made later or in installments.

#### TIME-PRICE DOCTRINE

time-price doctrine. The rule that if a debt arises out of a purchase and sale, the usury laws do not apply. • If a higher price is charged for a deferred payment than for an immediate payment, the difference between the time price and the cash price is deemed compensation to the seller for the risk that the buyer will default and for the interest that the seller could have earned on an immediate payment. Because the buyer can usually choose to postpone a purchase and save up the cash price, the buyer does not have the same status as a needy borrower who must deal with a potentially predatory lender.

#### TIME-SHARING

time-sharing, n. Joint ownership or rental of property (such as a vacation condominium) by several persons who take turns occupying the property. — Also termed time-share. [Cases: Estates in Property 1. C.J.S. Estates §§ 2–5, 8, 15–21, 116–128, 137, 243.] — time-share, vb.

#### TIMESHEET

timesheet. 1. An employee's record of time spent on the job. 2. An attorney's daily record of billable and nonbillable hours, used to generate clients' bills. — Formerly also termed time check. See BILLABLE HOUR.

#### TIME-SHIFTING

time-shifting. The practice of recording a broadcast for viewing at a later time. • Time-shifting was found to be a noninfringing fair use of videotape recorders in *Sony Corp. v. Universal Studios, Inc.*, 464 U.S. 417, 104 S.Ct. 774 (1984). [Cases: Copyrights and Intellectual Property 67.1. C.J.S. Copyrights and Intellectual Property §§ 51–52, 54.]

#### TIME UNITY

time unity. See unity of time under UNITY.

#### TIME VALUE

time value. The price associated with the length of time that an investor must wait until an investment matures or the related income is earned. Cf. YIELD TO MATURITY .

#### TIMOCRACY

timocracy (tī-mok-rə-see). 1. An aristocracy of property; government by propertied, relatively rich people. 2. A government in which the rulers' primary motive is the love of honor.

#### TIN PARACHUTE

tin parachute. An employment-contract provision that grants a corporate employee (esp. one below the executive level) severance benefits in the event of a takeover. • These benefits are typically less lucrative than those provided under a golden parachute. — Also termed silver parachute. Cf. GOLDEN PARACHUTE.

## TIP

tip, n.1. A piece of special information; esp., in securities law, advance or inside information passed from one person to another. See INSIDE INFORMATION; INSIDER TRADING. [Cases: Securities Regulation 60.28(2). C.J.S. Securities Regulation § 180.] 2. A gratuity for service given. • Tip income is taxable. IRC (26 USCA) § 61(a). [Cases: Internal Revenue 3163; Taxation 986.1.]

## TIPPEE

tippee. Securities. A person who acquires material nonpublic information from someone in a fiduciary relationship with the company to which that information pertains. [Cases: Securities Regulation 60.28(5). C.J.S. Securities Regulation § 184.]

## TIPPER

tipper. Securities. A person who possesses material inside information and who selectively discloses that information for trading or other personal purposes <the tippee traded 5,000 shares after her conversation with the tipper>. [Cases: Securities Regulation 60.28(5). C.J.S. Securities Regulation § 184.]

## TIPLING HOUSE

tippling house. See PUBLIC HOUSE.

## TIPSTAFF

tipstaff. A court crier. • The name derives from the crier's former practice of holding a staff tipped with silver as a badge of office. See CRIER(1). [Cases: Courts 58. C.J.S. Courts § 108.] Pl. tipstaves, tipstaffs.

## TIP-STAVE

tip-stave. See SERVITOR OF BILLS.

## TITHE

tithe (tith), n.1. A tenth of one's income, esp. in reference to a religious or charitable gift or obligation. [Cases: Religious Societies 15. C.J.S. Religious Societies §§ 53–54.] 2. Hist. A small tax or assessment, esp. in the amount of one-tenth. — tithe, vb. — tithable, adj.

“A tithe was the right of a rector to a tenth part of the produce of all the land in his parish. In some cases a rector was an individual, while in others the rectory was vested in a monastery, which appointed a vicar to perform the necessary ecclesiastical duties ‘vicariously’ for the monastery. On the dissolution of the monasteries in the reign of Henry VIII many rectories passed

into the royal hands and were granted to laymen; the result was that the right to tithes in many cases passed into lay hands. Like advowsons, tithes were deemed to be land in which the various estates could exist.” Robert E. Megarry & P.V. Baker, *A Manual of the Law of Real Property* 415 (4th ed. 1969).

great tithe.(usu. pl.) A tithe paid in kind and therefore considered more valuable than other tithes. • The great tithes often consisted of corn, peas, beans, hay, and wood.

mixed tithes.A tithe consisting of a natural product, such as milk or wool, obtained or cultivated by human effort.

“A second species of incorporeal hereditaments is that of tithes ... the first species being usually called predial, as of corn, grass, hops, and wood; the second mixed, as of wool, milk, pigs, etc., consisting of natural products, but nurtured and preserved in part by the care of man; and of these the tenth must be paid in gross: the third personal, as of manual occupations, trades, fisheries, and the like; and of these only the tenth part of the clear gains and profits is due.” 2 William Blackstone, *Commentaries on the Laws of England* 24 (1766).

personal tithe.A tithe of profits from manual occupations or trades.

predial tithe.A tithe of crops (such as corn). — Also spelled praedial tithe.

vicarial tithe (vI-kair-ee-<<schwa>>l). A small tithe payable to a vicar.

#### TITHE OF AGISTMENT

tithe of agistment (<<schwa>>-jist-m<<schwa>>nt).Hist. A church-levied charge on grazing land. • The tithe was paid by the occupier of the land rather than the person whose cattle grazed on the land. See AGISTMENT.

#### TITHING

tithing. See DECENNARY.

#### TITIUS HERES ESTO

Titius heres esto (tish-ee-<<schwa>>s heer-eez es-toh). [Latin] Roman law. Let Titius be my heir. • The phrase was the testamentary form for appointing an heir. Titius was a fictitious name often used by way of example in legal writing, esp. in forms.

#### TITLE

title. 1. The union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property; the legal link between a person who owns property and the property itself <no one has title to that land>.2. Legal evidence of a person's ownership rights in property; an instrument (such as a deed) that constitutes such evidence < record your title with the county clerk>.

“Though employed in various ways, [title] is generally used to describe either the manner in which a right to real property is acquired, or the right itself. In the first sense, it refers to the

conditions necessary to acquire a valid claim to land; in the second, it refers to the legal consequences of such conditions. These two senses are not only interrelated, but inseparable: given the requisite conditions, the legal consequences or rights follow as of course; given the rights, conditions necessary for the creation of those rights must have been satisfied. Thus, when the word 'title' is used in one sense, the other sense is necessarily implied." Kent McNeil, *Common Law Aboriginal Title* 10 (1989).

aboriginal title. 1. Land ownership, or a claim of land ownership, by an indigenous people in a place that has been colonized. — Also termed native title. 2. INDIAN TITLE.

absolute title. An exclusive title to land; a title that excludes all others not compatible with it. See fee simple absolute under FEE SIMPLE. [Cases: Estates in Property 5. C.J.S. Estates §§ 11–12.]

adverse title. A title acquired by adverse possession. See ADVERSE POSSESSION. [Cases: Adverse Possession 106. C.J.S. Adverse Possession §§ 247, 339.]

after-acquired title. Title held by a person who bought property from a seller who acquired title only after purporting to sell the property to the buyer. See AFTER-ACQUIRED-TITLE DOCTRINE. [Cases: Vendor and Purchaser 8. C.J.S. Vendor and Purchaser § 6.]

apparent title. See COLOR OF TITLE.

bad title. 1. See defective title. 2. See unmarketable title.

clear title. 1. A title free from any encumbrances, burdens, or other limitations. [Cases: Vendor and Purchaser 130(2), 133. C.J.S. Vendor and Purchaser §§ 326, 330.] 2. See marketable title. — Also termed good title.

defeasible title. A title voidable on the occurrence of a contingency, but not void on its face. [Cases: Estates in Property 6. C.J.S. Estates §§ 13–14.]

defective title. A title that cannot legally convey the property to which it applies, usu. because of some conflicting claim to that property. — Also termed bad title. [Cases: Vendor and Purchaser 129. C.J.S. Vendor and Purchaser § 314.]

derivative title. 1. A title that results when an already existing right is transferred to a new owner. 2. The general principle that a transferee of property acquires only the rights held by the transferor and no more. [Cases: Vendor and Purchaser 210. C.J.S. Vendor and Purchaser § 464.]

dormant title. A title in real property held in abeyance.

doubtful title. A title that exposes the party holding it to the risk of litigation with an adverse claimant. See unmarketable title. [Cases: Vendor and Purchaser 129(1), 130(2). C.J.S. Vendor and Purchaser §§ 314–319, 321–322, 326.]

equitable title. A title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title. • Before the Statute of Uses (1536), an equitable title was

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enforceable only in a court of chancery, not of law. Cf. legal title. [Cases: Vendor and Purchaser 54. C.J.S. Vendor and Purchaser §§ 145–146.]

good title. 1. A title that is legally valid or effective. [Cases: Vendor and Purchaser 130(2), 133. C.J.S. Vendor and Purchaser §§ 326, 330.] 2. See clear title (1). 3. See marketable title.

imperfect title. A title that requires a further exercise of the granting power to pass land in fee, or that does not convey full and absolute dominion.

Indian title. See INDIAN TITLE.

just title. In a case of prescription, a title that the possessor received from someone whom the possessor honestly believed to be the real owner, provided that the title was to transfer ownership of the property. [Cases: Adverse Possession 69. C.J.S. Adverse Possession §§ 66, 73, 75, 103, 105.]

legal title. A title that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest. • Before the Statute of Uses (1536), a legal title was enforceable only in a court of law, not chancery. Cf. equitable title. [Cases: Vendor and Purchaser 54. C.J.S. Vendor and Purchaser §§ 145–146.]

lucrative title. Civil law. A title acquired without giving anything in exchange for the property; title by which a person acquires anything that comes as a clear gain, as by gift, descent, or devise. • Because lucrative title is usu. acquired by gift or inheritance, it is treated as the separate property of a married person. Cf. onerous title.

marketable title. A title that a reasonable buyer would accept because it appears to lack any defect and to cover the entire property that the seller has purported to sell; a title that enables a purchaser to hold property in peace during the period of ownership and to have it accepted by a later purchaser who employs the same standards of acceptability. — Also termed good title; merchantable title; clear title. [Cases: Vendor and Purchaser 130. C.J.S. Vendor and Purchaser § 324.]

“One definition of a marketable title which has been put forward repeatedly is one free from all reasonable doubt. Stated another way, a marketable title is one which does not contain any manner of defect or outstanding interest or claim which may conceivably operate to defeat or impair the interest which is bargained for and is intended to be conveyed. This negative concept of marketability has become an implied invitation for courts to declare titles unmarketable if an examiner has entertained any doubt whatever with respect to them. The digests attest the painful truth that claims of a bygone era cling like barnacles to land titles and encumber them long after they should have been scraped clean.... We need to replace this negative approach by a positive one which will make the marketability of titles depend solely upon their state during some recent interval of time rather than upon their entire history.” Paul E. Basye, *Clearing Land Titles* § 371, at 539 (1953).

native title. See aboriginal title (1).

nonmerchantable title. See unmarketable title.

onerous title (on-<<schwa>>r-<<schwa>>s). 1. Civil law. A title acquired by giving valuable consideration for the property, as by paying money or performing services. 2. A title to property that is acquired during marriage through a spouse's skill or labor and is therefore treated as community property. Cf. lucrative title.

original title. A title that creates a right for the first time.

“The catching of fish is an original title of the right of ownership, whereas the purchase of them is a derivative title. The right acquired by the fisherman is newly created; it did not formerly exist in any one.” John Salmond, *Jurisprudence* 345 (Glanville L. Williams ed., 10th ed. 1947).

paper title. See record title.

paramount title. 1. Archaic. A title that is the source of the current title; original title. 2. A title that is superior to another title or claim on the same property.

particular title. Civil law. A title acquired from an ancestor by purchase, gift, or inheritance before or after the ancestor's death.

perfect title. 1. FEE SIMPLE. 2. A grant of land that requires no further act from the legal authority to constitute an absolute title to the land. 3. A title that does not disclose a patent defect that may require a lawsuit to defend it. 4. A title that is good both at law and in equity. 5. A title that is good and valid beyond all reasonable doubt.

presumptive title. A title of the lowest order, arising out of the mere occupation or simple possession of property without any apparent right, or any pretense of right, to hold and continue that possession.

record title. A title as it appears in the public records after the deed is properly recorded. — Also termed title of record; paper title. [Cases: Vendor and Purchaser 132, 231(1). C.J.S. Vendor and Purchaser §§ 328, 496.]

singular title. The title by which one acquires property as a singular successor.

tax title. A title to land purchased at a tax sale. [Cases: Taxation 726–743. C.J.S. Taxation §§ 1354–1401.]

title by descent. A title that one acquires by law as an heir of the deceased owner.

title by devise. A title created by will.

title by estoppel. Title acquired from a person who did not have title at the time of a purported conveyance with a warranty but later acquired the title, which then inures to the benefit of the grantee.

title by prescription. A title acquired by prescription. See PRESCRIPTION (5). [Cases: Adverse Possession 106. C.J.S. Adverse Possession §§ 247, 339.]

title defective in form. A title for which some defect appears on the face of the deed, as opposed to a defect that arises from circumstances or extrinsic evidence. • Title defective in form

cannot be the basis of prescription. See PRESCRIPTION(5). [Cases: Vendor and Purchaser 129. C.J.S. Vendor and Purchaser § 314.]

title of entry.The right to enter upon lands.

title of record.See record title.

universal title.A title acquired by a conveyance causa mortis of a stated portion of all the conveyor's property interests so that on the conveyor's death the recipient stands as a universal successor.

unmarketable title.A title that a reasonable buyer would refuse to accept because of possible conflicting interests in or litigation over the property. — Also termed bad title; unmerchantable title; nonmerchantable title. [Cases: Vendor and Purchaser 130(2). C.J.S. Vendor and Purchaser § 326.]

3. The heading of a statute or other legal document <the title of the contract was “Confidentiality Agreement”>. [Cases: Contracts 152; Statutes 109–126. C.J.S. Contracts §§ 307, 318–322, 327, 331; Statutes §§ 209–242.]

general title.A statute's name that broadly and comprehensively identifies the subject matter addressed by the legislature. Cf. restrictive title.

long title.The full, formal title of a statute, usu. containing a brief statement of legislative purpose.

“The first Acts of Parliament did not have titles. The first time that an Act of Parliament was given a title was about 1495. Even when the long title came to be added to each Act of Parliament as a matter of course, as it did from about 1513, the long title was not regarded as part of the Act of Parliament itself. Today, however, the position is different: the long title is part of the Act of Parliament.” D.J. Gifford & John Salter, *How to Understand an Act of Parliament* 19 (1996).

“Because Parliament's clerks, rather than Parliament, provided the titles of acts, the traditional rule has been that the title could not be used for interpretive purposes.... This is no longer the practice in most English-speaking jurisdictions, for the long title, and often a short title as well, are part of the legislative bill from the very beginning. In the United States, most state constitutions require the legislative enactment to have a title that gives accurate notice of the contents of the law.” William N. Eskridge Jr. & Elizabeth Garrett, *Legislation* 831 (2001).

restrictive title.A statute's name that narrowly identifies the particular subject matter addressed by the legislature. Cf. general title.

short title.The abbreviated title of a statute by which it is popularly known; a statutory nickname.

4. A subdivision of a statute or code <Title IX>.5. The name by which a court case or other legal proceeding is distinguished from others; STYLE(1).6. An appellation of office, dignity, or distinction <after the election, he bore the title of mayor for the next four years>.

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**TITLE, ABSTRACT OF**

title, abstract of. See ABSTRACT OF TITLE.

**TITLE, ACTION TO QUIET**

title, action to quiet. See action to quiet title under ACTION(4).

**TITLE, CHAIN OF**

title, chain of. See CHAIN OF TITLE.

**TITLE, CLOUD ON**

title, cloud on. See CLOUD ON TITLE.

**TITLE, COLOR OF**

title, color of. See COLOR OF TITLE(1).

**TITLE, COVENANT FOR**

title, covenant for. See covenant for title under COVENANT(4).

**TITLE, DOCUMENT OF**

title, document of. See DOCUMENT OF TITLE.

**TITLE, INDICIA OF**

title, indicia of. See INDICIA OF TITLE.

**TITLE, MUNIMENT OF**

title, muniment of. See MUNIMENT OF TITLE.

**TITLE, ROOT OF**

title, root of. See ROOT OF TITLE.

**TITLE, WARRANTY OF**

title, warranty of. See warranty of title under WARRANTY(2).

**TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

Title VII of the Civil Rights Act of 1964. A federal law that prohibits employment discrimination and harassment on the basis of race, sex, pregnancy, religion, and national origin, as well as prohibiting retaliation against an employee who opposes illegal harassment or discrimination in the workplace. • This term is often referred to simply as Title VII. 42 USCA §§ 2000e et seq. [Cases: Civil Rights 1102. C.J.S. Civil Rights §§ 22, 26–27, 30–31, 33–34, 37, 41–42, 67.]

**TITLE IX OF THE EDUCATIONAL AMENDMENTS OF 1972**

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Title IX of the Educational Amendments of 1972. A federal statute generally prohibiting sex discrimination and harassment by educational facilities that receive federal funds. • This term is often referred to simply as Title IX. 20 USCA §§ 1681 et seq. [Cases: Civil Rights 1067. C.J.S. Civil Rights §§ 2, 7, 44, 49–53, 64, 86, 221.]

#### TITLE CLEARANCE

title clearance. The removal of impediments to the marketability of land, esp. through title examinations.

#### TITLE COMPANY

title company. See COMPANY.

#### TITLE DEED

title deed. See DEED.

#### TITLE DIVISION

title division. Archaic. A common-law system for dividing property acquired during marriage upon the dissolution of the marriage, the divisions being based on who holds legal title to the property. • Under title division, when a marriage ends in divorce, property purchased during the marriage is awarded to the person who holds title to the property. Cf. COMMUNITY PROPERTY; EQUITABLE DISTRIBUTION.

#### TITLE-GUARANTY COMPANY

title-guaranty company. See title company under COMPANY.

#### TITLE INSURANCE

title insurance. See INSURANCE.

#### TITLE JURISDICTION

title jurisdiction. See TITLE THEORY.

#### TITLE MEMBER

title member. See name partner under PARTNER.

#### TITLE OF ENTRY

title of entry. See TITLE(2).

#### TITLE OF RECORD

title of record. See record title under TITLE(2).

#### TITLE OF RIGHT

title of right. A court-issued decree creating, transferring, or extinguishing rights. • Examples include a decree of divorce or judicial separation, an adjudication of bankruptcy, a discharge in

bankruptcy, a decree of foreclosure against a mortgagor, an order appointing or removing a trustee, and a grant of letters of administration. In all the examples listed, the judgment operates not as a remedy but as a title of right.

#### TITLE OPINION

title opinion. See OPINION(2).

#### TITLE REGISTRATION

title registration. A system of registering title to land with a public registry, such as a county clerk's office. See TORRENS SYSTEM. [Cases: Records 9. C.J.S. Registers of Deeds §§ 2–71.]

#### TITLE RETENTION

title retention. A form of lien, in the nature of a chattel mortgage, to secure payment of a loan given to purchase the secured item. [Cases: Chattel Mortgages 1.]

#### TITLE SEARCH

title search. An examination of the public records to determine whether any defects or encumbrances exist in a given property's chain of title. • A title search is typically conducted by a title company or a real-estate lawyer at a prospective buyer's or mortgagee's request. [Cases: Abstracts of Title 1–3; Vendor and Purchaser 231(2). C.J.S. Abstracts of Title §§ 2–20; Vendor and Purchaser §§ 497–498.]

#### TITLE STANDARDS

title standards. Criteria by which a real-estate title can be evaluated to determine whether it is defective or marketable. • Many states, through associations of conveyancers and real-estate attorneys, still adhere to title standards. [Cases: Abstracts of Title 1–3; Vendor and Purchaser 130(2). C.J.S. Abstracts of Title §§ 2–20; Vendor and Purchaser § 326.]

#### TITLE STATE

title state. See TITLE THEORY.

#### TITLE THEORY

title theory. Property law. The idea that a mortgage transfers legal title of the property to the mortgagee, who retains it until the mortgage has been satisfied or foreclosed. • Only a few American states — known as title states, title jurisdictions, or title-theory jurisdictions — have adopted this theory. Cf. LIEN THEORY. [Cases: Mortgages 136. C.J.S. Mortgages § 183.]

#### TITLE TRANSACTION

title transaction. A transaction that affects title to an interest in land.

#### TITLE UNITY

title unity. See unity of title under UNITY.

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**TITULO LUCRATIVO, QUI TITULUS EST POST CONTRACTUM DEBITUM**

titulo lucrativo, qui titulus est post contractum debitum (tich-<<schwa>>-loh loo-kr<<schwa>>-tI-voh, kwI tich-<<schwa>>-l<<schwa>>s est pohst k<<schwa>>n-trak-t<<schwa>>m deb-i-t<<schwa>>m). [Law Latin] Hist. By a lucrative title, which occurs after the contracting of debt.

**TITULO SINGULARI**

titulo singulari (tich-<<schwa>>-loh sing-gy<<schwa>>-lair-I). [Law Latin] Hist. By a singular title. • Those acquiring property by means other than succession held the property under a titulus singularis.

**TITULO UNIVERSALI**

titulo universali (tich-<<schwa>>-loh yoo-ni-v<<schwa>>r-say-II). [Law Latin] Hist. By a universal title. • An heir succeeding to an ancestor's estate held title titulo universali.

**TITULUS TRANSFERENDI**

titulus transferendi (tich-<<schwa>>-l<<schwa>>s trans-f<<schwa>>r-en-dI). [Law Latin] Hist. The legal title for transferring. — Also spelled titulus transferendi. Cf. MODUS TRANSFERENDI.

**TM**

TM.abbr. TRADEMARK. • Typically used as a superscript after a mark (TM), it signals only that someone claims ownership of the mark; it does not mean that the mark is registered.

**TMEP**

TMEP.abbr. TRADEMARK MANUAL OF EXAMINING PROCEDURE.

**T-NOTE**

T-note.abbr. TREASURY NOTE.

**TOCHER**

tocher.Scots law. Dowry.

**TO-HAVE-AND-TO-HOLD CLAUSE**

to-have-and-to-hold clause.See HABENDUM CLAUSE(1).

**TOKEN**

token,n.1. A sign or mark; a tangible evidence of the existence of a fact. 2. A sign or indication of an intention to do something, as when a buyer places a small order with a vendor to show good faith with a view toward later placing a larger order. 3. A coin or other legal tender. • Although token most commonly refers to a piece of metal, the term may also denote a bill or other medium of exchange.

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false token. A counterfeit coin, bill, or the like.

### TOLERATION

toleration, n. 1. The act or practice of permitting or enduring something not wholly approved of; the act or practice of allowing something in a way that does not hinder. 2. The allowance of opinions and beliefs, esp. religious ones, that differ from prevailing norms. 3. Archaic. Legal permission or authorization; LICENSE(1). — tolerate, vb.

### TOLL

toll, n. 1. A tax or due paid for the use of something; esp., the consideration paid either to use a public road, highway, or bridge, or to maintain a booth for the sale of goods at a fair or market. [Cases: Bridges 33; Turnpikes and Toll Roads 37. C.J.S. Bridges §§ 65–69; Turnpikes and Toll Roads §§ 36, 40.] 2. A right to collect such a tax or due. 3. The privilege of being free from such a tax or due. 4. A charge for a long-distance telephone call. [Cases: Telecommunications 323.]

toll, vb. 1. To annul or take away <toll a right of entry>. 2. (Of a time period, esp. a statutory one) to stop the running of; to abate <toll the limitations period>. See EQUITABLE TOLLING. 3. Hist. To raise or collect a tax or due for the use of something.

### TOLLAGE

tollage (toh-lij). 1. Payment of a toll. 2. Money charged or paid as a toll. 3. The liberty or franchise of charging a toll.

### TOLLING AGREEMENT

tolling agreement. An agreement between a potential plaintiff and a potential defendant by which the defendant agrees to extend the statutory limitations period on the plaintiff's claim, usu. so that both parties will have more time to resolve their dispute without litigation. [Cases: Limitation of Actions 14. C.J.S. Limitations of Actions § 25.]

### TOLLING STATUTE

tolling statute. A law that interrupts the running of a statute of limitations in certain situations, as when the defendant cannot be served with process in the forum jurisdiction. [Cases: Limitation of Actions 43–138. C.J.S. Contracts § 582; Employer–Employee Relationship § 87; Limitations of Actions §§ 21, 81–195, 197–251, 303; Physicians, Surgeons, and Other Health-Care Providers § 108; RICO (Racketeer Influenced and Corrupt Organizations) § 16.]

### TOLT

tolt (toht). Hist. A writ for removing a case pending in a court baron to a county court. — Also termed writ of tolt. See COURT BARON; county court under COURT.

“Where the disputed interest in the land was not a fee held of the king in chief but a fee held of a ‘mesne lord’ the writ was directed to him bidding him do full right between the parties in the matter of the land in question under pain of the case being removed from his court to the sheriff’s court if he failed to do justice. This removal was effected (if necessary) by the process known as

'tolt' under which a sheriff on a complaint to him in his county court of a failure of the lord to do justice ordered his bailiff to attend the lord's court and take away the plaint into the county court." Geoffrey Radcliffe & Geoffrey Cross, *The English Legal System* 38 (G.J. Hand & D.J. Bentley eds., 6th ed. 1977).

