

P

P.A. Professional Association.

Paage /péyāj/ In old English law, a toll for passage through another's land. The same as "pedage."

PAC. Political Action Committee. Committees, clubs, associations or other groups of persons formed to receive contributions for use in election campaigns. The organization, registration, reporting, and other activities of such organizations is regulated by federal and state laws. See *e.g.*, 2 U.S.C.A. § 431 et seq.

Pacare /pəkəriy/. L. Lat. To pay.

Pacatio /pəkéysh(iy)ow/. Payment.

Pace. A measure of length containing two feet and a half, being the ordinary length of a step. The geometrical pace is five feet long, being the length of two steps, or the whole space passed over by the same foot from one step to another.

Paceatur /pèysiyétər/. Lat. Let him be freed or discharged.

Pacification. The act of making peace between two hostile or belligerent states; reestablishment of public tranquillity.

Pacifist. One who seeks to maintain peace and to abolish war. One who refuses or is unwilling for any purpose to bear arms because of conscientious considerations, and who is disposed to encourage others in such refusal. U. S. v. Schwimmer, Ill., 279 U.S. 644, 49 S.Ct. 448, 451, 73 L.Ed. 889. A conscientious objector.

Paci sunt maxime contraria vis et injuria /péysay sènt mæksəmiy kəntériyə vis et ənjúriyə/. Violence and injury are the things chiefly hostile to peace.

Pack. To decide by false appearances; to counterfeit; to delude; to put together in sorts with a fraudulent design. To pack a jury is to use unlawful, improper, or deceitful means to have the jury made up of persons favorably disposed to the party so contriving, or who have been or can be improperly influenced to give the verdict he seeks. The term imports the improper and corrupt selection of a jury sworn and impaneled for the trial of a cause.

Package. A bundle put up for transportation or commercial handling; a thing in form to become, as such, an article of merchandise or delivery from hand to hand. A parcel is a small package; "parcel" being the diminutive of "package." Each of the words denotes a thing in form suitable for transportation or handling, or sale from hand to hand. As ordinarily understood in the

commercial world, it means a shipping package. See also Parcel.

Original package. See Original.

Packed parcels. The name for a consignment of goods, consisting of one large parcel made up of several small ones (each bearing a different address), collected from different persons by the immediate consignor (a carrier), who unites them into one for his own profit, at the expense of the railway by which they are sent, since the railway company would have been paid more for the carriage of the parcels singly than together.

Packing list. Document which contains the contents, weight and other information concerning the package to be shipped. It accompanies the package and is available for inspection.

Pact. A bargain; compact; agreement. An agreement between two or more nations or states usually less elaborate than a treaty but nearly equivalent thereto. See also Compact; Pactum; Treaty.

Nude pact. A translation of the Latin "*nudum pactum*," a bare or naked pact, that is, a promise or agreement made without any consideration on the other side, which is therefore not enforceable.

Obligatory pact. In civil law, an informal obligatory declaration of consensus, which the Roman law refused to acknowledge.

Pact de non alienando /pækt diy nón èyliyənəndow/. An agreement not to alienate (particularly mortgaged) property. This stipulation, sometimes found in mortgages made in Louisiana, and derived from the Spanish law, binds the mortgagor not to sell or encumber the mortgaged premises to the prejudice of the mortgagee; it does not avoid a sale made to a third person, but enables the mortgagee to proceed directly against the mortgaged property in a proceeding against the mortgagor alone and without notice to the purchaser.

Pacta conventa quæ neque contra leges neque dolo malo inita sunt omni modo observanda sunt /pæktə kənvéntə kwiy nékwiy kóntrə líyjiyz nékwiy dówlow mælow inətə sènt ómnay mówdow òbzərvándə sènt/. Agreements which are not contrary to the laws nor entered into with a fraudulent design are in all respects to be observed.

Pacta dant legem contractui /pæktə dánt líyjom kənt්රáktyuway/. The stipulations of parties constitute

the law of the contract. Agreements give the law to the contract.

Pacta privata juri publico derogare non possunt /pæktə prayvéytə júray pəbləkow dirəgériy non pósənt/. Private compacts cannot derogate from public right.

Pacta quæ contra leges constitutionesque, vel contra bonos mores fiunt, nullam vim habere, indubitati juris est /pæktə kwiy kóntrə líyjiz kónstət(y)úwshiyənizkwiy, vèl kóntrə bównows móriyz fáyənt, nóləm vim həbiriy, indyúwbətéytay júras ést/. That contracts which are made against law or against good morals have no force is a principle of undoubted law.

Pacta quæ turpem causam continent non sunt observanda /pæktə kwiy tərpəm kózəm kóntənənt nón sənt òzbərvəndə/. Agreements founded upon an immoral consideration are not to be observed.

Pacta sunt servanda /pæktə sənt sərvəndə/. Agreements (and stipulations) of the parties (to a contract) must be observed.

Pactio /pæksh(iy)ow/. Lat. In the civil law, a bargaining or agreeing of which *pactum* (the agreement itself) was the result. It is used, however, as the synonym of "*pactum*."

Pactional /pækshənəl/. Relating to or generating an agreement; by way of bargain or covenant.

Pactions /pækshənz/. In international law, contracts between nations which are to be performed by a single act, and of which execution is at an end at once.

Pactis privatorum juri publico non derogatur /pæktəs prayvətóram júray pəbləkow nón dirəgétar/. Private contracts do not derogate from public law.

Pactitious /pæktishəs/. Settled by covenant.

Pactio aliquod licitum est, quod sine pacto non admittitur /pæktow ələkwoð lisətəm ést kwód sáyniy pæktow nón ədmídətər/. By special agreement things are allowed which are not otherwise permitted.

Pactum /pæktəm/. Lat. *Civil law*. A pact. An agreement or convention without specific name, and without consideration, which, however, might, in its nature, produce a civil obligation.

Nudum pactum. A bare or naked pact or agreement; a promise or undertaking made without any consideration for it, and therefore not enforceable.

Roman law. With some exceptions, those agreements that the law does not directly enforce, but which it recognizes only as a valid ground of defense, were called "*pacta*." Those agreements that are enforced, in other words, are supported by actions, are called "*contractus*." The exceptions are few, and belong to a late period.

Pactum commissorium /pæktəm kóməsóriyəm/. An agreement of forfeiture.

Pactum constitutæ pecuniæ /pæktəm kónstət(y)úwtiy pəkýúwniyiy/. In the Civil law, an agreement by which a person appointed to his creditor a certain day, or a certain time, at which he promised to pay; or term may

be defined as simply an agreement by which a person promises a creditor to pay him. There is a striking conformity between the *pactum constitutæ pecuniæ*, as above defined, and our *indebitatus assumpsit*.

Pactum de non alienando /pæktəm diy nón èy-lyonəndow/. A pact or agreement binding the owner of property not to alienate it, intended to protect the interests of another; particularly an agreement by the mortgagor of real estate that he will not transfer the title to a third person until after satisfaction of the mortgage. A clause inserted in mortgages in Louisiana to secure to the mortgage creditor the right to foreclose his mortgage by executory process directed solely against the mortgagor, and to give him the right to seize and sell the mortgaged property, regardless of any subsequent alienations. *Shields v. Schiff*, 124 U.S. 351, 355, 8 S.Ct. 510, 31 L.Ed. 445.

Pactum de non petendo /pæktəm diy nón pəténdow/. In the civil law, an agreement not to sue. A simple convention whereby a creditor promises the debtor that he will not enforce his claim.

Pactum de quota litis /pæktəm diy kwówtə láytəs/. In the civil law, an agreement by which a creditor promised to pay a portion of a debt difficult to recover to a person who undertook to recover it.

Padder. A robber; a foot highwayman; a foot-pad.

Pagarchus /pəgárkəs/. A petty magistrate of a pagus or little district in the country.

Pagus /péygəs/. A county.

Paid-in-capital. Money or property given to a corporation in exchange for the corporation's capital stock; as distinguished from capital obtained from the earnings of or donations to the corporation. *See also* Surplus (*Paid-in surplus*).

Paid-in-surplus. The amount paid for the stock of a corporation in excess of its par or stated value. *See* Capital (*Capital surplus*); Paid-in-capital; Surplus (*Paid-in surplus*).

Paid-up insurance. Insurance coverage for which no additional premiums are due.

Paid-up stock. Shares of stock for which full payment has been received by the corporation.

Pain and suffering. Term used to describe not only physical discomfort and distress but also mental and emotional trauma which are recoverable as elements of damage in torts. Recovery for pain and suffering is restricted by statute in certain states. *See* Cap.

Paine forte et dure /péyn fórt ey dyúr/. *See* Peine fort et dure.

Pains and penalties, bills of. The name given to acts of parliament to attain particular persons of treason or felony, or to inflict pains and penalties beyond or contrary to the common law, to serve a special purpose. They are in fact new laws, made *pro re nata*. *See also* Bill of pains and penalties.

Pairing-off. In the practice of legislative bodies, a species of negative proxies, by which two members, who belong to opposite parties or are on opposite sides with regard to a given question, mutually agree that they will both be absent from voting, either for a specified period or when a division is had on the particular question. By this mutual agreement a vote is neutralized on each side of the question, and the relative numbers on the division are precisely the same as if both members were present. It is said to have originated in the house of commons in Cromwell's time.

Pais, pays /peɪ(s)/. Fr. The country; the neighborhood.

A trial *per pais* signifies a trial by the country; that is, by jury.

An assurance by matter *in pais* is an assurance transacted between two or more private persons "in the country;" that is, upon the very spot to be transferred.

Matter *in pais* signifies matter of fact, probably because matters of fact are triable by the country; *i.e.*, by jury.

Estoppels *in pais* are estoppels by conduct, as distinguished from estoppels by deed or by record.

Conveyances *in pais* are ordinary conveyances between two or more persons *in the country*; *i.e.*, upon the land to be transferred.

See also *In pais*; Matter *in pais*.

Palace court. See Court of the Steward and Marshal.

Palam /pæləm/. Lat. In the civil law, openly; in the presence of many.

Palimony. Term has meaning similar to "alimony" except that award, settlement or agreement arises out of nonmarital relationship of parties (*i.e.* nonmarital partners). It has been held that courts should enforce express contracts between nonmarital partners except to the extent the contract is explicitly founded on the consideration of meretricious sexual services, despite contention that such contracts violate public policy; that in the absence of express contract, the court should inquire into the conduct of the parties to determine whether that conduct demonstrates implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties, and may also employ the doctrine of quantum meruit or equitable remedies such as constructive or resulting trust, when warranted by the facts of the case. *Marvin v. Marvin*, 557 P.2d 106, 18 Cal.3d 660, 134 Cal.Rptr. 815.

Pallio cooperire /pæliyow kowə(w)pəráyriy/. In old English law, an ancient custom, where children were born out of wedlock, and their parents afterwards intermarried. The children, together with the father and mother, stood under a cloth extended while the marriage was solemnized. It was in the nature of adoption. The children were legitimate by the civil, but not by the common, law. They were called "mantle children" in Germany, France, and Normandy. The custom also existed in Scotland.

Palmarium /pælmériyəm/. In civil law, a conditional fee for professional services in addition to the lawful charge.

Palmer Act. A name given to the English statute 19 & 20 Vict., c. 16, enabling a person accused of a crime committed out of the jurisdiction of the central criminal court, to be tried in that court.

Palmistry /páməstriy/. The practice of telling fortunes by a feigned interpretation of the lines and marks on the hand. Also, a trick with the hand.

Palm off. Refers to the conduct of selling goods as the goods of another or doing business as the business of another such that the public is misled by the conduct and believes it is purchasing the goods of another or doing business with someone other than the actual seller. *Laser Industries, Ltd. v. Eder Instrument Co., Inc.*, D.C.Ill., 573 F.Supp. 987, 991.

Palm prints. The impression made by a person's palm on a smooth surface. They may be used for purpose of identification in criminal cases.

Palpable. Easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest. *People v. Hughey*, 382 Ill. 136, 47 N.E.2d 77, 80.

Palsgraf Rule. The rule derived from the case of *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 162 N.E. 99, to the effect that one who is negligent is liable only for the harm or injury which is within the orbit of foreseeability and not for every injury which follows from his negligence. See also *Foreseeability*.

Pandects /pændekts/. A compilation of Roman law, consisting of selected passages from the writings of the most authoritative of the older jurists, methodically arranged, prepared by Tribonian with the assistance of sixteen associates, under a commission from the emperor Justinian. This work, which is otherwise called the "Digest," because in his compilation the writings of the jurists were reduced to order and condensed *quasi digestae*, comprises fifty books, and is one of the four great works composing the *Corpus Juris Civilis*. It was first published in A.D. 529, when Justinian gave to it the force of law.

Pander, n. One who caters to the lust of others; a male bawd, a pimp, or procurer.

Pander, v. To pimp; to cater to the gratification of the lust of another. To entice or procure a female, by promises, threats, fraud, or artifice, to enter any place in which prostitution is practiced, for the purpose of prostitution. Pandering is established when evidence shows that accused has succeeded in inducing his victim to become engaged in prostitution. *People v. Charles*, 218 Cal.App.2d 812, 32 Cal.Rptr. 653, 658.

Pandering of obscenity. Business of purveying textual, pictorial or graphic matter openly advertised to appeal to prurient interest of customers, or potential customers, by either blatant and explicit advertising or subtle and sophisticated advertising. *U.S. v. Baranov*, 418 F.2d 1051, 1053. Such conduct is not protected by the First

Amendment. *Ginsburg v. United States*, 383 U.S. 463, 86 S.Ct. 942, 16 L.Ed.2d 31.

Panderer. One who solicits for prostitute. A pimp.

P & L. See Profit (*Profit and loss*); Profit and loss statement.

Panel. A list of jurors summoned to serve in a particular court, or for the trial of a particular action. Group of judges (smaller than the entire court) which decides a case; e.g. a nine member appellate court might be divided into three, three member panels with each panel hearing and deciding cases. May also refer to members of a commission.

See also Impanel; Jury-list; Jury panel.

Prepaid legal services. "Open panel" legal services is a plan in which legal services are paid for in advance (usually by a type of insurance) and members can choose their own lawyer. Under a "closed panel", however, all legal services are performed by a group of attorneys previously selected by the insurer, union, etc. See Prepaid legal services.

Pannellation /pænələyʃən/. The act of impaneling a jury.

Papal supremacy. The supremacy which the Pope claimed not only over the Emperor of the Holy Roman Empire, but over all other Christian princes. The theory was that they stood to the Pope as feudal vassals to a supreme lord; as such, the Pope claimed the right to enforce the duties due to him from his feudal subordinates through an ascending scale of penalties culminating in the absolution of the prince's subjects from the bonds of allegiance, and in the disposition of the sovereign himself. The papal supremacy was overthrown in England by acts of the Parliament which met in 1529 and was dissolved in 1536, ending in the Act of Supremacy which substituted the King for the Pope.

Paper. A written or printed document or instrument. A document filed or introduced in evidence in a suit at law, as, in the phrase "papers in the case" and in "papers on appeal." Any writing or printed document, including letters, memoranda, legal or business documents, and books of account, as in the constitutional provision which protects the people from unreasonable searches and seizures in respect to their "papers" as well as their houses and persons. A written or printed evidence of debt, particularly a promissory note or a bill of exchange, as in the phrases "accommodation paper" and "commercial paper" (*q.v.*). See also Bearer paper; Chattel paper; Commercial paper; Document; Instrument.

Paper money. Bills drawn by a government against its own credit, engaging to pay money, but which do not profess to be immediately convertible into specie, and which are put into compulsory circulation as a substitute for coined money. See Federal reserve notes; Legal tender.

Paper patent. Term used derisively to refer to a discovery or invention which has never been put to com-

mercial use nor recognized in the trade. *Coltman v. Colgate-Palmolive-Peet Co.*, C.C.A.Ind., 104 F.2d 508.

Paper profit (or loss). An unrealized profit (or loss) on a security or other investment still held. Paper profits (or losses) become realized profits (or losses) only upon the sale of the security.

Paper standard. A money system based on pure paper which is not convertible into gold or other metal of intrinsic value.

Papian poppæan law. See *Lex Papia Poppæa*.

Par. In commercial law, equal; equality. An equality subsisting between the nominal or face value of a bill of exchange, share of stock, etc., and its actual selling value. When the values are thus equal, the instrument or share is said to be "at par;" if it can be sold for more than its nominal worth, it is "above par;" if for less, it is "below par." See also Par of exchange; Par value.

Any standard or norm of conduct which is expected of people.

Parachronism /pərəkrənizəm/. Error in the computation of time.

Paracium /pərəyʃh(iy)əm/. In old English law, the tenure between parceners, viz., that which the youngest owes to the eldest without homage or service.

Parage /pærəj/ or **paragium** /pərəyj(iy)əm/. In old English law, an equality of blood or dignity, but more especially of land, in the partition of an inheritance between co-heirs. More properly, however, an equality of condition among nobles, or persons holding by a noble tenure. Thus, when a fief is divided among brothers, the younger hold their part of the elder by parage; i.e., without any homage or service. Term from which "disparagement", meaning inequality, is derived. Also the portion which a woman may obtain on her marriage.

Paragraph. A distinct part of a discourse or writing; any section or subdivision of writing or chapter which relates to particular point, whether consisting of one or many sentences.

A part or section of a statute, pleading, affidavit, will, trust, etc., which contains one article, the sense of which is complete.

Fed.R.Civil P. 10(b) provides that: "All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement or of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings . . ."

Paralegal. A person with legal skills, but who is not an attorney, and who works under the supervision of a lawyer in performing various tasks relating to the practice of law or who is otherwise authorized by law to use those legal skills. Paralegal courses leading to degrees in such specialty are now afforded by many schools.

Parallel citation. A citation reference to the same case printed in two or more different reports. See e.g. the case citation to U.S. Supreme Court decisions in this Dictionary.

Paramount. Above; upwards. Higher; superior; pre-eminent; of the highest rank or nature.

Paramount equity. An equitable right or claim which is prior, superior, or preferable to that with which it is compared.

Paramount title. In the law of real property, properly one which is superior to the title with which it is compared, in the sense that the former is the source or origin of the latter. It is, however, frequently used to denote a title which is simply better or stronger than another, or will prevail over it. But this use is scarcely correct, unless the superiority consists in the seniority of the title spoken of as "paramount."

Paramour. In general, a lover; but term is used commonly in connection with a person of either sex in an adulterous alliance.

Paranoia /pærənóyə/. See *Insanity*.

Paraph. A flourish at the end of a signature. In the Middle Ages this was a sort of rude safeguard against forgery. Also, in Louisiana, the signature itself, such as the official signature of a notary.

Parapherna /pærəfárnə/. In the civil law, goods brought by wife to husband over and above her dowry (*dos*).

Paraphernalia /pærəfárnéyl(i)yə/. The separate property of a married woman, other than that which is included in her dowry, or *dos*. Those goods which a woman is allowed to have, after the death of her husband, besides her dower, consisting of her apparel and ornaments, suitable to her rank and degree. Those goods which a wife could bequeath by her testament.

In the civil law, the separate property of the wife is divided into dotal and extradotal. Dotal property is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Extradotal property, otherwise called "paraphernal property," is that which forms no part of the dowry. It is property brought to the marriage by one of the spouses.

Paraphernal property /pærəfárnəl própərdiy/. See *Paraphernalia*.

Paraprofessional. One who assists a professional person though not a member of the profession himself; *e.g.* a paralegal (*q.v.*) who assists a lawyer.

Parasynexis /pærəsénéksəs/. In the civil law, a convention, or unlawful meeting.

Paratitla /pærətáytlə/. In the civil law, notes or abstracts prefixed to titles of law, giving a summary of their contents. An abbreviated explanation of some titles or books of the Code or Digest.

Paratum habeo /pæréytəm hábiyow/. Lat. I have him in readiness. The return by the sheriff to a *capias ad respondendum*, signifying that he has the defendant in readiness to be brought into court. This was a fiction, where the defendant was at large. Afterwards he was required, by statute, to take bail from the defendant,

and he returned *cepi corpus* and bailbond. But still he might be ruled to bring in the body.

Paratus est verificare /pæréytəs ést véhrəfəkériy/. Lat. He is ready to verify. The Latin form for concluding a pleading with a *verification* (*q.v.*).

Paravail /pærəvéyl/pærəvéyl/. Inferior; subordinate. In old English law, tenant paravail signified the lowest tenant of land, being the tenant of a mesne lord. He was so called because he was supposed to make "avail" or profit of the land for another.

Parcel, v. To divide an estate.

Parcel, n. A small package or bundle. See *Package*.

A part or portion of land. A part of an estate. "Parcel" as used with reference to land generally means a contiguous quantity of land in the possession of an owner. *United States ex rel. and for Use of Tennessee Val. Authority v. Easements and Rights over Certain Land in Hamilton County, D.C.Tenn., 259 F.Supp. 377, 382.* A contiguous quantity of land in possession of, owned by, or recorded as property of the same claimant person or company. *Adams Tree Service, Inc. v. Trans-america Title Ins. Co., 20 Ariz.App. 214, 511 P.2d 658, 662.* Term may be synonymous with "lot."

Parcela terræ /parsélə téhriy/. A parcel of land.

Parcel makers /pársəl méykərz/. In old English law, two officers in the exchequer who formerly made the parcels or items of the escheators' accounts, wherein they charged them with everything they had levied for the king during the term of their office.

Parcels. A description of property, formally set forth in a conveyance, together with the boundaries thereof, in order to provide for easy identification.

Parcels, bill of. An account of the items composing a parcel or package of goods, transmitted with them to the purchaser. See, *Bill of parcels* under *Bill*.

Parcenary /pársənéhriy/. The state or condition of holding title to lands jointly by parceners, before the common inheritance has been divided.

Parcener /pársənər/. A joint heir; one who, with others, holds an estate in co-parcenary (*q.v.*). *Gibson v. Johnson, 331 Mo. 1198, 56 S.W.2d 783.*

Parchment. Sheep-skins dressed for writing, so called from *Pergamus*, Asia Minor, where they were invented. Used for deeds, and used for writs of summons in England previous to the Judicature Act of 1875. The skin of a lamb, sheep, goat, young calf, or other animal, prepared for writing on; also, any of various papers made in imitation thereof.

Parco fracto /párkow fráktow/. Pound-breach; also the name of an old English writ against one who violently breaks a pound and takes beasts which, for some trespass done, or some other just cause, were lawfully impounded.

Par delictum /pár dəlíktəm/. (In *pari delicto*.) Equal guilt.

Pardon. An executive action that mitigates or sets aside punishment for a crime. An act of grace from governing power which mitigates the punishment the law demands for the offense and restores the rights and privileges forfeited on account of the offense. *Verneco, Inc. v. Fidelity & Cas. Co. of New York*, 253 La. 721, 219 So.2d 508, 511. A pardon releases offender from entire punishment prescribed for offense and from disabilities consequent on his conviction; it reinstates his civil liberties. *State ex rel. Herman v. Powell*, 139 Mont. 583, 367 P.2d 553, 556.

The power to pardon for non-federal crimes is generally invested in state governors, while the President has the power to pardon for federal offenses (Art. II, Sec. 2, U.S.Const.).

See also Amnesty; Board of pardons; Clemency; Commutation; Condonation; Parole; Reprieve.

Distinguished from amnesty. The distinction between amnesty and pardon is one rather of philological interest than of legal importance. *Knote v. U. S.*, 95 U.S. 149, 153, 24 L.Ed. 442, 443. This is so as to their ultimate effect, but there are incidental differences of importance. They are of different character and have different purposes. The one overlooks offense; the other remits punishment. The first is usually addressed to crimes against the sovereignty of the state, to political offenses, forgiveness being deemed more expedient for the public welfare than prosecution and punishment. The second condones infractions of the peace of the state. Amnesty is usually general, addressed to classes or even communities—a legislative act, or under legislation, constitutional or statutory—the act of the supreme magistrate. There may or may not be distinct acts of acceptance. If other rights are dependent upon it and are asserted, there is affirmative evidence of acceptance. *Burdick v. U. S.*, 236 U.S. 79, 271, 35 S.Ct. 267, 59 L.Ed. 476. "Pardon" applies only to the individual, releases him from the punishment fixed by law for his specific offense, but does not affect the criminality of the same or similar acts when performed by other persons or repeated by the same person.

Distinguished from commutation. A pardon, to be effective, must be accepted, *Burdick v. U. S.*, 236 U.S. 79, 35 S.Ct. 267, 268, 59 L.Ed. 476; but a commutation is merely a cessation of the exercise of sovereign authority, and does not obliterate guilt nor restore civil rights, and need not be accepted by the convict to be operative. A commutation is simply a remission of a part of the punishment, a substitution of a less penalty for the one originally imposed; while a "pardon" avoids or terminates punishment for crime. *U. S. v. Commissioner of Immigration at Port of New York, C.C.A.N.Y.*, 5 F.2d 162, 165.

Distinguished from parole. A "pardon" releases the offender from the entire punishment prescribed for the offense, and from all the disabilities consequent on his conviction, while by a "parole" a convict is merely released before the expiration of his term, to remain subject during the remainder thereof to supervision by

the public authority, and to return to imprisonment on violation of the condition of the parole.

Types of Pardons

Absolute or unconditional pardon. One which frees the criminal without any condition whatever. That which reaches both the punishment prescribed for the offense and the guilt of the offender. It obliterates in legal contemplation the offense itself. It goes no further than to restore the accused to his civil rights and remit the penalty imposed for the particular offense of which he was convicted in so far as it remains unpaid. *State v. Cullen*, 14 Wash.2d 105, 127 P.2d 257, 259.

Conditional pardon. One to which a condition is annexed, performance of which is necessary to the validity of the pardon. A pardon which does not become operative until the grantee has performed some specific act, or where it becomes void when some specific event transpires. One granted on the condition that it shall only endure until the voluntary doing of some act by the person pardoned, or that it shall be revoked by a subsequent act on his part, as that he shall leave the state and never return.

Executive pardon. See Executive pardon.

Full pardon. One freely and unconditionally absolving party from all legal consequences, direct and collateral, of crime and conviction. *Warren v. State*, 127 Tex.Cr.R. 71, 74 S.W.2d 1006, 1008.

General pardon. One granted to all the persons participating in a given criminal or treasonable offense (generally political), or to all offenders of a given class or against a certain statute or within certain limits of time. But "amnesty" is the more appropriate term for this. It may be express, as when a general declaration is made that all offenders of a certain class shall be pardoned, or implied, as in case of the repeal of a penal statute. See Amnesty.

Partial pardon. That which remits only portion of punishment or absolves from only portion of legal consequences of crime. *Warren v. State*, 127 Tex.Cr.R. 71, 74 S.W.2d 1006, 1008.

Unconditional pardon. Pardon that frees a prisoner without any conditions attached. A full pardon.

Pardon attorney. Official of Justice Department who considers applications for federal pardons and makes recommendations for the exercise of Presidential clemency.

Pardoners /párdənərz/. In old English law, persons who carried about the pope's indulgences, and sold them to any who would buy them.

Parens /párenz/pér°. Lat. In Roman law, a parent; originally and properly only the father or mother of the person spoken of; but also, by an extension of its meaning, any relative, male or female, in the line of direct ascent.

"Parens" est nomen generale ad omne genus cognationis /párenz est nówmən jənəréyly æd ómny jýnəs

kəgnəyshiyoʊwnəs/. "Parent" is a name general for every kind of relationship.

Parens patriæ /pə'renz pə'triyiy or pə'renz pə'ytriyyiy/. "Parens patriæ," literally "parent of the country," refers traditionally to role of state as sovereign and guardian of persons under legal disability, such as juveniles or the insane, *State of W.Va. v. Chas. Pfizer & Co., C.A. N.Y., 440 F.2d 1079, 1089*, and in child custody determinations, when acting on behalf of the state to protect the interests of the child. It is the principle that the state must care for those who cannot take care of themselves, such as minors who lack proper care and custody from their parents. It is a concept of standing utilized to protect those quasi-sovereign interests such as health, comfort and welfare of the people, interstate water rights, general economy of the state, etc. *Gibbs v. Titelman, D.C.Pa., 369 F.Supp. 38, 54*.

Parens patriæ originates from the English common law where the King had a royal prerogative to act as guardian to persons with legal disabilities such as infants. In the United States, the *parens patriæ* function belongs with the states.

State attorney generals have *parens patriæ* authority to bring actions on behalf of state residents for anti-trust offenses and to recover on their behalf. 15 U.S.C.A. § 15c. *See also* Hart-Scott-Rodino Antitrust Improvement Act.

The use of this power to deprive a person of freedom has been limited by recent laws and decisions; *e.g.* *Kent v. U. S., 383 U.S. 541, 554-555, 86 S.Ct. 1045, 1054, 14 L.Ed.2d 84*.

See also Surrogate parent.

Parent. The lawful father or mother of a person. In common and ordinary usage the word comprehends much more than mere fact of who was responsible for child's conception and birth and is commonly understood to describe and refer to person or persons who share mutual love and affection with a child and who supply child support and maintenance, instruction, discipline and guidance. *Solberg v. Metropolitan Life Ins. Co., 50 Wis.2d 746, 185 N.W.2d 319, 323*.

By statute, "parent" has been defined to include (1) either the natural father or the natural mother of a child born of their valid marriage to each other, if no subsequent judicial decree has divested one or both of them of their statutory coguardianship as created by their marriage; (2) either the adoptive father or the adoptive mother of a child jointly adopted by them, if no subsequent judicial decree has divested one or both of them of their statutory coguardianship as created by the adoption; (3) the natural mother of an illegitimate child, if her position as sole guardian of such a child has not been divested by a subsequent judicial decree; (4) a child's putative blood parent who has expressly acknowledged paternity and contributed meaningfully to the child's support; (5) any individual or agency whose status as guardian of the person of the child has been established by judicial decree.

Includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under the Uniform Probate Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent. Uniform Probate Code, § 1-201(28).

See also Adoption; Loco parentis; Parens patriæ; Surrogate parent.

Parentage. Kindred in the direct ascending line. The state or condition of being a parent.

Parental consent. Consent required of minor from parent to marry or undertake other legal obligations.

Parental Kidnapping Prevention Act. Federal law which imposes a duty on the states to enforce a child custody determination entered by a court of a sister state if the determination is consistent with provisions of the Act. 28 U.S.C.A. § 1738A.

Parental liability. By statute in certain states, the parents may be held liable up to a specified amount for damages caused to property of others by their children if such damage is found to have resulted from negligent control of parent over acts of child.

Parental rights. The sum total of the rights of the parent or parents in and to the child as well as the rights of the child in and to the parent or parents. *Anguis v. Superior Court In and For Maricopa County, 6 Ariz.App. 68, 429 P.2d 702, 705*. The following are "parental rights" protected to varying degrees by constitution: physical possession of child, which, in case of custodial parent, includes day-to-day care and companionship of child; right to discipline child, which includes right to inculcate in child parent's moral and ethical standards; right to control and manage minor child's earnings; right to control and manage minor child's property; right to be supported by adult child; right to have child bear parent's name; and right to prevent adoption of child without parents' consent. *L. A. M. v. State, Alaska, 547 P.2d 827, 835*.

Parent-child immunity. In some jurisdictions a parent is immune from liability for negligence in an action brought by his or her child, though the trend has been to abolish or restrict such immunity.

Parent company or corporation. Company owning more than 50 percent of the voting shares, or otherwise a controlling interest, of another company, called the subsidiary. *Compare* Holding company.

Parentela /pə'rentiylə/. The sum of those persons who trace descent from one ancestor.

In old English law, parentela, or *de parentela se tolere*, signified a renunciation of one's kindred and family. This was, according to ancient custom, done in open court, before the judge, and in the presence of twelve men, who made oath that they believed it was done for a just cause. After such abjuration, the person was incapable of inheriting anything from any of his relations, etc.

Parenticide /pərentəsəyd/. One who murders a parent; also the crime so committed.

Parentum est liberos alere etiam nothos /pərentəm èst libərows əliriy iyshiyəm nówθows/. It is the duty of parents to support their children even when illegitimate.

Pares /pəriyz/pér°. Lat. In old English law, a person's peers or equals; as the jury for the trial of causes, who were originally the vassals or tenants of the lord, being the equals or peers of the parties litigant; and, as the lord's vassals judged each other in the lord's courts, so the sovereign's vassals, or the lords themselves, judged each other in the sovereign's courts.

Pares curiæ /pəriyz kyúriyiy/. In old English law, peers of the court. Vassals who were bound to attend the lord's court.

Paresis /pəriysəs/pərésəs/. Progressive general paralysis, involving or leading to the form of insanity known as "*dementia paralytica*." Popularly, but not very correctly, called "softening of the brain." See *Insanity*.

Pares regni /pəriyz régnay/. Peers of the realm.

Paria copulantur paribus /pəriyə kòpyəlántər pərebəs/. Like things unite with like.

Paribus sententiis reus absolvitur /pərebəs senténshiyəs riyəs əbzólvətər/. Where the opinions are equal [where the court is equally divided], the defendant is acquitted.

Pari causa /pəray kózá/. Lat. With equal right; upon an equal footing; equivalent in rights or claims.

Pari delicto /pəray dəlíktow/. Lat. In equal fault; in a similar offense or crime; equal in guilt or in legal fault. "Pari delicto" doctrine rests on rule that courts will not enforce an invalid contract and that no party can recover in any action where it is necessary for him to prove an illegal contract in order to make out his case. *Neal v. Pennsylvania Life Ins. Co.*, Okl., 480 P.2d 923, 925. Under this doctrine transgressor will not be allowed to profit from his own wrongdoing and party is barred from recovering damages if his losses are substantially caused by activities which the law forbade him to engage in. *Recchion on Behalf of Westinghouse Elec. Corp. v. Kirby*, D.C.Pa., 637 F.Supp. 1309, 1316. See *In pari delicto*.

Paries communis /pəriyiyz kəmyúwnəs/. A common wall; a party-wall.

Pari materia /pəray mətíriyə/. Lat. Of the same matter; on the same subject; as, laws *pari materia* must be construed with reference to each other.

Pari-mutuel betting /pəriy myúwty(u)wəl bétiŋ/. A form of wagering, generally on the outcome of horse or dog races, whereby all bets made on a particular race are pooled and then paid, less a management fee, to holders of winning tickets. *Cramer v. New York State Racing Ass'n*, 136 A.D.2d 104, 525 N.Y.S.2d 938, 940. Such betting is allowed in most states, though it is

heavily regulated. Cf. *New York McKinney's Racing, Pari-mutuel Wagering and Breeding Law*, § 101 et seq.

Par in parem imperium non habet /pár in pəram əmpíriyəm nòn héybət/. An equal has no dominion over an equal.

Pari passu /pəray pás(y)uw/pəray péys(y)uw/. Lat. By an equal progress; equably; ratably; without preference. Used especially of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other.

Pari ratione /pəray rəshiyówniy/. Lat. For the like reason; by like mode of reasoning.

Paris, declaration of /dekləréyshən əv pərés/. See *Declaration*.

Parish. In English ecclesiastical law a circuit of ground, committed to the charge of one parson or vicar, or other minister having cure of souls therein. 1 Bl.Comm. 111. The precinct of a parish church, and the particular charge of a secular priest. An ecclesiastical division of a town, city or district, subject to the ministry of one pastor.

In Louisiana, a territorial governmental division of the state corresponding to what is elsewhere called a "county."

Parish apprentice. In old English law, the children of parents unable to maintain them could, by law, be apprenticed, by the guardians or overseers of their parish, to such persons as may be willing to receive them as apprentices. Such children were called "parish apprentices."

Parish church. This expression has various significations. It is applied sometimes to a select body of Christians, forming a local spiritual association, and sometimes to the building in which the public worship of the inhabitants of a parish is celebrated; but the true legal notion of a parochial church is a consecrated place, having attached to it the rights of burial and the administration of the sacraments.

Parish court. The name of a court established in each parish in Louisiana, and corresponding to the county courts or common pleas courts in the other states. It has a limited civil jurisdiction, besides general probate powers.

Parishioners. Members of a parish. In England, for many purposes they form a body politic.

Par items. Items which a drawee bank will remit to another bank without charge.

Parity. Equality in amount or value. Equivalence of prices of farm products in relation to those existing at some former date (base period) or to the general cost of living. Parity prices are important in establishing government price support programs for farmers.

Equivalence of prices of goods or services in two different markets.

The relationship between two currencies such that they are exchangeable for each other at the par or official rate of exchange. *See* Exchange rate.

Parity ratio. A relationship developed between the index of prices received by farmers for their crops and the index of costs of the farmers for the items which they buy.

Parium eadem est ratio, idem jus /p'ariyam iyédám èst réysh(iy)ow, áydám jás/. Of things equal, the reason is the same, and the same is the law.

Parium iudicium /p'ariyam jédishiyám/. The judgment of peers; trial by a jury of one's peers or equals.

Park, n. An inclosed pleasure-ground in or near a city, set apart for the recreation of the public.

Park, v. Term "park" as used in statutes or ordinances regulating parking, does not comprehend or include merely temporary or momentary stoppage but rather connotes a stoppage with intent of permitting vehicle to remain standing for an appreciable length of time. *Ford v. Stevens*, 280 Minn. 16, 157 N.W.2d 510, 513.

Parliament. The supreme legislative assembly of Great Britain and Ireland, consisting of the king or queen and the three estates of the realm, viz., the lords spiritual, the lords temporal, and the commons.

High Court of Parliament. In English law, the English parliament, as composed of the house of peers and house of commons; or the house of lords sitting in its judicial capacity.

Parliamentary. Relating or belonging to, connected with, enacted by or proceeding from, or characteristic of, the English parliament in particular, or any legislative body in general.

Parliamentary agents. In England, persons who act as solicitors in promoting and carrying private bills through parliament. They are usually attorneys or solicitors, but they do not usually confine their practice to this particular department. No member or officer of either house may act as an agent.

Parliamentary committee. A committee of members of the house of peers or of the house of commons, appointed by either house for the purpose of making inquiries, by the examination of witnesses or otherwise, into matters which could not be conveniently inquired into by the whole house.

Parliamentary law. The general body of enacted rules (*e.g.* Roberts Rules of Order) and recognized usages which governs the procedure of legislative assemblies and other deliberative bodies such as meetings of stockholders and directors of corporations, town meetings, boards, clubs, and the like.

Parliamentary taxes. *See* Tax.

Parliamentum /pàrl(iy)éméntám/. L. Lat. A legislative body in general or the English parliament in particular.

Parliamentum religiosorum /pàrl(iy)éméntám rəlij-iyowsórám/. In most convents there has been a common room into which the brethren withdrew for conver-

sation; conferences there being termed "*parliamentum.*" Likewise, the societies of the two temples, or inns of court, call that assembly of the benchers or governors wherein they confer upon the common affairs of their several houses a "parliament."

Parochial. Relating or belonging to a parish.

Par of exchange. The precise equality or equivalency of any given sum or quantity of money of one country, and the like sum or quantity of money of any other foreign country into which it is to be exchanged. The par of the currencies of any two countries means the equivalence of a certain amount of the currency of the one in the currency of the other. *See* Exchange rate.

Parol. A word; speech; hence, oral or verbal. Expressed or evidenced by speech only; as opposed to by writing or by sealed instrument.

As to *parol* Agreement; Arrest; Demurrer; Lease; and Promise; see those titles.

Parol contract. An oral contract as distinguished from a written or formal contract. *See also* Oral contract.

Parole /p'arówl/. Release from jail, prison or other confinement after actually serving part of sentence. *State v. Ludwig*, 218 Or. 483, 344 P.2d 764, 766. Conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order. *Thomas v. Arizona State Bd. of Pardons and Paroles*, 115 Ariz. 128, 564 P.2d 79, 81.

"Parolee" gains his conditional freedom as result of exercise of discretion by parole board which may grant parole when it is of opinion there is reasonable probability that prisoner will live and remain at liberty without violating laws. *Birch v. Anderson*, C.A.D.C., 358 F.2d 520, 524, 123 U.S.App.D.C. 153.

The granting, denying, revocation, and supervision of parole for federal prisoners rests in the U.S. Parole Commission. Most states have similar boards or commissions. *See* Parole board or commission.

In military law, a promise given by a prisoner of war, when he has leave to depart from custody, that he will return at the time appointed, unless discharged. An engagement by a prisoner of war, upon being set at liberty, that he will not again take up arms against the government by whose forces he was captured, either for a limited period or while hostilities continue.

Compare Amnesty; Pardon.

Probation distinguished. "Probation" relates to judicial action taken before the prison door is closed, whereas "parole" relates to executive action taken after the door has closed on a convict. *State v. Hewett*, 270 N.C. 348, 154 S.E.2d 476, 479.

Revocation hearing. Parole revocation hearing is in the nature of an administrative proceeding for the purpose of determining whether a parolee has violated the conditions of his parole. *State ex rel. McNeil v. New York*

State Bd. of Parole, 87 Misc.2d 497, 385 N.Y.S.2d 731, 734.