#### TOMBSTONE

tombstone.Securities. An advertisement (esp. in a newspaper) for a public securities offering, describing the security and identifying the sellers. • The term gets its name from the ad's traditional black border and plain print. — Also termed tombstone advertisement; tombstone ad. Cf. PROSPECTUS.

#### TON

ton. A measure of weight fixed at either 2,000 pounds avoirdupois or 20 hundredweights, each hundredweight being 112 pounds avoirdupois. [Cases: Weights and Measures 3. C.J.S. Weights and Measures § 3.]

long ton.Twenty long hundredweight (2,240 pounds), or 1.016 metric tons.

short ton.Twenty short hundredweight (2,000 pounds), or 0.907 metric tons.

#### TON MILE

ton mile.In transportation, a measure equal to the transportation of one ton of freight one mile.

#### TONNAGE

tonnage (t<<schwa>>n-ij).1. The capacity of a vessel for carrying freight or other loads, calculated in tons. — Also termed net tonnage. [Cases: Shipping 7. C.J.S. Shipping §§ 18–20.] 2. The total shipping tonnage of a country or port. 3. See tonnage duty under DUTY(4).

#### TONNAGE DUTY

tonnage duty.See DUTY(4).

#### TONNAGE-RENT

tonnage-rent. A rent reserved by a mining lease or similar transaction, consisting of a royalty on every ton of minerals extracted from the mine. [Cases: Mines and Minerals 70. C.J.S. Mines and Minerals §§ 218, 223–224.]

#### TONNAGE TAX

#### TONSURE

tonsure.Hist. The shaving of a person's (usu. a cleric's) head. • Serjeants-at-law supposedly wore coifs to conceal their shaved heads.

#### TONTINE

tontine (ton-teen or ton-teen), n.1. A financial arrangement in which a group of participants share in the arrangement's advantages until all but one has died or defaulted, at which time the whole goes to that survivor. [Cases: Insurance 2441.] 2. A financial arrangement in which an entire sum goes to the contributing participants still alive and not in default at the end of a specified period.

#### TONTINE POLICY

tontine policy. See INSURANCE POLICY.

#### TOP-HAT PENSION PLAN

top-hat pension plan. See PENSION PLAN.

#### TOP LEASE

top lease. See LEASE.

#### TOP MANAGEMENT

top management. See MANAGEMENT.

#### TOPOGRAPHICAL SURVEY

topographical survey. See SURVEY.

#### TORPEDO DOCTRINE

torpedo doctrine. See ATTRACTIVE-NUISANCE DOCTRINE.

#### TORRENS SYSTEM

Torrens system (tor-*<<schwa>>nz* ortahr-*<<schwa>>nz*). A system for establishing title to real estate in which a claimant first acquires an abstract of title and then applies to a court for the issuance of a title certificate, which serves as conclusive evidence of ownership. • This system — named after Sir Robert Torrens, a 19th-century reformer of Australian land laws — has been adopted in the United States by several counties with large metropolitan areas. — Also termed Torrens title system. See CAVEAT(3). [Cases: Records 9. C.J.S. Registers of Deeds §§ 2–71.]

#### TORT

tort (tort). 1. A civil wrong, other than breach of contract, for which a remedy may be obtained, usu. in the form of damages; a breach of a duty that the law imposes on persons who stand in a particular relation to one another. [Cases: Torts 1. C.J.S. Torts §§ 2–7.] 2. (pl.) The branch of law dealing with such wrongs.

“To ask concerning any occurrence ‘Is this a crime or is it a tort?’ is — to borrow Sir James Stephen's apt illustration — no wiser than it would be to ask concerning a man ‘Is he a father or a son?’ For he may well be both.” J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 543 (16th ed. 1952).

“We may ... define a tort as a civil wrong for which the remedy is a common-law action for

unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.” R.F.V. Heuston, *Salmond on the Law of Torts* 13 (17th ed. 1977).

“It might be possible to define a tort by enumerating the things that it is not. It is not crime, it is not breach of contract, it is not necessarily concerned with property rights or problems of government, but is the occupant of a large residuary field remaining if these are taken out of the law. But this again is illusory, and the conception of a sort of legal garbage-can to hold what can be put nowhere else is of no help. In the first place, tort is a field which pervades the entire law, and is so interlocked at every point with property, contract and other accepted classifications that, as the student of law soon discovers, the categories are quite arbitrary. In the second, there is a central theme, or basis or idea, running through the cases of what are called torts, which, although difficult to put into words, does distinguish them in greater or less degree from other types of cases.” W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 1, at 2–3 (5th ed. 1984).

constitutional tort. A violation of one's constitutional rights by a government officer, redressable by a civil action filed directly against the officer. • A constitutional tort committed under color of state law (such as a civil-rights violation) is actionable under 42 USCA § 1983. — Sometimes (informally) shortened to contort. [Cases: Civil Rights 1304. C.J.S. Civil Rights §§ 74–87.]

dignitary tort (dig-n<<schwa>>-tair-ee). A tort involving injury to one's reputation or honor. • In the few jurisdictions in which courts use the phrase dignitary tort (such as Maine), defamation is commonly cited as an example. — Also (erroneously) termed dignatory tort. [Cases: Libel and Slander 1; Torts 8.5(1). C.J.S. Libel and Slander; Injurious Falsehood §§ 2, 5–6, 10, 47; Right of Privacy and Publicity §§ 2, 8–9, 17, 20, 34, 39, 42.]

government tort. A tort committed by the government through an employee, agent, or instrumentality under its control. • The tort may or may not be actionable, depending on whether the government is entitled to sovereign immunity. A tort action against the U.S. government is regulated by the Federal Tort Claims Act, while a state action is governed by the state's tort claims act. See FEDERAL TORT CLAIMS ACT; sovereign immunity under IMMUNITY(1). [Cases: Municipal Corporations 723. C.J.S. Municipal Corporations §§ 661–663.]

intentional tort. A tort committed by someone acting with general or specific intent. • Examples include battery, false imprisonment, and trespass to land. — Also termed willful tort. Cf. NEGLIGENCE. [Cases: Torts 4. C.J.S. Torts §§ 2, 23.]

marital tort. A tort by one spouse against the other. • Since most jurisdictions have abolished interspousal tort immunity, courts have had to decide which tort claims to recognize between married persons. Among those that some, but not all, courts have chosen to recognize are assault and battery, including claims for infliction of sexually transmitted disease, and intentional and negligent infliction of emotional distress. — Also termed domestic tort. Cf. husband–wife immunity under IMMUNITY.

maritime tort. Any tort within the admiralty jurisdiction. [Cases: Admiralty 17. C.J.S.

Admiralty §§ 62–63.]

mass tort.A civil wrong that injures many people. • Examples include toxic emissions from a factory, the crash of a commercial airliner, and contamination from an industrial-waste-disposal site. Cf. toxic tort.

negligent tort.A tort committed by failure to observe the standard of care required by law under the circumstances. See NEGLIGENCE.

personal tort.A tort involving or consisting in an injury to one's person, reputation, or feelings, as distinguished from an injury or damage to real or personal property. [Cases: Torts 7. C.J.S. Torts § 90.]

prenatal tort. 1. A tort committed against a fetus. • If born alive, a child can sue for injuries resulting from tortious conduct predating the child's birth. [Cases: Death 15; Infants 72(2). C.J.S. Death §§ 34, 36, 68; Infants §§ 218–219.] 2. Loosely, any of several torts relating to reproduction, such as those giving rise to wrongful-birth actions, wrongful-life actions, and wrongful-pregnancy actions. [Cases: Health 686, 687.]

prima facie tort (prĪ-m<<schwa>> fay-shee-ee or -shee or -sh<<schwa>>). An unjustified, intentional infliction of harm on another person, resulting in damages, by one or more acts that would otherwise be lawful. • Some jurisdictions have established this tort to provide a remedy for malicious deeds — esp. in business and trade contexts — that are not actionable under traditional tort law. [Cases: Torts 1. C.J.S. Torts §§ 2–7.]

property tort.A tort involving damage to property. [Cases: Torts 11. C.J.S. Torts §§ 45, 58.]

public tort.A minor breach of the law (such as a parking violation) that, although it carries a criminal punishment, is considered a civil offense rather than a criminal one because it is merely a prohibited act (*malum prohibitum*) and not inherently reprehensible conduct (*malum in se*). — Also termed civil offense. Cf. civil wrong under WRONG; public delict under DELICT. [Cases: Criminal Law 26, 27. C.J.S. Criminal Law §§ 9–12, 44–45, 1110.]

quasi-tort. A wrong for which a nonperpetrator is held responsible; a tort for which one who did not directly commit it can nonetheless be found liable, as when a master is held liable for a tort committed by a servant. — Also spelled quasi tort. See vicarious liability under LIABILITY; RESPONDEAT SUPERIOR.[Cases: Action 14; Master and Servant 300; Negligence 483. C.J.S. Actions § 64; Employer–Employee Relationship §§ 181–184, 188–193, 203; Negligence §§ 152–153.]

sanctions tort.See SANCTIONS TORT.

toxic tort.A civil wrong arising from exposure to a toxic substance, such as asbestos, radiation, or hazardous waste. • A toxic tort can be remedied by a civil lawsuit (usu. a class action) or by administrative action. Cf. mass tort. [Cases: Negligence 306; Products Liability 43. C.J.S. Products Liability § 51.]

willful tort.See intentional tort.

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**TORTFEASOR**

tortfeasor (tort-fee-z<<schwa>>r). One who commits a tort; a wrongdoer.

concurrent tortfeasors. Two or more tortfeasors whose simultaneous actions cause injury to a third party. • Such tortfeasors are jointly and severally liable. [Cases: Negligence 421, 484; Torts 22. C.J.S. Negligence §§ 154–156, 198; Torts §§ 39–44.]

consecutive tortfeasors. Two or more tortfeasors whose actions, while occurring at different times, combine to cause a single injury to a third party. • Such tortfeasors are jointly and severally liable.

joint tortfeasors. Two or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit. See joint and several liability under LIABILITY. [Cases: Negligence 484; Torts 22. C.J.S. Negligence §§ 154–156; Torts §§ 39–44.]

successive tortfeasors. Two or more tortfeasors whose negligence occurs at different times and causes different injuries to the same third party. [Cases: Damages 34.]

**TORTIOUS**

tortious (tor-sh<<schwa>>s), adj. 1. Constituting a tort; wrongful <tortious conduct>. [Cases: Torts 1. C.J.S. Torts §§ 2–7.] 2. In the nature of a tort <tortious cause of action>.

**TORTIOUS ACT**

tortious act. See ACT(2).

**TORTIOUS BATTERY**

tortious battery. See BATTERY(2).

**TORTIOUS CONDUCT**

tortious conduct. See CONDUCT.

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

tortious interference with contractual relations. A third party's intentional inducement of a contracting party to break a contract, causing damage to the relationship between the contracting parties. — Also termed unlawful interference with contractual relations; interference with a contractual relationship; interference with contract; inducement of breach of contract; procurement of breach of contract. [Cases: Master and Servant 341; Torts 12. C.J.S. Employer–Employee Relationship §§ 264–267; Torts §§ 54, 59–65.]

**TORTIOUS INTERFERENCE WITH PROSPECTIVE ADVANTAGE**

tortious interference with prospective advantage. An intentional, damaging intrusion on another's potential business relationship, such as the opportunity of obtaining customers or employment. — Also termed interference with a business relationship. [Cases: Torts 10(1). C.J.S. Torts §§ 45–54.]

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**TORTIOUS LIABILITY**

tortious liability. See LIABILITY.

**TORT REFORM**

tort reform. A movement to reduce the amount of tort litigation, usu. involving legislation that restricts tort remedies or that caps damages awards (esp. for punitive damages). • Advocates of tort reform argue that it lowers insurance and healthcare costs and prevents windfalls, while opponents contend that it denies plaintiffs the recovery they deserve for their injuries.

**TORTURE**

torture, n. The infliction of intense pain to the body or mind to punish, to extract a confession or information, or to obtain sadistic pleasure. — torture, vb.

“By torture I mean the infliction of physically founded suffering or the threat immediately to inflict it, where such infliction or threat is intended to elicit, or such infliction is incidental to means adopted to elicit, matter of intelligence or forensic proof and the motive is one of military, civil, or ecclesiastical interest.” James Heath, *Torture and English Law* 3 (1982).

**TOTAL**

total, adj. 1. Whole; not divided; full; complete. 2. Utter; absolute.

**TOTAL ASSIGNMENT**

total assignment. See ASSIGNMENT(2).

**TOTAL BREACH**

total breach. See BREACH OF CONTRACT.

**TOTAL DISABILITY**

total disability. See DISABILITY(2).

**TOTAL-DISABILITY INSURANCE**

total-disability insurance. See general-disability insurance under INSURANCE.

**TOTAL EVICTION**

total eviction. See EVICTION.

**TOTAL FAILURE OF CONSIDERATION**

total failure of consideration. See FAILURE OF CONSIDERATION.

**TOTAL INCORPORATION**

total incorporation. See INCORPORATION.

**TOTALITY-OF-THE-CIRCUMSTANCES TEST**

totality-of-the-circumstances test.Criminal procedure. A standard for determining whether hearsay (such as an informant's tip) is sufficiently reliable to establish probable cause for an arrest or search warrant. • Under this test — which replaced Aguilar–Spinelli's two-pronged approach — the reliability of the hearsay is weighed by focusing on the entire situation as described in the probable-cause affidavit, and not on any one specific factor. *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317 (1983). Cf. AGUILAR–SPINELLI TEST. [Cases: Arrest 63.4(7); Searches and Seizures 115.1. C.J.S. Arrest § 28.]

#### TOTAL LOSS

total loss.See LOSS.

#### TOTAL-OFFSET RULE

total-offset rule.Torts. A theory of damages holding that the eroding effect of inflation offsets the accrual of interest on an award and makes it unnecessary to discount future damages to their present value.

#### TOTAL REPUDIATION

total repudiation.See REPUDIATION.

#### TOTA RE PERSPECTA

tota re perspecta (toh-t<<schwa>> ree p<<schwa>>r-spek-t<<schwa>>). [Latin] Hist. The whole matter being taken into account or considered. — Also termed *tota materia perspecta*.

#### TOTIDEM VERBIS

totidem verbis.[Latin] In so many words.

#### TOTIES QUOTIES

toties quoties (toh-shee-eez kwoh-shee-eez ortoh-sheez kwoh-sheez). [Latin] Hist. As often as.

#### TOTO CAELO

toto caelo (toh-toh see-loh), adv. [Latin “by the whole extent of the heavens”] As far as possible; diametrically <the parties differ with each other *toto caelo*>.

#### TOTO GENERE

toto genere (toh-toh jen-<<schwa>>-ree). [Latin] Hist. In their whole character; entirely.

#### TOTTEN TRUST

Totten trust.See TRUST.

#### TOUCH

touch,vb. Marine insurance. To stop at a port, usu. for a brief period. [Cases: Insurance 3059. C.J.S. Insurance § 768.]

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**TOUCH AND STAY**

touch and stay. Marine insurance. An insurer's giving to the insured the right to stop and remain at certain designated points in the course of the voyage. • A vessel that has the power to touch and stay at a place must confine itself strictly to the terms of the permission given, and any deviation during a stay — for example, by shipping or landing goods — will discharge the underwriters, unless the vessel has permission to trade as well as to touch and stay. [Cases: Insurance 3059. C.J.S. Insurance § 768.]

**TOUT COURT**

tout court (too koor), adv. [French “simply, without qualification”] Very briefly; without explanation.

**TOUT ENSEMBLE**

tout ensemble (toot oni-soin-bl<<schwa>>), n. [French “all together”] The overall visual effect of a design; general effect. • The phrase denotes a way of comparing two designs, by looking at the total impact rather than comparing individual design elements. That is the technique used in determining whether a design infringes someone's trade-dress rights, or whether a design-patent application shows a novel and nonobvious change from existing designs. Although the phrase is adverbial in French, it is typically used as a noun in English. See ANTIDISSECTION RULE.

**TOUTING**

touting, n. The solicitation of business by highly recommending a security or product, esp. when the recommendation's basis is largely puffery.

**TOUT TEMPS PRIST ET ENCORE PRIST**

tout temps prist et encore prist. [Law French] Common-law pleading. The clause in a plea of tender stating that the pleader is and always has been ready to pay. See PLEA OF TENDER.

**TOWAGE**

towage (toh-ij), n. 1. The act or service of towing ships and vessels, usu. by means of a small vessel called a tug. [Cases: Towage 1. C.J.S. Towage § 2.] 2. The charge for such a service. [Cases: Towage 5. C.J.S. Towage § 15.]

**TOWARD**

toward, adj. 1. In the direction of; on a course or line leading to (some place or something). 2. Coming soon; not long before.

**TOWING SERVICE**

towing service. See SALVAGE SERVICE.

**TO WIT**

to wit (too wit), adv. Archaic. That is to say; namely <the district attorney amended the complaint to include embezzlement, to wit, “stealing money that the company had entrusted to the accused”>. — Sometimes spelled to-wit; towit.

## TOWN

town. 1. A center of population that is larger and more fully developed than a village, but that (traditionally speaking) is not incorporated as a city. [Cases: Towns 1. C.J.S. Towns §§ 2–5.] 2. The territory within which this population lives. 3. Collectively, the people who live within this territory. Cf. CITY.

“A town is a precinct anciently containing ten families, whereupon in some countries they are called tithings, within one of which tithings every man must be dwelling, and find sureties for his good behaviour, else he that taketh him into his house is to be amerced in the leet.” Sir Henry Finch, *Law, or a Discourse Thereof* 80 (1759).

## TOWN-BONDING ACT

town-bonding act. A law authorizing a town, county, or other municipal corporation to issue its corporate bonds for the purpose of aiding in construction, often of railroads. — Also termed town-bonding law. [Cases: Towns 52. C.J.S. Towns § 210.]

## TOWN CLERK

town clerk. See CLERK(1).

## TOWN COLLECTOR

town collector. A town officer charged with collecting the taxes assessed by a town. [Cases: Towns 59. C.J.S. Towns §§ 241–252.]

## TOWN COMMISSIONER

town commissioner. See COMMISSIONER.

## TOWN CRIER

town crier. Hist. A town officer responsible for making proclamations related to town business.

## TOWN HALL

town hall. A building that houses the offices of a town's government. [Cases: Towns 35. C.J.S. Towns §§ 159–162, 164–165.]

## TOWNHOUSE

townhouse. A dwelling unit having usu. two or three stories and often connected to a similar structure by a common wall and (particularly in a planned-unit development) sharing and owning in common the surrounding grounds. — Also termed townhome.

## TOWN MEETING

town meeting. 1. A legal meeting of a town's qualified voters for the administration of local government or the enactment of legislation. • Town meetings of this type are common in some New England states. [Cases: Towns 17. C.J.S. Towns § 58.] 2. More generally, any assembly of a town's citizens for the purpose of discussing political, economic, or social issues. 3. Modernly, a televised event in which one or more politicians meet and talk with representative citizens about current issues.

#### TOWN ORDER

town order. An official written direction by the auditing officers of a town, directing the treasurer to pay a sum of money. — Also termed town warrant. [Cases: Towns 50. C.J.S. Towns §§ 201–207.]

#### TOWN PURPOSE

town purpose. A municipal project or expenditure that concerns the welfare and advantage of the town as a whole. [Cases: Towns 46(1). C.J.S. Towns §§ 184–186.]

#### TOWNSHIP

township. 1. In a government survey, a square tract six miles on each side, containing thirty-six square miles of land. 2. In some states, a civil and political subdivision of a county. — Abbr. tp. [Cases: Municipal Corporations 6. C.J.S. Municipal Corporations § 12.]

#### TOWNSHIP TRUSTEE

township trustee. See TRUSTEE(1).

#### TOWNSITE

townsite. A portion of the public domain segregated by proper authority and procedure as the site for a town.

#### TOWN TREASURER

town treasurer. An officer responsible for maintaining and disbursing town funds. [Cases: Towns 30. C.J.S. Towns §§ 120–125.]

#### TOWN WARRANT

town warrant. See TOWN ORDER.

#### TOXIC

toxic, adj. Having the character or producing the effects of a poison; produced by or resulting from a poison; poisonous. — Also termed toxicant. [Cases: Environmental Law 413.]

#### TOXICANT

toxicant (tok-si-k<<schwa>>nt), n. A poison; a toxic agent; any substance capable of producing toxication or poisoning.

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**TOXICATE**

toxicate, vb. Archaic. To poison. See INTOXICATION.

**TOXICOLOGY**

toxicology (tok-si-kol-<<schwa>>-jee). The branch of medicine that concerns poisons, their effects, their recognition, their antidotes, and generally the diagnosis and therapeutics of poisoning; the science of poisons. — toxicological (tok-si-k<<schwa>>-loj-i-k<<schwa>>l), adj.

**TOXIC TORT**

toxic tort. See TORT.

**TOXIC WASTE**

toxic waste. See WASTE(2).

**TOXIN**

toxin, n. 1. Broadly, any poison or toxicant. 2. As used in pathology and medical jurisprudence, any diffusible alkaloidal substance — such as the ptomaines, abrin, brucin, or serpent venoms — and esp. the poisonous products of disease-producing bacteria.

**TP**

tp. abbr. TOWNSHIP.

**TPL**

TPL. abbr. Third-party logistical service provider. See FREIGHT FORWARDER.

**TPPM**

TPPM. abbr. TANGIBLE-PERSONAL-PROPERTY MEMORANDUM.

**TPR**

TPR. abbr. TERMINATION OF PARENTAL RIGHTS.

**TRACES**

traces, n. See retrospectant evidence under EVIDENCE.

**TRACING**

tracing, n. 1. The process of tracking property's ownership or characteristics from the time of its origin to the present <tracing the vehicle's history>. • Parties in a divorce will be expected to trace the origins of property in existence at the time of marital dissolution in order to characterize each asset as separate or marital property (or as community property in some states). — Also termed tracing of funds; tracing of property. Cf. COMMINGLE. 2. The act of discovering and following a person's actions or movements <tracing the robber's steps>.

**TRACT**

tract. A specified parcel of land <a 40-acre tract>.

#### TRACT INDEX

tract index. See INDEX(1).

#### TRACTUS FUTURI TEMPORIS

tractus futuri temporis (trak-t<<schwa>>s fyoo-t[y]oor-Item-p<<schwa>>-ris). [Latin] Hist. A tract of future time.

#### TRADE

trade, n. 1. The business of buying and selling or bartering goods or services; COMMERCE.

inland trade. Trade wholly carried on within a country, as distinguished from foreign commerce.

precarious trade. Int'l law. Trade by a neutral country between two belligerent powers, allowed to exist at the latter's sufferance.

2. A transaction or swap. 3. A business or industry occupation; a craft or profession. — trade, vb.

#### TRADE ACCEPTANCE

trade acceptance. See ACCEPTANCE(4).

#### TRADE AGREEMENT

trade agreement. 1. An agreement — such as the North American Free Trade Agreement — between two or more nations concerning the buying and selling of each nation's goods. [Cases: Treaties 8, 11. C.J.S. Treaties §§ 6, 13–15.] 2. COLLECTIVE-BARGAINING AGREEMENT.

#### TRADE AND COMMERCE

trade and commerce. Every business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic.

#### TRADE AND DEVELOPMENT PROGRAM

Trade and Development Program. See UNITED STATES TRADE AND DEVELOPMENT AGENCY.

#### TRADE ASSOCIATION

trade association. See ASSOCIATION.

#### TRADE COUNCIL

trade council. A central labor union; the central organization of a local trade union. — Also termed trades council. See UNION.

#### TRADE DEFAMATION

trade defamation. See DEFAMATION.

#### TRADE DEFICIT

trade deficit. See DEFICIT.

#### TRADE DISCOUNT

trade discount. See DISCOUNT.

#### TRADE DISPARAGEMENT

trade disparagement. The common-law tort of belittling someone's business, goods, or services with a remark that is false or misleading but not necessarily defamatory. • To succeed at the action, a plaintiff must prove that (1) the defendant made the disparaging remark; (2) the defendant intended to injure the business, knew that the statement was false, or recklessly disregarded whether it was true; and (3) the statement resulted in special damages to the plaintiff, usu. by passing off. — Also termed commercial disparagement; product disparagement; injurious falsehood. Cf. trade defamation under DEFAMATION.

#### TRADE DISPUTE

trade dispute. 1. Int'l law. A dispute between two or more countries arising from tariff rates or other matters related to international commerce. 2. Labor law. A dispute between an employer and employees over pay, working conditions, or other employment-related matters. • An employee who leaves during a trade dispute is not entitled to benefits under the Unemployment Insurance Act.

#### TRADE DOLLAR

trade dollar. Hist. A United States dollar coin, made of silver, issued from 1873 to 1878 for use in foreign trade, esp. in eastern Asia. • A trade dollar was legal tender within the U.S. until 1876 when the coin's silver content fell to less than one dollar. From 1878 to 1885, trade dollars were minted only in proof sets, then discontinued.

#### TRADE DRAFT

trade draft. See DRAFT.

#### TRADE DRESS

trade dress. Trademarks. The overall appearance and image in the marketplace of a product or a commercial enterprise. • For a product, trade dress typically comprises packaging and labeling. For an enterprise, it typically comprises design and decor. If a trade dress is distinctive and nonfunctional, it may be protected under trademark law. — Also termed get-up; look and feel. [Cases: Trade Regulation 43. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 49–50.]

“ ‘The “trade dress” of a product is essentially its total image and overall appearance.’ It ‘involves the total image of a product and may include features such as size, shape, color or color

combinations, texture, graphics, or even particular sales techniques.’ ” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 765 n.1, 112 S.Ct. 2753, 2755 n.1 (1992) (citations omitted).

#### TRADE EMBARGO

trade embargo. See EMBARGO(3).