Parole board or commission. The state and federal administrative bodies empowered to decide whether inmates shall be conditionally released from prison before completion of their sentences. Called "Correctional Boards" in some states.

The U.S. Parole Commission consists of nine members, appointed by the President by and with the advice and consent of the Senate. It has sole authority to grant, modify, or revoke paroles of all U.S. prisoners. It is responsible for the supervision of parolees and prisoners released upon the expiration of their sentences with allowances for statutory good time. U.S. probation officers supervise parolees and mandatory releases.

The former federal Board of Parole was abolished in 1976 with its functions transferred to the U.S. Parole Commission. With implementation of the 1987 federal Sentencing Guidelines, the federal parole system will be phased out and replaced by release under the supervision of the judge who imposed the sentence—rather than by a parole board.

Parolee. Ex-prisoner who has been placed on parole.

Parole officers. Parole system is administered by parole officers whose duties include supervision of parolees. Normally, parolees must periodically report to such officers.

Parol evidence. Oral or verbal evidence; that which is given by word of mouth; the ordinary kind of evidence given by witnesses in court. In a particular sense, and with reference to contracts, deeds, wills, and other writings, parol evidence is the same as extraneous evidence or evidence *aliunde*. See also *Aliunde*; *Extraneous evidence*; *Oral evidence*.

Parol evidence rule. This evidence rule seeks to preserve integrity of written agreements by refusing to permit contracting parties to attempt to alter import of their contract through use of contemporaneous oral declarations. *Rose v. Food Fair Stores, Inc.*, 437 Pa. 117, 262 A.2d 851. Under this rule when the parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress, or mutual mistake. *Federal Deposit Ins. Corp. v. First Mortgage Investors*, 76 Wis.2d 151, 250 N.W.2d 362, 365. But rule does not forbid a resort to parol evidence not inconsistent with the matters stated in the writing. *Elkins v. Super-Cold Southwest Co.*, Tex.Civ.App., 157 S.W.2d 946, 947. Also, as regards sales of goods, such written agreement may be explained or supplemented by course of dealing or usage of trade or by course of conduct, and by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. U.C.C. § 2-202.

This rule is also applicable to wills and trusts.

Parols de ley /pə'rówlz də léy/. L. Fr. Words of law; technical words.

Parols font pleá /pə'rówls fónt plíy/. Words make the plea.

Parricide /pə'rəsəyd/. The crime of killing one's father; also a person guilty of killing his father.

Parricidium /pə'rəsáyd(i)yəm/. Lat. In the civil law, parricide; the murder of a parent.

Pars /parz/. Lat. A part; a party to a deed, action, or legal proceeding.

Pars enitia /pə'z ənáysh(i)yə/. In old English law, the privilege or portion of the eldest child in the partition of lands by lot.

Pars gravata /pə'z grævéytə/. A party aggrieved; the party aggrieved.

Parson. The rector of a church; one that has full possession of all the rights of a parochial church.

Parson mortal. In old English law, a rector instituted and inducted for his own life. But any collegiate or conventional body, to whom a church was forever appropriated, was termed "*persona immortalis*."

Pars rationabilis /pə'z rəshənéybələs/. That part of a man's goods which the law gave to his widow and children.

Pars rea /pə'z riyə/. A party defendant.

Pars viscerum matris /pə'z víserəm méytrəs/. Part of the bowels of the mother; *i.e.*, an unborn child.

Part. An integral portion, something essentially belonging to a larger whole; that which together with another or others makes up a whole. *First-Mechanics Nat. Bank of Trenton v. Norris*, 134 N.J.Eq. 229, 34 A.2d 746, 749. A portion, share, or purpart. One of two duplicate originals of a conveyance or covenant, the other being called "counterpart." Also, in composition, partial or incomplete; as part payment, part performance.

Partage /pə'tázh/. In French law, a division made between co-proprietors of a particular estate held by them in common. It is the operation by means of which the goods of a succession are divided among the co-heirs; while licitation (*q.v.*) is an adjudication to the highest bidder of objects which are not divisible.

Parte inaudita /pə'diy inódatə/. Lat. One side being unheard. Spoken of any action which is taken *ex parte*.

Partem aliquam recte intelligere nemo potest, antequam totum, iterum atque iterum, perlegerit /pə'dəm əlékwəm réktiy intələjəriy níymow pówtəst əntəkwəm tówtəm ítəram ətkwiy ítəram pərlíyjerət/. No one can rightly understand any part until he has read the whole again and again.

Parte non comparente /pə'tiy nón kómpərəntiy/. Lat. The party not having appeared. The condition of a cause called "default."

Parte quacumque integrante sublata, tollitur totum /pə'tiy kwəkəmkwiy intəgrəntiy səbléytə tóltətr

tówtám/. An integral part being taken away, the whole is taken away.

Partes finis nihil habuerunt /pártiyz fáynəs náy(h)əl hähüwírónt/. In old pleading, the parties to the fine had nothing; that is, had no estate which could be conveyed by it. A plea to a fine which had been levied by a stranger.

Partial. Relating to or constituting a part; not complete; not entire or universal; not general or total. *United States Fidelity & Guaranty Co. v. Baker, Tex.Civ. App., 65 S.W.2d 344, 346.*

Partial account. An account of an executor, administrator, guardian, etc., not exhibiting his entire dealings with the estate or fund from his appointment to final settlement, but covering only a portion of the time or of the estate.

Partial average. Another name for particular average. *See Average.*

Partial dependency. Test as to existence of such dependency for purpose of worker's compensation is whether contributions were relied on by claimants to aid and maintain them in present position in life and whether they were to substantial degree depending on support or aid of employee at time of death. *Federal Underwriters Exchange v. Hinkle, Tex.Civ.App., 187 S.W.2d 122, 124.*

Partial eviction. That which takes place when the possessor is deprived of only a portion of his rights in the premises. Such may result in constructive eviction.

Partial evidence. That which goes to establish a detached fact, in a series tending to the fact in dispute. It may be received, subject to be rejected as incompetent, unless connected with the fact in dispute by proof of other facts; for example, on an issue of title to real property, evidence of the continued possession of a remote occupant is partial, for it is of a detached fact, which may or may not be afterwards connected with the fact in dispute.

Partial incapacity. Such occurs when injury disables a workman to perform part of the usual tasks of his job, though such disablement does not prevent him from procuring and retaining employment reasonably suitable to his physical condition and ability to work, or when because of his injury he is only able to perform labor of a less remunerative class than he performed before the injury, and as a consequence he suffers a depression or reduction in his earning capacity. *Commercial Ins. Co. of Newark, New Jersey v. Puente, Tex.Civ.App., 535 S.W.2d 948, 957.*

Partial limitation. Provision found in some insurance policies in which the insurer agrees to pay a total loss if the actual loss exceeds a certain amount.

Partial loss. A loss of a part of a thing or of its value, or any damage not amounting (actually or constructively) to its entire destruction; as contrasted with *total* loss. Partial loss is one in which the damage done to the thing insured is not so complete as to amount to a total

loss, either actual or constructive. In every such case the underwriter is liable to pay such proportion of the sum which would be payable on total loss as the damage sustained by the subject of insurance bears to the whole value at the time of insurance. Partial loss implies a damage sustained by the ship or cargo, which falls upon the respective owners of the property so damaged; and, when happening from any peril insured against by the policy, the owners are to be indemnified by the underwriters, unless in cases excepted by the express terms of the policy.

Partial payment. *See Payment.*

Partial release. Clause in blanket mortgage directing mortgagee to release specified parcels from lien upon payment of certain sum.

Partial taking. *See Eminent domain.*

Partial verdict. *See Verdict.*

Partiarius /pärshiyériyəs/. Lat. In Roman law, a legatee who was entitled, by the directions of the will, to receive a share or portion of the inheritance left to the heir.

Partible lands. Lands which might be divided; lands held in gavelkind.

Particeps /pártəsèps/. Lat. A participant; a sharer; anciently, a part owner, or parcener.

Particeps criminis /pártəsèps krímənəs/. A participant in a crime; an accomplice. One who shares or co-operates in a criminal offense, tort or fraud. *See Accomplice.*

Participate /partisəpèyt/. To receive or have a part or share of; to partake of; experience in common with others; to have or enjoy a part or share in common with others. To partake, as to "participate" in a discussion, or in a pension or profit sharing plan. To take equal shares and proportions; to share or divide, as to participate in an estate. To take as tenants in common.

Participation. Provision in insurance policies by which the insured shares or participates in each loss incurred and covered by the policy on a specified percentage basis. Sometimes loosely referred to as coinsurance but latter term is not strictly applicable.

To prove "participation" in a criminal enterprise, for purpose of convicting for aiding and abetting, there must be evidence to establish that defendant engaged in some affirmative conduct, that is, that defendant committed an overt act designed to aid in success of the venture; proof of mere negative acquiescence will not suffice. *U.S. v. Cowart, C.A.Ga., 595 F.2d 1023, 1035.*

Participation loan. As a loan risk safeguard, and because of statutory and regulatory limitations on the amount which a single bank may lend to a single borrower, two or more banks will join in larger loans with each bank lending a portion of the amount to the borrower. Such loans are usually arranged for and serviced by a "lead" bank-lender.

Participation mortgage. Type of mortgage where lender participates in profits of venture beyond or in addition to normal interest rate.

Participes plures sunt quasi unum corpus in eo quod unum jus habent, et oportet quod corpus sit integrum, et quod in nulla parte sit defectus /partisəpiyz pluriyz sənt kwéyzay yúwnəm kórpəs in iyow kwòd yúwnəm jəs héybənt, èt əpòrtət kwòd kórpəs sid intəgrəm èt kwòd in nàlə pártiy sit dəfəktəs/. Many parceners are as one body, inasmuch as they have one right, and it is necessary that the body be perfect, and that there be a defect in no part.

Particula /partikyələ/. A small piece of land.

Particular. Relating to a part or portion of anything; separate; sole; single; individual; specific; local; comprising a part only; partial in extent; not universal. Opposed to general. *State v. Patterson*, 60 Idaho 67, 88 P.2d 493, 497. Of, or pertaining to, a single person, class or thing. *Albin v. Hughes*, Tex.Civ.App., 304 S.W.2d 371, 372.

As to *particular* Average; Customs; Estate; Malice; and Partnership; see those titles.

Particularity. In a pleading, affidavit, or the like, is the detailed statement of particulars.

Particular lien. A particular lien is a right to retain a thing for some charge or claim growing out of, or connected with, the identical thing. Right to retain property of another on account of labor employed or money expended on that specific property, and such lien may arise by implication of law, usages of a trade, or by express contract.

Particulars. The details of a claim, or the separate items of an account. When these are stated in an orderly form, for the information of a defendant, the statement is called a "bill of particulars". See *Particulars of criminal charges*.

Particulars, bill of. See *Particulars of criminal charges*.

Particulars of breaches and objections. In an action brought, in England, for the infringement of letters patent, the plaintiff is bound to deliver with his declaration (now with his statement of claim) particulars (*i.e.*, details) of the breaches which he complains of.

Particulars of criminal charges. A prosecutor, when a charge is general, is frequently ordered to give the defendant a statement of the specific acts charged (bill of particulars). Fed.R.Crim.P. 7. See *Bill (Bill of particulars)*.

Particulars of sale. When property such as land, houses, shares, reversions, etc., is to be sold by auction, it is usually described in a document called the "particulars," copies of which are distributed among intending bidders. They should fairly and accurately describe the property.

Particular tenant. The tenant of a particular estate. See *Estate*.

Parties. The persons who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding. *Green v. Bogue*, 158 U.S. 478, 15 S.Ct. 975, 39 L.Ed. 1061. See also *Party*.

In the Roman civil law, the parties were designated as "*actor*" and "*reus*". In civil actions they are called "plaintiff" and "defendant"; in equity, "complainant", or "plaintiff", and "defendant"; in admiralty practice, "libellant" and "respondent" or "libelee"; in appeals, "appellant" and "respondent" or "appellee", or sometimes, "plaintiff in error" and "defendant in error"; in criminal proceedings, "State of ____," or "United States of America", and "defendant".

See also *Coparties*; *Identity of parties*; *Indispensable parties*; *Interpleader*; *Intervention*; *Joinder*; *Necessary parties*; *Party*; *Proper party*; *Real party in interest*; *Substitution of parties*; *Third-party practice*.

Indispensible parties. See *Joinder*.

Joinder of parties. See *Joinder*.

Necessary parties. See *Joinder*.

Parties to crime. See *Accessory*; *Accomplice*; *Principal*.

Proper parties. See *Joinder*.

Real party in interest. See *Party*.

Parties and privies. Parties to a deed or contract are those with whom the deed or contract is actually made or entered into. By the term "privies," as applied to contracts, is frequently meant those between whom the contract is mutually binding, although not literally parties to such contract. Thus, in the case of a lease, the lessor and lessee are both parties and privies, the contract being literally made between the two, and also being mutually binding; but, if the lessee assign his interest to a third party, then a privity arises between the assignee and the original lessor, although such assignee is not literally a party to the original lease.

Parties in interest. See *Party (Real party in interest)*.

Partisan. An adherent to a particular party or cause as opposed to the public interest at large.

Partitio /pərtish(iy)ow/. Lat. In the civil law, partition; division. This word did not always signify *dimidium*, a dividing into halves.

Partitio legata /pərtish(iy)ow ləgétə/. In the civil law, a testamentary partition. This took place where the testator, in his will, directed the heir to divide the inheritance and deliver a designated portion thereof to a named legatee.

Partition. The dividing of lands held by joint tenants, coparceners, or tenants in common. *Gibson v. Gibson*, 264 Ark. 420, 572 S.W.2d 148, 149. And, in a less technical sense, any division of real or personal property between co-owners, resulting in individual ownership of the interests of each. Division between several persons of property which belongs to them as co-owners; it may be compulsory (judicial) or voluntary. *O'Brien v.*

O'Brien, 89 Misc.2d 433, 391 N.Y.S.2d 502, 503. Partition severs unity of possession. *Hamilton v. MacDonald*, C.A.Ariz., 503 F.2d 1138, 1150.

Commonly, the court will order the property sold and the proceeds divided instead of ordering a physical partition of the property.

Owely of partition. See *Owely*.

Partition, deed of. In conveyancing, a species of primary or original conveyance between two or more joint tenants, coparceners, or tenants in common, by which they divide the lands so held among them in severalty, each taking a distinct part.

Partition of a succession. The partition of a succession is the division of the effects of which the succession is composed, among all the co-heirs, according to their respective rights. Partition is voluntary or judicial. It is voluntary when it is made among all the co-heirs present and of age, and by their mutual consent. It is judicial when it is made by the authority of the court, and according to the formalities prescribed by law. Every partition is either definitive or provisional. Definitive partition is that which is made in a permanent and irrevocable manner. Provisional partition is that which is made provisionally, either of certain things before the rest can be divided, or even of everything that is to be divided, when the parties are not in a situation to make an irrevocable partition.

Partner. A member of partnership or firm; one who has united with others to form a partnership in business. See also *General partner*; *Partnership*.

Dormant partners. Those whose names are not known or do not appear as partners, but who nevertheless are silent partners, and partake of the profits, and thereby become partners, either absolutely to all intents and purposes, or at all events in respect to third parties. Dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm, as principals. See also *Silent partner*.

Full or general partner. A partner who participates fully in the profits, losses and management of the partnership and who is personally liable for its debts.

Junior partner. A partner whose participation in the firm is limited as to both profits and management. See also *Limited partner, below*.

Limited partner. A partner whose participation in the profits is limited by an agreement and who is not liable for the debts of the partnership beyond his capital contribution. See also *Partnership (Limited partnership)*.

Liquidating partner. The partner who, upon the dissolution or insolvency of the firm, is appointed to settle its accounts, collect assets, adjust claims, and pay debts.

Nominal partner. One whose name appears in connection with the business as a member of the firm, but who has no real interest in it.

Ostensible partner. One whose name appears to the world as such, or who is held out to all persons having dealings with the firm in the character of a partner, whether or not he has any real interest in the firm.

Quasi partner. One who has joined with others in a business which appears to be a partnership but who is not actually a partner, e.g. joint adventurer.

Secret partner. See *Dormant partners, above*.

Silent partner. See *Dormant partners, above*.

Special partner. A member of a limited partnership, who furnishes certain funds, and whose liability extends no further than the fund furnished. A partner whose responsibility is restricted to the amount of his investment.

Surviving partner. The partner who, on the dissolution of the firm by the death of his copartner, occupies the position of a trustee to settle up its affairs.

Partnership. A business owned by two or more persons that is not organized as a corporation. A voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. *Burr v. Greenland*, Tex.Civ.App., 356 S.W.2d 370, 376. An association of two or more persons to carry on, as co-owners, a business for profit. Uniform Partnership Act, § 6(1). Nearly all states have adopted the Uniform Partnership Act.

For income tax purposes, a partnership includes a syndicate, group, pool, or joint venture, as well as ordinary partnerships. In an ordinary partnership, two or more parties combine capital and/or services to carry on a business for profit as co-owners. I.R.C. § 7701(a)(2). See also *Limited partnership* and *Tiered partnership, below*.

Partnerships are treated as a conduit and are, therefore, not subject to taxation. The various items of partnership income, gains and losses, etc. flow through to the individual partners and are reported on their personal income tax returns.

Articles of partnership. See that title.

Collapsible partnership. See that title.

Commercial partnership. See *Trading partnership*.

Family partnership. One which family members control by being partners. Children may be partners but for tax purposes they should be given complete control over their interests; otherwise, the entire profits will be considered income of the active adult partners. See also *Family partnership*.

General partnership. A partnership in which the parties carry on all their trade and business, whatever it may be, for the joint benefit and profit of all the parties concerned, whether the capital stock be limited or not, or the contributions thereto be equal or unequal. One in which all the partners share the profits and losses as

well as the management equally, though their capital contributions may vary.

Implied partnership. One which is not a real partnership but which is recognized by the court as such because of the conduct of the parties; in effect, the parties are estopped from denying the existence of a partnership.

Limited partnership. A partnership consisting of one or more general partners, jointly and severally responsible as ordinary partners, and by whom the business is conducted, and one or more special partners, contributing in cash payments a specific sum as capital to the common stock, and who are not liable for the debts of the partnership beyond the fund so contributed. *See also* Limited partnership.

Mining partnership. *See* that title.

Particular partnership. One existing where the parties have united to share the benefits of a single individual transaction or enterprise.

Partnership assets. Property of any kind belonging to the firm as such (not the separate property of the individual partners) and available to the recourse of the creditors of the firm in the first instance.

Partnership at will. One designed to continue for no fixed period of time, but only during the pleasure of the parties, and which may be dissolved by any partner without previous notice.

Partnership by estoppel. Two or more persons who hold themselves out as partners to a third person, when in fact they are not partners, are barred from claiming they are not partners.

Partnership debt. One due from the partnership or firm as such and not (primarily) from one of the individual partners.

Partnership in commendam. A partnership formed by a contract by which one person or partnership agrees to furnish another person or partnership a certain amount, either in property or money, to be employed by the person or partnership to whom it is furnished, in his or their own name or firm, on condition of receiving a share in the profits, in the proportion determined by the contract, and of being liable to losses and expenses to the amount furnished and no more.

Secret partnership. One where the existence of certain persons as partners is not avowed to the public by any of the partners. *See* Partner (*Dormant partners*).

Special partnership. At common law, one formed for the prosecution of a special branch of business, as distinguished from the general business of the parties, or for one particular venture or subject. A joint adventure under state statutes; such are usually considered "limited partnerships".

Statutory partnership association. A statutory creation in some states (*e.g.* Michigan, New Jersey, Ohio) which resembles a corporation more than a partnership, but which has many attributes of the limited partnership.

Subpartnership. One formed where one partner in a firm makes a stranger a partner with him in his share of the profits of that firm. It is not a partnership but an arrangement in which the subpartner shares in the profits and losses of a partner.

Tiered partnership. An ownership arrangement where in one partnership (the parent or first tier) is a partner in one or more partnerships (the subsidiary/subsidiaries or second tier). Frequently, the first tier is a holding partnership and the second tier is an operating partnership.

Trading partnership. *See* that title.

Universal partnership. One in which the partners jointly agree to contribute to the common fund of the partnership the whole of their property, of whatever character, and future, as well as present.

Partnership agreement. The document embodying the terms and conditions of a partnership and sometimes referred to as the articles of partnership.

Partnership articles. *See* Articles of partnership.