#### TRADE FIXTURE

trade fixture. See FIXTURE.

#### TRADE GAP

trade gap. See trade deficit under DEFICIT.

#### TRADE GUILD

trade guild. See GUILD(1).

#### TRADE LIBEL

trade libel. Trade defamation that is written or recorded. See trade defamation under DEFAMATION; DISPARAGEMENT(3). Cf. trade slander under SLANDER. [Cases: Libel and Slander 130. C.J.S. Libel and Slander; Injurious Falsehood §§ 204–206, 209.]

#### TRADEMARK

trademark, n. 1. A word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others. • The main purpose of a trademark is to designate the source of goods or services. In effect, the trademark is the commercial substitute for one's signature. To receive federal protection, a trademark must be (1) distinctive rather than merely descriptive or generic; (2) affixed to a product that is actually sold in the marketplace; and (3) registered with the U.S. Patent and Trademark Office. In its broadest sense, the term trademark includes a servicemark. Unregistered trademarks are protected under common-law only, and distinguished with the mark “TM.” — Often shortened to mark. Cf. SERVICEMARK. [Cases: Trade Regulation 1, 3. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 2, 4, 14–15, 19–23.] 2. The body of law dealing with how businesses distinctively identify their products. — Abbr. TM. See LANHAM ACT. Cf. SERVICEMARK; registered trademark.

“The protection of trade-marks is the law's recognition of the psychological function of symbols. If it is true that we live by symbols, it is no less true that we purchase goods by them. A trade-mark is a merchandising short-cut which induces a purchaser to select what he wants, or what he has been led to believe he wants. The owner of a mark exploits this human propensity by making every effort to impregnate the atmosphere of the market with the drawing power of a congenial symbol. Whatever the means employed, the aim is the same — to convey through the mark, in the minds of potential customers, the desirability of the commodity upon which it appears. Once this is attained, the trade-mark owner has something of value. If another poaches upon the commercial magnetism of the symbol he has created, the owner can obtain legal redress.”

Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co., 316 U.S. 203, 205, 62 S.Ct. 1022, 1024 (1942)(Frankfurter, J.).

“A trademark functions on three different levels: as an indication of origin or ownership, as a guarantee of constancy of the quality or other characteristics of a product or service, and as a medium of advertisement. Thus, a trademark guarantees, identifies, and sells the product or service to which it refers. These three facets of a trademark — of differing importance at different times, in different lines of business and for different products or services — are somewhat correlative. The classical function, that of identification, has been primarily responsible for molding the development of trademark law. The significance of the guarantee function has been somewhat exaggerated, while the implications of the advertisement function still await full recognition in the law.” 3 Rudolf Callmann, *The Law of Unfair Competition, Trademarks and Monopolies* § 17.01, at 2 (4th ed. 1998).

**abandoned trademark.** A mark whose owner has discontinued using it and has no intent to resume using it in the ordinary course of trade, or has allowed it to become a generic term or otherwise to lose its distinctive significance. • Under § 45 of the Lanham Act, nonuse of a mark for three consecutive years is prima facie evidence of abandonment. The owner of an abandoned mark has no trademark rights to exclude others from using it. — Also termed abandoned mark.

**arbitrary trademark.** A trademark containing common words that do not describe or suggest any characteristic of the product to which the trademark is assigned. • Because arbitrary marks are neither descriptive nor suggestive of the goods or services in connection with which they are used, they are inherently distinctive, require no proof of secondary meaning, and are entitled to strong legal protection. A name that would be generic if used with one product may be arbitrary if used with another. For example, “Bicycle” may be registered to identify playing cards, but it could not be protected as a mark to identify bicycles. — Also termed arbitrary mark; arbitrary name. [Cases: Trade Regulation 24. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 47.]

**certification trademark.** A word, symbol, or device used on goods or services to certify the place of origin, material, mode of manufacture, quality, or other characteristic. See 15 USCA § 1127. — Also termed certification mark. Cf. collective trademark.

**coined trademark.** See fanciful trademark.

**collective trademark.** A trademark or servicemark used by an association, union, or other group either to identify the group's products or services or to signify membership in the group. • Collective marks — such as “Realtor” and “American Peanut Farmers” — can be federally registered under the Lanham Act. — Also termed collective mark. Cf. certification trademark.

**Community trademark.** A trademark registered with the European Union Trademark Office and recognized in all EU countries. — Also termed Community mark.

**composite trademark** (k<<schwa>>m-poz-it). A trademark or servicemark made up of several words that form a distinctive whole, even if the individual words are ordinary. • Advertising slogans are often protectable as composite marks. A trademark registrant can establish ownership in the whole mark, but must disclaim ownership in any unregistrable parts. — Also termed

composite mark; hybrid mark; hybrid trademark. [Cases: Trade Regulation 45. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 62.]

counterfeit trademark.A spurious mark that is identical to, or substantially indistinguishable from, a registered trademark. 15 USCA § 11. — Also termed counterfeit mark. [Cases: Trade Regulation 312. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 151.]

descriptive trademark.A trademark that is a meaningful word in common usage or that merely describes or suggests a product. • This type of trademark is entitled to protection only if it has acquired distinctiveness over time. — Also termed descriptive mark; weak mark; weak trademark. See SECONDARY MEANING.

“The bar against descriptive marks simply reflects the requirement of distinctiveness. 15 U.S.C.A. § 1052(e)(1). It often is said that a mark should not be analyzed in a piecemeal fashion. Instead, the mark as a whole must be tested for descriptiveness or secondary meaning. A mark that merely describes a product cannot possibly distinguish one producer from another. As an obvious example, ‘apple’ would be a descriptive name for that fruit, and, as a mark, would serve only to confuse the consumer, for it would tell nothing about the different origins of a selection of apples produced by different producers. Moreover, to allow an owner to pre-empt the term ‘apple’ would afford the owner a monopoly of something that is necessary to describe the goods for sale.” Arthur R. Miller & Michael H. Davis, *Intellectual Property: Patents, Trademarks, and Copyright in a Nutshell* 163 (2d ed. 1990).

disparaging trademark.A trademark that tends to bring a person or class of people into contempt or disrepute. • Section 2(a) of the Lanham Act prohibits the registration of disparaging marks. 15 USCA § 1052(a). — Also termed disparaging mark. See prohibited and reserved trademark. [Cases: Trade Regulation 282. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 190.]

distinctive trademark.A very strong trademark, one that consumers immediately and consistently associate with specific goods and services. • A distinctive trademark is usu. fanciful, arbitrary, or suggestive, but a descriptive trademark or common name can become distinctive if it becomes so well known as to acquire a secondary meaning. — Also termed distinctive mark.

evocative trademark.See suggestive trademark.

famous trademark.A trademark that not only is distinctive but also has been used and heavily advertised or widely accepted in the channels of trade over a long time, and is so well known that consumers immediately associate it with one specific product or service. • Only famous marks are protected from dilution. Eight nonexclusive statutory factors are often used in determining whether a particular mark is famous. See 15 USCA § 1125(c)(1)(A)–(H). — Also termed famous mark. [Cases: Trade Regulation 366. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 79.]

fanciful trademark.A trademark consisting of a made-up or coined word; a distinctive trademark or tradename having no independent meaning. • This type of mark is considered inherently distinctive and thus protected at common law, and is eligible for trademark registration

from the time of its first use. — Also termed fanciful mark; fanciful term; coined trademark; coined mark; coined term. [Cases: Trade Regulation 24. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 47.]

“Arbitrary or fanciful marks convey nothing about the nature of the product except through knowledge of the market. For instance, Kodak conveys nothing about photographic equipment except to those knowledgeable about that trade.” Arthur R. Miller & Michael H. Davis, *Intellectual Property in a Nutshell* 168 (2d ed. 1990).

geographically descriptive trademark.A trademark that uses a geographic name to indicate where the goods are grown or manufactured. • This type of mark is protected at common law, and can be registered only on proof that it has acquired distinctiveness over time. — Also termed geographically descriptive mark. See SECONDARY MEANING. [Cases: Trade Regulation 32. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 55.]

house trademark.A trademark that identifies a company, a division of a company, or a company's product line as the source of a product or service. • A house mark and a product mark often appear together on a label. — Also termed house mark. Cf. product trademark. [Cases: Trade Regulation 27. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 51.]

hybrid trademark.See composite trademark.

product trademark.A trademark that identifies a single good or service, rather than the producing company, a division of a company, or a product line. • A product mark and a house mark often appear together on a label. — Also termed product mark. Cf. house trademark.

prohibited and reserved trademark.A mark that is not protected under the Lanham Act because it either falls into an expressly excluded category or else is similar to a mark or marks granted by statute to others. 15 USCA § 1052. — Also termed prohibited and reserved mark.

pure trademark.See technical trademark.

registered trademark.A trademark that has been filed and recorded with the Patent and Trademark Office. • A federally registered trademark is usu. marked by the symbol “®” or a phrase such as “Registered U.S. Patent & Trademark Office” so that the trademark owner can collect treble damages or the defendant's profits for an infringement. If the symbol is not used, the owner can collect these damages or profits only by proving that the defendant actually knew that the mark was registered. — Also termed registered mark. Cf. SERVICEMARK. [Cases: Trade Regulation 151. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 147, 153.]

strong trademark.An inherently distinctive trademark that is used — usu. by the owner only — in a fictitious, arbitrary, and fanciful manner, and is therefore given greater protection than a weak mark under the trademark laws. — Also termed strong mark.

suggestive trademark.A trademark that suggests rather than describes the particular characteristics of a product, thus requiring a consumer to use imagination to draw a conclusion about the nature of the product. • A suggestive trademark is entitled to protection without proof of secondary meaning. — Also termed evocative trademark; suggestive mark; suggestive name. See

SECONDARY MEANING. [Cases: Trade Regulation 25. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 48.]

technical trademark. A mark that satisfies all the elements of a common-law trademark. • The essential elements of a technical trademark are as follows: (1) its use to designate a commercial source would not interfere with anyone else's right to use the mark; (2) it must primarily identify the source, rather than the product's category or grade of quality; (3) it must be attached to the product, label, or collateral materials rather than merely used in advertising; and (4) its use must not undermine some public policy, as by being scandalous or deceptive. — Also termed pure trademark; pure mark; technical mark; true trademark.

true trademark. See technical trademark.

weak trademark. See descriptive trademark.

#### TRADEMARK ACT OF 1946

Trademark Act of 1946. See LANHAM ACT.

#### TRADEMARK APPLICATION

trademark application. A mark owner's written request, filed with the U.S. Patent and Trademark Office, for federal registration of a mark, accompanied by a sample of the mark to be protected and the filing fee. • The application may describe either an existing mark that is in use or a proposed mark. — Also termed servicemark application. [Cases: Trade Regulation 212. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 176–177.]

combined application. An application to register a mark to be used in more than one class of goods or services. • A combined application is given a single serial number, but it is examined as if it were a set of distinct single applications. A separate filing fee must be paid for each class. — Also termed multiple-class application. [Cases: Trade Regulation 212. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 176–177.]

intent-to-use application. An application filed with the U.S. Patent and Trademark Office to protect a trademark or servicemark that is not currently in commercial use but whose owner has a bona fide intent to use the mark commercially in the foreseeable future. • Trademark rights have traditionally been restricted to marks actually used in trade, but a 1988 amendment to the Lanham Act permitted applications to be filed before actual use begins if the mark otherwise qualifies for the Principal Register. 15 USCA § 1051(b). See PRINCIPAL REGISTER. [Cases: Trade Regulation 212. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 176–177.]

multiple-class application. See combined application.

#### TRADEMARK-APPLICATION AMENDMENT

trademark-application amendment. A proposed modification to a registered trademark or to an application for trademark registration.

amendment of registration. Trademarks. Amendment of an existing trademark registration to

make minor changes in the design of a mark to reflect how the mark is actually used. • The U.S. Patent and Trademark Office permits an amendment of registration only if it does not materially alter the character of the mark. The PTO amends a registration by attaching to the printed registration a printed certificate showing the amendment. — Also termed amendment of mark in registration. [Cases: Trade Regulation 252. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 199.]

amendment to allege use.Trademarks. A supplement to a trademark applicant's intent-to-use application filed to inform the U.S. Patent and Trademark Office that a trademark is actually in use in interstate commerce. • The form is titled “Allegation of Use for Intent to Use Application.” — Also termed statement of use; allegation of use. — Abbr. AAU. See DECLARATION OF USE.

amendment to different register.Trademarks. An amendment to an application for registration on the Principal Register, requesting that the mark instead be placed on the supplemental register.

#### TRADEMARK CLASS

trademark class.Any one of 42 international trademark-protection categories, each comprising similar goods or services. • There are 34 goods classes and 8 services classes. A trademark is protected in each class that is relevant to the product's or service's business area.

#### TRADEMARK CYBERPIRACY PREVENTION ACT

Trademark Cyberpiracy Prevention Act.See ANTICYBERSQUATTING CONSUMER PROTECTION ACT .

#### TRADEMARK ELECTRONIC APPLICATION SYSTEM

Trademark Electronic Application System.A method of applying to the U.S. Patent and Trademark Office for a trademark over the Internet. • The system is available at <http://www.uspto.gov/teas/index.html>. — Abbr. TEAS.

#### TRADEMARK INFRINGEMENT

trademark infringement.See INFRINGEMENT.

#### TRADEMARK LAW TREATY

Trademark Law Treaty.A 1994 treaty that reduces barriers to applying for and registering trademarks internationally, and establishes a model international-trademark-registration form acceptable by all signatory nations. • The United States is a party to the treaty.

#### TRADEMARK MANUAL OF EXAMINING PROCEDURE

Trademark Manual of Examining Procedure.Trademarks. The U.S. Patent and Trademark Office book containing guidelines and procedures for trademark examiners. — Abbr. TMEP.

#### TRADEMARK OFFICE

Trademark Office.See UNITED STATES PATENT AND TRADEMARK OFFICE.

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**TRADEMARK-REGISTRATION NOTICE**

trademark-registration notice. A notice that a mark is protected by registration with the U.S. Patent and Trademark Office, shown by placing a symbol next to the mark. • In the U.S., the R-within-a-circle symbol (®) is common but the legend “Reg. U.S. Pat. Off.” is acceptable. Only federally registered marks may use this notice.

**TRADEMARK TRIAL AND APPEALS BOARD**

Trademark Trial and Appeals Board. An administrative body that hears and decides disputes involving trademark ownership, conflicts between marks, and registrability of marks. — Abbr. TTAB.

**TRADE MEANING**

trade meaning. See SECONDARY MEANING.

**TRADENAME**

tradename. 1. A name, style, or symbol used to distinguish a company, partnership, or business (as opposed to a product or service); the name under which a business operates. • A tradename is a means of identifying a business — or its products or services — to establish goodwill. It symbolizes the business's reputation. [Cases: Trade Regulation 1, 3, 7. C.J.S. Trade-Marks, Trade-Names, and Unfair Competition §§ 2, 4, 14–15, 19–25.] 2. A trademark that was not originally susceptible to exclusive appropriation but has acquired a secondary meaning. — Also termed brand name; commercial name.

**TRADE OR BUSINESS**

trade or business. Tax. Any business or professional activity conducted by a taxpayer with the objective of earning a profit. • If the taxpayer can show that the primary purpose and intention is to make a profit, the taxpayer may deduct certain expenses as trade-or-business expenses under the Internal Revenue Code. [Cases: Internal Revenue 3314.1–3318. C.J.S. Internal Revenue §§ 150–153, 163, 184, 270.]

**TRADE PRACTICE**

trade practice. A customary way of doing business; esp., a method of using specifications for size, thickness, shape, or quality adopted within a given industry.

**TRADE PRICE**

trade price. See PRICE.

**TRADER**

trader. 1. A merchant; a retailer; one who buys goods to sell them at a profit. 2. One who sells goods substantially in the form in which they are bought; one who has not converted them into another form of property by skill and labor. 3. One who, as a member of a stock exchange, buys and sells securities on the exchange floor either for brokers or on his or her own account. 4. One

who buys and sells commodities and commodity futures for others or for his or her own account in anticipation of a speculative profit.

#### TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

Trade-Related Aspects of Intellectual Property Rights. See TRIPS.

#### TRADER'S SETTLEMENT

trader's settlement. See SETTLEMENT(1).

#### TRADES COUNCIL

trades council. See TRADE COUNCIL.

#### TRADE SECRET

trade secret. 1. A formula, process, device, or other business information that is kept confidential to maintain an advantage over competitors; information — including a formula, pattern, compilation, program, device, method, technique, or process — that (1) derives independent economic value, actual or potential, from not being generally known or readily ascertainable by others who can obtain economic value from its disclosure or use, and (2) is the subject of reasonable efforts, under the circumstances, to maintain its secrecy. • This definition states the majority view, which is found in the Uniform Trade Secrets Act. [Cases: Torts 10(5). C.J.S. Torts §§ 55–57.] 2. Information that (1) is not generally known or ascertainable, (2) provides a competitive advantage, (3) has been developed at the plaintiff's expense and is used continuously in the plaintiff's business, and (4) is the subject of the plaintiff's intent to keep it confidential. • This definition states the minority view, which is found in the Restatement of Torts § 757 cmt. b (1939). [Cases: Torts 10(5). C.J.S. Torts §§ 55–57.]

“So long as the owner of a secret keeps it a secret he has a monopoly. While equity affords protection to trade secrets against betrayal by those under contract or in confidential relations with the owners of the secret, there is no difference between contracts as to trade secrets and contracts as to any other personal property, as far as restraint of trade is concerned.” Harry D. Nims, *The Law of Unfair Competition and Trade-Marks* 406 (1929).

“The concept of protecting trade secrets is related to the principles of trademark and patent law. The scope of trade secret protection, however, goes well beyond that of patent law. Unlike patent law, protection under trade secret law is not tied to the information's novelty; rather, the essence of a trade secret is its relative secrecy. Additionally, unlike patent law, trade secret law draws less from property principles, and more from the equitable principles surrounding confidential relationships.” Mark A. Rothstein et al., *Employment Law* § 8.18, at 516 (1994).

“The difficulty with defining ‘trade secrets’ in the abstract is that there are so many ways to go about it. In large part, this is a reflection of the fact that the law of trade secrets, unlike the law of patents or copyright, is a creature of the common law rather than of statute. In trying to impose a moral solution on cases of apparent breach of confidence, judges have juggled competing policy interests while trying to draw a line of protection that would lead to the result that they believed

was right.... In other words, the development of trade secret law has been a bit chaotic ....” James Pooley, *Trade Secrets* § 1.01, at 1–1 to 1–3 (1998).

#### TRADE SLANDER

trade slander. See SLANDER.

#### TRADESMAN

tradesman (traydz-m<<schwa>>n), n.1. One who buys and sells things for profit; esp., a shopkeeper. 2. A shopkeeper's employee. 3. A mechanic or artisan whose livelihood depends on manual labor; one who is skilled in a trade. — Also termed tradesperson.

#### TRADE SURPLUS

trade surplus. See SURPLUS.

#### TRADE UNION

trade union. See UNION.

#### TRADE USAGE

trade usage. See USAGE.

#### TRADING

trading. The business of buying and selling, esp. of commodities and securities. [Cases: Commodity Futures Trading Regulation 11; Securities Regulation 35.10–67.15. C.J.S. Securities Regulation §§ 103–241, 273, 456.]

day trading. The act or practice of buying and selling stock shares or other securities on the same day, esp. over the Internet, usu. for the purpose of making a quick profit on the difference between the buying price and the selling price.

secondary trading. The buying and selling of securities in the market between members of the public, involving neither the issuer nor the underwriter of the securities.

short-term trading. Investment in securities only to hold them long enough to profit from market-price fluctuations. [Cases: Securities Regulation 53.10–53.22. C.J.S. Securities Regulation §§ 142–153.]

#### TRADING CORPORATION

trading corporation. See CORPORATION.

#### TRADING CURB

trading curb. A temporary restriction on trading in a particular security to curtail dramatic price movements. — Sometimes shortened to curb. Cf. TRADING HALT .

#### TRADING HALT

trading halt. A temporary suspension of trading in a particular security for a specific reason, such as an order imbalance or a pending news announcement. • Options can be exercised during a trading halt, and open orders may be canceled. — Also termed suspended trading. Cf. TRADING CURB.

#### TRADING PARTNERSHIP

trading partnership. See PARTNERSHIP.

#### TRADING VOYAGE

trading voyage. See VOYAGE.

#### TRADING WITH THE ENEMY

trading with the enemy. The federal offense of carrying on commerce with a nation or with a subject or ally of a nation with which the United States is at war. [Cases: War and National Emergency 514.]

#### TRADITIO

traditio (tr<<schwa>>-dish-ee-oh), n. [Latin] Roman law. The simple delivery of a piece of property by one person to another with the intention of transferring ownership. • This was the simplest form of transfer, and ultimately it was applied to land as well as movables. Constructive delivery was developed. — Also termed traditio rei. See BREVI MANU; CONSTITUTUM POSSESSORIUM. Pl. traditiones (tr<<schwa>>-dish-ee-oh-nee-z).

#### TRADITIO BREVI MANU

traditio brevi manu (tr<<schwa>>-dish-ee-oh bree-vIman-yoo). [Latin] Roman law. The surrender of the mediate possession of a thing to the person who is already in immediate possession of it. • This is a type of constructive delivery in which a delivery to the mediate possessor and redelivery to the immediate possessor are unnecessary. See BREVI MANU. For the other two types of constructive delivery, see ATTORNMENT; CONSTITUTUM POSSESSORIUM.

“The first [type of constructive delivery] is that which the Roman lawyers termed traditio brevi manu, but which has no recognised name in the language of English law.... If, for example, I lend a book to someone, and afterwards, while he still retains it, I agree with him to sell it to him, or to make him a present of it, I can effectually deliver it to him in fulfilment of this sale or gift, by telling him that he may keep it. It is not necessary for him to go through the form of handing it back to me and receiving it a second time from my hands.” John Salmond, *Jurisprudence* 306 (Glanville L. Williams ed., 10th ed. 1947).

#### TRADITIO LONGA MANU

traditio longa manu (tr<<schwa>>-dish-ee-oh long-g<<schwa>> man-yoo). [Latin] Roman law. See CONSTITUTUM POSSESSORIUM.

#### TRADITION

tradition. 1. Past customs and usages that influence or govern present acts or practices. [Cases: Customs and Usages 10. C.J.S. Customs and Usages §§ 15–19, 26–41.] 2. The delivery of an item or an estate.

#### TRADITIONAL PUBLIC FORUM

traditional public forum. See PUBLIC FORUM.

#### TRADITIONAL SURROGACY

traditional surrogacy. See SURROGACY.

#### TRADITIONAL EVIDENCE

traditional evidence. See EVIDENCE.

#### TRADITIO REI.

traditio rei. See TRADITIO.

#### TRADO TIBI ECCLESIAM

trado tibi ecclesiam (trad-oh tib-I e-klee-z[h]ee-<<schwa>>m). [Law Latin] Hist. Eccles. law & Scots law. I deliver this church (or living) to you. • A patron uttered this phrase when presenting an incumbent to a vacant church. Cf. ACCIPE ECCLESIAM.

#### TRADUCE

traduce (tr<<schwa>>-d[y]oos), vb. To slander; calumniate. — traducement, n.

#### TRAFFIC

traffic, n. 1. Commerce; trade; the sale or exchange of such things as merchandise, bills, and money. 2. The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. 3. People or things being transported along a route. 4. The passing to and fro of people, animals, vehicles, and vessels along a transportation route.

traffic, vb. To trade or deal in (goods, esp. illicit drugs or other contraband) <trafficking in heroin>. [Cases: Controlled Substances 32, 82.] — trafficking, n. — trafficker, n.

#### TRAFFIC BALANCE

traffic balance. The balance of moneys collected in payment for transporting passengers and freight.

#### TRAFFIC COURT

traffic court. See COURT.

#### TRAFFIC REGULATION

traffic regulation. A prescribed rule of conduct for traffic; a rule intended to promote the orderly and safe flow of traffic. [Cases: Automobiles 7. C.J.S. Motor Vehicles §§ 24, 26–27,

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29–33.]

#### TRAILER CLAUSE

trailer clause. An employee's promise to assign to the employer the rights to all inventions developed while employed and for a specified time afterward. • For the covenant to be enforceable, the time restriction must be reasonable. — Also termed holdover clause.

#### TRAITOR

traitor, n. 1. A person who commits treason against his or her country. [Cases: Treason 10. C.J.S. Treason §§ 10–11.] 2. One who betrays a person, a cause, or an obligation. — traitorous, adj.

#### TRAMP

tramp, n. 1. A person who roams about from place to place, begging or living without labor or visible means of support; a vagrant. 2. TRAMP STEAMER.

#### TRAMP CORPORATION

tramp corporation. See CORPORATION.

#### TRAMP STEAMER

tramp steamer. A ship that is not scheduled to sail between prearranged ports of call but that stops at those ports for which it has cargo. • A tramp steamer typically carries bulk cargoes such as oil, grain, coal, steel, iron ore, or lumber, and is contracted with a charterparty rather than a bill of lading. — Often shortened to tramp.

#### TRANCHE

tranche (tranh), n. [French “slice”] Securities. 1. A bond issue derived from a pooling of similar debt obligations. • A tranche usu. differs from other issues by maturity date or rate of return. 2. A block of bonds designated for sale in a foreign country. — Also spelled tranch; trench. See COLLATERALIZED MORTGAGE OBLIGATION .

#### TRANSACT

transact, vb. 1. To carry on or conduct (negotiations, business, etc.) to a conclusion <transact business>. 2. Civil law. To settle (a dispute) by mutual concession. See TRANSACTION(4). 3. To carry on or conduct negotiations or business <refuses to transact with the enemy>.