Partnership association. Type of business association which resembles in part a partnership and a joint stock company. Its salient feature is the limited liability of the members and is seldom used today.

Partnership certificate. A document evidencing the participation of the partners in a partnership and commonly furnished to financial institutions when the partnership borrows money.

Partnership insurance. *See* Insurance.

Part performance. A plaintiff who renders partial performance of a contract relying on the promised performance of the other party may successfully resist the defense of the statute of frauds under certain conditions. In order to establish part performance taking an oral contract for the sale of realty out of the statute of frauds, the acts relied upon as part performance must be of such a character that they can reasonably be naturally accounted for in no other way than that they were performed in pursuance of the contract, and they must be in conformity with its provisions. *Camerota v. Wisniewski*, 21 Conn.Sup. 88, 145 A.2d 139, 141. *See* U.C.C. § 2-201(3). *See also* Performance.

Partus /pártəs/. Lat. Child; offspring; the child just before it is born, or immediately after its birth.

Partus ex legitimo thoro non certius noscit matrem quam genitorem suum /pártəs èks læjítəməw θórow nòn sársh(i)yəs nósət méytrəm kwəm jènətórəm s(y)úwəm/. The offspring of a legitimate bed knows not his mother more certainly than his father.

Partus sequitur ventrem /pártəs sékwətər véntərəm/. The offspring follows the mother; the brood of an animal belongs to the owner of the dam; the offspring of a slave belongs to the owner of the mother, or follows the condition of the mother. A maxim of the civil law, which has been adopted in the law of England in regard

to animals, though never allowed in the case of human beings.

Party, n. A person concerned or having or taking part in any affair, matter, transaction, or proceeding, considered individually. A "party" to an action is a person whose name is designated on record as plaintiff or defendant. *M & A Elec. Power Co-op. v. True, Mo.App.*, 480 S.W.2d 310, 314. Term, in general, means one having right to control proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from judgment. *City of Chattanooga v. Swift*, 223 Tenn. 46, 442 S.W.2d 257, 258.

"Party" is a technical word having a precise meaning in legal parlance; it refers to those by or against whom a legal suit is brought, whether in law or in equity, the party plaintiff or defendant, whether composed of one or more individuals and whether natural or legal persons; all others who may be affected by the suit, indirectly or consequently, are persons interested but not parties. *Golatte v. Mathews, D.C.Ala.*, 394 F.Supp. 1203, 1207.

See also Nominal defendant; Parties; Prevailing party.

For indispensable parties, joinder of parties, necessary parties, proper parties, see Joinder.

Party aggrieved. Under statutes permitting any party aggrieved to appeal, is one whose right has been directly and injuriously affected by action of court. *Singer v. Allied Factors*, 216 Minn. 443, 13 N.W.2d 378, 380. One whose pecuniary interest in subject matter of an action is directly and injuriously affected or whose right of property is either established or divested by complained of decision. *Whitman v. Whitman, Okl.*, 397 P.2d 664, 667.

To be "party aggrieved" by judgment, appellant's interest must be immediate, pecuniary and substantial and not nominal or remote consequence of judgment. *Leoke v. San Bernardino County*, 249 C.A.2d 767, 57 Cal.Rptr. 770, 772, 773. See also Aggrieved party.

Party in interest. Primary meaning ascribed the term "party in interest" in bankruptcy cases is one whose pecuniary interest is directly affected by the bankruptcy proceeding. *In re Kutner, Bkrcty.Tex.*, 3 B.R. 422, 425.

Party to be charged. A phrase used in the statute of frauds, meaning the party against whom the contract is sought to be enforced. The party to be charged in the action—that is, the defendant.

Political party. A body of voters organized for the purpose of influencing or controlling the policies and conduct of government through the nomination and election of its candidates to office. See also Political party.

Real party in interest. Fed.R. Civil P. 17(a) provides that every action shall be prosecuted by the "real party in interest." The adoption of this rule was intended to change the common law rule which permitted suit to be brought only in the name of the person having the legal title to the right of action, and thus precluded suit by persons who had only equitable or beneficial interests. Under the rule the "real party in interest" is the party

who, by the substantive law, possesses the right sought to be enforced, and not necessarily the person who will ultimately benefit from the recovery. This is illustrated by the further language of the rule stating that executors, administrators, and other named representatives may sue in their own name without joining with them the party for whose benefit the action is brought.

Third parties. A term used to include all persons who are not parties to the contract, agreement, or instrument of writing by which their interest in the thing conveyed is sought to be affected. See also Beneficiary.

In civil actions, a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiffs' claim against him. A similar right is afforded to the plaintiff when a counterclaim is asserted against him. Fed.R. Civil P. 14. See Third party complaint; Third-party practice.

Party wall. A wall erected on a property boundary as a common support to structures on both sides, which are under different ownerships. A wall built partly on the land of one owner, and partly on the land of another, for the common benefit of both in supporting the construction of contiguous buildings. A division wall between two adjacent properties belonging to different persons and used for mutual benefit of both parties, but it is not necessary that the wall should stand part upon each of two adjoining lots, and it may stand wholly upon one lot. *Soma Realty Co. v. Romeo*, 31 Misc.2d 20, 220 N.Y.S.2d 752, 755.

In the primary and most ordinary meaning of the term, a party-wall is (1) a wall of which the two adjoining owners are tenants in common. But it may also mean (2) a wall divided longitudinally into two strips, one belonging to each of the neighboring owners; (3) a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements (the term is so used in some of the English building acts); or (4) a wall divided longitudinally into two moieties, each moiety being subject to a cross-easement in favor of the owner of the other moiety.

Parum /pærəm/. Lat. Little; but little.

Parum cavisse videtur /pærəm kævısıy vədıytər/. Lat. Roman law. He seems to have taken too little care; he seems to have been incautious, or not sufficiently upon his guard. A form of expression used by the judge or magistrate in pronouncing sentence of death upon a criminal.

Parum differunt quæ re concordant /pærəm dıfərənt kwıy rıy kankórdənt/. Things which agree in substance differ but little.

Parum est latam esse sententiam nisi mandetur executioni /pærəm ést léytəm ésiıy sánténsh(iy)əm náısay mändéytər əkəkıyüwshıyównay/. It is little [or to little

purpose] that judgment be given unless it be committed to execution.

Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum /pærəm prófəsət sáyriy kwid fáyray débət, sáy nón kəgnóskəs kwówmədow sit fəkt(y)úrəm/. It profits little to know what ought to be done, if you do not know how it is to be done.

Par value. The face or stated value of a share of stock or bond. With reference to mortgages or trust deeds, the value of the mortgage based on the balance owing, without discount.

In the case of a common share, par means an arbitrary or nominal dollar amount assigned to the share by the issuing company. Par value may also be used to compute the dollar amount of the common shares on the balance sheet. Par value has little significance so far as market value of common stock is concerned. Many companies today issue no-par stock but give a stated per share value on the balance sheet. In the case of preferred shares and bonds, however, par is important. It often signifies the dollar value upon which dividends on preferred stocks, and interest on bonds, are figured. In the case of bonds and stock, the face value appearing on the certificate is the par value. Those stocks not containing such a statement have no par value.

Bonds are issued at or very near par value, and subsequently trade at either a discount or a premium to this figure, based on the direction of interest rates. Bonds mature at par.

Par value or stated value. The Revised Model Business Corporation Act and the statutes of many states have eliminated the concept of par value.

Parva serjeantia /párvə sərjijəns(iy)ə/. Petty serjeanty (*q.v.*).

Parvum cape /párvəm kéyp(iy)/. See Petit cape.

Pas /pá/. In French. Precedence; right of going foremost.

Pass, v. To utter or pronounce, as when the court *passes* sentence upon a prisoner. Also to proceed; to be rendered or given, as when judgment is said to *pass* for the plaintiff in a suit.

In legislative parlance, a bill or resolution is said to *pass* when it is agreed to or enacted by the house, or when the body has sanctioned its adoption by the requisite majority of votes; in the same circumstances, the body is said to *pass* the bill or motion. See also Passage.

When an auditor appointed to examine into any accounts certifies to their correctness, he is said to *pass* them; *i.e.*, they pass through the examination without being detained or sent back for inaccuracy or imperfection.

The term also means to examine into anything and then authoritatively determine the disputed questions which it involves. In this sense a jury is said to *pass upon* the rights or issues in litigation before them.

In the language of conveyancing, the term means to move from one person to another; *i.e.* to be transferred or conveyed from one owner to another.

To publish; utter; transfer; circulate; impose fraudulently. This is the meaning of the word when the offense of *passing* counterfeit money or a forged paper is spoken of.

"Pass," "utter," "publish," and "sell" are in some respects convertible terms, and, in a given case, "pass" may include utter, publish, and sell. The words "uttering" and "passing," used of notes, do not necessarily import that they are transferred as genuine. The words include any delivery of a note to another for value, with intent that it shall be put into circulation as money. When used in connection with negotiable instrument means to deliver, to circulate, to hand from one person to another. *State v. Beaver*, 266 N.C. 115, 145 S.E.2d 330, 331. See Delivery; Negotiation; Transfer; Utter.

Pass, n. Permission to pass; a license to go or come; a certificate, emanating from authority, wherein it is declared that a designated person is permitted to go beyond certain boundaries which, without such authority, he could not lawfully pass. Also a ticket issued by a railroad or other transportation company, authorizing a designated person to travel free on its lines, between certain points or for a limited time.

Passage. Act of passing; transit; transition. A way over water or land or through the air. An easement giving the right to pass over a piece of private water. Travel by sea; a voyage over water; the carriage of passengers by water; price paid for such carriage.

Enactment; the act of carrying a bill or resolution through a legislative or deliberative body in accordance with the prescribed forms and requisites. The emergence of the bill in the form of a law, or the motion in the form of a resolution. Passage may mean when bill has passed either or both houses of legislature or when it is signed by President or Governor.

Passagio /pæsəj(iy)ow/. An ancient writ addressed to the keepers of the ports to permit a man who had the king's leave to pass over sea.

Passator /pæsəytər/. In old English law, he who has the interest or command of the passage of a river; or a lord to whom a duty is paid for passage.

Passbook. Document issued by a bank in which the customer's transactions (*i.e.* savings deposits and withdrawals) are recorded.

Passenger. In general, a person who gives compensation to another for transportation. *Shapiro v. Bookspan*, 155 Cal.App.2d 353, 318 P.2d 123, 126. The word passenger has however various meanings, depending upon the circumstances under which and the context in which the word is used; sometimes it is construed in a restricted legal sense as referring to one who is being carried by another for hire; on other occasions, the word is interpreted as meaning any occupant of a vehicle other than the person operating it. *American Mercury Ins. Co. v. Bifulco*, 74 N.J.Super. 191, 181 A.2d 20, 22.

The essential elements of "passenger" as opposed to "guest" under guest statute are that driver must receive some benefit sufficiently real, tangible, and substantial to serve as the inducing cause of the transportation so as to completely overshadow mere hospitality or friendship; it may be easier to find compensation where the trip has commercial or business flavor. *Friedhoff v. Engberg*, 82 S.D. 522, 149 N.W.2d 759, 761, 762, 763.

A person whom a common carrier has contracted to carry from one place to another, and has, in the course of the performance of that contract, received under his care either upon the means of conveyance, or at the point of departure of that means of conveyance.

Passenger mile. In statistics of transportation, a unit of measure equal to the transport of one passenger over one mile of route.

Passim /pæsəm/. Lat. Everywhere. Often used to indicate a very general reference to a book or legal authority.

Passion. In the definition of manslaughter as homicide committed without premeditation but under the influence of sudden "passion" or "heat of passion", this term means any of the emotions of the mind known as rage, anger, hatred, furious resentment, or terror, rendering the mind incapable of cool reflection. *See also* Heat of passion.

Passive. As used in law, this term means inactive; permissive; consisting in endurance or submission, rather than action; and in some connections it carries the implication of being subjected to a burden or charge.

As to *passive* Debt; Negligence; Title; Trust; and Use; see those titles.

Passive activity. A term introduced with the Tax Reform Act of 1986. A passive activity generally refers to an activity in which a taxpayer does not materially participate. An example includes an investment in a limited partnership. *See* Passive income; Passive loss.

Passive income. Income earned in an activity in which an individual does not materially participate. An example of "passive income" includes: income from an interest in a limited partnership in contrast to "active income" which is salaries and wages, or earnings from a trade or business. Rental income is always considered passive regardless of material participation. *See also* Passive loss.

Passive investment income. As defined in I.R.C. § 1362(d)(3)(D), passive investment income means gross receipts from royalties, certain rents, dividends, interest, annuities, and gains from the sale or exchange of stock and securities.

Passive loss. In tax law, any loss from (1) activities in which the taxpayer does not materially participate, (2) rental activities (with certain exceptions for individuals who actively participate in rental activities), or (3) tax shelter activities. The deductibility of passive losses are limited based upon when the activity was acquired, as well as the type of activity involved. Any passive losses which are limited in the year incurred are fully deduct-

ible in the year the investment activity is disposed. Passive loss limitations were phased in beginning in 1987. *See also* Passive income; Portfolio income.

Passport. A document identifying a citizen, in effect requesting foreign powers to allow the bearer to enter and to pass freely and safely, recognizing the right of the bearer to the protection and good offices of American diplomatic and consular offices. *U. S. v. Laub*, U.S.N.Y., 385 U.S. 475, 87 S.Ct. 574, 578, 17 L.Ed.2d 526. A passport is evidence of permission from sovereign to its citizen to travel to foreign countries and to return to land of his allegiance, as well as request to foreign powers that such citizen be allowed to pass freely and safely. *Worthy v. U. S.*, C.A.Fla., 328 F.2d 386, 391. *See also* Visa.

Any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the entry of the bearer into a foreign country. 8 U.S.C.A. § 1101.

In international law. A license or safe-conduct, issued during the progress of a war, authorizing a person to remove himself or his effects from the territory of one of the belligerent nations to another country, or to travel from country to country without arrest or detention on account of the war.

Maritime. A document issued to a neutral merchant vessel, by her own government, during the progress of a war, to be carried on the voyage, to evidence her nationality and protect her against the cruisers of the belligerent powers. This paper is otherwise called a "pass," "sea-pass," "sea-letter," "sea-brief." It usually contains the captain's or master's name and residence, the name, property, description, tonnage, and destination of the ship, the nature and quantity of the cargo, the place from whence it comes, and its destination, with such other matters as the practice of the place requires.

Past consideration. In contracts, a detriment suffered by a contracting party at a time antecedent to the formation of a contract and hence, except in unusual cases, is not legally sufficient consideration to support a contract. In law of negotiable instruments, past consideration is sufficient to support a note or other negotiable instrument.

Past recollection recorded. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect that knowledge correctly, is not excluded by the hearsay rule, even though the declarant is available as a witness. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party. Fed.Evid.R. 803(5).

Under the "past recollection recorded" doctrine, written report is properly admissible into evidence if witness has testified that on examination of the report he had no independent recollection of the matters contained therein. *Lawson v. Belt Ry. Co. of Chicago*, 34 Ill.

App.3d 7, 339 N.E.2d 381, 394. Past recollection recorded is where a witness, who is either devoid of a present recollection or possessed of an imperfect present recollection, desires to use a past recollection by employing some record of such recollection. *Askins v. State*, 13 Md.App. 702, 284 A.2d 626, 630.

Pastus /pástas/. In feudal law, the procuration or provision which tenants were bound to make for their lords at certain times, or as often as they made a progress to their lands. It was often converted into money.

Pateat universis per praesentes /pátiyət yúwnəvərsəs pər prazéntiyz/. Know all men by these presents. Words with which letters of attorney anciently commenced.

Patent, *adj.* Open; manifest; evident; unsealed. Used in this sense in such phrases as "patent ambiguity," "patent writ," "letters patent."

Letters patent. Open letters, as distinguished from letters close. An instrument proceeding from the government, and conveying a right, authority, or grant to an individual, as a patent for a tract of land, or for the exclusive right to make and sell a new invention. See Letters patent; Patent and Trademark Office.

Patent, *n.* A grant of some privilege, property, or authority, made by the government or sovereign of a country to one or more individuals.

The instrument by which a state or government grants public lands to an individual.

A grant of right to exclude others from making, using or selling one's invention and includes right to license others to make, use or sell it. *Valmont Industries, Inc. v. Yuma Mfg. Co.*, D.C.Colo., 296 F.Supp. 1291, 1294. A grant from the government conveying and securing for an inventor the exclusive right to make, use, and sell an invention for seventeen years. 35 U.S.C.A. § 154. See Board of Patent Appeals and Inferences; Patent and copyright clause; Patent and Trademark Office.

See also Assignor estoppel; Basic or pioneer patent; Combination patent; File wrapper estoppel; Identity; Invent; Invention; Lapse patent; Letters patent; License; Official Gazette; On sale; Paper patent; Process patent; Prosecution history estoppel; Public use; Scope of a patent; Shop right rule; Useful; Utility.

Design patent. The unique appearance or design of an article of manufacture may be protected against duplication by a design patent if it is original, non-obvious and ornamental. Design patents may be issued for both surface ornamentation or the overall configuration of an object. Such patents last for a term of 14 years. Material that is eligible for design patent protection may also be copyrightable. 35 U.S.C.A. § 171.

Land patent. A muniment of title issued by a government or state for the conveyance of some portion of the public domain.

Mining claims. The instrument by which title to mining claims is conveyed by the federal government subject to any existing liens and any vested and accrued

water rights and in conformity with conditions imposed by state statutes. *Roberts v. Morton*, D.C.Colo., 389 F.Supp. 87, 91.

Patent pending. Designation (often abbreviated "Pat. Pend.") describing the legal status of patent application, after patent application has been filed and while patent examination is being conducted by U.S. Patent and Trademark Office to determine whether the claimed invention is in fact new, useful and non-obvious.

Patent-right. A right secured by patent; usually meaning a right to the exclusive manufacture, use and sale of an invention or patented article.

Patent-right dealer. Any one whose business it is to sell, or offer for sale, patent-rights.

Patent suit. A suit with issues affecting the validity, enforcement or infringement of a patent.

Pioneer patent. A patent for an invention covering a function never before performed, or a wholly novel device, or one of such novelty and importance as to mark a distinct step in the progress of the art, as distinguished from a mere improvement or perfecting of what has gone before. *Westinghouse v. Boyden Power-Brake Co.*, 170 U.S. 537, 18 S.Ct. 707, 42 L.Ed. 1136; *Sealed Air Corp. v. U.S. Intern. Trade Comm.*, 645 F.2d 976.

Plant patent. A patent granted to person who invents or discovers and asexually reproduces any distinct and new variety of plant, including cultivated sports, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or a plant found in an uncultivated state. 35 U.S.C.A. § 161.

Reissued patent. A patent may be reissued whenever it is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent. 35 U.S.C.A. § 251.

Tax treatment. A patent is an identifiable intangible asset which may be amortized over the remaining life of the patent. The sale of a patent usually results in capital gain treatment. I.R.C. § 1235. If developed internally by a company, the development costs are expensed as incurred under generally accepted accounting principles.

Utility patent. The customary type of patent issued to any novel, non-obvious, and useful machine, article of manufacture, composition of matter or process. This is one of three types of patents provided for by the statute, the others being design and plant patents. See also Utility.

Patentable. Suitable to be patented; entitled by law to be protected by the issuance of a patent. And to be patentable, a device must embody some new idea or principle not before known, and it must be a discovery as distinguished from mere mechanical skill or knowledge. In *re Herthel*, Cust. & Pat.App., 104 F.2d 824, 826.

Patent ambiguity. An ambiguity apparent on face of instrument and arising by reason of any inconsistency or inherent uncertainty of language used so that effect is either to convey no definite meaning or confused meaning. *Ohio Cas. Group of Ins. Companies v. Gray, C.A.Ind., 746 F.2d 381, 383. See also Ambiguity. Compare Latent ambiguity.*

Patent and copyright clause. Art. I, Sec. 8, cl. 8, U.S. Constitution, which provides for promoting the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Patent and Trademark Office. Federal agency in the Department of Commerce headed by the Commissioner of Patents and Trademarks. In addition to the examination of patent and trademark applications, issuance of patents, and registration of trademarks, the Patent and Trademark Office (PTO) sells printed copies of issued documents; records and indexes documents transferring ownership; maintains a scientific library and search files containing over 20 million documents, including U.S. and foreign patents and U.S. trademarks; provides search rooms for the public to research their applications; hears and decides appeals from prospective inventors and trademark applicants; participates in legal proceedings involving the issue of patents or trademark registrations; helps represent the United States in international efforts to cooperate on patent and trademark policy; compiles the Official Gazettes—a weekly list of all patents and trademarks issued by the PTO; and maintains a roster of agents and attorneys qualified to practice before the PTO.