#### TRANSACTIO

transactio (tran-sak-shee-oh), n. [Latin “compromise”] Roman law. The renunciation of a contested claim or defense in litigation in consideration of a quid pro quo. Pl. transactiones (tran-sak-shee-oh-nee-z).

#### TRANSACTION

transaction, n. 1. The act or an instance of conducting business or other dealings; esp., the formation, performance, or discharge of a contract. 2. Something performed or carried out; a

business agreement or exchange. 3. Any activity involving two or more persons. 4. Civil law. An agreement that is intended by the parties to prevent or end a dispute and in which they make reciprocal concessions. La. Civ. Code art. 3071. — transactional,adj.

arm's-length transaction. 1. A transaction between two unrelated and unaffiliated parties. 2. A transaction between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises.

closed transaction. Tax. A transaction in which an amount realized on a sale or exchange can be established for the purpose of stating a gain or loss. [Cases: Internal Revenue 3393.]

colorable transaction. A sham transaction having the appearance of authenticity; a pretended transaction <the court set aside the colorable transaction>.

#### TRANSACTIONAL AUDIT

transactional audit. See AUDIT.

#### TRANSACTIONAL IMMUNITY

transactional immunity. See IMMUNITY(3).

#### TRANSACTIONAL LAWYER

transactional lawyer. 1. LAWYER. 2. OFFICE PRACTITIONER.

#### TRANSACTIONAL TAKEOVER DEFENSE

transactional takeover defense. See TAKEOVER DEFENSE.

#### TRANSACTION CAUSATION

transaction causation. See CAUSATION.

#### TRANSACTION COST

transaction cost. See COST(1).

#### TRANSACTION-OR-OCCURRENCE TEST

transaction-or-occurrence test. A test used to determine whether, under Fed. R. Civ. P. 13(a), a particular claim is a compulsory counterclaim. • Four different tests have been suggested: (1) Are the legal and factual issues raised by the claim and counterclaim largely the same? (2) Would res judicata bar a later suit on the counterclaim in the absence of the compulsory-counterclaim rule? (3) Will substantially the same evidence support or refute both the plaintiff's claim and the counterclaim? (4) Are the claim and counterclaim logically related? See compulsory counterclaim under COUNTERCLAIM. [Cases: Federal Civil Procedure 776; Set-off and Counterclaim 60. C.J.S. Set-off and Counterclaim §§ 102–103.]

#### TRANSACTION SLIP

transaction slip. See CONFIRMATION SLIP.

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**TRANSCARCERATION**

transcarceration. The movement of prisoners or institutionalized mentally ill persons from facility to facility, rather than from a prison or an institution back to the community, as when a prisoner is transferred to a halfway house or to a drug-treatment facility.

**TRANSCRIBE**

transcribe,vb. To make a written or typed copy of (spoken material, esp. testimony).

**TRANSCRIPT**

transcript,n. A handwritten, printed, or typed copy of testimony given orally; esp., the official record of proceedings in a trial or hearing, as taken down by a court reporter. — Also termed report of proceedings; reporter's record. [Cases: Appeal and Error 593–611; Criminal Law 1104; Federal Courts 694. C.J.S. Appeal and Error §§ 440, 447, 506–517.]

**TRANSCRIPTION**

transcription. 1. The act or process of transcribing. 2. Something transcribed; a transcript.

**TRANSCRIPT OF PROCEEDINGS**

transcript of proceedings.A compilation of all documents relating to a bond issue, typically including the notices, affidavits of notices, a bond resolution (or bond ordinance), official statement, trust indenture and loan agreements, and minutes of meetings of all authorizing bodies.

**TRANSEUNT CUM UNIVERSITATE**

transeunt cum universitate (tran-see-<<schwa>>nt k<<schwa>>m yoo-ni-v<<schwa>>r-s<<schwa>>-tay-tee). [Latin] Hist. They are transferred with the whole estate.

**TRANSFER**

transfer,n.1. Any mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance. • The term embraces every method — direct or indirect, absolute or conditional, voluntary or involuntary — of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption. 2. Negotiation of an instrument according to the forms of law. • The four methods of transfer are by indorsement, by delivery, by assignment, and by operation of law. [Cases: Municipal Corporations 917. C.J.S. Municipal Corporations §§ 1658–1660.] 3. A conveyance of property or title from one person to another. [Cases: Bills and Notes 176–222. C.J.S. Bills and Notes; Letters of Credit §§ 4, 29, 139–141, 143–159.]

colorable transfer.A sham transfer having the appearance of authenticity; a pretended transfer. See ILLUSORY-TRANSFER DOCTRINE. [Cases: Sales 197–218.5; Vendor and Purchaser 145–159. C.J.S. Sales §§ 214–218, 221, 223–229; Vendor and Purchaser §§ 378–393, 395–396.]

constructive transfer.A delivery of an item — esp. a controlled substance — by someone other than the owner but at the owner's direction. [Cases: Controlled Substances 32, 82.]

incomplete transfer.Tax. A decedent's inter vivos transfer that is not completed for federal estate-tax purposes because the decedent retains significant powers over the property's possession or enjoyment. • Because the transfer is incomplete, some or all of the property's value will be included in the transferor's gross estate. IRC (26 USCA) §§ 2036–2038. [Cases: Internal Revenue 4159(3). C.J.S. Internal Revenue § 515.]

inter vivos transfer (in-t<<schwa>>r vI-vohs orvee-vohs). A transfer of property made during the transferor's lifetime.

testamentary transfer.A transfer made in a will. • The transfer may be of something less than absolute ownership. Cf. testamentary gift under GIFT.

transfer in contemplation of death.See gift causa mortis under GIFT.

transfer in fraud of creditors.A conveyance of property made in an attempt to prevent the transferor's creditors from making a claim to it. [Cases: Fraudulent Conveyances 1.]

transfer,vb.1. To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of. 2. To sell or give.

#### TRANSFERABLE

transferable (trans-f<<schwa>>r-<<schwa>>-b<<schwa>>l), adj. Capable of being transferred, together with all rights of the original holder.

#### TRANSFERABLE LETTER OF CREDIT

transferable letter of credit.See LETTER OF CREDIT.

#### TRANSFERABLE VOTE

transferable vote.See single transferable vote under VOTE(1).

#### TRANSFER AGENT

transfer agent.See AGENT(2).

#### TRANSFER-AGENT-RUN DIVIDEND-REINVESTMENT PLAN

transfer-agent-run dividend-reinvestment plan.See DIVIDEND-REINVESTMENT PLAN.

#### TRANSFEEE

transferee. One to whom a property interest is conveyed.

#### TRANSFEEE LIABILITY

transferee liability.Tax. The liability of a transferee to pay taxes owed by the transferor. • This liability is limited to the value of the asset transferred. The Internal Revenue Service can, for example, force a donee to pay the gift tax when the donor who made the transfer cannot pay it.

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IRC (26 USCA) §§ 6901–6905. [Cases: Internal Revenue 4817; Taxation 1011. C.J.S. Internal Revenue § 724; Taxation § 1701.]

#### TRANSFERENCE

transference.Scots law. The act of substituting a representative for a deceased litigant in a pending action. • This is similar to the common law's substitution of parties.

#### TRANSFER HEARING

transfer hearing.See HEARING.

#### TRANSFER OF A CASE

transfer of a case.The removal of a case from the jurisdiction of one court or judge to another by lawful authority. — Also termed transfer of a cause. See REMOVAL(2). [Cases: Removal of Cases 16. C.J.S. Removal of Causes § 2.]

#### TRANSFER OF VENUE

transfer of venue.See CHANGE OF VENUE.

#### TRANSFEROR

transferor. One who conveys an interest in property.

#### TRANSFER PAYMENT

transfer payment.(usu. pl.) A governmental payment to a person who has neither provided goods or services nor invested money in exchange for the payment. • Examples include unemployment compensation and welfare payments. [Cases: United States 82(1). C.J.S. United States §§ 155, 158.]

#### TRANSFER PRICE

transfer price.See PRICE.

#### TRANSFERRED INTENT

transferred intent.See INTENT(1).

#### TRANSFERRED-INTENT DOCTRINE

transferred-intent doctrine.The rule that if one person intends to harm a second person but instead unintentionally harms a third, the first person's criminal or tortious intent toward the second applies to the third as well. • Thus, the offender may be prosecuted for an intent crime or sued by the third person for an intentional tort. See INTENT. [Cases: Assault and Battery 3, 49; Torts 4. C.J.S. Assault and Battery §§ 5, 9, 15, 67, 71; Torts §§ 2, 23.]

#### TRANSFERRED MALICE

transferred malice.See MALICE.

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**TRANSFER STATUTE**

transfer statute. A provision that allows or mandates the trial of a juvenile as an adult in a criminal court for a criminal act. • Every state has some form of transfer statute. The Supreme Court has held that a juvenile cannot be transferred to criminal court under a discretionary statute “without ceremony — without hearing, without effective assistance of counsel, without a statement of reasons.” *Kent v. United States*, 383 U.S. 541, 554, 86 S.Ct. 1045, 1053–54 (1966).

automatic-transfer statute. A law requiring the transfer from delinquency court to criminal court for certain statutorily enumerated offenses if certain statutory requirements are met.

discretionary-transfer statute. A law that allows, but does not mandate, the transfer from delinquency court to criminal court for certain statutorily enumerated offenses if certain statutory requirements are met. • The prosecutor has discretion to request the transfer, and the judge has discretion to order the transfer.

reverse transfer statute. A provision that allows a criminal court to return certain cases to juvenile court.

**TRANSFERS TO MINORS ACT**

Transfers to Minors Act. See **UNIFORM TRANSFERS TO MINORS ACT**.

**TRANSFER TAX**

transfer tax. See **TAX**.

**TRANSFER WARRANT**

transfer warrant. See **WARRANTY(2)**.

**TRANSFORMATIVE USE**

transformative use. Copyright. The use of copyrighted material in a manner, or for a purpose, that differs from the original use in such a way that the expression, meaning, or message is essentially new. • The term was coined by Judge Pierre N. Leval in a 1990 law-review article entitled *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1111 (1990). The concept was first applied by the U.S. Supreme Court in *Campbell v. Acuff–Rose Music, Inc.*, 510 U.S. 569, 114 S.Ct. 1164 (1994). The Court held that the transformative use in that case was a fair, noninfringing use of the plaintiff's copyright. [Cases: Copyrights and Intellectual Property 53.2. C.J.S. Copyrights and Intellectual Property §§ 45–46, 48–50.]

**TRANSGENIC**

transgenic (tranz-jen-ik), adj. Patents. Of, relating to, or describing a living organism that has been genetically altered by introducing recombinant DNA from another organism.

**TRANSGRESS**

transgress, vb. 1. To exceed the limits of (a law, rule, regulation, etc.); to break or violate. 2. To pass over (limits, boundaries, etc.). — transgressor, n.

**TRANSGRESSION**

transgression. Archaic. See MISDEMEANOR.

**TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM**

transgressione, ad audiendum et terminandum (trans-gres[h]-ee-oh-nee, ad aw-dee-en-d<<schwa>>m et t<<schwa>>r-m<<schwa>>-nan-d<<schwa>>m). See DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM .

**TRANSGRESSIVE TRUST**

transgressive trust. See TRUST.

**TRANSIENT**

transient (tran-sh<<schwa>>nt), adj. Temporary; impermanent; passing away after a short time.

transient, n. 1. A person or thing whose presence is temporary or fleeting. 2. TRANSIENT PERSON.

**TRANSIENT FOREIGNER**

transient foreigner. One who visits a country without the intent to remain.

**TRANSIENT JURISDICTION**

transient jurisdiction. See JURISDICTION.

**TRANSIENT MERCHANT**

transient merchant. A trader who sells merchandise at a temporary location without intending to become a permanent merchant in that place. [Cases: Licenses 15(2).]

**TRANSIENT PERSON**

transient person. One who has no legal residence within a jurisdiction for the purpose of a state venue statute. — Also termed transient. [Cases: Venue 18. C.J.S. Venue §§ 79, 98.]

**TRANSIT**

transit, n. 1. The transportation of goods or persons from one place to another. [Cases: Insurance 2137(3). C.J.S. Insurance § 419.] 2. Passage; the act of passing.

**TRANSITIONAL ALIMONY**

transitional alimony. See rehabilitative alimony under ALIMONY.

**TRANSITION PHRASE**

transition phrase. Patents. In a patent claim, the word or phrase that relates the preamble to the body. • The transition is often the term “comprising,” “having,” “including,” “consisting of,” or “consisting essentially of.” Cf. PREAMBLE(2); BODY OF A CLAIM.

**TRANSITIVE COVENANT**

transitive covenant. See COVENANT(1).

**TRANSITORY**

transitory (tran-s<<schwa>>-tor-ee or tran-z<<schwa>>-), adj. That passes from place to place; capable of passing or being changed from one place to another.

**TRANSITORY ACTION**

transitory action. See ACTION(4).

**TRANSITORY TREATY**

transitory treaty. See TREATY(1).

**TRANSITORY WRONG**

transitory wrong. See WRONG.

**TRANSIT PASSAGE**

transit passage. Int'l law. The right of a vessel or airplane to exercise freedom of navigation and overflight solely for the purpose of continuous and expeditious transit between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone. — Also termed right of transit passage. Cf. INNOCENT PASSAGE.

**TRANSIT TERRA CUM ONERE**

transit terra cum onere (tran-sit [or tran-zit] ter-<<schwa>> k<<schwa>>m on-<<schwa>>r-ee). [Law Latin] Hist. The land passes with its burdens.

**TRANSLATION**

translation, n. 1. The transformation of language from one form to another; esp., the systematic rendering of the language of a book, document, or speech into another language.

“Generally speaking, a translation need not consist of transferring from one language into another; it may apply to the expression of the same thoughts in other words of the same language.” *Rasmussen v. Baker*, 50 P. 819, 826 (Wyo. 1897).

2. Archaic. The transfer of property. 3. Eccles. law. The removal of a bishop from one diocese to another.

**TRANSLATIVE**

translative (trans- or tranz-lay-tiv), adj. Making or causing a transfer or conveyance.

**TRANSLATIVE FACT**

translative fact. See FACT.

**TRANSMISSION**

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transmission.Civil law. The passing of an inheritance to an heir.

#### TRANSMIT

transmit,vb.1. To send or transfer (a thing) from one person or place to another. 2. To communicate.

#### TRANSMITTAL LETTER

transmittal letter.A nonsubstantive letter that establishes a record of delivery, such as a letter to a court clerk advising that a particular pleading is enclosed for filing. • Lawyers have traditionally opened transmittal letters with the phrase “Enclosed please find,” even though that phrasing has been widely condemned in business-writing handbooks since the late 19th century. A transmittal letter may properly begin with a range of openers as informal as “Here is” to the more formal “Enclosed is.” — Also termed cover letter.

#### TRANSMUTATION

transmutation. A change in the nature of something; esp., in family law, the transformation of separate property into marital property, or of marital property into separate property.

#### TRANSNATIONAL ADOPTION

transnational adoption.See international adoption under ADOPTION.

#### TRANSNATIONAL CORPORATION

transnational corporation.See multinational corporation under CORPORATION.

#### TRANSNATIONAL LAW

transnational law. 1. The amalgam of common principles of domestic and international law dealing esp. with problems arising from agreements made between sovereign states and foreign private parties. 2. The problems to which such principles apply. Cf. INTERNATIONAL LAW.

#### TRANSPARENCY

transparency. Openness; clarity; lack of guile and attempts to hide damaging information. • The word is used of financial disclosures, organizational policies and practices, lawmaking, and other activities where organizations interaction with the public.

#### TRANSPORT

transport,vb. To carry or convey (a thing) from one place to another.

#### TRANSPORTATION

transportation,n.1. The movement of goods or persons from one place to another by a carrier. 2.Criminal law. A type of punishment that sends the criminal out of the country to another place (usu. a penal colony) for a specified period. Cf. DEPORTATION.

#### TRANSPORTATION SECURITY ADMINISTRATION

Transportation Security Administration. The federal agency charged with promoting safety and security of air, water, rail, and highway transportation. • The agency was created in the Department of Transportation after the terrorist attacks of September 11, 2001, and was transferred to the Department of Homeland Security in 2002.

#### TRANSRACIAL ADOPTION

transracial adoption. See ADOPTION.

#### TRANSSEXUAL

transsexual. A person born with the physical characteristics of one sex but who has undergone, or is preparing to undergo, sex-change surgery. See SEX REASSIGNMENT .

#### TRANSSHIPMENT

transshipment. Maritime law. The act of taking cargo out of one ship and loading it on another. • Transshipment may also involve transfer of cargo to another mode of transportation, such as rail or truck. [Cases: Shipping 112. C.J.S. Shipping §§ 266–267.] — transship, vb.

#### TRANSVESTITIVE FACT

transvestitive fact. See FACT.

#### TRAP

trap, n. 1. A device for capturing living creatures, such as a pitfall, snare, or machine that shuts suddenly.

mantrap. A booby-trap; esp., a device to catch a trespasser or burglar. • A mantrap is not illegal if it is designed merely to sound an alarm and not cause bodily harm. Illegal mantraps include manufactured devices such as spring guns, and dangerous hidden conditions (manufactured or natural) that can injure a person, such as pitfalls. — Also spelled man-trap.

2. Any device or contrivance by which one may be caught unawares; stratagem; snare.  
3. Torts. An ultrahazardous hidden peril of which the property owner or occupier, but not a licensee, has knowledge. • A trap can exist even if it was not designed or intended to catch or entrap anything. [Cases: Negligence 1040(3). C.J.S. Negligence §§ 440–451, 487–491, 527, 537–538, 542–554, 560, 562–563, 569–570, 572.]

#### TRASHING

trashing. DECONSTRUCTION.

#### TRAVAUX PRÉPARATOIRES

travaux préparatoires (tra-voh pray-par-<<schwa>>-twah[r]z). [French “preparatory works”] Materials used in preparing the ultimate form of an agreement or statute, and esp. of an international treaty; the draft or legislative history of a treaty. See LEGISLATIVE HISTORY.

#### TRAVEL-ACCIDENT INSURANCE

travel-accident insurance. See INSURANCE.

#### TRAVEL ACT

Travel Act. A federal law, enacted in 1961, that prohibits conduct intended to promote, direct, or manage illegal business activities in interstate commerce. • This statute was enacted to create federal jurisdiction over many criminal activities traditionally handled by state and local governments to help those jurisdictions cope with increasingly complex interstate criminal activity. 18 USCA § 1952. [Cases: Commerce 82.10. C.J.S. Commerce §§ 133–134, 136–141.]

#### TRAVELED PLACE

traveled place. A place where the public has, in some manner, acquired the legal right to travel.

#### TRAVELER

traveler, n. A person who passes from place to place, for any reason.

#### TRAVELER'S CHECK

traveler's check. See CHECK.

#### TRAVELER'S LETTER OF CREDIT

traveler's letter of credit. See LETTER OF CREDIT.

#### TRAVEL EXPENSE

travel expense. See EXPENSE.

#### TRAVERSE

traverse (trav-⟨⟨schwa⟩⟩rs), n. Common-law pleading. A formal denial of a factual allegation made in the opposing party's pleading <Smith filed a traverse to Allen's complaint, asserting that he did not knowingly provide false information>. See DENIAL. [Cases: Pleading 112–129. C.J.S. Pleading §§ 183–196.] — traverse (trav-⟨⟨schwa⟩⟩rs or tr⟨⟨schwa⟩⟩-v⟨⟨schwa⟩⟩rs), vb.

“It is said that the technical term traverse, from transverto, to turn over, is applied to an issue taken upon an indictment for a misdemeanor, and means nothing more than turning over or putting off the trial to a following session or assize; and that thus it is that the officer of the court asks the party whether he is ready to try then, or will traverse to the next session; though some have referred its meaning originally to the denying or taking issue upon an indictment, without reference to the delay of trial, and which seems more correct.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 486 (2d ed. 1826).

common traverse. A traverse consisting of a tender of issue — that is, a denial accompanied by a formal offer for decision of the point denied — with a denial that expressly contradicts the terms of the allegation traversed. — Also termed specific traverse. [Cases: Pleading 117. C.J.S. Pleading § 184.]

“The common or specific traverse is an express denial of a particular allegation in the opposing pleading in the terms of the allegation, accompanied by a tender of issue or formal offer of the point denied for trial.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 168, at 303 (Henry Winthrop Ballantine ed., 3d ed. 1923).

cumulative traverse. A traverse that analyzes a proposition into its constituent parts and traverses them cumulatively. • It amounts to the same thing as traversing the one entire proposition, since the several parts traversed must all make up one entire proposition or point.

general traverse. A denial of all the facts in an opponent's pleading.

special traverse. A denial of one material fact in an opponent's pleading; a traverse that explains or qualifies the denial. • The essential parts of a special traverse are an inducement, a denial, and a verification. [Cases: Pleading 118.]

specific traverse. See common traverse.

#### TRAVERSE JURY

traverse jury. See petit jury under JURY.

#### TRAVERSER

traverser, n. One who traverses or denies a pleading.

#### TRAVERSE THE REQUIREMENT

traverse the requirement, vb. Patents. To (1) respond in detail to a patent examiner's decision that the patent application claims more than one invention and (2) ask that the restriction requirement be reconsidered. • The response must specifically explain why restriction should not be required, not merely assert that the requirement is wrong. Failure to traverse a requirement forfeits any rights to appeal the decision.

#### TREACHERY

treachery, n. A deliberate and willful betrayal of trust and confidence.

#### TREASON

treason, n. The offense of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or by materially supporting its enemies. — Also termed high treason; *alta proditio*. Cf. *SEDITION*. [Cases: Treason 1. C.J.S. Treason §§ 2–3, 5.] — treasonable, treasonous, adj.

“The judgment of high treason was, until very lately, an exception to the merciful tenor of our judgments. The least offensive form which is given in the books is, that the offender ‘be carried back to the place from whence he came, and from thence to be drawn to the place of execution, and be there hanged by the neck, and cut down alive, and that his entrails be taken out and burned before his face, and his head cut off, and his body divided into four quarters, and his head and quarters disposed of at the king's pleasure.’ Some of the precedents add other circumstances, of

still more grossness and aggravation. But this horrible denunciation was very seldom executed in its more terrible niceties." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 702 (2d ed. 1826).

"[S]everal important characteristics marked off high treason from all other crimes. For one thing, it earned a peculiarly ghastly punishment. For another, it was 'unclergyable,' while every felony was 'clergyable' unless some statute had otherwise ordained. Thirdly, while the felon's land escheated to his lord, the traitor's land was forfeited to the king. This last distinction influenced the development of the law." 2 Frederick Pollock & Frederic William Maitland, *History of English Law Before the Time of Edward I* 500 (2d ed. 1899).

"Treason against the United States, shall consist only in levying war against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." U.S. Const. art. III, § 3.

constructive treason. 1. Speech that manifests a desire or intent to make war against the state or materially support an enemy, even though the speech is unaccompanied by acts that further the desire or intent. • There is no crime of constructive treason in U.S. law because treason requires an affirmative act, and intent alone cannot substitute for an act. Cf. *SEDITION*. 2.Hist. Speech that is critical of the government. • This sense arose during the reign of Henry VIII of England. Critical speech remained a capital crime until the early 18th century.

petty treason.Archaic. Murder of one's employer or husband. • Until 1828, this act was considered treason under English law. — Also spelled *petit treason*.

"The frequent reference to high treason is a carry-over from an ancient division of the offense that has long since disappeared. In the feudal stage of history the relation of lord to vassal was quite similar to the relation of king to subject. The relation of husband to wife came to be regarded in the same category, as also did the relation of master to servant, and that of prelate to clergyman. And just as it was high treason to kill the king, so a malicious homicide was *petit treason* if it involved a killing of (originally, lord by vassal, and later) husband by wife, master by mistress or servant, or prelate by clergyman. When the special brutality provided by the common law for the punishment of *petit treason* disappeared, this crime became merged with murder and only one crime of treason remained." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 498–99 (3d ed. 1982).

#### TREASONABLE MISDEMEANOR

reasonable misdemeanor.English law. An act that is likely to endanger or alarm the monarch, or disturb the public peace in the presence of the monarch. Cf. *TREASON FELONY*.

#### TREASON FELONY

treason felony.English law. An act that shows an intention of committing treason, unaccompanied by any further act to carry out that intention. • This offense usu. results in life imprisonment rather than the death penalty. Cf. *TREASONABLE MISDEMEANOR*.

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**TREAS. REG.**

Treas. Reg.abbr.TREASURY REGULATION.

**TREASURER**

treasurer. An organization's chief financial officer. • The treasurer's duties typically include prudently depositing (or, if authorized, investing) and safeguarding the organization's funds and otherwise managing its finances; monitoring compliance with any applicable law relating to such finances and filing any required report; disbursing money as authorized; and reporting to the organization on the state of the treasury. — Also termed finance officer; financial secretary; quartermaster. [Cases: Corporations 301. C.J.S. Corporations § 470.]

**TREASURER, LORD HIGH**

Treasurer, Lord High.See LORD HIGH TREASURER.

**TREASURER OF THE UNITED STATES**

Treasurer of the United States.The officer in the U.S. Department of the Treasury responsible for overseeing the operations of the Bureau of Engraving and Printing and the U.S. Mint.

**TREASURE TROVE**

treasure trove.[Law French “treasure found”] Valuables (usu. gold or silver) found hidden in the ground or other private place, the owner of which is unknown. • At common law in the United States, the finder of a treasure trove can usu. claim good title against all except the true owner. But until 1996, all treasure trove found in the United Kingdom belonged to the Crown.

“Treasure hid in the earth, not upon the earth, nor in the sea, and coin though not hidden, being found is the king's; we call it treasure trove.” Sir Henry Finch, *Law, or a Discourse Thereof* 177 (1759).

“Treasure trove consists essentially of articles of gold and silver, intentionally hidden for safety in the earth or in some secret place, the owner being unknown, although it is probable that the category might include articles made from the required metals buried in the ground for other purposes, for example in connection with an ancient sepulture. In the United States, the state has never claimed title to lost property by virtue of its character as treasure trove, and it has been stated that the law relating thereto is merged with that of lost goods generally, although there is authority for the proposition that while treasure trove in the United States belongs to the finder, found goods not of that character go to the owner of the locus in quo.” Ray Andrews Brown, *The Law of Personal Property* § 13, at 27–28 (2d ed. 1955).

**TREASURY**

treasury. 1. A place or building in which stores of wealth are kept; esp., a place where public revenues are deposited and kept and from which money is disbursed to defray government expenses. [Cases: United States 81.C.J.S. United States § 154.] 2. (cap.) DEPARTMENT OF THE TREASURY.

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**TREASURY, FIRST LORD**

Treasury, First Lord. See **FIRST LORD OF THE TREASURY**.

**TREASURY BENCH**

Treasury Bench. In the British House of Commons, the first row of seats on the right hand of the speaker. • The Treasury Bench is occupied by the First Lord of the Treasury or principal minister of the Crown.

**TREASURY BILL**

Treasury bill. A short-term debt security issued by the federal government, with a maturity of 13, 26, or 52 weeks. • These bills — auctioned weekly or quarterly — pay interest in the form of the difference between their discounted purchase price and their par value at maturity. — Abbr. T-bill. [Cases: United States 89. C.J.S. United States §§ 165–166.]

**TREASURY BOND**

Treasury bond. A long-term debt security issued by the federal government, with a maturity of 10 to 30 years. • These bonds are considered risk-free, but they usu. pay relatively little interest. — Abbr. T-bond. [Cases: United States 91. C.J.S. United States §§ 164, 167.]

**TREASURY CERTIFICATE**

treasury certificate. An obligation of the federal government maturing in one year and on which interest is paid on a coupon basis. [Cases: United States 90. C.J.S. United States §§ 162, 167.]

**TREASURY DEPARTMENT**

Treasury Department. See **DEPARTMENT OF THE TREASURY**.

**TREASURY NOTE**

Treasury note. An intermediate-term debt security issued by the federal government, with a maturity of two to ten years. • These notes are considered risk-free, but they usu. pay relatively little interest. — Abbr. T-note. [Cases: United States 90. C.J.S. United States §§ 162, 167.]

**TREASURY REGULATION**

Treasury Regulation. A regulation promulgated by the U.S. Treasury Department to explain or interpret a section of the Internal Revenue Code. • Treasury Regulations are binding on all taxpayers. — Abbr. Treas. Reg. [Cases: Internal Revenue 3038–3042, 3045, 3048.]

**TREASURYS**

Treasurys. Debt obligations of the federal government backed by the full faith and credit of the government. See **TREASURY BILL**; **TREASURY BOND**; **TREASURY CERTIFICATE**; **TREASURY NOTE**. [Cases: United States 89–91. C.J.S. United States §§ 162, 164–167.]

**TREASURY SECURITY**

treasury security. See treasury stock under STOCK.

#### TREASURY SHARE

treasury share. See treasury stock under STOCK.

#### TREASURY STOCK

treasury stock. See STOCK.

#### TREASURY WARRANT

treasury warrant. See WARRANT(2).

#### TREATING-PHYSICIAN RULE

treating-physician rule. The principle that a treating physician's diagnoses and findings about the degree of a social-security claimant's impairment are binding on an administrative-law judge in the absence of substantial contrary evidence. [Cases: Social Security and Public Welfare 143.65. C.J.S. Social Security and Public Welfare § 71.]

#### TREATY

treaty. 1. An agreement formally signed, ratified, or adhered to between two nations or sovereigns; an international agreement concluded between two or more states in written form and governed by international law. — Also termed accord; convention; covenant; declaration; pact. Cf. EXECUTIVE AGREEMENT. [Cases: Treaties 1. C.J.S. Treaties § 2.]

“[T]he legal terminology used by the United States to describe international agreements is markedly different from that employed elsewhere. Under the U.S. Constitution, the term ‘treaty’ has a particular meaning — an agreement made by the President with the advice and consent of the Senate.” David J. Bederman, *International Law Frameworks* 158 (2001).

commercial treaty. A bilateral or multilateral treaty concerning trade or other mercantile activities. • Such a treaty may be general in nature, as by supplying the framework of long-term commercial relations. Or it may be specific, as by detailing the conditions of particular branches of trade or other commercial transactions. Sometimes a treaty of this kind deals with an individual project, such as a guaranty agreement. [Cases: Treaties 8. C.J.S. Treaties § 6.]

defensive treaty. A treaty in which each party agrees to come to the other's aid if one is attacked by another nation. See treaty of alliance.

“Defensive treaties, as generally understood, are made to secure the parties to them against aggression from other states. They may, also, aim at the maintenance of internal quiet, or of neutrality amid the conflicts of neighboring powers. To attempt to gain any of these objects is not necessarily contrary to the law of nations or to natural justice. Mutual aid, indeed, against the disturbers of internal quiet, may secure an absolute government against popular revolutions in favor of liberty, but if a confederation or alliance may secure to its members the enjoyment of free institutions, there is no reason, as far as international law is concerned, why institutions of an opposite kind may not support themselves in the same way.” Theodore D. Woolsey, *Introduction*

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to the Study of International Law § 107, at 171 (5th ed. 1878).

**dispositive treaty** (dis-poz-<<schwa>>-tiv). A treaty by which a country takes over territory by impressing a special character on it, creating something analogous to a servitude or easement in private law.

**guarantee treaty.**An agreement between countries directly or indirectly establishing a unilateral or reciprocal guarantee. — Also spelled guaranty treaty. — Also termed treaty of guarantee; quasi-guarantee treaty; pseudo-guarantee treaty.

“In many instances where the term ‘guarantee’ is used in international treaties, the contracting parties merely intend to underline their willingness to comply with the obligation they have entered into. Obligations of this kind do not fall within the concept of guarantee in the proper sense of the term. In this particular respect, the expression ‘pseudo-guarantees’ or ‘quasi-guarantee treaties’ is used.” George Ress, “Guarantee Treaties,” in 2 Encyclopedia of Public International Law 634 (1995).

**mixed treaty.**A treaty with characteristics of different types of treaties, esp. contrasting types (e.g., permanent and transitory, or personal and real).

**nonaggression treaty.**See NONAGGRESSION PACT.

**nonproliferation treaty.**A treaty forbidding the transfer of nuclear weapons from a country with a nuclear arsenal to one that does not have nuclear-weapons capability. • The first such treaty was concluded in 1968, and now more than 100 nations have agreed to its terms. — Also termed nuclear-nonproliferation treaty.

**offensive treaty.**A treaty in which the parties agree to declare war jointly on another nation and join forces to wage the war. See treaty of alliance.

**peace treaty.**A treaty signed by heads of state to end a war. — Also termed treaty of peace. [Cases: War and National Emergency 33. C.J.S. War and National Defense § 50.]

“A peace differs not from a truce essentially in the length of its contemplated duration, for there may be very long armistices and a state of peace continuing only a definite number of years. The ancients often concluded treaties of peace which were to expire after a certain time ....” Theodore D. Woolsey, Introduction to the Study of International Law § 158, at 268 (5th ed. 1878).

**permanent treaty.**A treaty that contemplates ongoing performance (as with a treaty of neutrality).

**personal treaty.**Hist. A treaty relating exclusively to the contracting sovereign as a person. • Examples of personal treaties are family alliances and treaties guaranteeing the throne to a particular sovereign and his or her family. With the advent of constitutional government in Europe, personal treaties have lost their importance.

**pseudo-guarantee treaty.**See guarantee treaty.

**quasi-guarantee treaty.**See guarantee treaty.

real treaty.A treaty relating solely to the subject matter of the compact, independently of the persons of the contracting sovereigns. • Real treaties continue to bind the state even when the heads of government change.

transitory treaty.A treaty carried into effect once and for all, so that it is complete when the act has been performed (as with a treaty of cession).

treaty of alliance.A treaty establishing mutual and reciprocal support obligations. • A treaty of alliance may be for support in defense, aggression, or both. See defensive treaty; offensive treaty.

“A treaty of alliance can bind the parties to no injustice, nor justify either of them in being accessory to an act of bad faith on the part of another. Hence a defensive, still more an offensive alliance, can only contemplate, if lawful, the warding off of intended injustice.” Theodore D. Woolsey, *Introduction to the Study of International Law* § 107, at 172 (5th ed. 1878).

treaty of guarantee.See guarantee treaty.

treaty of neutrality.A treaty in which the parties agree not to engage in any aggressive action against one another, whether individually or jointly with others, and not to interfere with the other party's affairs. • There is no commitment to aid another party in the event of war — only to refrain from becoming involved.

“Treaties of neutrality are reciprocal engagements to have no part in the conflicts between other powers — to remain at peace in an apprehended or an actual war. They are suggested by, and prevent the evils of that interference of nations in each other's affairs, for the preservation of the balance of power or the safety of the parties interfering, which is so common in modern history.” Theodore D. Woolsey, *Introduction to the Study of International Law* § 107, at 172 (5th ed. 1878).

treaty of peace.See peace treaty.

2. A contract or agreement between insurers providing for treaty reinsurance. See treaty reinsurance under REINSURANCE. [Cases: Insurance 3593.] 3. A negotiated contract or agreement between private persons.

private treaty.An agreement to convey property negotiated by the buyer and seller or their agents. • This term is esp. common in the U.K.

#### TREATY CLAUSE

Treaty Clause.The constitutional provision giving the President the power to make treaties, with the advice and consent of the Senate. U.S. Const. art. II, § 2. [Cases: Treaties 2. C.J.S. Treaties § 3.]

#### TREATY-CREATED LAW

treaty-created law.See CONVENTIONAL LAW.

#### TREATY-MADE LAW

treaty-made law.See CONVENTIONAL LAW.

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**TREATY OF REINSURANCE**

treaty of reinsurance. See REINSURANCE TREATY.

**TREATY POWER**

treaty power. The President's constitutional authority to make treaties, with the advice and consent of the Senate. See TREATY CLAUSE. [Cases: Treaties 2. C.J.S. Treaties § 3.]

**TREATY REINSURANCE**

treaty reinsurance. See REINSURANCE.

**TREBLE DAMAGES**

treble damages. See DAMAGES.

**TREBUCKET**

trebucket (tree-b<<schwa>>k-it). See CASTIGATORY.

**TREND**

trend. A price pattern in the stock market generally or in a particular stock.

major trend. A long-term trend of the stock market; a general increase or decrease of stock prices over an extended period. — Also termed fundamental trend.

market trend. The direction of stock-market prices over a several-month period.

**TRESPASS**

trespass (tres-p<<schwa>>s ortres-pas), n. 1. An unlawful act committed against the person or property of another; esp., wrongful entry on another's real property. [Cases: Trespass 1–15. C.J.S. Trespass §§ 2, 4–16, 28–29, 74, 164.] 2. At common law, a legal action for injuries resulting from an unlawful act of this kind. 3. Archaic. MISDEMEANOR. — trespass, vb. — trespassory (tres-p<<schwa>>-sor-ee), adj.

“The familiar legend on notice-boards, ‘Trespassers will be prosecuted,’ implies that it is a crime, but this may usually be dismissed as ‘a wooden lie.’ Yet in time past the idea was correct, for trespass of any sort was punishable by fine and imprisonment as well as redressible by an action for damages, and actually it was not until 1694 that the punitive element disappeared although it had faded into obsolescence long before that date. But nowadays trespass is never criminal except under special statutes which make it punishable ....” P.H. Winfield, *A Textbook of the Law of Tort* § 90, at 307 (5th ed. 1950).

“The term trespass has been used by lawyers and laymen in three senses of varying degrees of generality. (1) In its widest and original signification it includes any wrongful act — any infringement or transgression of the rule of right. This use is common in the Authorized Version of the Bible, and was presumably familiar when that version was first published. But it never obtained recognition in the technical language of the law, and is now archaic even in popular

speech. (2) In a second and narrower signification — its true legal sense — the term means any legal wrong for which the appropriate remedy was a writ of trespass — viz. any direct and forcible injury to person, land, or chattels. (3) The third and narrowest meaning of the term is that in which, in accordance with popular speech, it is limited to one particular kind of trespass in the second sense — viz. the tort of trespass to land (trespass quare clausum fregit).” R.F.V. Heuston, *Salmond on the Law of Torts* 4 (17th ed. 1977).

“Before the word ‘misdemeanor’ became well established the old writers tended to use the word ‘trespass’ to indicate an offense below the grade of felony. And it was used at times by Blackstone for this purpose, as in the phrase ‘treason, felony, or trespass.’ ” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 405 (3d ed. 1982).

cattle-trespass.Hist. Trespass by one's cattle or other animals on another's land, as a result of which the other might either distrain them damage feasant or sue for trespass in the local courts. • At first (from the early 13th century) this type of trespass applied only to intentional trespass by the keeper of the cattle, but in 1353 it was extended to beasts that had merely escaped. This type of trespass gave rise to strict liability.

“It has long been settled that liability for cattle-trespass is independent of negligence, and it is that which constitutes its strictness. And, in spite of some confusion in time past, it is quite distinct from the scienter type of liability. In *Lee v. Riley* [(1865), 18 C.B. (N.S.) 722] the defendant's mare strayed through a gap in his fence, which it was his duty to repair, to the plaintiff's land and there quarrelled with and kicked the plaintiff's horse. The defendant was held liable for cattle-trespass. A great deal of argument was expended at the trial on whether the defendant had notice of the ferocious disposition of his mare, but Erle, C.J., pointed out that, however relevant that might have been in a scienter action, it was beside the mark in one for cattle-trespass.” P.H. Winfield, *A Textbook of the Law of Tort* § 148, at 518 (5th ed. 1950).

constructive trespass.See trespass to chattels.

continuing trespass.A trespass in the nature of a permanent invasion on another's rights, such as a sign that overhangs another's property. [Cases: Trespass 51. C.J.S. Trespass §§ 143, 152.]

criminal trespass. 1. A trespass on property that is clearly marked against trespass by signs or fences. [Cases: Trespass 81. C.J.S. Trespass § 183.] 2. A trespass in which the trespasser remains on the property after being ordered off by a person authorized to do so.

innocent trespass.A trespass committed either unintentionally or in good faith. [Cases: Trespass 2. C.J.S. Trespass §§ 6, 164.]

joint trespass.A trespass that two or more persons have united in committing, or that some have actually committed while others commanded, encouraged, or directed it. [Cases: Trespass 31. C.J.S. Trespass §§ 3, 34.]

permanent trespass.A trespass consisting of a series of acts, done on consecutive days, that are of the same nature and that are renewed or continued from day to day, so that the acts in the aggregate form one indivisible harm.

trespass ab initio (ab i-nish-ee-oh). An entry on land that, though begun innocently or with a privilege, is deemed a trespass from the beginning because of conduct that abuses the privilege. [Cases: Trespass 13. C.J.S. Trespass §§ 14, 16.]

trespass by relation. A trespass committed when the plaintiff had a right to immediate possession of land but had not yet exercised that right. • When the plaintiff takes possession, a legal fiction treats the plaintiff as having had possession ever since the accrual of the right of entry. This is known as trespass by relation because the plaintiff's possession relates back to the time when the plaintiff first acquired a right to possession.

trespass de bonis asportatis (dee boh-nis as-p<<schwa>>r-tay-tis). [Latin “trespass for carrying goods away”] 1. A wrongful taking of chattels. • This type of trespassory taking was also an element of common-law larceny. 2. At common law, an action to recover damages for the wrongful taking of chattels. — Abbr. trespass d.b.a. — Often shortened to trespass de bonis. — Also termed trespass to personal property. [Cases: Trespass 6. C.J.S. Trespass § 9.]

trespass on the case. At common law, an action to recover damages that are not the immediate result of a wrongful act but rather a later consequence. • This action was the precursor to a variety of modern-day tort claims, including negligence, nuisance, and business torts. — Often shortened to case. — Also termed action on the case; breve de transgressione super casum. [Cases: Trespass 1, 16, 17. C.J.S. Trespass §§ 2, 4–5, 62–64, 70–74.]

“The most important of the writs framed under the authority of the statute of Westminster 2 is that of ‘trespass on the case,’ to meet cases analogous to trespass in delict, but lacking the element of direct or immediate force or violence. This writ gave a form of action in which the court was enabled to render judgment of damages in cases of fraud, deceit, negligence, want of skill, defamation oral or written, and all other injurious acts or omissions resulting in harm to person or property, but wanting the *vi et armis*, the element of direct force and violence, to constitute trespass.” Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* 7 (2d ed. 1899).

“Common law recognizes a distinction between the actions of trespass *vi et armis* (or simply trespass) and trespass on the case. This distinction has been expressed by stating that a tort committed by the direct application of force is remediable by an action for trespass, while a tort accomplished indirectly is a matter for trespass on the case. Other authority makes the distinction on the basis of the defendant's intent, stating that trespass involves a willful and deliberate act while trespass on the case contemplates an act or omission resulting from negligence.” 1 Am. Jur. 2d Actions § 23, at 738 (1994).

trespass quare clausum fregit (kwair-ee-klaw-z<<schwa>>m-free-jit). [Latin “why he broke the close”] 1. A person's unlawful entry on another's land that is visibly enclosed. • This tort consists of doing any of the following without lawful justification: (1) entering upon land in the possession of another, (2) remaining on the land, or (3) placing or projecting any object upon it. 2. At common law, an action to recover damages resulting from another's unlawful entry on one's land that is visibly enclosed. — Abbr. trespass q.c.f. — Also termed trespass to real property; trespass to land; quare clausum querentis fregit. See trespass *vi et armis*. [Cases: Trespass 10, 16,

## 17. C.J.S. Trespass §§ 13–15, 62–64, 70–74.]

“Every unwarrantable entry on another's soil the law entitles a trespass by breaking his close; the words of the writ of trespass commanding the defendant to shew cause, *quare clausum querentis fregit*. For every man's land is in the eye of the law enclosed and set apart from his neighbour's: and that either by a visible and material fence, as one field is divided from another by a hedge; or, by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. And every such entry or breach of a man's close carries necessarily along with it some damage or other: for, if no other special loss can be assigned, yet still the words of the writ itself specify one general damage, viz. the treading down and bruising his herbage.” 3 William Blackstone, *Commentaries on the Laws of England* 209–10 (1768).

trespass to chattels. The act of committing, without lawful justification, any act of direct physical interference with a chattel possessed by another. • The act must amount to a direct forcible injury. — Also termed trespass to goods; constructive trespass. [Cases: Trespass 5. C.J.S. Trespass § 9.]

“Trespass to goods is a wrongful interference with the possession of them. It may take innumerable forms, such as scratching the panel of a coach, removing a tire from a car, injuring or destroying goods, or in the case of animals, beating or killing them, or infecting them with disease. All that is necessary is that the harm done should be direct ....” P.H. Winfield, *A Textbook of the Law of Tort* § 99, at 345 (5th ed. 1950).

trespass to goods. See trespass to chattels.

trespass to land. See trespass *quare clausum fregit* (2).

trespass to personal property. See trespass *de bonis asportatis*.

trespass to real property. See trespass *quare clausum fregit* (2).

trespass to try title. 1. In some states, an action for the recovery of property unlawfully withheld from an owner who has the immediate right to possession. 2. A procedure under which a claim to title may be adjudicated.

trespass *vi et armis* (*vi et ahr-mis*). [Latin “with force and arms”] 1. At common law, an action for damages resulting from an intentional injury to person or property, esp. if by violent means; trespass to the plaintiff's person, as in illegal assault, battery, wounding, or imprisonment, when not under color of legal process, or when the battery, wounding, or imprisonment was in the first instance lawful, but unnecessary violence was used or the imprisonment continued after the process had ceased to be lawful. • This action also lay for injury to relative rights, such as menacing tenants or servants, beating and wounding a spouse, criminal conversation with or seducing a wife, or debauching a daughter or servant. 2. See trespass *quare clausum fregit*. • In this sense, the “force” is implied by the “breaking” of the close (that is, an enclosed area), even if no real force is used. [Cases: Trespass 17. C.J.S. Trespass §§ 70–74.]

TRESPASSER

trespasser. One who commits a trespass; one who intentionally and without consent or privilege enters another's property. • In tort law, a landholder owes no duty to unforeseeable trespassers. Cf. INVITEE; LICENSEE(2). [Cases: Trespass 9. C.J.S. Trespass § 12.]

“The word ‘trespasser’ has an ugly sound, but it covers the wicked and the innocent. The burglar and the arrogant squatter are trespassers, but so are all sorts of comparatively innocent and respectable persons such as a walker in the countryside who unhindered strolls across an open field. Perhaps much of the trouble in this area has arisen from ‘the simplistic stereotype’ of the definition. The courts are therefore beginning to recognise that the duty of the occupier may vary according to the nature of the trespasser.” R.F.V. Heuston, *Salmond on the Law of Torts* 278 (17th ed. 1977).

innocent trespasser. One who enters another's land unlawfully, but either inadvertently or believing in a right to do so. [Cases: Trespass 2, 23. C.J.S. Trespass §§ 6, 36–37, 39–45, 164.]

#### TRESPASS FOR MESNE PROFITS

trespass for mesne profits. Hist. An action — supplementing an action for ejectment — brought against a tenant in possession to recover the profits wrongfully received during the tenant's occupation. [Cases: Ejectment 124. C.J.S. Ejectment §§ 139–140.]

#### TRET

tret (tret), n. An allowance or abatement of a certain weight or quantity that a seller makes to a buyer because of water or dust that may be mixed with a commodity. Cf. TARE.

#### TRIABLE

triable, adj. Subject or liable to judicial examination and trial <a triable offense>.

#### TRIABLE EITHER WAY

triable either way. English law. (Of an offense) prosecutable either in the Crown Court or in a magistrates' court.

“The criminal courts in England and Wales are the magistrates' courts and the Crown Court. Those offences considered least serious are summary offences, triable only in the magistrates' courts. Those offences considered most serious are triable only on indictment, in the Crown Court. A large number of offences, such as theft and most burglaries, are ‘triable either way,’ in a magistrates' court or the Crown Court. For these offences the defendant can elect to be tried at the Crown Court, where there is a judge and jury. If the defendant does not wish a Crown Court trial, the magistrates may decide (having heard representations from the prosecutor) that the case is so serious that it should be committed to the Crown Court for trial.” Andrew Ashworth, *Principles of Criminal Law* 16 (1991).

#### TRIAL

trial. A formal judicial examination of evidence and determination of legal claims in an adversary proceeding. [Cases: Federal Civil Procedure 1951; Trial 18. C.J.S. Trial §§ 91–92.]

abortive trial. See MISTRIAL.

bench trial. A trial before a judge without a jury. • The judge decides questions of fact as well as questions of law. — Also termed trial to the bench; nonjury trial; court trial; trial before the court (abbr. TBC); judge trial. [Cases: Criminal Law 247–260.13; Federal Civil Procedure 2251; Trial 367–387. C.J.S. Trial §§ 1018–1072.]

bifurcated trial. A trial that is divided into two stages, such as for guilt and punishment or for liability and damages. — Also termed two-stage trial. Cf. SEVERANCE(2). [Cases: Federal Civil Procedure 1954; Sentencing and Punishment 334; Trial 3. C.J.S. Criminal Law §§ 1497, 1499, 1531–1532, 1542; Trial §§ 17–27.]

closed trial. A trial that is not open to the public, usu. because of some overriding concern such as a need to protect a child's anonymity or for security.

court trial. See bench trial.

fair trial. See FAIR TRIAL.

joint trial. A trial involving two or more parties; esp., a criminal trial of two or more persons for the same or similar offenses. [Cases: Criminal Law 622. C.J.S. Criminal Law §§ 562–564.]

judge trial. See bench trial.

jury trial. A trial in which the factual issues are determined by a jury, not by the judge. — Also termed trial by jury.

mock trial. See MOCK TRIAL.

new trial. A postjudgment retrial or reexamination of some or all of the issues determined in an earlier judgment. • The trial court may order a new trial by motion of a party or on the court's own initiative. Also, when an appellate court reverses the trial court's judgment, it may remand the case to the trial court for a new trial on some or all of the issues on which the reversal is based. See Fed. R. Civ. P. 59; Fed. R. Crim. P. 33. See MOTION FOR NEW TRIAL; REMAND. [Cases: Federal Civil Procedure 2311; New Trial 0.5.]

nonbinding minitrial. See summary jury trial.

nonbinding summary jury trial. See summary jury trial.

nonjury trial. See bench trial.

perfect trial. A trial free from all error.

political trial. A trial (esp. a criminal prosecution) in which either the prosecution or the defendant (or both) uses the proceedings as a platform to espouse a particular political belief; a trial of a person for a political crime. See SHOW TRIAL.

public trial. A trial that anyone may attend or observe.

separate trial. 1. Criminal procedure. The individual trial of each of several persons jointly

accused of a crime. Fed. R. Crim. P. 14. [Cases: Criminal Law 622.1–622.5. C.J.S. Criminal Law §§ 565–577.] 2.Civil procedure. Within a single action, a distinct trial of a separate claim or issue — or of a group of claims or issues — ordered by the trial judge, usu. to conserve resources or avoid prejudice. Fed. R. Civ. P. 42(b). Cf. SEVERANCE(2). [Cases: Federal Civil Procedure 1953–1965; Trial 3. C.J.S. Trial §§ 17–27.]

short-cause trial.See short cause under CAUSE(3).

show trial.See SHOW TRIAL.

speedy trial.See SPEEDY TRIAL.

state trial.A trial for a political offense.

summary jury trial.A settlement technique in which the parties argue before a mock jury, which then reaches a nonbinding verdict that will assist the parties in evaluating their positions. — Also termed nonbinding summary jury trial; nonbinding minitrial. Cf. MOCK TRIAL. [Cases: Federal Civil Procedure 2252.]

trial at bar.Hist. A trial before all the judges of the court in which the proceedings take place. — Also termed trial at the bar.

trial at nisi prius (nI-sIprI-*<<schwa>>*s).Hist. A trial before the justices of assize and nisi prius in the county where the facts are alleged to have occurred, and from which county the jurors have been summoned.

trial before the court.See bench trial.

trial by battle.See TRIAL BY COMBAT.

trial by certificate.Hist. A trial in which the issue is decided on evidence in the form of witnesses' certificates of what they individually know.

trial by combat.See TRIAL BY COMBAT.

trial by duel.See TRIAL BY COMBAT.

trial by inspection.Hist. A trial in which the judge decided the dispute by individual observation and investigation, without the benefit of a jury.

trial by jury.See jury trial.

trial by ordeal.See ORDEAL.

trial by record.Hist. A trial in which, a record having been pleaded by one party and denied by the other, the record is inspected in order to decide the dispute, no other evidence being admissible. See NUL TIEL RECORD.

trial by the country.See trial per pais.

trial by the record.A trial in which one party insists that a record exists to support its claim and the opposing party denies the existence of such a record. • If the record can be produced, the

court will consider it in reaching a verdict — otherwise, it will rule for the opponent.

trial de novo (dee or di noh-voh). A new trial on the entire case — that is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance. [Cases: Appeal and Error 892; Criminal Law 260, 1139; Federal Courts 776. C.J.S. Appeal and Error § 756.]

trial in absentia. A trial held without the accused being present. • In the United States, a trial may be held in absentia only if the accused has either voluntarily left after the trial has started else has so disrupted the proceedings that the judge orders the accused's removal as a last resort.

trial on the merits. A trial on the substantive issues of a case, as opposed to a motion hearing or interlocutory matter.

trial per pais (p<<schwa>>r payorpays). [Law French “trial by the country”] Trial by jury. — Also termed trial by the country. Cf. CONCLUSION TO THE COUNTRY; GOING TO THE COUNTRY; PATRIA(3).

trial to the bench. See bench trial.

trifurcated trial. A trial that is divided into three stages, such as for liability, general damages, and special damages. [Cases: Federal Civil Procedure 1961; Trial 3(5.1).]

two-stage trial. See bifurcated trial.