Patent appeals. *See* Board of Patent Appeals and Interferences.

Patent defect. In sales of personal property, one which is plainly visible or which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence. U.C.C. § 2-605(1).

A patent defect in a legal description is one which cannot be corrected on its face, and a new description must be used. *Compare* Latent defect.

Patentee. He to whom a patent has been granted. The term is usually applied to one who has obtained letters patent for a new invention.

Patent infringement. The unauthorized making, using or selling of an invention covered by a valid claim of a patent during the term or extended term of the patent. *Durango Associates, Inc. v. Reflange, Inc., S.D.Tex., 629 F.Supp. 1443, 1459. See 35 U.S.C.A. § 271. Liability also exists for actively inducing infringement and for contributory infringement. 35 U.S.C.A. § 271(b), (c). See also Infringement.*

Patent medicine. A packaged health remedy for public use, protected by letters patent and sold over-the-counter without a physician's prescription. *Board of Pharmacy v. Sherman, 74 N.J.Super. 417, 181 A.2d 418, 419.*

Patent pooling. An arrangement in which a number of manufacturers agree to an interchange of patent licenses among the members of the pooling group.

Pater /péytər/. Lat. A father; the father. In the civil law, this word sometimes included *avus* (grandfather).

Paterfamilias /péytərfəmil(i)yəs/. The father of a family.

In Roman law, the head or master of a family.

This word is sometimes employed, in a wide sense, as equivalent to *sui juris*. A person *sui juris* is called "*paterfamilias*" even when under the age of puberty. In the narrower and more common use, a *paterfamilias* is any one invested with *potestas* over any person. It is thus as applicable to a grandfather as to a father.

Pater is est quem nuptiæ demonstrant /péytər is èst kwèm nópshiyiy dămónstrənt/. The father is he whom the marriage points out.

Paternal. That which belongs to the father or comes from him.

Paternal line. A line of descent or relationship between two persons which is traced through the father.

Paternal power. The authority lawfully exercised by parents over their children. This phrase is also used to translate the Latin "*patria potestas*" (*q.v.*).

Paternal property. That which descends or comes to one from his father, grandfather, or other ascendant or collateral on the paternal side of the house.

Paternity. The state or condition of a father; the relationship of a father.

Paternity suit or action. A court action to determine whether a person is the father of a child born out of wedlock for the purpose, commonly, of enforcing support obligations. *See also* HLA test; Multiple access.

Pater patriæ /péytər pətriyy/. Father of the country. *See* *Parens patriæ*.

Pathologist. One trained in the scientific study of disease, its causes, development and consequences.

Pathology. The science or doctrine of diseases. That part of medicine which explains the nature of diseases, their causes, and their symptoms.

Patiens /pāshiyènz/. Lat. One who suffers or permits; one to whom an act is done; the passive party in a transaction.

Patient. Person under medical or psychiatric treatment and care. Person may be "patient" and physician-patient privilege may apply, where physician attends person for purpose of giving professional aid, even though person attended is unconscious or unaware of physician's presence and does not consent, or actually objects to being treated. *State v. Pitchford, 10 Kan.App.2d 293, 697 P.2d 896, 900.*

Patient-physician privilege. The right of one who is a patient to refuse to divulge, or have divulged by his physician, the communications made between he and his physician. This privilege is provided for by statute in

most states, and, where recognized, it belongs to the patient and not to the physician and hence, it may be waived by the patient.

Patient's bill of rights. A general statement of patient rights voluntarily adopted by most health care providers, covering matters such as access to care, patient dignity and confidentiality, personal safety, consent to treatment and explanation of charges. Similar rights have been statutorily adopted in several states (cf. Minn. Stat. § 144.651) and by the federal government (cf. Developmentally Disabled Assistance and Bill of Rights Act of 1975, 42 U.S.C.A. § 6010).

Pat. Pend. See Patent (*Patent pending*).

Patria /pátriyə/péytriyə/. Lat. The country, neighborhood, or vicinage; the men of the neighborhood; a jury of the vicinage. Synonymous, in this sense, with "pais."

Patria laboribus et expensis non debet fatigari /pátriyə ləbórəbəs èt èkspénsəs nòn débət fätəgəray/. A jury ought not to be harassed by labors and expenses.

Patria potestas /pátriyə pətéstəs/. Lat. In Roman law, paternal authority; the paternal power. This term denotes the aggregate of those peculiar powers and rights which, by the civil law of Rome, belonged to the head of a family in respect to his wife, children (natural or adopted), and any more remote descendants who sprang from him through males only. Anciently, it was of very extensive reach, embracing even the power of life and death, but was gradually curtailed, until finally it amounted to little more than a right in the *paterfamilias* to hold as his own any property or acquisitions of one under his power.

Patria potestas in pietate debet, non in atrocitate, consistere /pátriyə pətéstəs in päyətéytiy débət, nòn in ètròsətéytiy kənsístəriy/. Paternal power should consist [or be exercised] in affection, not in atrocity.

Patricide /pátrəsáyd/. One who has killed his or her father. The act of killing one's father.

Patrimonial /pátrəmówn(i)yəl/. Pertaining to a patrimony; inherited from ancestors, but strictly from the direct male ancestors.

Patrimonium /pátrəmówn(i)yəm/. In civil law, that which is capable of being inherited. The private and exclusive ownership or dominion of an individual. Things capable of being possessed by a single person to the exclusion of all others (or which are actually so possessed) are said to be *in patrimonio*; if not capable of being so possessed (or not actually so possessed), they are said to be *extra patrimonium*.

Patrimony /pátrəmóniy/. Such estate as has descended in the same family. Estates which have descended or been devised in a direct line from the father, and, by extension, from the mother or other ancestor. It has been held that the word is not necessarily restricted to property inherited directly from the father.

Patrimony is the total mass of existing or potential rights and liabilities attached to a person for the satisfaction of his economic needs and patrimony is always

PATTERN OF RACKETEERING ACTIVITY

attached to a natural or juridical person. *Creech v. Capitol Mack, Inc., La., 287 So.2d 497, 503.*

Patrimony of a debtor is totality of assets and liabilities susceptible of pecuniary evaluation; as practical matter, debtor's patrimony consists of assets which are subject to execution for benefit of creditor. *Hastings v. Dinning, La.App., 314 So.2d 744, 746.*

Patrocinium /pátrəsíniyəm/. In Roman law, patronage; protection; defense. The business or duty of a patron or advocate.

Patrolman. A policeman assigned to duty in patrolling a certain beat or district; also the designation of a grade or rank in the organized police force of large cities, a patrolman being generally a private in the ranks, as distinguished from sergeants, lieutenants, etc. See also Police officer.

Patron. In ordinary usage one who protects, countenances, or supports some person or thing. One who habitually extends material assistance; a regular customer; a protector or benefactor.

Patronage /pátrənəj/péytr'/. Collective term to describe the customers of a business. Also, the practice of a public official in making appointments to public (non-civil service) offices and to confer honors. The right of appointing to office, considered as a perquisite, or personal right; not in the aspect of a public trust.

Patronize /péytrənəyz/pátr'/. To act as a patron, extend patronage, countenance, encourage, favor.

Patronum faciunt dos, ædificatio, fundus /pátrównəm féysh(iy)ənt dóws, iydáfəkéysh(iy)ow, fándəs/. Endowment, building, and land make a patron.

Patruelis /pátruwiyləs/. Lat. In the civil law, a cousin-german by the father's side; the son or daughter of a father's brother.

Patruus /pátruwəs/. Lat. An uncle by the father's side; a father's brother.

Patruus magnus /pátruwəs mægnəs/. A grandfather's brother; granduncle.

Patruus major /pátruwəs méyjər/. A great-grandfather's brother.

Patruus maximus /pátruwəs mæksəməs/. A great-grandfather's father's brother.

Pattern. A reliable sample of traits, acts or other observable features characterizing an individual. *Richerson v. Superior Court In and For Sacramento County, App., 70 Cal.Rptr. 350, 352.*

The words "pattern or practice" within the Civil Rights Act provision which permits the Attorney General to seek relief when there is a pattern or practice of resistance to the Act is more than isolated or accidental instance of conduct in violation of the Act; it means an intentional, regular or repeated violation of the right granted by the Act. *U. S. v. Hunter, C.A.Md., 459 F.2d 205, 217.*

Pattern of racketeering activity. As used in the racketeering statute (RICO), 18 U.S.C.A. § 1962, a "pattern of

racketeering activity" includes two or more related criminal acts that amount to, or threaten the likelihood of, continued criminal activity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 109 S.Ct. 2893, 106 L.Ed.2d 195. A single illegal scheme can constitute a "pattern of racketeering activity," so long as the racketeering acts meet the "continuity plus relationship" requirement. A combination of specific factors, such as the number of unlawful acts, the length of time over which the acts were committed, the similarity of the acts, the number of victims, the number of perpetrators, and the character of the unlawful activity can be considered in determining whether a pattern existed. *Bartcheck v. Fidelity Union Bank*, C.A.N.J., 832 F.2d 36, 39. *See also* RICO laws.

Pauper /pópər/. A person so poor that he must be supported at public expense. A suitor who, on account of poverty, is allowed to sue or defend without being chargeable with costs; also, an indigent criminal defendant who has a right to assigned defense counsel. *Fed. R.Crim.P.* 44; *Fed.R.App.P.* 24; 18 U.S.C.A. § 3006A; 28 U.S.C.A. § 1915. *See* Counsel, right to; Indigent; *In forma pauperis*; Pauper's oath.

Dispauper. To deprive one of the status of a pauper and of any benefits incidental thereto: particularly, to take away the right to sue *in forma pauperis* because the person so suing, during the progress of the suit, has acquired money or property which would enable him to sustain the costs of the action.

Pauperies /pópəriyz/. Lat. In Roman law, damage or injury done by an irrational animal, without active fault on the part of the owner, but for which the latter was bound to make compensation.

Pauper's oath. Affidavit, verification, or oath by person seeking public assistance, appointment of counsel, waiver of court fees, or other free services or benefits, that he or she is in fact impoverished and as such unable to pay for such. *See e.g.* 28 U.S.C.A. § 1915. *See also* Poverty affidavit.

Pawn, v. To deliver personal property to another in pledge, or as security for a debt or sum borrowed.

Pawn, n. A bailment of goods to a creditor, as security for some debt or engagement; a pledge; a deposit of personal property made to a pawnbroker as security for a loan. That sort of bailment when goods or chattels are delivered to another as security to him for money borrowed of him by the bailor.

Also the specific chattel delivered to the creditor as a pledge.

See Bailment; Pledge.

Pawnbroker. A person whose business is to lend money, usually in small sums, on security of personal property deposited with him or left in pawn.

Pawnee. The person receiving a pawn, or to whom a pawn is made; the person to whom goods are delivered by another in pledge.

Pawnor. The person pawning goods or delivering goods to another in pledge.

Pax regis /páks ríjəs/. Lat. The peace of the king; that is, the peace, good order, and security for life and property which it is one of the objects of government to maintain, and which the king, as the personification of the power of the state, is supposed to guaranty to all persons within the protection of the law.

This name was also given, in ancient times, to a certain privileged district or sanctuary. The *pax regis*, or verge of the court, as it was afterwards called, extended from the palace-gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms, and nine barleycorns.

Pay, n. Compensation; wages; salary; commissions; fees. The act or fact of paying or being paid. *See* Discharge; Payment.

Pay, v. To discharge a debt by tender of payment due; to deliver to a creditor the value of a debt, either in money or in goods, for his acceptance. U.C.C. §§ 2-511, 3-604. To compensate for goods, services or labor. *See also* Discharge; Payment.

Payable. Capable of being paid; suitable to be paid; admitting or demanding payment; justly due; legally enforceable. A sum of money is said to be payable when a person is under an obligation to pay it. Payable may therefore signify an obligation to pay at a future time, but, when used without qualification, term normally means that the debt is payable at once, as opposed to "owing."

Payable after sight. Means that instrument is payable after acceptance of bill or protest for nonacceptance.

Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. U.C.C. § 3-108.

Payables. *See* Account (*Account payable*).

Payable to bearer. A negotiable instrument is payable to bearer when by its terms it is payable to (a) bearer or the order of bearer; or (b) a specified person or bearer; or (c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee. U.C.C. § 3-111. *See also* Negotiation.

Payable to order. A negotiable instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. U.C.C. § 3-110. *See also* Negotiation.

Pay any bank. After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder: (a) until the item has been returned to the customer initiating collection; or (b) until the item has been specially indorsed by a bank to a person who is not a bank. U.C.C. § 4-201(2).

Paydown. Repayment of loan but in an amount less than entire principal of loan. *See also* Payment (*Part payment*).

Payee. The person in whose favor a bill of exchange, promissory note, or check is made or drawn; the person to whom or to whose order a bill, note, or check is made payable; the person to whom an instrument is payable upon issuance. The entity to whom a cash payment is made or who will receive the stated amount of money on a check. One to whom money is paid or is to be paid. *See* Draft; Fictitious payee.

Payer, or payor. One who pays, or who is to make a payment; particularly the person who is to make payment of a check, bill or note. Correlative to "payee."

Paying quantities. This phrase, as used in oil and gas leases, when applied to the production of oil, means such a quantity as will pay a profit on the cost of operating the well. Sufficient quantities to pay a reasonable profit on the whole sum required to be expended, including the cost of drilling, equipping, and operating the well. If the well pays a profit, even small, over operating expenses, it produces in paying quantities, though it may never repay its cost, and the operation as a whole may prove unprofitable.

Payment. The fulfillment of a promise, or the performance of an agreement. A discharge of an obligation or debt, and part payment, if accepted, is a discharge pro tanto.

In a more restricted legal sense payment is the performance of a duty, promise, or obligation, or discharge of a debt or liability, by the delivery of money or other value by a debtor to a creditor, where the money or other valuable thing is tendered and accepted as extinguishing debt or obligation in whole or in part. Also the money or other thing so delivered. U.C.C. §§ 2-511, 3-604.

Payment is a delivery of money or its equivalent in either specific property or services by one person from whom it is due to another person to whom it is due. *Sizmore v. E. T. Barwick Industries, Inc.*, 225 Tenn. 226, 465 S.W.2d 873, 875. A discharge in money or its equivalent of an obligation or debt owing by one person to another, and is made by debtor's delivery to creditor of money or some other valuable thing, and creditor's receipt thereof, for purpose of extinguishing debt. *Allmon v. Allmon*, Mo.App., 306 S.W.2d 651, 655.

Under Internal Revenue Code provision allowing deduction for charitable contribution of which payment is made within taxable year, "payment" need not be in money, but subject matter must have been placed beyond dominion and control of donor. *Pauley v. U. S.*, C.A.Cal., 459 F.2d 624, 626.

The execution and delivery of negotiable papers is not payment unless it is accepted by the parties in that sense. U.C.C. § 3-410.

See also Compulsory payment; Conditional payment; Constructive payment; Down payment; Final payment; Guaranty of payment; Installment credit; Installment loan; Installment sale; Involuntary payment; Liquidation; Lump-sum payment; Pay.

Affirmative defense. Payment is an affirmative defense which must be pleaded under Fed.R. Civil P. 8(c).

It is a plea in avoidance. *Harrison v. Leasing Associates, Inc.*, Tex.Civ.App., 454 S.W.2d 808, 809.

Balloon payment. *See* Balloon payment.

Part payment. The reduction of any debt or demand by the payment of a sum less than the whole amount originally due.

The rule of partial payments is to apply the payment, in the first place, to the discharge of the interest then due. If the payment exceeds the interest, the surplus goes toward discharging the principal, and the subsequent interest is to be computed on the balance of principal remaining due. If the payment be less than the interest, the surplus of the interest must not be taken to augment the principal; but interest continues on the former principal until the period of time when the payments, taken together, exceed the interest then due, to discharge which they are applied, and the surplus, if any, is to be applied towards the discharge of the principal, and the interest is to be computed on the balance as aforesaid, and this process continues until final settlement.

Payment into court. The act of a defendant in depositing the amount which he admits to be due, with the proper officer of the court, for the benefit of the plaintiff and in answer to his claim. Fed.R. Civil P. 67.

Voluntary payment. A payment made by a debtor of his own will and choice, as distinguished from one exacted from him by process of execution or other compulsion.

Payment bond. *See* Miller Act; Performance bond.

Payment guaranteed. "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party. U.C.C. § 4-416.

Payment in due course. With respect to negotiable instruments, means payment at or after the instrument's maturity date to the holder in good faith and without notice that the title is defective. Under the Negotiable Instruments Law, a negotiable instrument could be discharged by payment in due course by or on behalf of the principle debtor; *see e.g. Bourg v. Wiley*, La., 398 So.2d 13, 15. The Uniform Commercial Code § 3-603 eliminates any reference to payment in due course. It is now covered by § 3-601(3).

Payment into court. The deposit of funds or other things capable of delivery with the court during the pendency of a lawsuit. Fed.R.Civil P. 67.

Payor. The person by whom a bill or note has been or should have been paid.

Payor bank. A bank by which an item is payable as drawn or accepted, U.C.C. § 4-105(b), which includes the drawee of a check. Term includes drawee bank and also bank at which item is payable if item constitutes order on bank to pay. *Phelan v. University Nat. Bank*, 85 Ill.App.2d 56, 229 N.E.2d 374, 377.

Payroll tax. A tax on an employees' salary or on the income of a self-employed individual. Federal and state

income taxes are paid by the employee or the self-employed individual; social security taxes are paid both by the employer and employee and paid solely by the self-employed individual. Unemployment taxes are paid by the employer.

PBGC. See Pension Benefit Guaranty Corporation.

P.C. An abbreviation for "Pleas of the Crown;" sometimes also for "Privy Council," "Parliamentary Cases," "Patent Cases," "Practice Cases," "Penal Code," "Political Code," or "Professional Corporation."

Peace. For purposes of breach of the peace statute, peace is that state and sense of safety which is necessary to the comfort and happiness of every citizen, and which government is instituted to secure. *State v. Boles*, 5 Conn.Cir. 22, 240 A.2d 920, 927. Term, within law of breach of the peace, means tranquility enjoyed by citizens of the municipality or community where good order reigns among its members. *State v. Edwards*, 239 S.C. 339, 123 S.E.2d 247, 249.

The tranquility enjoyed by a political society internally, by the good order which reigns among its members, and externally by the good understanding it has with all other nations. Applied to the internal regulations of a nation, peace imports, in a technical sense, not merely a state of repose and security as opposed to one of violence or warfare, but likewise a state of public order and decorum. *Catlette v. U. S.*, C.C.A.W.Va., 132 F.2d 902, 906.

Articles of the peace. See Articles.

Bill of peace. See Bill.

Breach of peace. See Breach.

Conservator of the peace. See Conservator.

Justice of the peace. See that title.

Peace and quietude. Public tranquility and obedience to law, and that public order and security which is commanded by the laws of a particular sovereign.

Peace officers. This term is variously defined by statute in the different states; but generally it includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce the local government laws and ordinances and preserve the public peace. In general, any person who has been given general authority to make arrests. Generally a "peace officer" is a person designated by public authority to keep the peace and arrest persons guilty or suspected of crime and he is a conservator of the peace, which term is synonymous with the term "peace officer". *Vandiver v. Manning*, 215 Ga. 874, 114 S.E.2d 121, 124. See also Police officer.

Peace of God and the church. In old English law, that rest and cessation which the king's subjects had from trouble and suit of law between the terms and on Sundays and holidays.

Public peace. The peace or tranquility of the community in general; the good order and repose of the people composing a state or municipality. That invisible sense

of security which every man feels so necessary to his comfort, and for which all governments are instituted.

Public peace and quiet. Peace, tranquility, and order and freedom from agitation or disturbance; the security, good order, and decorum guaranteed by civil society and by the law.

Peaceable. Free from the character of force, violence, or trespass; as, a "peaceable entry" on lands. *Peaceable possession* of real estate is such as is acquiesced in by all other persons, including rival claimants, and not disturbed by any forcible attempt at ouster nor by adverse suits to recover the possession or the estate. *Stanley v. Schwalby*, 147 U.S. 508, 13 S.Ct. 418, 37 L.Ed. 259. Compare Adverse possession.

Peace bond. Type of surety bond required by a judge or magistrate of one who has threatened to breach the peace or has a history of such misconduct.

Peace officer. See Police officer.