#### TRIAL BRIEF

trial brief. See BRIEF.

#### TRIAL BY COMBAT

trial by combat. Hist. A trial that is decided by personal battle between the disputants, common in Europe and England during the Middle Ages; specif., a trial in which the person accused fought with the accuser, the idea being that God would give victory to the person in the right. • This method was introduced into England by the Normans after 1066, but it was a widely detested innovation and was little used. It became obsolete several centuries before being formally abolished in 1818, having been replaced in practice by the grand assize and indictment. — Also termed trial by battle; trial by wager of battle; trial by duel; judicial combat; duel; duellum; wager of battle; ornest; vadiatio duelli; wehading. See JUDICIUM DEI.

#### TRIAL BY DUEL

#### TRIAL BY CORSNAED

trial by corsnaed. See ordeal of the morsel under ORDEAL.

#### TRIAL BY OATH

trial by oath. See COMPURGATION.

#### TRIAL BY ORDEAL

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**TRIAL BY WAGER OF BATTLE**

trial by wager of battle.Hist. See TRIAL BY COMBAT.

**TRIAL CALENDAR**

trial calendar.See DOCKET(2).

**TRIAL COUNSEL**

trial counsel.See COUNSEL.

**TRIAL COURT**

trial court.See COURT.

**TRIAL EXAMINER**

trial examiner.See ADMINISTRATIVE-LAW JUDGE.

**TRIAL FRANCHISE**

trial franchise.See FRANCHISE(4).

**TRIAL JUDGE**

trial judge.See JUDGE.

**TRIAL JURY**

trial jury.See petit jury under JURY.

**TRIAL OF RIGHT OF PROPERTY**

trial of right of property.1.INTERVENTION(1).2.INTERVENTION(2).

**TRIAL-SETTING PREFERENCE**

trial-setting preference.See special setting under SETTING.

**TRIAL-TYPE HEARING**

trial-type hearing.See ADMINISTRATIVE PROCEEDING.

**TRIANGULAR MERGER**

triangular merger.See MERGER.

**TRIBAL COURT**

Tribal Court.Under the Indian Child Welfare Act, a court with child-custody jurisdiction that is (1) a Court of Indian Offenses, (2) a court established and operated under the code or custom of a tribe, or (3) any other tribal administrative body that is vested with authority over child-custody proceedings. • The Tribal Court is composed of tribal members, is usu. situated on the reservation, and varies in its characteristics from tribe to tribe. It is not part of any state's judicial system,

instead operating more or less as a judicial system of a foreign nation. See INDIAN CHILD WELFARE ACT .

#### TRIBAL LAND

tribal land. A part of an Indian reservation that is not allotted to or occupied by individual Indians but is held as the common land of the tribe. Cf. INDIAN LAND. [Cases: Indians 9. C.J.S. Indians § 67.]

#### TRIBUNAL

tribunal (trI-byoo-n<<schwa>>l). 1. A court or other adjudicatory body. 2. The seat, bench, or place where a judge sits.

#### TRIBUTARY

tributary (trib-y<<schwa>>-ter-ee), n. A stream flowing directly or indirectly into a river.

#### TRIBUTE

tribute (trib-yoot), n. 1. An acknowledgment of gratitude or respect. 2. A contribution that a sovereign raises from its subjects to defray the expenses of state. 3. Money paid by an inferior sovereign or state to a superior one to secure the latter's friendship and protection.

#### TRIBUTUM

tributum (tri-byoo-t<<schwa>>m), n. [Latin] Roman law. Originally, a war tax; later, a regular tax on land or persons in the Roman provinces.

#### TRI-CHAD

tri-chad. See CHAD.

#### TRIER OF FACT

trier of fact. See FACT-FINDER.

#### TRIFURCATED TRIAL

trifurcated trial. See TRIAL.

#### TRIGAMY

trigamy (trig-<<schwa>>-mee), n. The act of marrying a person while legally married to someone else and bigamously married to yet another. [Cases: Bigamy 1. C.J.S. Bigamy §§ 2–6, 8.]

“Trigamy, literally three marriages, is often used for a special situation. ‘Trigamy,’ in the sense of the special problem of the third wife, stems from the premise that invalidity of the alleged prior marriage is a good defense to a charge of bigamy. Thus in a bigamy prosecution a so-called common-law marriage can be relied upon to establish either the first or second marriage, if it is recognized in the jurisdiction as giving rise to the marital status, but cannot be relied upon where it

is not so recognized. A logical result is that a charge of bigamy may be defeated by showing that the alleged prior marriage, relied upon to support the charge, was itself void because of an even earlier marriage existing at the time — as was held about 1648 in *Lady Madison's Case*. For example, D marries A, and afterward while A is alive marries B, and still later when A is dead but B alive, marries C. The marriage to C is not bigamy because the marriage to B was bigamous and void.” Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 458 (3d ed. 1982).

#### TRIGGERING CONDITION

triggering condition. See *CONDITION*(2).

#### TRINITY SITTINGS

Trinity sittings. English law. A term of court beginning on May 22 of each year and ending on June 12. • This was known until 1875 as Trinity term. Cf. *EASTER SITTINGS*; *HILARY SITTINGS*; *MICHAELMAS SITTINGS*.

#### TRIPARTITE

tripartite (trI-pahr-tIt), adj. Involving, composed of, or divided into three parts or elements <a tripartite agreement>.

#### TRIPARTITE LEASE

tripartite lease. See finance lease under *LEASE*.

#### TRIPLE DAMAGES

triple damages. See treble damages under *DAMAGES*.

#### TRIPLE NET LEASE

triple net lease. See net-net-net lease under *LEASE*.

#### TRIPLE ORDEAL

triple ordeal. See *ORDEAL*.

#### TRIPLE TRIGGER

triple trigger. Insurance. A theory of coverage providing that all insurers on a risk from the day a claimant is first exposed to an injury-producing product (such as asbestos) — beyond the last exposure — to the date of diagnosis or death, whichever occurs first, must cover the loss. — Also termed continuous trigger. Cf. *ACTUAL-INJURY TRIGGER*; *EXPOSURE THEORY*; *MANIFESTATION THEORY*. [Cases: Insurance 2265. C.J.S. Insurance §§ 429–430.]

#### TRIPLE WITCHING SESSION

triple witching session. See *SESSION* (3).

#### TRIPLICATIO

triplicatio (trip-li-kay-shee-oh), n. [Latin] Roman law. A defendant's response to a plaintiff's

replicatio. Pl. triplicaciones (trip-li-kay-shee-oh-nee-z). See REPLICATIO. Cf. QUADRUPPLICATIO.

### TRIPS

TRIPs.abbr. Patents. The Agreement on Trade-Related Aspects of Intellectual Property Rights, a treaty that harmonized and strengthened the intellectual-property laws of its signatories by linking the obligation to protect the intellectual-property rights of other members' citizens with a mechanism for settling international trade disputes. • TRIPs was negotiated at the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT). More than 130 nations are parties to the agreement. In the field of patents, TRIPs standardized patentable subject matter to include medicines, required testing for nonobviousness and utility, protected patentees from infringing imports, and all but eliminated compulsory licenses. In response to the agreement, Congress (1) changed patent terms to 20 years from the date of application, rather than 17 years from the date of issue; (2) allowed foreign filers to prove priority by inventive efforts that preceded filing; (3) widened the definition of infringement to cover offering for sale and importing; and (4) permitted provisional applications, with brief descriptions and no claims, to establish priority. 33 I.L.M. 1197. — Also written TRIPS. — Also termed TRIPs Agreement.

“Articles 1–8 of TRIPs include the basic principles of national treatment and most-favoured-nation treatment. That is, each Member must give to the nationals of other Members treatment no less favourable than that given to its own nationals, and must give to the nationals of all Members the same privileges as are given to the nationals of any Member. Thus, subject to certain exemptions, bilateral agreements between Members should no longer be permitted.” Philip W. Grubb, *Patents for Chemicals, Pharmaceuticals and Biotechnology* 31 (3d ed. 1999).

### TRISTIS SUCCESSIO

tristis successio (tris-tis s<<schwa>>k-ses[h]-ee-oh). See hereditas luctuosa under HEREDITAS.

### TRIVERBIAL DAYS

triverbial days (trI-v<<schwa>>r-bee-<<schwa>>l). See dies fasti under DIES.

### TRIVIAL

trivial,adj. Trifling; inconsiderable; of small worth or importance.

### TRO

TRO (tee-ahr-oh).abbr.TEMPORARY RESTRAINING ORDER.

### TROVER

trover (troh-v<<schwa>>r). A common-law action for the recovery of damages for the conversion of personal property, the damages generally being measured by the value of the property. — Also termed trover and conversion. Cf. DETINUE; REPLEVIN. [Cases: Trover and

Conversion 1, 43. C.J.S. Trover and Conversion §§ 1–3, 5–7, 120–121.]

“Trover may be maintained for all kinds of personal property, including legal documents, but not where articles are severed from land by an adverse possessor, at least until recovery of possession of the land. It lies for the misappropriation of specific money, but not for breach of an obligation to pay where there is no duty to return specific money.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 43, at 99 (Henry Winthrop Ballantine ed., 3d ed. 1923).

#### TRUANCY

truancy (troo-*<<schwa>>n*-see), n. The act or state of shirking responsibility; esp., willful and unjustified failure to attend school by one who is required to attend. [Cases: Schools 161. C.J.S. Schools and School Districts §§ 740–743.] — truant, adj. & n.

#### TRUANCY OFFICER

truancy officer. An official responsible for enforcing laws mandating school attendance for minors of specified ages (usu. 16 and under). — Also termed truant officer; attendance officer. [Cases: Schools 161. C.J.S. Schools and School Districts §§ 740–743.]

#### TRUCE

truce. Int'l law. A suspension or temporary cessation of hostilities by agreement between belligerent powers. — Also termed armistice; ceasefire; suspension of arms. [Cases: War and National Emergency 33. C.J.S. War and National Defense § 50.] — trucional, adj.

general truce. A truce that suspends hostilities in all places.

partial truce. See special truce.

special truce. A truce referring only to operations before a specific fortress or in a district, or between certain detachments of armies. — Also termed partial truce.

#### TRUCK

truck. Hist. Scots law. The payment of wages in scrip or goods. • Truck systems, once common where workers had to live in isolated areas and depended on company stores for food and clothing, were abolished in the 19th century.

“Truck was payment not in money but in goods or tickets which could be exchanged for goods.... The principle that contractors could buy in bulk and retail to the workmen, deducting the cost from their wages, was sound but was open to abuse; in fact truck became a means of robbery. Railway contractors frequently made more profit from truck than from the contract.... Truck shops, frequently called tommy shops or tally shops, might be run by the contractor or let by him to an associate or a shopkeeper for a rent or on the basis that part of the shop profits would go back to the contractor. The goods were frequently inferior and sold at excessive prices.” David M. Walker, *6 A Legal History of Scotland* 820 (2001).

#### TRUE ADMISSION

true admission. See implied admission under ADMISSION(1).

#### TRUE AND CORRECT

true and correct. Authentic; accurate; unaltered <we have forwarded a true and correct copy of the expert's report>. — Also termed true and exact.

#### TRUE BILL

true bill, n. A grand jury's notation that a criminal charge should go before a petty jury for trial <the grand jury returned a true bill, and the state prepared to prosecute>. — Also termed *billa vera*. Cf. NO BILL. [Cases: Grand Jury 42.]

#### TRUE-BILL

true-bill, vb. To make or deliver a true bill on <the grand jury true-billed the indictment>.

#### TRUE COPY

true copy. See COPY.

#### TRUE DEFENSE

true defense. See DEFENSE(1).

#### TRUE LEGAL IMPOSSIBILITY

true legal impossibility. See legal impossibility (1) under IMPOSSIBILITY.

#### TRUE MARK

true mark. See technical trademark under TRADEMARK.

#### TRUE RESIDUE

true residue. See CLEAR RESIDUE.

#### TRUE TRADEMARK

true trademark. See technical trademark under TRADEMARK.

#### TRUE VALUE

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

#### TRUE-VALUE RULE

true-value rule. The rule requiring that one who subscribes for and receives corporate stock must pay par value for it, in either money or its equivalent, so that a corporation's real assets square with its books. • If true value is less than par value, the stock is deemed unpaid for to the full extent of the difference, and the affected shareholder is liable to creditors for the difference, notwithstanding the directors' good faith. [Cases: Corporations 232.]

#### TRUE VERDICT

true verdict. See VERDICT.

## TRUST

trust, n. 1. The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (the trustee) at the request of another (the settlor) for the benefit of a third party (the beneficiary). • For a trust to be valid, it must involve specific property, reflect the settlor's intent, and be created for a lawful purpose. The two primary types of trusts are private trusts and charitable trusts (see below). [Cases: Trusts 1. C.J.S. Trover and Conversion §§ 1–9, 14–18.] 2. A fiduciary relationship regarding property and charging the person with title to the property with equitable duties to deal with it for another's benefit; the confidence placed in a trustee, together with the trustee's obligations toward the property and the beneficiary. • A trust arises as a result of a manifestation of an intention to create it. See FIDUCIARY RELATIONSHIP. 3. The property so held; CORPUS(1).

“[A] trust involves three elements, namely, (1) a trustee, who holds the trust property and is subject to equitable duties to deal with it for the benefit of another; (2) a beneficiary, to whom the trustee owes equitable duties to deal with the trust property for his benefit; (3) trust property, which is held by the trustee for the beneficiary.” Restatement (Second) of Trusts § 2 cmt. h (1959).

“One must distinguish, ... [in] countries where English is spoken, between a wide and a narrow sense of the word ‘trust.’ In the wide sense a trust exists when property is to be held or administered by one person on behalf of another or for some purpose other than his own benefit... In the narrow or strict sense a trust exists when the creator of the trust ... hands over or is bound to hand over the control of an asset which, or the proceeds of which, is to be administered by another (the trustee or administrator) in his capacity as such for the benefit of some person (beneficiary) other than the trustee or for some impersonal object. A trust in this sense is a species of the genus ‘trust’ in the wide sense.” Tony Honoré, *The South African Law of Trusts* §§ 1–2, at 1–3 (3d ed. 1985).

“Some courts and legal writers have defined a trust as a certain kind of right that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has against the trustee, or a certain kind of interest that the beneficiary has in the trust property, thus looking at it from the point of view of the beneficiary. While it is true that the beneficiary has the right or interest described, the trust is something more than the right or interest of the beneficiary. The trust is the whole juridical device: the legal relationship between the parties with respect to the property that is its subject matter, including not merely the duties that the trustee owes to the beneficiary and to the rest of the world, but also the rights, privileges, powers, and immunities that the beneficiary has against the trustee and against the rest of the world. It would seem proper, therefore, to define the trust either as a relationship having certain characteristics stated in the definition or perhaps as a juridical device or legal institution involving such a relationship.” 1 Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 2.4, at 42 (4th ed. 1987).

A-B trust. See bypass trust.

accumulation trust. A trust in which the trustee must accumulate income and gains from sales

of trust assets for ultimate disposition with the principal when the trust terminates. • Many states restrict the time over which accumulations may be made or the amount that may be accumulated. [Cases: Trusts 280. C.J.S. Trover and Conversion §§ 544–550.]

**active trust.**A trust in which the trustee has some affirmative duty of management or administration besides the obligation to transfer the property to the beneficiary. — Also termed express active trust; special trust; operative trust. Cf. passive trust. [Cases: Trusts 135. C.J.S. Trover and Conversion §§ 13, 242.]

**alimony trust.**A trust in which the payor spouse transfers to the trustee property from which the payee spouse, as beneficiary, will be supported after a divorce or separation.

**annuity trust.**A trust from which the trustee must pay a sum certain annually to one or more beneficiaries for their respective lives or for a term of years, and must then either transfer the remainder to or for the use of a qualified charity or retain the remainder for such a use. • The sum certain must not be less than 5% of the initial fair market value of the property transferred to the trust by the donor. A qualified annuity trust must comply with the requirements of IRC (26 USCA) § 664. [Cases: Trusts 281. C.J.S. Trover and Conversion § 532.]

**asset-protection trust.**See self-settled trust.

**bank-account trust.**See Totten trust.

**blended trust.**A trust in which the beneficiaries are a group, with no member of the group having a separable individual interest. • Courts rarely recognize these trusts.

**blind trust.**A trust in which the settlor places investments under the control of an independent trustee, usu. to avoid a conflict of interest.

**bond trust.**A trust whose principal consists of bonds that yield interest income.

**business trust.**A form of business organization, similar to a corporation, in which investors receive transferable certificates of beneficial interest (instead of stock shares). — Also termed Massachusetts trust; common-law trust. [Cases: Joint–Stock Companies and Business Trusts 1, 8. C.J.S. Business Trusts §§ 2–8, 10–12, 17–18, 37; Joint Stock Companies §§ 2–4, 6, 11.]

“The business trust was developed in Massachusetts from 1910 to 1925 to achieve limited liability and to avoid restrictions then existing there on a corporation's acquiring and developing real estate, by adoption of the trust device ....” Henry G. Henn & John R. Alexander, *Laws of Corporations* § 58, at 117 (3d ed. 1983).

**bypass trust.**A trust into which just enough of a decedent's estate passes, so that the estate can take advantage of the unified credit against federal estate taxes. 26 USCA § 2010. — Also termed credit-shelter trust; A–B trust; marital life-estate trust. See unified estate-and-gift tax credit under TAX CREDIT.

**charitable lead trust.**An irrevocable trust that is made in favor of a charity and that allows the charity to receive income from the trust property for a specified period, after which the property reverts to the settlor's estate.

charitable-remainder annuity trust. A charitable-remainder trust in which the beneficiaries receive for a specified period a fixed payment of 5% or more of the fair market value of the original principal, after which the remaining principal passes to charity. — Abbr. CRAT. — Also termed charitable-remainder-trust retirement fund. [Cases: Charities 6; Trusts 281. C.J.S. Charities § 4; Trover and Conversion § 532.]

charitable-remainder trust. A trust that consists of assets that are designated for a charitable purpose and that are paid over to the trust after the expiration of a life estate or intermediate estate. — Abbr. CRT. — Also termed split-interest trust. [Cases: Charities 4. C.J.S. Charities §§ 3–4.]

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

charitable trust. A trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. • Charitable trusts are often eligible for favorable tax treatment. — Also termed public trust; charitable use. See charitable deduction under DEDUCTION; CY PRES. Cf. private trust. [Cases: Charities 1; Internal Revenue 4048; Taxation 241.1(2), 876(1), 1022. C.J.S. Charities §§ 2–3; Taxation §§ 279, 329–333, 1713, 1876.]

Claflin trust. See indestructible trust.

Clifford trust. An irrevocable trust, set up for at least ten years and a day, whereby income from the trust property is paid to the beneficiary but the property itself reverts back to the settlor when the trust expires. • These trusts were often used by parents — with their children as beneficiaries — to shelter investment income, but the Tax Reform Act of 1986 eliminated the tax advantage by imposing the kiddie tax and by taxing the income of settlors with a reversionary interest that exceeds 5% of the trust's value. This term gets its name from *Helvering v. Clifford*, 309 U.S. 331, 60 S.Ct. 554 (1940). — Also termed short-term trust. [Cases: Internal Revenue 3362. C.J.S. Internal Revenue §§ 178, 180.]

common-law trust. See business trust.

community trust. See COMMUNITY TRUST.

complete voluntary trust. See executed trust.

complex trust. 1. A trust having elaborate provisions. 2. See discretionary trust.

constructive trust. An equitable remedy that a court imposes against one who has obtained property by wrongdoing. • A constructive trust, imposed to prevent unjust enrichment, creates no fiduciary relationship. Despite its name, it is not a trust at all. Cf. resulting trust. — Also termed implied trust; involuntary trust; trust de son tort; trust ex delicto; trust ex maleficio; remedial trust; trust in invitum. See trustee de son tort under TRUSTEE. Cf. resulting trust. [Cases: Trusts 91–111. C.J.S. Trover and Conversion §§ 10, 12, 174–201.]

“A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.” *Beatty v.*

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Guggenheim Exploration Co., 122 N.E. 378, 380 (N.Y. 1919)(Cardozo, J.).

“It is sometimes said that when there are sufficient grounds for imposing a constructive trust, the court ‘constructs a trust.’ The expression is, of course, absurd. The word ‘constructive’ is derived from the verb ‘construe,’ not from the verb ‘construct.’ ... The court construes the circumstances in the sense that it explains or interprets them; it does not construct them.” 5 Austin W. Scott & William F. Fratcher, *The Law of Trusts* § 462.4 (4th ed. 1987).

contingent trust. An express trust depending for its operation on a future event.

credit-shelter trust. See bypass trust.

Crummey trust. A trust in which the trustee has the power to distribute or accumulate income and to give the beneficiary the right to withdraw the amount of the annual exclusion (or a smaller sum) within a reasonable time after the transfer. • This type of trust can have multiple beneficiaries and is often used when the beneficiaries are minors. Gifts to a Crummey trust qualify for the annual exclusion regardless of the age of the beneficiaries. The trust assets are not required to be distributed to the beneficiaries at age 21. The validity of this type of trust was established in *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968). — Also termed discretionary trust. See CRUMMEY POWER; annual exclusion under EXCLUSION. Cf. 2503(c) trust.

custodial trust. A revocable trust for which a custodial trustee is named to manage the assets for an incapacitated or disabled beneficiary. • The beneficiary does not have to be disabled or incapacitated at the time the trust is created. An adult beneficiary who is not disabled or incapacitated may terminate the trust at any time before his or her disability, incapacity, or death.

declared trust. See express trust.

defective trust. A trust that is treated, for income-tax purposes, as if it were the same entity as the grantor, but for estate-tax purposes is treated as an entity separate from the grantor. • Typically a trust is an independent entity that is taxed separately from the settlor. Because trust income is taxed at higher rates than individual income, the settlor may intentionally create a defect in the trust terms so that the trust's income will be taxable to the grantor. This is achieved by violating the grantor-trust rules of IRC §§ 671–677 in a way that does not affect the completeness of the gift under IRC §§ 2035–2042. A violation renders the trust “defective” because the settlor must recognize the income even if the settlor does not actually receive it. The attribution of tax liability and payment of taxes on trust income do not give the grantor an ownership in the trust, which remains separate from the settlor's estate and is not subject to estate taxes.

destructible trust. A trust that can be destroyed by the happening of an event or by operation of law.

directory trust. 1. A trust that is not completely and finally settled by the instrument creating it, but only defined in its general purpose and to be carried into detail according to later specific directions. 2. See fixed trust.

direct trust. See express trust.

discretionary trust. 1. A trust in which the settlor has delegated nearly complete or limited discretion to the trustee to decide when and how much income or property is distributed to a beneficiary. • This is perhaps the most common type of trust used in estate planning. [Cases: Trusts 150, 177. C.J.S. Trover and Conversion §§ 269, 347–348, 350–360.] 2. See Crummey trust. Cf. mandatory trust; CRUMMEY POWER.

donative trust. A trust that establishes a gift of a beneficial interest in property for a beneficiary. • Most trusts are donative trusts. — Also termed gratuitous trust. [Cases: Trusts 35(1). C.J.S. Trover and Conversion § 55.]

dry trust. 1. A trust that merely vests legal title in a trustee and does not require that trustee to do anything. 2. See passive trust.

dynasty trust. A generation-skipping trust funded with the amount that is permanently exempt from generation-skipping tax and designed to last more than two generations. • In 2000, a settlor could contribute \$1 million to a dynasty trust. Almost half the states allow dynasty trusts, despite their potential for lasting more than 100 years. — Also termed GST supertrust.

educational trust. 1. A trust to found, endow, or support a school. 2. A trust to support someone's education.

equipment trust. See EQUIPMENT TRUST.

estate trust. A trust that is established to qualify a deceased spouse's property for the marital deduction. • The trustee may be given discretion to distribute principal or income to the donor's spouse if the donor also provides that, at the surviving spouse's death, any accumulated income and remaining principal must be distributed to the surviving spouse's estate. See marital deduction under DEDUCTION.

ex delicto trust (d<<schwa>>-lik-toh). A trust that is created for an illegal purpose, esp. to prevent the settlor's creditors from collecting their claims out of the trust property.

executed trust. A trust in which the estates and interests in the subject matter of the trust are completely limited and defined by the instrument creating the trust and require no further instruments to complete them. — Also termed complete voluntary trust. [Cases: Trusts 114. C.J.S. Trover and Conversion § 215.]

executory trust (eg-zek-y<<schwa>>-tor-ee). A trust in which the instrument creating the trust is intended to be provisional only, and further conveyances are contemplated by the trust instrument before the terms of the trust can be carried out. — Also termed imperfect trust. [Cases: Trusts 114. C.J.S. Trover and Conversion § 215.]

express active trust. See active trust.

express private passive trust. A trust in which land is conveyed to or held by one person in trust for another, without any power being expressly or impliedly given to the trustee to take actual possession of the land or exercise any ownership rights over it, except at the beneficiary's direction. [Cases: Trusts 136. C.J.S. Trover and Conversion §§ 13, 243.]

**express trust.** A trust created with the settlor's express intent, usu. declared in writing; an ordinary trust as opposed to a resulting trust or a constructive trust. — Also termed direct trust; declared trust. [Cases: Trusts 1–61.5. C.J.S. Conflict of Laws §§ 73, 85; Trover and Conversion §§ 1–9, 14–127, 143.]

**family-pot trust.** A trust in which all the assets are kept in a single fund for the trustee to use for multiple beneficiaries (usu. children). • Family-pot trusts are typically testamentary and used to administer a donor's property until the donor's minor children have completed their education.

**family trust.** A trust created to benefit persons who are related to one another by blood, affinity, or law.

**fixed trust.** A trust in which the trustee may not exercise any discretion over the trust's management or distributions. — Also termed directory trust; nondiscretionary trust.

**foreign-situs trust** (sI-t<<schwa>>s). A trust created under foreign law. • This type of trust usu. has no significant income-tax benefits and is subject to greater reporting requirements than a domestic trust. Because creditors cannot easily reach the foreign trust's assets, it is frequently used as a means of asset-protection. — Also termed foreign trust; offshore trust.

**general trust.** See passive trust.

**generation-skipping trust.** A trust that is established to transfer (usu. principal) assets to a skip person (a beneficiary more than one generation removed from the settlor). • The transfer is often accomplished by giving some control or benefits (such as trust income) of the assets to a nonskip person, often a member of the generation between the settlor and skip person. This type of trust is subject to a generation-skipping transfer tax. IRC (26 USCA) §§ 2601 et seq. See DEEMED TRANSFEROR; GENERATION-SKIPPING TRANSFER; generation-skipping transfer tax under TAX; SKIP PERSON. Cf. dynasty trust. [Cases: Internal Revenue 4224.]

**governmental trust.** 1. A type of charitable trust established to provide a community with facilities ordinarily supplied by the government, esp. by a municipality, and to promote purposes that are sufficiently beneficial to the community to justify permitting the property to be perpetually devoted to those purposes. • Examples of such facilities include public buildings, bridges, streets, parks, schools, and hospitals. 2. A type of charitable trust established for general governmental or municipal purposes, such as defraying the expenses of a governmental entity or paying the public debt. Restatement (Second) of Trusts §§ 373, 374 (1959).

**grantor-retained annuity trust.** An irrevocable trust into which the grantor transfers property in exchange for the right to receive fixed payments at least annually, based on original fair market value of the property transferred. — Abbr. GRAT.

**grantor-retained income trust.** A trust in which a gift's value can be reduced by the grantor's retaining an income interest, for a specified time, in the gifted property. — Sometimes shortened to retained income trust. — Abbr. GRIT.

**grantor-retained unitrust.** An irrevocable trust into which the grantor transfers property in exchange for the right to receive annual payments, the amount of which fluctuates based on the

increase or decrease in the value of the property transferred. — Abbr. GRUT. Cf. grantor-retained annuity trust.

grantor trust. A trust in which the settlor retains control over the trust property or its income to such an extent that the settlor is taxed on the trust's income. • The types of controls that result in such tax treatment are set out in IRC (26 USCA) §§ 671–677. An example is the revocable trust.

gratuitous trust. See donative trust.

GST supertrust. See dynasty trust.

honorary trust. A noncharitable trust that is of doubtful validity because it lacks a beneficiary capable of enforcing the trust. • Examples include trusts for the care and support of specific animals, or for the care of certain graves. The modern trend is to recognize the validity of such trusts, if the trustee is willing to accept the responsibility. If the trustee fails to carry out the duties, however, a resulting trust arises in favor of the settlor's residuary legatees or next of kin. [Cases: Trusts 1. C.J.S. Trover and Conversion §§ 1–9, 14–18.]

Illinois land trust. See land trust.

illusory trust. An arrangement that looks like a trust but, because of powers retained in the settlor, has no real substance and is not a completed trust. [Cases: Trusts 1. C.J.S. Trover and Conversion §§ 1–9, 14–18.]

imperfect trust. See executory trust.

implied trust. 1. See constructive trust. 2. See resulting trust.

indestructible trust. A trust that, because of the settlor's wishes, cannot be prematurely terminated by the beneficiary. — Also termed Claflin trust.

insurance trust. A trust whose principal consists of insurance policies or their proceeds.

inter vivos trust (in-t<<schwa>>r vI-vohs orvee-vohs). A trust that is created and takes effect during the settlor's lifetime. — Also termed living trust. Cf. testamentary trust. [Cases: Trusts 1, 58–61. C.J.S. Trover and Conversion §§ 1–9, 14–18, 96–127.]

investment trust. See investment company under COMPANY.

involuntary trust. See constructive trust.

irrevocable trust (i-rev-<<schwa>>-k<<schwa>>-b<<schwa>>l). A trust that cannot be terminated by the settlor once it is created. • In most states, a trust will be deemed irrevocable unless the settlor specifies otherwise. [Cases: Trusts 59. C.J.S. Trover and Conversion §§ 103–116.]

land trust. A land-ownership arrangement by which a trustee holds both legal and equitable title to land while the beneficiary retains the power to direct the trustee, manage the property, and draw income from the trust. — Also termed Illinois land trust; naked land trust. [Cases: Trusts 140(1). C.J.S. Trover and Conversion §§ 254, 256.]

life-insurance trust.A trust consisting of one or more life-insurance policies payable to the trust when the insured dies. [Cases: Trusts 37. C.J.S. Trover and Conversion § 60.]

limited trust.A trust created for a limited period. Cf. perpetual trust.

liquidating trust.A trust designed to be liquidated as soon as possible. • An example is a trust into which a decedent's business is placed to safeguard the business until it can be sold.

living trust.See inter vivos trust.

mandatory trust.A trust in which the trustee must distribute all the income generated by the trust property to one or more designated beneficiaries. — Also termed simple trust. Cf. discretionary trust.

marital-deduction trust.A testamentary trust created to take full advantage of the marital deduction; esp., a trust entitling a spouse to lifetime income from the trust and sufficient control over the trust to include the trust property in the spouse's estate at death. See marital deduction under DEDUCTION. [Cases: Internal Revenue 4169. C.J.S. Internal Revenue § 535.]

marital life-estate trust.See bypass trust.

Massachusetts trust.See business trust.

Medicaid-qualifying trust.A trust that is deemed to have been created in an effort to reduce someone's assets so that the person may qualify for Medicaid, and that will be included as an asset for purposes of determining the person's eligibility. • Someone who wants to apply and qualify for Medicaid, but who has too many assets to qualify, will sometimes set up a trust — or have a spouse or custodian set up a trust — using the applicant's own assets, under which the applicant may be the beneficiary of all or part of the payments from the trust, which are distributed by a trustee with discretion to make trust payments to the applicant. Such a trust may be presumed to have been established for the purpose of attempting to qualify for Medicaid, and may be counted as an asset of the applicant, resulting in a denial of benefits and the imposition of a penalty period during which the applicant cannot reapply. Nonetheless, Medicaid rules allow three types of trusts that do not impair Medicaid eligibility, since the trust assets are not considered the beneficiary's property: Miller trust, pooled trust, and under-65 trust. [Cases: Health 471(6).]

Miller trust.An irrevocable trust funded with the income of an incompetent beneficiary who seeks to qualify for Medicaid in a state with an income cap. • Funding is strictly limited to the beneficiary's income (from any source). The assets in the trust are not included in the beneficiary's estate for Medicaid purposes if the trust assets will be used to reimburse the state after the beneficiary's death. Trust distributions are kept below the income cap in order to preserve the beneficiary's Medicaid eligibility. This type of trust was first judicially sanctioned in *Miller v. Ibarra*, 746 F.Supp. 19 (D. Colo. 1990). — Also termed Miller's trust; qualified income trust.

ministerial trust.See passive trust.

minor's trust.See 2503(c) trust.

mixed trust.A trust established to benefit both private individuals and charities.

naked land trust. See land trust.

naked trust. See passive trust.

nominal trust. See passive trust.

nominee trust. 1. A trust in which the beneficiaries have the power to direct the trustee's actions regarding the trust property. 2. An arrangement for holding title to real property under which one or more persons or corporations, under 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. — Also termed (in sense 2) realty trust. [Cases: Trusts 133–140. C.J.S. Trover and Conversion §§ 13, 242–243, 245–251, 254–257.]

nondiscretionary trust. See fixed trust.

offshore trust. See foreign-situs trust.

onerous trust. A trust that places exceptionally heavy and time-consuming duties of responsibility and care on the trustee, often without providing for compensation. • Because of the burden and inequity of requiring the trust to be administered voluntarily, courts often grant a trustee a reasonable sum for the tasks performed.

oral trust. 1. A trust created by the settlor's spoken statements as opposed to a written agreement. • Trusts of real property must usu. be in writing (because of the statute of frauds), but trusts of personal property can usu. be created orally. — Also termed parol trust. [Cases: Trusts 17. C.J.S. Trover and Conversion § 28.] 2. A trust created by operation of law, such as a resulting trust or a constructive trust.

parol trust. See oral trust (1).

passive trust. A trust in which the trustee has no duty other than to transfer the property to the beneficiary. — Also termed dry trust; general trust; nominal trust; simple trust; naked trust; ministerial trust; technical trust. See bare trustee under TRUSTEE. Cf. active trust. [Cases: Trusts 136. C.J.S. Trover and Conversion §§ 13, 243.]

pension trust. An employer-funded pension plan; esp., a pension plan in which the employer transfers to trustees amounts sufficient to cover the benefits payable to the employees. [Cases: Pensions 28. C.J.S. Pensions and Retirement Plans and Benefits §§ 11–15.]

perpetual trust. A trust that is to continue as long as the need for it continues, such as for the lifetime of a beneficiary or the term of a particular charity. Cf. limited trust.

personal-residence trust. An irrevocable trust to which the settlor transfers ownership of his or her personal residence while retaining the right to live there for a specified term of years. • The trust cannot hold any assets other than the residence and proceeds resulting from damage to or destruction of the residence. Cf. qualified personal-residence trust.

personal trust. See private trust.

pet trust. A trust, usu. honorary, that is established for the care and maintenance of a particular

animal or group of animals. • Pet trusts are generally invalid because animals are incapable of compelling a trustee to act, and animals have no standing in law. Effectively, the trust has no beneficiary. But some states (e.g., Colorado) statutorily recognize these trusts as valid. And pet trusts are covered in the Uniform Trust Code (§ 111(d)).

pooled trust. An irrevocable, discretionary trust that (1) is established and managed by a nonprofit association, (2) is funded with the assets of disabled persons, and (3) maintains a separate trust account for each beneficiary, but (4) pools the trust assets for investment purposes. • If the trust provides for distribution of a deceased beneficiary's interest to the state in reimbursement of Medicaid expenditures, a pooled-trust beneficiary may be eligible for Medicaid benefits. The assets contributed to the trust for the individual's benefit are not treated as the beneficiary's property. — Also termed pooled-assets trust.

pourover trust. An inter vivos trust that receives property (usu. the residual estate) from a will upon the testator's death. Cf. pourover will under WILL.

power-of-appointment trust. A trust in which property is left in trust for the surviving spouse. • The trustee must distribute income to the spouse for life, and the power of appointment is given to the spouse or to his or her estate. A power-of-appointment trust is commonly used to qualify property for the marital deduction. See marital deduction under DEDUCTION.

precatory trust (prek-*<<schwa>>*-tor-ee). A trust that the law will recognize to carry out the wishes of the testator or grantor even though the statement in question is in the nature of an entreaty or recommendation rather than a positive command. [Cases: Trusts 29. C.J.S. Trover and Conversion § 43.]

presumptive trust. See resulting trust.

private trust. A trust created for the financial benefit of one or more designated beneficiaries rather than for the public benefit; an ordinary trust as opposed to a charitable trust. • Three elements must be present for a private trust: (1) the demonstrated intent of the settlor, (2) trust property (as res), and (3) a certain beneficiary capable of enforcing the trust. — Also termed personal trust. Cf. charitable trust. [Cases: Trusts 1. C.J.S. Trover and Conversion §§ 1–9, 14–18.]

protective trust. A trust that is designed to protect the trust property to ensure the continued support of the beneficiary. [Cases: Trusts 152. C.J.S. Trover and Conversion §§ 270–272.]

“In a broad sense, a spendthrift, support, or other similarly protective trust is one created to provide a fund for the maintenance of the beneficiary and at the same time to secure it against the beneficiary's improvidence or incapacity.” 76 Am. Jur. 2d Trusts § 121 (1992).

public trust. See charitable trust.

purchase-money resulting trust. A resulting trust that arises when one person buys property but directs the seller to transfer the property and its title to another. • Although a purchase-money resulting trust is properly understood as a court-imposed equitable remedy rather than as a true trust, the buyer is occasionally referred to as the “beneficiary” and the titleholder as the “trustee.”

— Abbr. PMRT. [Cases: Trusts 72–83. C.J.S. Trover and Conversion §§ 128, 138, 140, 147–164.]

QTIP trust (kyoo-tip). A trust that is established to qualify for the marital deduction. • Under this trust, the assets are referred to as qualified-terminable-interest property, or QTIP. See qualified-terminable-interest property under PROPERTY. Cf. qualified domestic trust. [Cases: Internal Revenue 4169(4). C.J.S. Internal Revenue §§ 536–537.]

qualified domestic trust. A trust for a noncitizen spouse qualifying for the marital deduction. 26 USCA § 2056(d). — Abbr. QDOT. See marital deduction under DEDUCTION. Cf. QTIP trust.

qualified income trust. See Miller trust.

qualified personal-residence trust. An irrevocable trust that is funded with cash and the personal residence of the grantor, who retains the right to dwell in the residence for a specified term of years. • The trust can receive and hold additional cash to pay for trust expenses, mortgage installments, and improvements to the residence. — Abbr. QPRT. Cf. personal-residence trust.

real-estate investment trust. See REAL-ESTATE INVESTMENT TRUST.

real-estate mortgage trust. See REAL-ESTATE MORTGAGE TRUST.

realty trust. See nominal trust (2).

reciprocal trust. A trust arrangement between two parties in which one party is beneficiary of a trust established by the other party, and vice versa. • Such trusts are common between husband and wife.

remedial trust. See constructive trust.

resulting trust. A remedy imposed by equity when property is transferred under circumstances suggesting that the transferor did not intend for the transferee to have the beneficial interest in the property. — Also termed implied trust; presumptive trust. Cf. constructive trust. [Cases: Trusts 62–90. C.J.S. Trover and Conversion §§ 10–11, 128–142, 144–173.]

retained income trust. See grantor-retained income trust.

revocable trust (rev-<<schwa>>-k<<schwa>>-b<<schwa>>l). A trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income. [Cases: Trusts 59. C.J.S. Trover and Conversion §§ 103–116.]

savings-account trust. See Totten trust.

savings-bank trust. See Totten trust.

secret trust. An instrument, usu. a will, that appears to give an absolute gift to another although the donee has orally agreed with the grantor that he or she is to use the property for the benefit of some third party. • Courts admit evidence of the promise to prevent unjust enrichment and enforce it by imposing the remedy of a constructive trust upon the reneging “trustee.” Cf. semi-secret trust. [Cases: Trusts 35(3).]

self-settled trust. A trust in which the settlor is also the person who is to receive the benefits from the trust, usu. set up in an attempt to protect the trust assets from creditors. • In most states, such a trust will not protect trust assets from the settlor's creditors. Restatement (Second) of Trusts § 156 (1959). — Also termed asset-protection trust.

semi-secret trust. An instrument that indicates who is to serve as a trustee but fails to identify either the beneficiary or the terms of the trust, or both. • Traditionally, this trust was deemed to fail for want of an ascertainable beneficiary. But the modern view is to provide the same relief as that given for a secret trust: to receive evidence of the donor's intent, including the intended beneficiary, and impose a constructive trust in his or her favor. Cf. secret trust.

shifting trust. An express trust providing that, upon a specified contingency, it may operate in favor of an additional or substituted beneficiary.

short-term trust. See Clifford trust.

simple trust. 1. See mandatory trust. 2. See passive trust.

special-needs trust. See supplemental-needs trust.

special trust. See active trust.

spendthrift trust. 1. A trust that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that interest; a trust by the terms of which a valid restraint is imposed on the voluntary or involuntary transfer of the beneficiary's interest. [Cases: Trusts 12, 141, 152. C.J.S. Trover and Conversion §§ 23, 263, 270–272.] 2. A similar trust in which the restraint on alienation results from a statute rather than from the settlor's words in the trust instrument.

“Origin of the term ‘spendthrift trust.’ The phrase ‘spendthrift trust’ seems to have been first used, as might be expected, in Pennsylvania. The earliest instance in which a use of the phrase has been found was in 1875, when it appeared in the syllabus of a case, though the court did not use it in its opinion. Four years later, in *Overman's Appeal* [88 Pa. 276 (1879)], the phrase is found in the auditor's report (in italics), while the opinion of the court in the same case refers to the trust in question as ‘a trust for a spendthrift as it is termed’ [id. at 278]. That the phrase had not become familiar by 1882 is indicated by *Thackara v. Mintzer* [100 Pa. 151 (1882)], where the head note refers to a ‘spendthrift son trust,’ but the court does not use that or any similar phrase. And in 1883, in the first edition of his *Restraints on Alienation*, [John Chipman] Gray used the phrase only rarely, and then spoke rather apologetically of ‘spendthrift trusts so called.’ In the second edition of this book, published twelve years later, the use of the phrase is frequent.” Erwin N. Griswold, *Spendthrift Trusts* § 33, at 32 (2d ed. 1947).

split-interest trust. See charitable remainder trust.

spray trust. See sprinkle trust.

sprinkle trust. A trust in which the trustee has discretion to decide how much will be given to each beneficiary. — Also termed spray trust. See SPRINKLE POWER.

standby trust. A trust created to manage a person's assets while he or she is out of the country or disabled.

supplemental-needs trust. A trust established to provide supplemental income for a disabled beneficiary who is receiving or may be eligible to receive government benefits. • This type of irrevocable trust is often used by parents of disabled children to ensure the beneficiary's eligibility for government benefits by expressly prohibiting distributions that may be used for the beneficiary's food, shelter, or clothing.

support trust. A discretionary trust in which the settlor authorizes the trustee to pay to the beneficiary as much income or principal as the trustee believes is needed for support, esp. for "comfortable support" or "support in accordance with the beneficiary's standard of living." • The beneficiary's interest cannot be voluntarily transferred, but creditors who provide necessaries can usu. reach it; general creditors cannot. [Cases: Trusts 127. C.J.S. Trover and Conversion § 218.]

technical trust. See passive trust.

tentative trust. See Totten trust.

testamentary trust (tes-t<<schwa>>-men-t<<schwa>>-ree or -tree). A trust that is created by a will and takes effect when the settlor (testator) dies. — Also termed trust under will. Cf. inter vivos trust. [Cases: Wills 669–694. C.J.S. Wills §§ 1425–1484, 1486–1550, 1552.]

Totten trust. A revocable trust created by one's deposit of money, typically in a savings account, in the depositor's name as trustee for another. • A Totten trust is an early form of "pay on death" account, since it creates no interest in the beneficiary unless the account remained at the depositor's death. Its name derives from the earliest decision in which the court approved the concept, even though the formalities of will execution were not satisfied: *In re Totten*, 71 N.E. 748 (N.Y. 1904). A Totten trust is commonly used to indicate a successor to the account without having to create a will, and thus it is a will substitute. — Also termed tentative trust; bank-account trust; savings-account trust; savings-bank trust; trustee bank account. [Cases: Trusts 34(1). C.J.S. Trover and Conversion §§ 56–58.]

"A deposit by one person of his own money, in his own name as trustee for another, standing alone, does not establish an irrevocable trust during the lifetime of the depositor. It is a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the pass book or notice to the beneficiary. In case the depositor dies before the beneficiary without revocation, or some decisive act or declaration of disaffirmance, the presumption arises that an absolute trust was created as to the balance on hand at the death of the depositor." *In re Totten*, 179 N.Y. 112, 125–26 (1904) (Vann, J.).

transgressive trust. A trust that violates the rule against perpetuities. See RULE AGAINST PERPETUITIES.

trust de son tort (d<<schwa>> sawn [or son] tor[t]). See constructive trust.

trust ex delicto. See constructive trust.

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trust ex maleficio. See constructive trust.

trust for support. A trust that, by its terms, provides that the trustee must pay or apply only as much of the income and principal as is necessary for the education and support of the beneficiary.

trust in invitum. See constructive trust.

trust under will. See testamentary trust.

2503(c) trust. A trust with only one beneficiary, who must be a minor and must have the power to withdraw all assets from the trust upon attaining the age of 21. • This type of trust derives its name from the requirements set forth in IRC (26 USCA) § 2503(c). Although the trust may continue after the beneficiary turns 21, gifts to the trust will no longer qualify for the annual exclusion if the beneficiary has no immediate right to withdraw the gift.

under-65 trust. A discretionary trust established for the sole benefit of a Medicaid recipient who is under the age of 65. • This type of trust may be established by anyone except the beneficiary, who must be less than 65 years old at the time of creation. The assets in trust will not be included in the beneficiary's estate for purposes of determining Medicaid eligibility. The beneficiary may receive distributions from the trust during life, but any balance remaining in the trust must be used to reimburse the state for the beneficiary's Medicaid expenditures.

unit-investment trust. 1. A trust in which funds are pooled and invested in income-producing securities. • Units of the trust are sold to investors, who maintain an interest in the trust in proportion to their investment. 2. An investment company that gives a shareholder an undivided interest in a fixed pool of securities held by the trustee. • This type of company can be organized in several ways (as by trust indenture, contract of custodianship or agency, or similar instrument), but is most commonly organized with a trust indenture. Such a company does not have a board of directors and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 USCA § 80a-4. See investment company under COMPANY.

unitrust. A trust from which a fixed percentage of the fair market value of the trust's assets, valued annually, is paid each year to the beneficiary. [Cases: Trusts 276. C.J.S. Trover and Conversion §§ 539–541.]

voluntary trust. 1. A trust that is not founded on consideration. • One having legal title to property may create a voluntary trust by (1) declaring that the property is to be held in trust for another, and (2) transferring the legal title to a third person who acts as trustee. [Cases: Trusts 13. C.J.S. Trover and Conversion § 25.] 2. An obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

voting trust. A trust used to hold shares of voting stock in a closely held corporation, usually transferred from a parent to a child, and empowering the trustee to exercise the right to vote. • The trust acts as custodian of the shares but is not a stockholder. Cf. VOTING GROUP. [Cases: Corporations 198.1(1). C.J.S. Corporations § 380.]

“At common law there was great suspicion of voting trusts. One commentator described a voting trust as ‘little more than a vehicle for corporate kidnapping.’ This attitude has largely

disappeared. State statutes now uniformly recognize the validity of voting trusts and they have received a more hospitable judicial reception.” Robert W. Hamilton, *The Law of Corporations in a Nutshell* 199 (3d ed. 1991).

wasting trust. A trust in which the trust property is gradually depleted by periodic payments to the beneficiary. [Cases: Trusts 61(5). C.J.S. *Trover and Conversion* § 127.]

#### TRUST ACCOUNT

trust account. See CLIENT TRUST ACCOUNT.

#### TRUST AGREEMENT

trust agreement. See declaration of trust (2) under DECLARATION(1).

#### TRUSTBUSTER

trustbuster, n. A person — esp. a federal officer — who seeks the dissolution of trusts under the antitrust laws. See TRUST(1).

#### TRUST CERTIFICATE

trust certificate. See EQUIPMENT TRUST CERTIFICATE.

#### TRUST COMPANY

trust company. See COMPANY.

#### TRUST CORPORATION

trust corporation. See trust company under COMPANY.

#### TRUST DEED

trust deed. 1. See declaration of trust (2) under DECLARATION(1). 2. See deed of trust under DEED.

#### TRUST DE SON TORT

trust de son tort (d<<schwa>> sawn [or son] tor[t]). See constructive trust under TRUST.

#### TRUST DISTRIBUTION

trust distribution. See DISTRIBUTION.