Peccata contra naturam sunt gravissima /pəkɛytə kɔntrə nət(y)úrəm sənt grəvísəmə/. Crimes against nature are the most heinous.

Peccatum peccato addit qui culpæ quam facit patrocinia defensionis adjungit /pəkɛytəm pəkɛytow ədət kwəy kálpiy kwəm féysət pətrəsín(i)yə dəfənsiyównəs əjónjət/. He adds fault to fault who sets up a defense of a wrong committed by him.

Peck. A measure of two gallons; a dry measure.

Peculation. The unlawful appropriation, by a depository of public funds, of the property of the government intrusted to his care, to his own use, or that of others. The fraudulent misappropriation by one to his own use of money or goods intrusted to his care.

Peculatus /pəkyléytəs/. Lat. In the civil law, the offense of stealing or embezzling the public money.

Peculiar, adj. /pəkýúwl(i)yər/. Particular or special. *Wolf v. Mallinckrodt Chemical Works*, 336 Mo. 746, 81 S.W.2d 323, 330.

Peculium /pəkýúwl(i)yəm/. Lat. In Roman law, such private property as might be held by a slave, wife, or son who was under the *patria potestas*, separate from the property of the father or master, and in the personal disposal of the owner.

Pecunia /pəkýúwn(i)yə/. In old English law, goods and chattels.

In the civil law, property in general, real or personal; anything that is actually the subject of private property. In a narrower sense, personal property; fungible things. In the strictest sense, money. This has become the prevalent, and almost the exclusive, meaning of the word.

Pecunia constituta /pəkýúwn(i)yə kɔnstət(y)úwtə/. In Roman law, money owing (even upon a moral obligation) upon a day being fixed (*constituta*) for its payment, became recoverable upon the implied promise to pay on that day, in an action called "*de pecunia constituta*," the

implied promise not amounting (of course) to a *stipulatio*.

Pecunia non numerata /pəkyúwn(i)yə nɒnn(y)ùw-mərəytə/. In the civil law, money not paid. The subject of an exception or plea in certain cases.

Pecunia numerata /pəkyúwn(i)yə n(y)ùwmərəytə/. Money numbered or counted out; *i.e.*, given in payment of a debt.

Pecuniary /pəkyúwn(i)yəriy/. Monetary; relating to money; financial; consisting of money or that which can be valued in money.

As to *pecuniary* Consideration; Damages; and Legacy; see those titles.

Pecuniary benefits. Benefits that can be valued in money. *Dallas Ry. & Terminal Co. v. Moore*, Tex.Civ. App., 52 S.W.2d 104. Pecuniary benefits available to parents by reason of death of an adult child encompass those benefits, including money, that can be reasonably estimated in money, such as labor, services, kindness and attention of child to parents. *Borak v. Bridge*, Tex.Civ.App., 524 S.W.2d 773, 776.

Pecuniary bequest. A bequest of money to an heir by a decedent. A bequest of money to a legatee by a testator. Also known as a monetary bequest. *See* Bequest.

Pecuniary causes. In English ecclesiastical practice, causes arising from the withholding of ecclesiastical dues, or the doing or neglecting some act relating to the church whereby some damage accrues to the plaintiff. 3 Bl.Comm. 88.

Pecuniary condition. Within statute relative to obtaining goods by false pretenses, comprehends, not only money in hand, but property and all other assets of value constituting an existing fact that go to make up financial responsibility as a basis of credit.

Pecuniary consideration. *See* Consideration.

Pecuniary damages. *See* Damages; Pecuniary loss.

Pecuniary formulas. In federal estate taxation, a gift to a surviving spouse of an amount equal to the maximum marital deduction to which the estate is entitled, less the value of any other interests passing to the surviving spouse that qualify for the marital deduction. *See also* Marital deduction.

Pecuniary injury. Within meaning of wrongful death statute providing that damages may be awarded "taking into consideration the pecuniary injury or injuries resulting from such death to the surviving party or parties entitled to the judgment," term "pecuniary injury" means a reasonable expectation of pecuniary benefits from the continued life of the deceased. *Stang v. Hertz Corp.*, App., 81 N.M. 69, 463 P.2d 45, 48. Such compensation includes damages for deprivation of support, of companionship, guidance, advice, love and affection of deceased. *Hall v. Gillins*, 13 Ill.2d 26, 147 N.E.2d 352, 355. *See also* Consortium; Damages (*Pecuniary damages*); Loss; Pecuniary loss.

Pecuniary interest. A direct interest related to money in an action or case as would, for example, require a judge to disqualify himself from sitting on a case if he owned stock in corporate party.

Pecuniary legacy. *See* Legacy.

Pecuniary loss. A loss of money, or of something by which money or something of money value may be acquired. As applied to a dependent's loss from death pecuniary loss means the reasonable expectation of pecuniary benefit from the continued life of the deceased: such includes loss of services, training, nurture, education, guidance, and society. *Sea Land Services, Inc. v. Gaudet*, 414 U.S. 573, 94 S.Ct. 806, 39 L.Ed.2d 9.

Pecuniary loss within Wrongful Death Act means what the life of decedent was worth, in a pecuniary sense, to the survivors, including loss of care, love, and affection. *Flynn v. Vancil*, 89 Ill.App. 368, 232 N.E.2d 473, 474.

See also Pecuniary injury.

Pecunia sepulchralis /pəkyúwn(i)yə sèpəlkréyləs/. Money anciently paid to the priest at the opening of a grave for the good of the deceased's soul.

Pecunia trajectitia /pəkyúwn(i)yə trəjektish(iy)ə/. In the civil law, a loan in money, or in wares which the debtor purchases with the money to be sent by sea, and whereby the creditor, according to the contract, assumes the risk of the loss from the day of the departure of the vessel until the day of her arrival at her port of destination. Interest does not necessarily arise from this loan, but when it is stipulated for, it is termed "*nauticum fœnus*" (maritime interest), and, because of the risk which the creditor assumes, he is permitted to receive a higher interest than usual.

Pedage /pédəj/. In old English law, a toll or tax paid by travelers for the privilege of passing, on foot or mounted, through a forest or other protected place.

Pedagium /pədəyj(iy)əm/. L. Lat. Pedage (*q.v.*).

Pedaulus /pədóləs/. (Lat. *Pes* foot). In civil law, a judge who sat at the foot of the tribunal, *i.e.* on the lowest seats, ready to try matters of little moment at command of the prætor.

Peddler. An itinerant trader; person who goes about seeking sales and deliveries of articles to possible customers. *Case v. Comptroller of State of Md.*, 219 Md. 282, 149 A.2d 6, 9. A person who sells small goods which he carries with him in traveling about from place to place, and whose activities generally require that he be licensed by the city or town within which he peddles. *See also* Hawker.

Pederasty /pédərəstiy/. In criminal law, the unnatural carnal copulation of male with male, particularly of a man with a boy; a form of sodomy (*q.v.*).

Pedestrian. While "pedestrians" are ordinarily understood to be persons traveling on foot, they may be on roller skates, ice skates, stilts or crutches. *Petties v. Petties*, 210 N.J.Super. 14, 509 A.2d 190, 192. The statutory definition of "pedestrian" is broad enough to

include persons standing upon the highway as well as those traversing it. See *v. Willett*, 58 Wash.2d 39, 360 P.2d 592, 593. Person on foot does not cease to be "pedestrian" within policy covering injuries sustained while a pedestrian merely because he is not in motion. *Peterson v. Continental Cas. Co.*, 25 Utah 2d 408, 483 P.2d 445, 446.

Pedigree /pédəgrɪj/. Lineage, descent, and succession of families; line of ancestors from which a person descends; genealogy. An account or register of a line of ancestors. Family relationship.

Evidence. The "pedigree exception" to hearsay rule allows consideration of hearsay evidence regarding a person's family relationship as proof of existence of the relationship. *Smith v. Givens*, 223 Va. 455, 290 S.E.2d 844, 846. Statements of fact concerning genealogy are not excluded by the hearsay rule, even though the declarant is available as a witness. Fed.Evid.R. 803.

Pedis abscissio /pɪdəs æbsɪʃ(ɪ)ow/. Lat. In old feudal criminal law, the cutting off a foot; a punishment anciently inflicted instead of death.

Pedis positio /pɪdəs pəzɪʃ(ɪ)ow/. Lat. In the civil and old English law, a putting or placing of the foot. A term used to denote the possession of lands by actual corporal entry upon them.

Pedis possessio /pɪdəs pəzɛʃ(ɪ)ow/. Lat. A foothold; an actual possession. To constitute adverse possession there must be *pedis possessio*, or a substantial inclosure.

Doctrine which normally only governs rights prior to discovery of valuable minerals while party is still prospecting; it protects prospector from intervention by another prospector, but only so long as he remains in actual possession of the claim and is diligently searching for minerals. *Goldfield Mines, Inc. v. Hand*, App., 147 Ariz. 498, 711 P.2d 637, 644.

Peeping tom. As used in reference to, *e.g.*, "Peeping Tom" statute, has commonly understood meaning as one who sneaks up to window and peeps in for purpose of spying on and invading privacy of inhabitants. *Matter of Banks*, 295 N.C. 236, 244 S.E.2d 386, 389.

Peerage /pɪrɛj/. The rank or dignity of a peer or nobleman. Also the body of nobles taken collectively. In England, by the Life Peerages Act of 1958 the House of Lords exercises original jurisdiction over all matters and claims regarding peerage.

Peeress /pɪrəs/. A woman who belongs to the nobility, which may be either in her own right or by right of marriage.

Peer Review Organizations. A Peer Review Organization in the medicare program is essentially an enforcement agent of the federal government for purposes of Health and Human Services regulations under which the PRO monitors compliance with Health and Human Services' rules affecting private hospitals seeking compensation from the agency. *American Hospital Association v. Bowen*, C.A.D.C., 834 F.2d 1037, 1048.

Peers /pɪrz/. In feudal law, the vassals of a lord who sat in his court as judges of their co-vassals, and were called "peers," as being each other's equals, or of the same condition. The nobility of Great Britain, being the lords temporal having seats in parliament, and including dukes, marquises, earls, viscounts, and barons.

Equals; those who are a man's equals in rank and station; thus "trial by a jury of his peers" means trial by jury of citizens. For *Judgment of his peers*, see Judgment.

Peers of fees. Vassals or tenants of the same lord, who were obliged to serve and attend him in his courts, being equal in function. These were termed "peers of fees," because holding fees of the lord, or because their business in court was to sit and judge, under their lords, of disputes arising upon fees; but, if there were too many in one lordship, the lord usually chose twelve, who had the title of peers, by way of distinction; whence, it is said, we derive our common juries and other peers.

Peg. To fix the price of something, as the government may stabilize the price of gold by offering to buy all the gold offered at a stated price. Speculators in stocks may peg the price of securities by frequent buying and selling at the pegged price, though today such manipulation is illegal.

Peine fort et dure /pɛɪn fɔrt ɛy dyʊr/. L. Fr. In old English law, a special form of punishment for those who, being arraigned for felony, obstinately "stood mute," that is, refused to plead or to put themselves upon trial. It is described as a combination of solitary confinement, slow starvation, and crushing the naked body with a great load of iron. This atrocious punishment was vulgarly called "pressing to death."

Peles /pɪlzl/. Issues arising from or out of a thing.

Pelfe, or pelfre /pɛlf(ɛr)/. Booty; also the personal effects of a felon convict.

Pelage /pɛləj/. The custom or duty paid for skins of leather.

Pellex /pɛləks/. Lat. In Roman law, a concubine.

Pells, clerk (or master) of the /klɑrk əv ðə pɛlz/máster/. Formerly, an officer in the English exchequer, who entered every teller's bill on the parchment rolls, *i.e.*, "pells," commonly two in number, one being the pell or roll of receipts, and the other the pell or roll of disbursements.

Penal. Punishable; inflicting a punishment; containing a penalty, or relating to a penalty.

Penal action. In its broadest context, it refers to criminal prosecution. More particularly, it refers to a civil action in which a wrongdoer is subject to a fine or penalty payable to the aggrieved party (*e.g.* punitive damages).

The word "penal" is inherently a much broader term than "criminal" since it pertains to any punishment or penalty and relates to acts which are not necessarily delineated as criminal. *State v. Lowry*, 95 N.J.Super. 307, 230 A.2d 907, 913. Action is essentially "penal" if

amount sought to be recovered is arbitrarily exacted for some act or omission of the defendant. *Tasner v. U. S. Industries, Inc.*, D.C.Ill., 379 F.Supp. 803, 806.

An action upon a penal statute; an action for the recovery of a penalty given by statute. *Smith Engineering Works v. Custer*, 194 Okl. 318, 151 P.2d 404, 407, 408. In a broad sense, the term has been made to include all actions in which there may be a recovery of exemplary or vindictive damages, as suits for libel and slander, or in which special, double, or treble damages are given by statute, such as actions to recover money paid as usury or for violation of antitrust laws. But in a more particular sense it means (1) an action on a statute which gives a certain penalty to be recovered by any person who will sue for it, or (2) an action in which the judgment against the defendant is in the nature of a fine or is intended as a punishment, actions in which the recovery is to be compensatory in its purpose and effect not being penal actions but civil suits, though they may carry special damages by statute. *See Damages (Exemplary or punitive damages, Treble damages).*

Penal bill. An instrument formerly in use, by which a party bound himself to pay a certain sum or sums of money, or to do certain acts, or, in default thereof, to pay a certain specified sum by way of penalty; thence termed a "penal sum." These instruments have been superseded by the use of a bond in a penal sum, with conditions. *See Penal bond.*

Penal bond. A promise to pay a named sum of money, the penalty, in the event of nonperformance, with a condition underwritten that, if a stipulated collateral thing, other than the payment of money, be done or forborne, the obligation shall be void. *Maryland Casualty Co. v. Kansas City, Mo.*, C.C.A.Mo., 128 F.2d 998, 1004. Bond conditioned upon forfeiture of penalty for its breach. *See Penalty.*

Penal clause. A secondary obligation entered into for purpose of enforcing performance of a primary obligation, and nature of penalty is by way of compensation for damages and not as punishment for failure to perform obligation. Also a clause in a statute declaring a penalty for a violation of the preceding clauses. *See Penalty clause.*

Penal code. Bringing together and codification of substantive criminal laws of state or federal government; e.g. California Penal Code; Title 18 of U.S. Code. Several state Penal or Criminal Codes are patterned on the A.L.I. Model Penal Code.

Penal institutions. Generic term to describe all places of confinement for those convicted of crime such as jails, prisons, workhouses, houses of correction, and other correctional institutions.

Penal laws. Term, in general, refers to state and federal statutes that define criminal offenses and specify corresponding fines and punishment. Statutes imposing a penalty, fine, or punishment for certain offenses of a public nature or wrongs committed against the state.

Strictly speaking, statutes giving a private action against a wrongdoer are not penal in their nature, neither the liability imposed nor the remedy given being penal. If the wrong done is to the individual, the law giving him a right of action is remedial, rather than penal, though the sum to be recovered may be called a "penalty" or may consist in double or treble damages. *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123.

Where a statute is both penal and remedial, as where it is penal in one part and remedial in the other, it should be considered as a "penal statute" when it is sought to enforce the penalty, and as a "remedial statute" when it is sought to enforce the remedy. *Collins v. Kidd*, D.C.Tex., 38 F.Supp. 634, 637.

See also Penal code.

Penal servitude. In English criminal law, is a punishment which consists in keeping an offender in confinement, and compelling him to labor.

Penal statutes. *See Penal code; Penal laws.*

Penal sum. A sum agreed upon in a bond, to be forfeited if the condition of the bond is not fulfilled. *See also Penal bond; Penalty.*

Penalty. An elastic term with many different shades of meaning; it involves idea of punishment, corporeal or pecuniary, or civil or criminal, although its meaning is generally confined to pecuniary punishment. *Allied v. Graves*, 261 N.C. 31, 134 S.E.2d 186, 192.

The sum of money which the obligor of a bond undertakes to pay in the event of his omitting to perform or carry out the terms imposed upon him by the conditions of the bond. A penalty is a sum inserted in a contract, not as a measure of compensation for its breach, but rather as punishment for default, or by way of security for actual damages which might be sustained by reason of nonperformance. *Stein v. Bruce*, Mo.App., 366 S.W.2d 732, 735. The sum a party agrees to pay in the event of a contract breach, but which is fixed, not as a pre-estimate of probable actual damages, but as a punishment, the threat of which is designed to prevent the breach. *Westmount Country Club v. Kameny*, 82 N.J. Super. 200, 197 A.2d 379, 382.

A penalty provision operates to compel performance of act and usually becomes effective only in event of default on which a forfeiture is compelled without regard to actual damages sustained by party aggrieved by breach. *Garrett v. Coast and Southern Federal Sav. and Loan Ass'n*, 9 C.3d 731, 108 Cal.Rptr. 845, 850. *See Penalty clause.*

A penalty is a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done. *Hidden Hollow Ranch v. Collins*, 146 Mont. 321, 406 P.2d 365, 368. A statutory liability imposed on wrongdoer in amount which is not limited to damages suffered by party wronged. *Missouri-Kansas-Texas R. Co. v. Standard Industries, Inc.*, 192 Kan. 381, 388 P.2d 632, 634.

See also Fine; Forfeiture; Penal action; Statutory penalty.

Penalty clause. Provision in contract, loan agreement, savings instrument or the like providing penalties for default, late or missed payments, early withdrawals, etc. Such clauses are generally not enforceable by the courts. A provision for liquidated damages, however, will be enforced by the courts but the liquidated damages must be a reasonable estimate at the time of contracting of the likely damages from breach. Whether a provision for damages is a penalty clause or a liquidated damages clause is a question of law. *Lake River Corporation v. Carborundum Co.*, C.A.Ill., 769 F.2d 1284, 1288-92.

Penance. An ecclesiastical punishment inflicted by an ecclesiastical court for some spiritual offense.

Pendency. Suspense; the state of being pendent or undecided; the state of an action, etc., after it has been begun, and before the final disposition of it.

Pendens /péndenz/. Lat. Pending; as *lis pendens*, a pending suit.

Pendente lite /pendénty látyi/. Lat. Pending the lawsuit; during the actual progress of a suit; during litigation. Matters "pendente lite" are contingent on outcome of litigation.

Pendente lite nihil innovetur /pendénty látyi náy(h)əl inóvítyər/. During a litigation nothing new should be introduced.

Pendent jurisdiction. A principle applied in federal courts that allows state created causes of action arising out of the same transaction to be joined with a federal cause of action even if diversity of citizenship is not present. Pendent jurisdiction is discretionary matter whereby federal court may allow assertion of nonfederal claim for which no independent jurisdictional ground exists along with recognized federal claim between same parties who are properly before the court, provided relationship between federal claim and state claim permits conclusion that entire action before court comprises but one constitutional case. *Schwab v. Erie Lackawanna R. Co.*, D.C.Pa., 303 F.Supp. 1398, 1399. The doctrine permits federal court under some circumstances to determine state cause of action which otherwise would have to be heard in state court; if state court would be without authority to award damages under state law, the doctrine can give the federal district court no greater power to do so. *Local 20, Teamsters, Chauffeurs and Helpers Union v. Morton*, 377 U.S. 252, 84 S.Ct. 1253, 1257, 12 L.Ed.2d 280.

Pendent jurisdiction pertains to the concept whereby a federal district court, in the exercise of jurisdiction over a federal law claim properly before it, may also, in its discretion, proceed to extend jurisdiction over a related state law claim where both claims arise from a common nucleus of operative facts. *Barnes v. Childs*, D.C.Miss., 63 F.R.D. 628, 630.

Pending. Begun, but not yet completed; during; before the conclusion of; prior to the completion of; unsettled; undetermined; in process of settlement or adjustment.

Awaiting an occurrence or conclusion of action, period of continuance or indeterminacy. Thus, an action or suit is "pending" from its inception until the rendition of final judgment.

An action is "pending" after it is commenced by either filing a complaint with the court or by the service of a summons. *Johnson v. McCaughan, Carter & Scharrer*, Colo.App., 672 P.2d 221, 222.

See also Pendente lite.

Penetration. A term used in criminal law, and denoting (in cases of alleged rape) the insertion of the male part into the female parts to however slight an extent; and by which insertion the offense is complete without proof of emission.

Penitentiary. A prison, correctional institution, or other place of confinement where convicted felons are sent to serve out the term of their sentence.

Pennoyer Rule. A rule to the effect that a court which has no personal jurisdiction over a defendant may not issue an in personam judgment or decree against him. *Pennoyer v. Neff*, 95 U.S. 714, 24 L.Ed. 565.