#### TRUSTEE

trustee (tr<<schwa>>s-tee), n. 1. One who, having legal title to property, holds it in trust for the benefit of another and owes a fiduciary duty to that beneficiary. • Generally, a trustee's duties are to convert to cash all debts and securities that are not qualified legal investments, to reinvest the cash in proper securities, to protect and preserve the trust property, and to ensure that it is employed solely for the beneficiary, in accordance with the directions contained in the trust instrument. [Cases: Trusts 133, 171. C.J.S. *Trover and Conversion* §§ 245–246, 318–320.]

bare trustee. A trustee of a passive trust. • A bare trustee has no duty other than to transfer the property to the beneficiary. See passive trust under TRUST.

corporate trustee. A corporation that is empowered by its charter to act as a trustee, such as a bank or trust company.

indenture trustee. A trustee named in a trust indenture and charged with holding legal title to the trust property; a trustee under an indenture.

joint trustee. See COTRUSTEE.

judicial trustee. A trustee appointed by a court to execute a trust.

quasi-trustee. One who benefits from a breach of a trust to a great enough degree to become liable as a trustee.

successor trustee. A trustee who succeeds an earlier trustee, usu. as provided in the trust agreement. [Cases: Trusts 169, 243. C.J.S. Trover and Conversion §§ 288–294, 298–299, 341.]

testamentary trustee (tes-t<<schwa>>-men-t<<schwa>>-ree or -tree). A trustee appointed by or acting under a will; one appointed to carry out a trust created by a will. [Cases: Wills 681. C.J.S. Wills § 1454.]

township trustee. One of a board of officers to whom, in some states, a township's affairs are entrusted. [Cases: Towns 28. C.J.S. Towns §§ 95–114.]

trustee ad litem (ad II-tem or -t<<schwa>>m). A trustee appointed by the court.

trustee de son tort (d<<schwa>> sawn [or son] tor[t]). A person who, without legal authority, administers a living person's property to the detriment of the property owner. See constructive trust under TRUST. [Cases: Trusts 170. C.J.S. Trover and Conversion § 317.]

trustee ex maleficio (eks mal-<<schwa>>-fish-ee-oh). A person who is guilty of wrongful or fraudulent conduct and is held by equity to the duty of a trustee, in relation to the subject matter, to prevent him or her from profiting from the wrongdoing.

2. Bankruptcy. A person appointed by the U.S. Trustee or elected by creditors or appointed by a judge to administer the bankruptcy estate during a bankruptcy case. • The trustee's duties include (1) collecting and reducing to cash the assets of the estate, (2) operating the debtor's business with court approval if appropriate to preserve the value of business assets, (3) examining the debtor at a meeting of creditors, (4) filing inventories and making periodic reports to the court on the financial condition of the estate, (5) investigating the debtor's financial affairs, (6) examining proofs of claims and objecting to improper claims, (7) furnishing information relating to the bankruptcy to interested parties, and (8) opposing discharge through bankruptcy, if advisable. A trustee is appointed or elected in every Chapter 7 case, and is appointed in every Chapter 12 and Chapter 13 case under the Bankruptcy Code. A trustee is not appointed or elected in a Chapter 11 case unless the court finds that a trustee is needed and appoints one. In most Chapter 11 cases, the bankruptcy estate is administered by the debtor in possession, rather than by a trustee. The role of a bankruptcy trustee varies depending on the type of bankruptcy case. 11 USCA §§ 701–703, 1104,

1202. — Also termed (in sense 2) bankruptcy trustee; trustee in bankruptcy. See UNITED STATES TRUSTEE. [Cases: Bankruptcy 3001–3011. C.J.S. Bankruptcy §§ 194–198.]

interim trustee. A bankruptcy trustee appointed to perform all the functions and duties of a trustee until the regular trustee is selected and qualified. • Before the meeting of creditors, the interim trustee often preliminarily investigates the debtor's assets and financial affairs. [Cases: Bankruptcy 3002. C.J.S. Bankruptcy § 195.]

3. DIRECTOR(2). 4. Parliamentary law. An officer who audits an organization's finances.

trustee, vb. 1. To serve as trustee. 2. To place (a person or property) in the hands of one or more trustees. 3. To appoint (a person) as trustee, often of a bankrupt's estate in order to restrain a creditor from collecting moneys due. 4. To attach (the effects of a debtor) in the hands of a third person.

TRUSTEE, U.S.

trustee, U.S. See UNITED STATES TRUSTEE.

TRUSTEE BANK ACCOUNT

trustee bank account. See Totten trust under TRUST.

TRUSTEE IN BANKRUPTCY

trustee in bankruptcy. See TRUSTEE(2).

TRUSTEE PROCESS

trustee process. See FACTORIZING PROCESS.

TRUSTEESHIP

trusteeship. 1. The office, status, or function of a trustee. 2. Int'l law. Administration or supervision of a territory by one or more countries, esp. under a U.N. trusteeship council. Cf. MANDATE(6).

TRUST ESTATE

trust estate. See CORPUS(1).

TRUST EX DELICTO

trust ex delicto. See constructive trust under TRUST.

TRUST EX MALEFICIO

trust ex maleficio. See constructive trust under TRUST.

TRUST FUND

trust fund. The property held in a trust by a trustee; CORPUS(1). [Cases: Trusts 1. C.J.S. Trover and Conversion §§ 1–9, 14–18.]

common trust fund. A trust fund set up within a trust department to combine the assets of numerous small trusts to achieve greater investment diversification. • Common trust funds are regulated by state law.

#### TRUST-FUND DOCTRINE

trust-fund doctrine. The principle that the assets of an insolvent company, including paid and unpaid subscriptions to the capital stock, are held as a trust fund to which the company's creditors may look for payment of their claims. • The creditors may follow the property constituting this fund, and may use it to reduce the debts, unless it has passed into the hands of a bona fide purchaser without notice. — Also termed trust-fund theory. [Cases: Corporations 544(2). C.J.S. Corporations § 743.]

#### TRUST INDENTURE

trust indenture. See INDENTURE.

#### TRUST INDENTURE ACT

Trust Indenture Act. A federal law, enacted in 1939, designed to protect investors of certain types of bonds by requiring that (1) the SEC approve the trust indenture, (2) the indenture include certain protective clauses and exclude certain exculpatory clauses, and (3) the trustees be independent of the issuing company. 15 USCA §§ 77aaa et seq. [Cases: Securities Regulation 29.10–29.14. C.J.S. Securities Regulation §§ 101–102.]

#### TRUST INDORSEMENT

trust indorsement. See INDORSEMENT.

#### TRUST IN INVITUM

trust in invitum (in in-vI-t<<schwa>>m). See constructive trust under TRUST.

#### TRUST INSTRUMENT

trust instrument. See declaration of trust (2) under DECLARATION(1).

#### TRUST LEGACY

trust legacy. See LEGACY.

#### TRUST OFFICER

trust officer. See OFFICER(1).

#### TRUSTOR

trustor. One who creates a trust; SETTLOR(1).

#### TRUST OWNERSHIP

trust ownership. See OWNERSHIP.

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**TRUST POWER**

trust power. See beneficial power under **POWER**(5).

**TRUST PROCESS**

trust process. See **PROCESS**.

**TRUST PROPERTY**

trust property. See **CORPUS**(1).

**TRUST RECEIPT**

trust receipt. 1. A pre-UCC security device — now governed by Article 9 of the Code — consisting of a receipt stating that the wholesale buyer has possession of the goods for the benefit of the financier. • Today there must usu. be a security agreement coupled with a filed financing statement. [Cases: Chattel Mortgages 9; Sales 454.] 2. A method of financing commercial transactions by which title passes directly from the manufacturer or seller to a banker or lender, who as owner delivers the goods to the dealer on whose behalf the banker or lender is acting, and to whom title ultimately goes when the banker's or lender's primary right has been satisfied.

**TRUST RELATIONSHIP**

trust relationship. See **RELATIONSHIP**.

**TRUST RES**

trust res (reez or rays). See **CORPUS**(1).

**TRUST TERRITORY**

trust territory. See **TERRITORY**.

**TRUST UNDER WILL**

trust under will. See testamentary trust under **TRUST**.

**TRUSTY**

trusty, n. A convict or prisoner who is considered trustworthy by prison authorities and therefore given special privileges. [Cases: Prisons 4(1), 13(1). C.J.S. Prisons and Rights of Prisoners §§ 7–8, 20, 50–53, 55, 80.]

**TRUTH**

truth. 1. A fully accurate account of events; factuality. 2. Defamation. An affirmative defense by which the defendant asserts that the alleged defamatory statement is substantially accurate. [Cases: Libel and Slander 54. C.J.S. Libel and Slander; Injurious Falsehood §§ 108–109.]

**TRUTH IN LENDING ACT**

Truth in Lending Act. See **CONSUMER CREDIT PROTECTION ACT**. — Abbr. **TILA**.

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**TRUTH-SEEKER**

truth-seeker. One who strives to reveal the truth <the trial lawyer should be a truth-seeker>.

**TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH**

truth, the whole truth, and nothing but the truth. The words used in the common oath administered to a witness who is about to testify <do you swear or affirm that you shall tell the truth, the whole truth and nothing but the truth?>. • The purpose of the second part of the oath is to preclude the possibility of suppressio veri; the purpose of the third part is to preclude the possibility of suggestio falsi. See SUPPRESSIO VERI; SUGGESTIO FALSI.

**TRY**

try, vb. To examine judicially; to examine and resolve (a dispute) by means of a trial.

**TRY TITLE**

try title. The judicial examination of a title. See TRESPASS TO TRY TITLE; action to quiet title under ACTION(4).

**TSCA**

TSCA. abbr. Toxic Substances Control Act. 42 USCA §§ 2601 et seq. [Cases: Environmental Law 413.]

**TTAB**

TTAB. abbr. TRADEMARK TRIAL AND APPEALS BOARD.

**TTB**

TTB. abbr. ALCOHOL AND TOBACCO TAX AND TRADE BUREAU.

**TUBMAN**

tubman (t<<schwa>>b-m<<schwa>>n). Hist. A junior barrister in the Court of Exchequer who made motions that were second in precedence to those of the postman. • The tubman was so called because he stood by a tub anciently used as a measure of capacity. Cf. POSTMAN.

**TUCKER ACT**

Tucker Act. A federal law enacted in 1887 to ameliorate the inadequacies of the original authority of the Court of Claims by extending that court's jurisdiction to include (1) claims founded on the Constitution, a federal statute, or a federal regulation, and (2) damage claims in cases not arising in tort. [Cases: Federal Courts 1071.]

**TURNCOAT WITNESS**

turncoat witness. See WITNESS.

**TURNKEY**

turnkey,adj.1. (Of a product) provided in a state of readiness for immediate use <a turnkey computer network>.2. Of, relating to, or involving a product provided in this manner <a turnkey contract>.

turnkey,n. A jailer; esp., one charged with keeping the keys to a jail or prison.

#### TURNKEY CONTRACT

turnkey contract.See engineering, procurement, and construction contract under CONTRACT.

#### TURNKEY DRILLING CONTRACT

turnkey drilling contract.See DRILLING CONTRACT.

#### TURNOVER DUTY

turnover duty.Maritime law. A shipowner's obligation to provide safe working conditions and to give notice of any nonobvious hazards regarding instruments and areas that the shipowner turns over to the stevedore and longshoremen while the ship is being loaded or unloaded. Cf. ACTIVE-OPERATIONS DUTY; INTERVENTION DUTY. [Cases: Shipping 84(3).]

#### TURNOVER ORDER

turnover order.See ORDER(2).

#### TURN STATE'S EVIDENCE

turn state's evidence,vb. To cooperate with prosecutors and testify against other criminal defendants <after hours of intense negotiations, the suspect accepted a plea bargain and agreed to turn state's evidence>.

#### TURNTABLE DOCTRINE

turntable doctrine.See ATTRACTIVE-NUISANCE DOCTRINE.

#### TURPIS CAUSA

turpis causa (t<<schwa>>r-pis kaw-z<<schwa>>). [Latin "immoral consideration"] See immoral consideration under CONSIDERATION(1).

#### TURPITUDE

turpitude (t<<schwa>>r-p<<schwa>>-t[y]ood). See MORAL TURPITUDE.

#### TUTELA

tutela (t[y]oo-tee-l<<schwa>>), n.[Latin "tutelage"] Roman law. A type of guardianship either for those not having reached puberty (tutela impuberum) or for women (tutela mulierum). • The guardian was called the tutor, the ward the pupillus. Guardians for women no longer existed in Justinian's time. Cf. CURA.

#### TUTELAGE

tutelage (t[y]oo-t<<schwa>>-lij), n.1. The act of protecting or guiding; guardianship. 2.Int'l law. The state of being under the care and management of an international organization such as the League of Nations or United Nations. • This term applies, for example, to the status of a people who do not yet benefit from a fully operational government of their own — such as people displaced by war and living in a territory that will in the future be given its autonomy.

### TUTOR

tutor,n.1. One who teaches; esp., a private instructor. Pl. tutors. 2.Roman & civil law. A guardian of a minor; a person appointed to have the care of the minor's person and estate. • The guardian of a minor past the age of puberty is called a curator and has duties somewhat different from those of a tutor. Pl. tutores.[Cases: Guardian and Ward 10, 17.]

tutor dativus (t[y]oo-tor [or -<<schwa>>r] d<<schwa>>-t[i]-v<<schwa>>s). [Latin] Roman law. A tutor appointed by the court upon application. Pl. tutores dativi.

tutor gerens (t[y]oo-tor [or -t<<schwa>>r] jeer-enz). [Latin] Roman law. A tutor who, though not sole tutor, actually administered the ward's affairs. Pl. tutores gerentes.

tutor legitimus (t[y]oo-tor [or -<<schwa>>r] l<<schwa>>-jit-i-m<<schwa>>s). [Latin] Roman law. A tutor-at-law; a tutor by virtue of the relationship with the pupil, such as a paternal uncle. Pl. tutores legitimi.

tutor testamentarius (t[y]oo-tor [or -<<schwa>>r] tes-t<<schwa>>-men-tair-ee-<<schwa>>s). [Latin] Roman law. A tutor appointed by will to have the guardianship over the testator's children. Pl. tutores testamentarii.

undertutor.Civil law. A person appointed by a court to represent a minor under the care of a tutor whenever the interests of the minor conflict with that of the tutor. See TUTORSHIP. [Cases: Guardian and Ward 12.]

### TUTORIO NOMINE

tutorio nomine (t[y]oo-tor-ee-oh nahm-<<schwa>>-nee). [Latin] Hist. In the name and character of tutor.

### TUTORSHIP

tutorship.Civil law.The office and power of a tutor; the power that an individual has, sui juris, to take care of one who cannot care for himself or herself. • The four types of tutorship are (1) tutorship by nature, (2) tutorship by will, (3) tutorship by the effect of the law, and (4) tutorship by judicial appointment. La. Civ. Code art. 247. [Cases: Guardian and Ward 1.]

dative tutorship.Civil law. Tutorship that arises from a court's appointment, usu. on the advice of the family. — Also termed dative curatorship; tutorship by judicial appointment.

legal tutorship.Civil law. Tutorship that is bestowed by statute and does not require a court's or family's approval. • For example, a spouse has the legal tutorship of the incompetent spouse. — Also termed tutorship by the effect of the law.

tutorship by judicial appointment.Civil law. See dative tutorship.

tutorship by nature. 1. Tutorship of a minor child that belongs by right to a surviving parent. 2. Tutorship of a minor child that belongs to the parent under whose care the child has been placed following divorce or judicial separation. • If the parents are awarded joint custody, both have cotutorship and equal authority, privileges, and responsibilities. La. Civ. Code art. 250. [Cases: Child Custody 1. C.J.S. Parent and Child §§ 55, 58–59.]

tutorship by the effect of the law.Civil law. See legal tutorship.

tutorship by will.Tutorship that is created (1) by the will of the parent who dies last, or (2) by any declaration of the surviving father or mother (or the parent who is the curator of the other spouse), executed before a notary and two witnesses. La. Civ. Code art. 257.

#### TUTOR TESTAMENTARIUS

tutor testamentarius.See TUTOR.

#### TUTORY

tutory (t[y]oo-t<<schwa>>r-ee).1. Guardianship; charge. 2. Tutorage; tutelage. — Also spelled tutry; tutoury. Cf. TUTELAGE(1).

#### TUTRIX

tutrix.Archaic. A female tutor. See TUTOR(2).

#### TUTUS ACCESSUS NON FUIT

tutus accessus non fuit (t[y]oo-t<<schwa>>s ak-ses-<<schwa>>s non fyoo-it). [Latin] Hist. There was no safe access.

#### TVA

TVA.abbr.TENNESSEE VALLEY AUTHORITY.

#### TWELFTH AMENDMENT

Twelfth Amendment.The constitutional amendment, ratified in 1804, that altered the electoral-college system by separating the balloting for presidential and vice-presidential candidates. [Cases: United States 25. C.J.S. United States § 46.]

#### TWELVE-DAY RULE

twelve-day rule.Criminal procedure. A rule in some jurisdictions requiring that a person charged with a felony be given a preliminary examination no later than 12 days after the arraignment on the original warrant. [Cases: Criminal Law 264. C.J.S. Criminal Law §§ 362–363.]

#### TWELVE-MONTH LIQUIDATION

twelve-month liquidation.See LIQUIDATION.

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**TWELVE TABLES**

**Twelve Tables.**Roman law. The earliest surviving legislation enacted by the Romans, written on 12 tablets in the 5th century B.C. • The Tables set out many rights and duties of Roman citizens, including debtors' rights, family law, wills, torts, civil procedure, and some public law. They substituted a written body of laws, easily accessible and binding on all citizens of Rome, for an unwritten usage accessible to only a few. The law of the Twelve Tables was also known as the Lex Duodecim Tabularum.

“The Twelve Tables continued to be recognized for many centuries as the fundamental law of the Romans; they did not formally lose this character until it was taken from them by the legislation of Justinian.” James Hadley, *Introduction to Roman Law* 74–75 (1881).

**TWENTIETH AMENDMENT**

**Twentieth Amendment.**The constitutional amendment, ratified in 1933, that changed the date of the presidential and vice-presidential inaugurations from March 4 to January 20, and the date for congressional convention from March 4 to January 3, thereby eliminating the short session of Congress, during which a number of members sat who had not been reelected to office. — Also termed lame-duck amendment. [Cases: United States 26. C.J.S. United States §§ 45–47.]

**TWENTY-FIFTH AMENDMENT**

**Twenty-fifth Amendment.**The constitutional amendment, ratified in 1967, that established rules of succession for the presidency and vice presidency in the event of death, resignation, or incapacity. [Cases: United States 26.C.J.S. United States §§ 45–47.]

**TWENTY-FIRST AMENDMENT**

**Twenty-first Amendment.**The constitutional amendment, ratified in 1933, that repealed the 18th Amendment (which established national Prohibition) and returned the power to regulate alcohol to the states. [Cases: Intoxicating Liquors 17. C.J.S. Intoxicating Liquors § 35.]

**2503(C) TRUST**

2503(c) trust.See TRUST.

**TWENTY-FOURTH AMENDMENT**

**Twenty-fourth Amendment.**The constitutional amendment, ratified in 1964, that prohibits the federal and state governments from restricting the right to vote in a federal election because of one's failure to pay a poll tax or other tax. [Cases: Elections 83. C.J.S. Elections § 29.]

**TWENTY-SECOND AMENDMENT**

**Twenty-second Amendment.**The constitutional amendment, ratified in 1951, that prohibits a person from being elected President more than twice (or, if the person succeeded to the office with more than half the predecessor's term remaining, more than once). [Cases: United States 26. C.J.S. United States §§ 45–47.]

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**TWENTY-SEVENTH AMENDMENT**

Twenty-seventh Amendment. The constitutional amendment, ratified in 1992, that prevents a pay raise for senators and representatives from taking effect until a new Congress convenes. • This amendment was proposed as part of the original Bill of Rights in 1789, but it took 203 years for the required three-fourths of the states to ratify it. — Also termed Madison Amendment. [Cases: United States 39(6). C.J.S. United States §§ 24, 61.]

**TWENTY-SIXTH AMENDMENT**

Twenty-sixth Amendment. The constitutional amendment, ratified in 1971, that sets the minimum voting age at 18 for all state and federal elections. [Cases: Elections 18. C.J.S. Elections § 13.]

**TWENTY-THIRD AMENDMENT**

Twenty-third Amendment. The constitutional amendment, ratified in 1961, that allows District of Columbia residents to vote in presidential elections.

**TWIST**

twist, n. Slang. An informant who provides testimony in exchange for leniency in sentencing, rather than for money. See INFORMANT.

**TWISTING**

twisting, n. An insurance agent's or company's misrepresenting or misstating facts, or giving an incomplete comparison of policies, to induce an insured to give up a policy in one company and buy another company's policy. [Cases: Insurance 1563, 1618. C.J.S. Insurance § 91.]

**TWO-CONTROLLED-STUDIES STANDARD**

two-controlled-studies standard. The requirement by the Federal Trade Commission that before the maker of an over-the-counter painkiller can advertise that it is better or has fewer side effects than another brand, the maker must verify the claim in two scientifically controlled studies.

**TWO-DISMISSAL RULE**

two-dismissal rule. The rule that a notice of voluntary dismissal operates as an adjudication on the merits — not merely as a dismissal without prejudice — when filed by a plaintiff who has already dismissed the same claim in another court. [Cases: Federal Civil Procedure 1714; Pretrial Procedure 519. C.J.S. Dismissal and Nonsuit § 13.]

**TWO-ISSUE RULE**

two-issue rule. The rule that if multiple issues were submitted to a trial jury and at least one of them is error-free, the appellate court should presume that the jury based its verdict on the proper issue — not on an erroneous one — and should therefore affirm the judgment. [Cases: Appeal and Error 1136. C.J.S. Appeal and Error §§ 714, 770, 826.]

**TWO-PARTY PAYMENT**

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two-party payment.See PAYMENT.

#### TWO-ROUND VOTING

two-round voting.See VOTING.

#### TWO-STAGE TRIAL

two-stage trial.See bifurcated trial under TRIAL.

#### TWO-TIER OFFER

two-tier offer.A two-step technique by which a bidder tries to acquire a target corporation, the first step involving a cash tender offer and the second usu. a merger in which the target company's remaining shareholders receive securities from the bidder (these securities ordinarily being less favorable than the cash given in the first step).

#### TWO-WITNESS RULE

two-witness rule. 1. The rule that, to support a perjury conviction, two independent witnesses (or one witness along with corroborating evidence) must establish that the alleged perjurer gave false testimony. [Cases: Perjury 34. C.J.S. Perjury § 43.] 2. The rule, as stated in the U.S. Constitution, that no person may be convicted of treason without two witnesses to the same overt act — or unless the accused confesses in open court. U.S. Const. art. IV, § 2, cl. 2. [Cases: Treason 13.C.J.S. Treason §§ 14–15.]

#### TYING

tying,adj. Antitrust. Of or relating to an arrangement whereby a seller sells a product to a buyer only if the buyer purchases another product from the seller <tying agreement>. [Cases: Monopolies 17.5(2). C.J.S. Monopolies §§ 100, 102.]

#### TYING ARRANGEMENT

tying arrangement.Antitrust. 1. A seller's agreement to sell one product or service only if the buyer also buys a different product or service. • The product or service that the buyer wants to buy is known as the tying product or tying service; the different product or service that the seller insists on selling is known as the tied product or tied service. Tying arrangements may be illegal under the Sherman or Clayton Act if their effect is too anticompetitive. [Cases: Monopolies 17.5(2). C.J.S. Monopolies §§ 100, 102.]

“The courts have developed an easily articulated text for so-called per se illegal tying arrangements, although the test varies from one circuit court to another.... In operation, the tests are similar, and the three-part test combines elements that are separated in the tests of other circuits. For purpose of analysis we use this five-part test: (1) There must be separate tying and tied products; (2) there must be ‘evidence of actual coercion by the seller that in fact forced the buyer to accept the tied product ...’; (3) the seller must possess ‘sufficient economic power in the tying product market to coerce purchaser acceptance of the tied product ...’; (4) there must be ‘anticompetitive effects in the tied market ...’; and (5) there must be ‘involvement of a “not

insubstantial” amount of interstate commerce in the tied product market ....’ ” Herbert Hovenkamp, *Federal Antitrust Policy* 392 (2d ed. 1999) (quoting *Yentsch v. Texaco, Inc.*, 630 F.2d 46, 56, 57 (2d Cir. 1980)).

2. A seller's refusal to sell one product or service unless the buyer also buys a different product or service. — Also termed tying agreement; tie-in; tie-in arrangement. Cf. RECIPROCAL DEALING.

#### TYING PRODUCT

tying product. See TYING ARRANGEMENT(1).

#### TYPED DRAWING

typed drawing. See DRAWING.

#### TYPED-FORM DRAWING

typed-form drawing. See typed drawing under DRAWING.

#### TYPOGRAPHUM

typographum (tI-pog-r<<schwa>>-f<<schwa>>m). [Latin] Hist. Impressed by use of a type, as distinguished from chirographum (“written by hand”).

#### TYRANNY

tyranny. 1. The severe deprivation of a natural right. 2. The accumulation of all powers — the legislative, executive, and judicial — in the same hands (whether few or many). • Sense 2 expresses the Madisonian view of tyranny, to be found in *The Federalist*, No. 47.3. Arbitrary or despotic government; the severe and autocratic exercise of sovereign power, whether vested constitutionally in one ruler or usurped by that ruler by breaking down the division and distribution of governmental powers. — tyrannical, tyrannous, adj.

#### TYRANT

tyrant, n. A sovereign or ruler, legitimate or not, who wields power unjustly and arbitrarily to oppress the citizenry; a despot.