Pennsylvania Rule. Under the "Pennsylvania Rule," when one party has committed a statutory violation that is claimed to have caused a collision, the rule requires the alleged violator to show, if he is to be freed from fault, that the violation could not have been a cause of the collision. *Crown, Zellerbach Corp. v. Willamette-Western Corp.*, C.A.Or., 519 F.2d 1327, 1329.

Penny stocks. Low-priced stock issues often highly speculative, selling at less than \$1 a share.

Pennyweight. A Troy weight, equal to twenty-four grains, or one-twentieth part of an ounce.

Penology. The science of prison management and rehabilitation of criminals.

Pen register. A mechanical device that records the numbers dialed on a telephone by monitoring the electrical impulses caused when the dial on the telephone is released. It does not overhear oral communications and does not indicate whether calls are actually completed; thus, there is no recording or monitoring of the conversation. For regulation of use of pen registers, see 18 U.S.C.A. § 3121 et seq. *See also* Wiretapping.

Pensam /pénsəm/. The full weight of twenty ounces.

Pensio /pénsh(iy)ow/. Lat. In the civil law, a payment, properly, for the use of a thing. A rent; a payment for the use and occupation of another's house.

Pension. Retirement benefit paid regularly (normally, monthly), with the amount of such based generally on length of employment and amount of wages or salary of pensioner. Deferred compensation for services rendered. *Waite v. Waite*, 6 C.3d 461, 99 Cal.Rptr. 325, 330, 492 P.2d 13. *See also* Pension plan; Vested pension.

Pension Benefit Guaranty Corporation. Federal agency established by Employee Retirement Income Security Act of 1974 (ERISA), to guarantee payment of insured benefits if covered employee retirement plans

terminate without sufficient assets to pay such benefits. 29 U.S.C.A. § 1302.

Pensioner. Recipient or beneficiary of a pension plan.

Pension fund. Fund established by corporations, unions, governmental bodies, etc. to pay pension benefits to its retired workers. *See* Pension plan.

Pension plan. A plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees, or their beneficiaries, over a period of years (usually for life) after retirement. Retirement benefits are measured by, and based on, such factors as years of service and compensation received by the employees. The Employees Retirement Income Security Act (ERISA) governs plan qualification, operation, and administration, and specifically such matters as participation requirements, funding, vesting and filing and reporting with the Internal Revenue Service and Labor Department. Pension benefits under qualified plans are guaranteed by the Pension Benefit Guaranty Corporation.

A stated allowance out of the public treasury granted by government to an individual, or to his representatives, for his valuable services to the country, or in compensation for loss or damage sustained by him in the public service. *Frisbie v. U. S.*, 157 U.S. 160, 15 S.Ct. 586, 39 L.Ed. 657.

See also Individual retirement account; Keogh Plan; Money-purchase plan; Pension trust.

Contributory pension plan. A plan funded with both employer and employee contributions.

Defined-contribution plan. Pension plan that provides benefits as determined by the accumulated contributions and the return on the fund's investment performance; the contributions are specified, but the benefits are not.

Defined pension plan. A pension plan where the employer promises specific benefits to each employee. The employer's cash contributions and pension expense are adjusted in relation to investment performance of the pension fund. Sometimes called a "fixed-benefit" pension plan.

Funded pension plan. *See* Funded.

Noncontributory plan. A pension plan where only the employer makes payments to fund the plan. *Compare* *Contributory pension plan*, above.

Qualified pension plan. An employer-sponsored plan that meets the requirements of I.R.C. § 401. If these requirements are met, none of the employer's contributions to the plan are taxed to the employee until distributed to him or her [§ 402]. The employer will be allowed a deduction in the year the contributions are made [§ 404].

Pension trust. Type of funded pension plan in which the employer transfers to trustees an amount sufficient to cover cost of pensions to employees who are the beneficiaries of the trust.

Penumbra doctrine. The implied powers of the federal government predicated on the Necessary and Proper Clause of the U.S.Const., Art. I, Sec. 8(18), permits one implied power to be engrafted on another implied power. *Kohl v. U. S.*, 91 U.S. 367, 23 L.Ed. 449.

Peonage /piˈɒnəʃ/. A condition of servitude (prohibited by 13th Amendment) compelling persons to perform labor in order to pay off a debt.

People. A state; as the people of the state of New York. A nation in its collective and political capacity. The aggregate or mass of the individuals who constitute the state. *Loi Hoa v. Nagle*, C.C.A.Cal. 13 F.2d 80, 81. In a more restricted sense, and as generally used in constitutional law, the entire body of those citizens of a state or nation who are invested with political power for political purposes. *See also* Citizen; Person.

Peppercorn. A dried berry of the black pepper. In English law, the reservation of a merely nominal rent, on a lease, was sometimes expressed by a stipulation for the payment of a peppercorn.

Per /pɜː/. Lat. By, through, or by means of.

Perambulation /pəˈræmbʊləʃən/. The act or custom of walking over the boundaries of a district or piece of land, either for the purpose of determining them or of preserving evidence of them. Thus, in many parishes in England, it is the custom for the parishioners to perambulate the boundaries of the parish in rogation week in every year. Such a custom entitles them to enter any man's land and abate nuisances in their way. The custom has now largely fallen into disuse.

Perambulatione facienda, writ de /rit diː pəˈræmbʊləʃiːwɔːniː fæʃiːjəndə/. In old English law, the name of a writ which was sued by consent of both parties when they were in doubt as to the bounds of their respective estates. It was directed to the sheriff to make perambulation, and to set the bounds and limits between them in certainty.

Per and post /pɜː ənd pɔːst/. In old English law, to come in in the *per* is to claim by or through the person last entitled to an estate; as the heirs or assigns of the grantee. To come in in the *post* is to claim by a paramount and prior title; as the lord by escheat.

Per annum /pɜː ˈænəm/. By the year; annually; yearly.

Per autre vie /pɜː ɔːtrə viː/ˈváy/. L. Fr. For or during another's life; for such period as another person shall live.

Per aversionem /pɜː əvɜːz(h)ɪjəwɔːnəm/. Lat. In the civil law, by turning away. A term applied to that kind of sale where the goods are taken in bulk, and not by weight or measure, and for a single price; or where a piece of land is sold as containing in gross, by estimation, a certain number of acres. So called because the buyer acts without particular examination or discrimination, *turning* his face, as it were, *away*.

Per bouche /pɜː bʊ(w)ʃ/. L. Fr. By the mouth; orally.

Perca /párkə/. A perch of land; sixteen and one-half feet. *See* Perch.

Per capita /pər kápədə/. Lat. By the heads or polls; according to the number of individuals; share and share alike. This term, derived from the civil law, is much used in the law of descent and distribution, and denotes that method of dividing an intestate estate by which an equal share is given to each of a number of persons, all of whom stand in equal degree to the decedent, without reference to their stocks or the right of representation. It is the antithesis of *per stirpes* (*q.v.*). *Buxton v. Noble*, 146 Kan. 671, 73 P.2d 43, 47; *MacGregor v. Roux*, 198 Ga. 520, 32 S.E.2d 289, 291. A division "per capita" means by a number of individuals equally or share and share alike. *Gilbert v. Wenzel*, 247 Iowa 1279, 78 N.W.2d 793, 794.

Per cent. An abbreviation of the Latin "*per centum*," meaning by the hundred, or so many parts in the hundred, or so many hundredths.

Percentage depletion. *See* Depletion.

Percentage lease. A lease, usually on a retail business property, using a percentage of the gross or net sales to determine the rent. There is usually a minimum or "base" rental, in the event of poor sales.

Percentage of completion method. A method of reporting income or loss on certain long-term contracts. Under this method of accounting, revenue is recognized gradually throughout the construction period. *See also* Completed contract method.

Percentage order. A market or limited price order to buy (or sell) a stated amount of a certain stock after a fixed number of shares of such stock have traded.

Perception. Taking into possession. Thus, perception of crops or of profits is reducing them to possession. As used with respect to money, it means the counting out and payment of a debt. Seeing, noticing or otherwise comprehending.

Perch. A measure of land containing five yards and a half, or sixteen feet and a half in length; otherwise called a "rod" or "pole."

Percolate /párkəleyt/. As used in the cases relating to the right of land-owners to use water on their premises, designates any flowage of sub-surface water other than that of a running stream, open, visible, clearly to be traced.

Percolating waters /párkəleytiŋ wótərz/. *See* Water.

Percolation test. The test to determine the capability of the soil to absorb and drain water, both for construction and septic systems.

Per consequens /pər kónsəkwənz/. Lat. By consequence; consequently.

Per considerationem curiæ /pər kənsidərəyshiyównəm kyúriyiy/. Lat. In old practice, by the consideration (judgment) of the court.

Per curiam /pər kyúriyəm/. Lat. By the court. A phrase used to distinguish an opinion of the whole court

from an opinion written by any one judge. Sometimes it denotes an opinion written by the chief justice or presiding judge, or to a brief announcement of the disposition of a case by court not accompanied by a written opinion.

Perdida /pèrdiyōə/. A synonym of damages. *Ponce De Leon v. Coca Cola Bottling Co.*, D.C.Puerto Rico, 75 F.Supp. 966.

Per diem /pər dáyəm/˚diyəm/. By the day; an allowance or amount of so much per day. For example, state legislators are often given a per diem allowance to cover expenses while attending legislature sessions. Generally, as used in connection with compensation, wages or salary, means pay for a day's service.

Perdonatio utlagariæ /pərdənéysh(iy)ow ətləgériyiy/. L. Lat. A pardon for a man who, for contempt in not yielding obedience to the process of a court, is outlawed, and afterwards of his own accord surrenders.

Perduellio /pərd(y)uwél(i)yow/. Lat. In Roman law, hostility or enmity towards the Roman republic; traitorous conduct on the part of a citizen, subversive of the authority of the laws or tending to overthrow the government.

Perdurable /pərd(y)úrəbəl/pəjrəbəl/. In old English law, as applied to an estate, perdurable signifies lasting long or forever. Thus, a disseisor or tenant in fee upon condition has as high and great an estate as the rightful owner or tenant in fee-simple absolute, but not so perdurable. The term is chiefly used with reference to the extinguishment of rights by unity of seisin, which does not take place unless both the right and the land out of which it issues are held for equally high and perdurable estates.

Perempt /pərémp(t)/. In old ecclesiastical procedure, to waive or bar an appeal by one's own act so as partially to comply with or acquiesce in a sentence of a court.

Peremption /pərémp(ə)shən/. A nonsuit; also a quashing or killing.

Peremptorius /pərémp(t)óriyəs/. Lat. In the civil law, that which takes away or destroys forever; hence, *exceptio peremptoria*, a plea which is a perpetual bar.

Peremptory /pərémp(t)əriy/. Imperative; final; decisive; absolute; conclusive; positive; not admitting of question, delay, reconsideration or of any alternative. Self-determined; arbitrary; not requiring any cause to be shown. *Wolfe v. State*, 147 Tex.Cr.R. 62, 178 S.W.2d 274, 279.

As to *peremptory* Defense; Jury instructions; Mandamus; Nonsuit; Plea; and Writ, see those titles.

Peremptory challenge. The right to challenge a juror without assigning, or being required to assign, a reason for the challenge. In most jurisdictions each party to an action, both civil and criminal, has a specified number of such challenges and after using all his peremptory challenges he is required to furnish a reason for subsequent challenges. *Fed.R.Crim.P.* 24; 28 U.S.C.A. § 1870 (civil cases). *See also* Challenge; Jury challenge.

Peremptory day. A day assigned for trial or hearing in court, absolutely and without further opportunity for postponement.

Peremptory exceptions. In the civil law, any defense which denies entirely the ground of action. Those exceptions which tend to the dismissal of the action.

Peremptory instruction. See Jury instruction.

Peremptory rule. In practice, an absolute rule; a rule without any condition or alternative of showing cause. Ruling made by a trial judge or hearing magistrate "on the spot" and without taking the matter under advisement.

Peremptory undertaking. In English law, an undertaking by a plaintiff to bring on a cause for trial at the next sittings or assizes.

Per eundem /pər iyəndəm/. Lat. By the same. This phrase is commonly used to express "by, or from the mouth of, the same judge." So "*per eundem in eadem*" means "by the same judge in the same case."

Perfect or perfected. Complete; finished; executed; enforceable; without defect; merchantable; marketable. Brought to a state of perfection.

As to *perfect* Equity; Obligation; Ownership; Title; and Usufruct, see those titles.

Perfect attestation clause. One that asserts performance of all acts required to be done to make valid testamentary disposition.

Perfected. See *Perfect or perfected*; Perfection of security interest.

Perfecting bail. Term describing certain qualifications of a property character being required of persons who tender themselves as bail, when such persons have justified, *i.e.*, established their sufficiency by satisfying the court that they possess the requisite qualifications; a rule or order of court is made for their allowance, and the bail is then said to be perfected, *i.e.*, the process of giving bail is finished or completed.

Perfect instrument. An instrument such as a deed or mortgage is said to become perfect or perfected when recorded (or registered) or filed for record, because it then becomes good as to all the world.

Perfection of security interest. In secured transactions law, the process whereby a security interest is protected, as far as the law permits, against competing claims to the collateral, which usually requires the secured party to give public notice of the interest as by filing in a government office (*e.g.* in office of Secretary of State). Perfection of a security interest deals with those steps legally required to give a secured party an interest in subject property against debtor's creditors. *Bramble Transp., Inc. v. Sam Senter Sales, Inc., Del.Super., 294 A.2d 97, 102.*

The minimum meaning of this term in connection with a security interest is that the secured party has done whatever is necessary in the way of giving notice to make his security interest effective at least against lien creditors of the debtor. Depending upon the type of

collateral and the method of perfection, it may mean more; *e.g.* it may mean that the interest is good even against all purchasers. The methods for attaining perfection are stated in U.C.C. Sections 9-302 through 9-306. In most cases the secured party may obtain perfection either by filing (*i.e.* with Secretary of State) or by taking possession of the collateral. When the collateral is held by a bailee who has not issued a negotiable document of title, perfection by notification is possible; *e.g.* the secured party may obtain perfection by notifying the bailee of the secured party's interest. For a few special situations the Code provides that a security interest is perfected without any of the above actions on the part of the secured party. Such perfection is called automatic perfection, or perfection by attachment.

Perfect trust. An executed trust (*q.v.*).

Perfectum est cui nihil deest secundum suæ perfectionis vel naturæ modum /pərféktəm èst k(yúw)əy náy(h)əl diyèst səkándəm s(y)úwiy pərfèkshiyównəs vèl nətýriy mówdəm/. That is perfect to which nothing is wanting, according to the measure of its perfection or nature.

Perfidy /pərfədiy/. The act of one who has engaged his faith to do a thing, and does not do it, but does the contrary. Faithlessness, treachery, violation of a promise or vow or a trust reposed.

Perform. To perform an obligation or contract is to execute, fulfill, or accomplish it according to its terms. This may consist either in action on the part of the person bound by the contract or in omission to act, according to the nature of the subject-matter; but the term is usually applied to any action in discharge of a contract other than payment. See *Performance*.

In copyright law, to "perform" a work means to recite, render, play, dance, or act it, either directly or by means of any device or process or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible. Copyright Act, 17 U.S.C.A. § 101.

Per formam doni /pər fórməm dównay/. L. Lat. In English law, by the form of the gift; by the designation of the giver, and not by the operation of law.

Performance. The fulfillment or accomplishment of a promise, contract, or other obligation according to its terms, relieving such person of all further obligation or liability thereunder. See also *Execute*; *Execution*; *Part performance*; *Payment*; *Substantial performance doctrine*. *Non performance.* See *Commercial frustration*; *Default*; *Impossibility*.

Part performance. The doing some portion, yet not the whole, of what either party to a contract has agreed to do.

Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

As regards the sale of goods, the statute of frauds requirement is dispensed with by partial performance for the goods which have been accepted or for which payment has been made and accepted. U.C.C. § 2-201(3). *See also* Part performance.

Specific performance. The remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. The actual accomplishment of a contract by a party bound to fulfill it. The doctrine of specific performance is that, where money damages would be an inadequate compensation for the breach of an agreement, the contractor or vendor will be compelled to perform specifically what he has agreed to do; *e.g.* ordered to execute a specific conveyance of land. *See* Fed.R. Civil P. 70.

With respect to sale of goods, specific performance may be decreed where the goods are unique or in other proper circumstances. The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just. U.C.C. §§ 2-711(2)(b), 2-716.

As the exact fulfillment of an agreement is not always practicable, the phrase may mean, in a given case, not literal, but substantial performance.

Performance bond. Surety bond which guarantees that contractor will fully perform contract and guarantees against breach of contract. *Isaac v. Reliance Ins. Co.*, 201 Kan. 288, 440 P.2d 600, 605. Proceeds of bond are used to complete contract or compensate for loss in the event of nonperformance. *See also* Bond; Bid bond; Miller Act.

Per fraudem /pər frɔːdəm/. Lat. By fraud. In common law pleading, where a plea alleges matter of discharge, and the replication avers that the discharge was fraudulently obtained and is therefore invalid, it is called a "replication *per fraudem*."

Periculosum existimo quod bonorum virorum non comprobatur exemplo /pəˈrɪkylɔːwsəm əgzɪstəməw kwɔd bənɔrəm vɪrɔrəm nɔn kɔmpɹəbɛjtər əgzɛmplɔw/. I consider that dangerous which is not approved by the example of good men.

Periculosus /pəˈrɪkylɔːwsəs/. Lat. Dangerous; perilous.

Periculum /pəˈrɪkyləm/. Lat. In the civil law, peril; danger; hazard; risk.

Peril. The risk, hazard, or contingency insured against by a policy of insurance. In general, the cause of any loss such as may be caused by fire, hail, etc. *See also* Imminent peril.

Perils of the lakes. As applied to navigation of the Great Lakes, this term has the same meaning as "perils of the sea (*q.v.*)"

Perils of the sea. In maritime and insurance law, natural accidents peculiar to the sea, which do not happen by the intervention of man, nor are to be prevented by human prudence. Hence to recover on ma-

rine policy insuring against loss by perils of sea, vessel must be seaworthy when it is sent to sea. Perils of the sea are from (1) storms and waves; (2) rocks, shoals, and rapids; (3) other obstacles, though of human origin; (4) changes of climate; (5) the confinement necessary at sea; (6) animals peculiar to the sea; (7) all other dangers peculiar to the sea. All losses caused by the action of wind and water acting on the property insured under extraordinary circumstances, either directly or mediately, without the intervention of other independent active external causes, are losses by "perils of the sea or other perils and dangers," within the meaning of the usual clause in a policy of marine insurance. In an enlarged sense, all losses which occur from maritime adventure may be said to arise from the perils of the sea; but underwriters are not bound to this extent. They insure against losses from extraordinary occurrences only; such as stress of weather, winds and waves, lightning, tempests, etc. These are understood to be meant by the phrase "the perils of the sea," in a marine policy, and not those ordinary perils which every vessel must encounter.

Peril of the sea within a marine policy envisions extraordinary and unusual perils which vessel may not reasonably expect to encounter; circumstances which are ordinarily encountered such as predictable winds, tides, wave actions and conditions of the water do not fall within such classification. *Vining v. Security Ins. Co. of New Haven, La.App.*, 252 So.2d 754, 757. Under Carriage of Goods by Sea Act, "perils of the sea" are understood to mean those perils which are peculiar to sea and which are of extraordinary nature or arise from irresistible force or overwhelming power, and which cannot be guarded against by ordinary exertions of human skill and prudence. *New Rotterdam Ins. Co. v. S. S. Loppersum, D.C.N.Y.*, 215 F.Supp. 563, 566, 567.

Per incuriam /pər ɪnk(y)ʊriəm/. Lat. Through inadvertence.

Per industriam hominis /pər ɪndəstriəm hómənəs/. Lat. In old English law, by human industry. A term applied to the reclaiming or taming of wild animals by art, industry, and education.

Per infortunium /pər ɪnfɔrtjuːn(i)əm/. Lat. By misadventure. In criminal law, homicide *per infortunium* is committed where a man, doing a lawful act, without any intention of hurt, unfortunately kills another. *See* Homicide.

Period. Any point, space, or division of time.

Periodic. Recurring at fixed intervals; to be made or done, or to happen, at successive periods separated by determined intervals of time, as periodic payments of interest on a bond, or periodic alimony payments.

Periodic alimony. A form of support alimony which may be modified for changed circumstances of either party. An allowance payable by one spouse to the other at intermittent times, usually by the week or by the month, in a definite amount over a definite or indefinite period of time. An award of periodic alimony is appropriate according to the needs of the spouse requesting

alimony and the corresponding ability of the other spouse to pay. *Cann v. Cann*, Fla.App., 334 So.2d 325, 328. This is also known in some jurisdictions as permanent alimony. *Maxcy v. Estate of Maxcy*, 485 So.2d 1077, 1078. State statutes which provide for alimony payments only from husbands, and not wives, have been held unconstitutional. *Orr v. Orr*, 99 S.Ct. 1102. *See also* Alimony; Permanent alimony.

Periodic tenancy. Generic term descriptive of a tenancy from week to week, month to month, or year to year.

Periodic tenancy is one continuing tenancy subject to termination at various rental periods rather than a series of individual and new tenancies. *Rosow Oil Co., Inc. v. Heiman*, 72 Wis.2d 696, 242 N.W.2d 176, 180. An estate that continues for successive periods unless terminated at end of a period by notice. *State v. Fin & Feather Club, Me.*, 316 A.2d 351, 357.

Peripheral rights. Those rights which surround or spring from other rights.

Periphrasis. Circumlocution; use of many words to express the sense of one.

Perish. To come to an end; to cease to be; to die.

Perishable. Subject to speedy and natural decay (*e.g.* fruits, vegetables, dairy products, meat). But, where the time contemplated is necessarily long, the term may embrace property liable merely to material depreciation in value from other causes than such decay.

Perishable commodity. A relative term used to describe a product, like fruit or fresh vegetables, which quickly deteriorates in quality and value. *In re Rosenbaum Grain Corporation*, C.C.A.Ill., 83 F.2d 391, 393.

Perishable goods. Goods which quickly decay and lose their value if not put to their intended use within a short period of time.

Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt /pəɹjʊrəɪ sɑnt kwɑɪ sərvətɛjətəs vɜrbəs ʤurəmɛntəɪ dəsɪpijənt ɔriɪz ijɔrəm kwɑɪ əksɪpijənt/. They are perjured, who, preserving the words of an oath, deceive the ears of those who receive it.

Perjury. In criminal law, the willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being material to the issue or point of inquiry and known to such witness to be false. A false statement knowingly made in a proceeding in a court of competent jurisdiction or concerning a matter wherein an affiant is required by law to be sworn as to some matter material to the issue or point in question. *Henry v. Deen*, 310 N.C. 75, 310 S.E.2d 326, 335.

A person is guilty of perjury if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material

and he does not believe it to be true. Model Penal Code, § 241.1. *See also* 18 U.S.C.A. §§ 1621, 1623.

Subornation of perjury is procuring another to commit perjury. *See* 18 U.S.C.A. § 1622.

For unsworn declarations under penalty of perjury, *see* 28 U.S.C.A. § 1746.

See also False swearing; Two witness rule.

Perks. *See* Perquisites.

Per legem terræ /pɜr lijəm tɛhriɪ/. Lat. By the law of the land; by due process of law.

Permanent. Continuing or enduring in the same state, status, place, or the like, without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding; stable; not temporary or transient. *Hiatt v. Department of Labor and Industries*, 48 Wash.2d 843, 297 P.2d 244, 246. Generally opposed in law to "temporary," but not always meaning "perpetual."

As to *permanent* Injunction; Nuisance, and Trespass; *see* those titles.

Permanent abode. A domicile or fixed home, which the party may leave as his interest or whim may dictate, but which he has no present intention of abandoning. *See also* Domicile; Residence.

Permanent alimony. An allowance for the support and maintenance of a spouse during his or her lifetime, and its purpose is to provide nourishment, sustenance and the necessities of life to a former spouse who has neither the resources nor ability to be self-sustaining. *Cann v. Cann*, Fla.App., 334 So.2d 325, 329. *See also* Alimony; Periodic alimony.

Permanent disability. Generally, permanent disability is one which will remain substantially the same during remainder of workers' compensation claimant's life. *Subsequent Injuries Fund v. Industrial Acc. Commission*, 226 Cal.App.2d 136, 37 Cal.Rptr. 844, 849. A permanent disability is one which causes impairment of earning capacity, impairment of normal use of member, or competitive handicap in open labor market. *State Compensation Ins. Fund v. Industrial Acc. Commission*, 59 Cal.2d 45, 27 Cal.Rptr. 702, 707, 377 P.2d 902.

Within insurance policies does not mean that disability must continue throughout life of insured, but it connotes idea that disability must be something more than temporary, and at least presumably permanent.

See also Disability; Permanent injury.

Permanent employment. As provided for by contract, means only that employment is to continue indefinitely and until either party wishes to sever relation for some good reason. *Speegle v. Board of Fire Underwriters of Pacific*, Cal.App., 158 P.2d 426, 429.

Permanent financing. Long term loan which replaces bridge or interim financing; *e.g.*, mortgage loan used to repay construction loan.

Permanent injury. One where situation has stabilized and permanent damage is reasonably certain. *Haugen Trust v. Warner*, 204 Mont. 508, 665 P.2d 1132, 1135. Physical or mental impairment or disability which will last throughout life, or injury reasonably certain to be

followed by permanent impairment of earning capacity or one producing permanent irremediable pain. *Driver v. Anheuser, Mo.App., 397 S.W.2d 11, 16. See also Permanent disability.*

Permanent law. An act which continues in force for an indefinite time.

Per metas et bundas /pər miytəs et bəndəs/. L. Lat. In old English law, by metes and bounds.

Per minas /pər máynəs/. Lat. By threats. *See Duress.*

Per misadventure /pər misədventyər/. In old English law, by mischance. The same with *per infortunium (q.v.)*.

Permission. A license to do a thing; an authority to do an act which, without such authority, would have been unlawful. An act of permitting, formal consent, authorization, leave, license or liberty granted, and it has a flexible meaning depending upon the sense in which it is used. *Winterton v. Van Zandt, Mo., 351 S.W.2d 696, 700. See also Authority; Certificate; License; Permit.*

Permissions. Negations of law, arising either from the law's silence or its express declaration.

Permissive. Allowed; allowable; that which may be done. Lenient; tolerant.

Permissive counterclaim. Federal Rule of Civil Procedure 13(b) grants defendant unqualified right to interpose "permissive counterclaim"; one that does not arise out of same transaction or occurrence furnishing subject matter of plaintiff's claim, and court possesses no discretion to reject it. *U. S. for Use and Benefit of Kashulines v. Thermo Contracting Corp., D.C.N.J., 437 F.Supp. 195, 198. See also Counterclaim.*

Permissive use. *See Use.*

Permissive waste. *See Waste.*

Permit, v. To suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly assent or agree to the doing of an act.

Permit, n. In general, any document which grants a person the right to do something. A license or grant of authority to do a thing. *Matter of Building Permit and Zoning, 29 N.C.App. 749, 225 S.E.2d 647, 649.* A written license or warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without such authority.

A license or instrument granted by the officers of excise (or customs), certifying that the duties on certain goods have been paid, or secured, and permitting their removal from some specified place to another.

See also Building permit; Certificate; License; Special use permit.

Permit card. A document given by a union to a non-union member which allows an employer to hire him for a job for which the union is unable to supply sufficient members.

Per mitter le droit /pər mītər lə dróyt/. L. Fr. By passing the right. One of the modes by which releases

at common law were said to inure was "*per mitter le droit*," as where a person who had been disseised released to the disseisor or his heir or feoffee. In such case, by the release, the right which was in the releasor was added to the possession of the releasee, and the two combined perfected the estate.

Per mitter l'estate /pər mītər ləstéyt/. L. Fr. By passing the estate. At common law, if two or more are seised, either by deed, devise, or descent, as joint tenants or coparceners of the same estate, and one of them releases to the other, this is said to inure by way of "*per mitter l'estate*."

Permutatio /pərmýtəysh(iy)ow/. Lat. In the civil law, exchange; barter.

Permutation /pərmýtəyshən/. The exchange of one movable subject for another; barter.

Per my et per tout /pər míy ey pər túw(t)/. L. Fr. By the half and by the whole. A phrase descriptive of the mode in which joint tenants hold the joint estate, the effect of which, technically considered, is that for purposes of tenure and survivorship each is the holder of the whole, but for purposes of alienation each has only his own share, which is presumed in law to be equal.

Pernancy. Taking; a taking or receiving; as of the profits of an estate. Actual pernancy of the profits of an estate is the taking, perception, or receipt of the rents and other advantages arising therefrom.

Pernor of profits /pərnər əv prɒfəts/. He who receives the profits of lands, etc.; he who has the actual pernancy of the profits.

Pernour /pərnər/. L. Fr. A taker. *Le pernour ou le detenour*, the taker or the detainer.

Per pais, trial /tráy(ə)l pər péy(s)/. Trial by the country; *i.e.*, by jury.

Perpars /pərpárz/. L. Lat. A purpart; a part of the inheritance.

Perpetration. The act of one committing a crime either with his own hands, or by some means or instrument or through some innocent agent.

Perpetrator /pərpətrétər/. Generally, this term denotes the person who actually commits a crime or delict, or by whose immediate agency it occurs.

Perpetual /pərpétyuwəl/. Never ceasing; continuous; enduring; lasting; unlimited in respect of time; continuing without intermission or interval.

As to *perpetual Injunction; Lease; and Statute*, see those titles.

Perpetual edict. In Roman law, originally the term "perpetual" was merely opposed to "occasional" and was used to distinguish the general edicts of the prætors from the special edicts or orders which they issued in their judicial capacity. But under Hadrian the edict was revised by the jurist Julianus, and was republished as a permanent act of legislation. It was then styled "perpetual," in the sense of being calculated to endure

in *perpetuum*, or until abrogated by competent authority.

Perpetua lex est nullam legem humanam ac positivam perpetuam esse, et clausula quæ abrogationem excludit ab initio non valet /pərpətyuwə léks èst nàləm líjəm hyuwméynəm æk pòzətáyvəm pərpətyuwəm ésiy, èt klòz(y)ələ kwíy æbrəgəyshiýównəm ækskl(y)úwdət æb ənish(iy)ow nòn vələt/. It is a perpetual law that no human and positive law can be perpetual, and a clause [in a law] which precludes the power of abrogation is void *ab initio*.

Perpetual succession. That continuous existence which enables a corporation to manage its affairs, and hold property without the necessity of perpetual conveyances, for the purpose of transmitting it. By reason of this quality, this ideal and artificial person remains, in its legal entity and personality, the same, though frequent changes may be made of its members.

Perpetuating testimony. Means or procedure permitted by federal and state discovery rules for preserving for future use the testimony of witness, which might otherwise be lost or unavailable before the trial in which it is intended to be used. Fed.R. Civil P. 27(a) (depositions before trial).

Perpetuities, rule against. See Perpetuity; Rule (*Rule against perpetuities*).

Perpetuity /pərpətyúwədiy/. Continuing forever. Legally, pertaining to real property, any condition extending the inalienability or property beyond the time of a life or lives in being plus twenty one years. A perpetuity is a limitation which takes the subject-matter of the perpetuity out of commerce for a period greater than a life or lives in being and 21 years thereafter, plus ordinary period of gestation. *Zahn v. National Bank of Commerce of Dallas, Tex.Civ.App., 328 S.W.2d 783, 789. See also Rule (Rule against perpetuities).*

Perpetuity of the king. That fiction of the English law which for certain political purposes ascribes to the king in his political capacity the attribute of immortality; for, though the reigning monarch may die, yet by this fiction the king never dies, *i.e.*, the office is supposed to be reoccupied for all political purposes immediately on his death.

Per procuration /pərpəkryəréyshən/. By proxy; by one acting as an agent with special powers, as under a letter of attorney. These words give notice to all persons that the agent is acting under a special and limited authority. The phrase is commonly abbreviated to "*per proc.*," or "*p. p.*," and is more used in the civil law and in England than in American law. A proxy or signature of a principal executed by an agent who discloses his role as agent on the document.

Per quæ servitia /pərp kwíy sərvish(iy)ə/. Lat. In old English law, a real action by which the grantee of a seignory could compel the tenants of the grantor to attend to himself. It was abolished by St. 3 & 4 Wm. IV, c. 27, § 35.

Perquisites /pərkwəzəts/. Emoluments, privileges, fringe benefits, or other incidental profits or benefits attaching to an office or employment position in addition to regular salary or wages. Shortened term "Perks" is used with reference to such extraordinary benefits afforded to business executives (*e.g.* free cars, club memberships, insurance, etc.). See also Fringe benefits.

Perquisitio /pərkwəzish(iy)ow/. Purchase. Acquisition by one's own act or agreement, and not by descent.

Perquisitor /pərkwízətar/. In old English law, a purchaser; one who first acquired an estate to his family; one who acquired an estate by sale, by gift, or by any other method, except only that of descent.

Per quod /pərp kwód/. Lat. Whereby. When the declaration in an action of tort, after stating the acts complained of, goes on to allege the consequences of those acts as a ground of special damage to the plaintiff, the recital of such consequences is prefaced by these words, "*per quod*," whereby; and sometimes the phrase is used as the name of that clause of the declaration or complaint.

At the common law, "per quod" acquired two meanings in the law of defamation: when used in the frame of reference of slander it meant proof of special damages was required and when used in the frame of reference of libel it meant that proof of extrinsic circumstances was required. *General Motors Corp. v. Piskor, 27 Md.App. 95, 340 A.2d 767, 783. See also Libelous per quod.*

Words "actionable per quod" are those not actionable per se upon their face, but are only actionable in consequence of extrinsic facts showing circumstances under which they were said or the damages resulting to slandered party therefrom.

See also Actionable per quod.

Per quod consortium amisit /pərp kwód kənsórsh(iy)əm əmáyzət/. Lat. In old pleading, whereby he lost the company [of his wife]. A phrase used in the old declarations in actions of trespass by a husband for beating or ill using his wife, descriptive of the special damage he had sustained. *Crocker v. Crocker, C.C.Mass., 98 F. 702, 703. See Consortium.*

Per quod servitium amisit /pərp kwód sərvish(iy)əm əmáyzət/. Lat. In old pleading, whereby he lost the service [of his servant]. A phrase used in the old declarations in actions of trespass by a master, for beating or ill using his servant, descriptive of the special damage he had himself sustained. This action was commonly brought by the father for the seduction of his daughter, in which case very slight evidence of the relation of master and servant was necessary; but still some loss of service, or some expense, had to be shown.

Per rationes pervenitur ad legitimam rationem /pərp rəshiyówniyz pərvíynətar æd lejítəməm rəshiyównəm/. By reasoning we come to true reason.

Per rerum naturam factum negantis nulla probatio est /pərp rírəm nətyúram fáktəm nəgántəs nálə prə-

béysh(iy)ow èst/. It is in the nature of things that he who denies a fact is not bound to give proof.

Per saltum /pâr sôltâm/. Lat. By a leap or bound; by a sudden movement; passing over certain proceedings.

Per sample /pâr sâmpəl/. By sample. A purchase so made is a collateral engagement that the goods shall be of a particular quality. U.C.C. § 2-313(1)(c).

Per se /pâr siy/'séy/. Lat. By itself; in itself; taken alone; by means of itself; through itself; inherently; in isolation; unconnected with other matters; simply as such; in its own nature without reference to its relation.

In law of defamation, certain words and phrases that are actionable as slander or libel in and of themselves without proof of special damages, e.g. accusation of crime. Used in contrast to defamation per quod which requires proof of special damage. See Actionable per se; Libelous per se; Slanderous per se.

See also Negligence per se; Per se doctrine; Per se violations.

Persecutio /pârsékýúwsh(iy)ow/. Lat. In the civil law, a following after; a pursuing at law; a suit or prosecution. Properly that kind of judicial proceeding before the prætor which was called "extraordinary." In a general sense, any judicial proceeding, including not only "actions" (*actiones*), properly so called, but other proceedings also.

Per se doctrine. Under the "per se doctrine," if an activity is blatant in its intent and pernicious in its effect, a court need not inquire into the reasonableness of the same before determining that it is a violation of the antitrust laws. Connecticut Ass'n of Clinical Laboratories v. Connecticut Blue Cross, Inc., 31 Conn.Sup. 10, 324 A.2d 288, 291. See Per se violations.

Persequi /pârsékway/. Lat. In the civil law, to follow after; to pursue or claim in form of law. An action is called a "*jus persequendi*."

Per se violations. In anti-trust law, term that implies that certain types of business agreements, such as price-fixing, are considered inherently anti-competitive and injurious to the public without any need to determine if the agreement has actually injured market competition. See Per se doctrine; Rule (*Rule of reason*).

Person. In general usage, a human being (i.e. natural person), though by statute term may include labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers. See e.g. National Labor Relations Act, § 2(1), 29 U.S.C.A. § 152; Uniform Partnership Act, § 2.

Scope and delineation of term is necessary for determining those to whom Fourteenth Amendment of Constitution affords protection since this Amendment expressly applies to "person."

Aliens. Aliens are "persons" within meaning of Fourteenth Amendment and are thus protected by equal protection clause against discriminatory state action. *Foley v. Connelie*, D.C.N.Y., 419 F.Supp. 889, 891.

Bankruptcy Code. "Person" includes individual, partnership, and corporation, but not governmental unit. 11 U.S.C.A. § 101.

Commercial law. An individual or organization. U.C.C. § 1-201(30).

Corporation. A corporation is a "person" within meaning of Fourteenth Amendment equal protection and due process provisions of United States Constitution. *Metropolitan Life Ins. Co. v. Ward*, Ala., 470 U.S. 869, 105 S.Ct. 1676, 1683, 84 L.Ed.2d 751. The term "persons" in statute relating to conspiracy to commit offense against United States, or to defraud United States, or any agency, includes corporation. *Alamo Fence Co. of Houston v. U.S.*, C.A.Tex., 240 F.2d 179, 181.

In corporate law, "person" includes individual and entity. Rev.Model Bus.Corp.Act, § 1.40.

Foreign government. Foreign governments otherwise eligible to sue in U.S. courts are "persons" entitled to bring treble-damage suit for alleged antitrust violations under Clayton Act, Section 4. *Pfizer, Inc. v. Government of India*, C.A.Minn., 550 F.2d 396.

Illegitimate child. Illegitimate children are "persons" within meaning of the Equal Protection Clause of the Fourteenth Amendment, *Levy v. Louisiana*, 391 U.S. 68, 88 S.Ct. 1509, 1511, 20 L.Ed.2d 436; and scope of wrongful death statute, *Jordan v. Delta Drilling Co.*, Wyo., 541 P.2d 39, 48.

Interested person. Includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding. Uniform Probate Code, § 1-201(20).

Labor unions. Labor unions are "persons" under the Sherman Act and the Clayton Act, *Casey v. F.T.C.*, C.A.Wash., 578 F.2d 793, 797, and also under Bankruptcy Code, Highway and City Freight Drivers, Dockmen and Helpers, Local Union No. 600 v. Gordon Transports, Inc., C.A.Mo., 576 F.2d 1285, 1287.

Minors. Minors are "persons" under the United States Constitution, possessed of rights that governments must respect. In re *Scott K.*, 24 C.3d 395, 155 Cal.Rptr. 671, 674, 595 P.2d 105.

Municipalities. Municipalities and other government units are "persons" within meaning of 42 U.S.C.A. § 1983. Local government officials sued in their official capacities are "persons" for purposes of Section 1983 in those cases in which a local government would be suable in its own name. *Monell v. N. Y. City Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 2035, 56 L.Ed.2d 611. See Color of law.

Definition of "person" or "persons" covered by anti-trust laws includes cities, whether as municipal utility operators suing as plaintiffs seeking damages for anti-trust violations or as operators being sued as defendants. *City of Lafayette, La. v. Louisiana Power & Light Co., La.*, 435 U.S. 389, 98 S.Ct. 1123, 1128, 55 L.Ed.2d 364.

Protected person. One for whom a conservator has been appointed or other protective order has been made. Uniform Probate Code, § 5-103(18).

Resident alien. A resident alien is a "person" within the meaning of the due process and equal protection clauses of the Fourteenth Amendment. *C. D. R. Enterprises, Ltd. v. Board of Ed. of City of New York, D.C. N.Y.*, 412 F.Supp. 1164, 1168.

Unborn child. Word "person" as used in the Fourteenth Amendment does not include the unborn. *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 729, 35 L.Ed.2d 147. Unborn child is a "person" for purpose of remedies given for personal injuries, and child may sue after his birth. *Weeks v. Mounter*, 88 Nev. 118, 493 P.2d 1307, 1309. In some jurisdictions a viable fetus is considered a person within the meaning of the state's wrongful death statute, e.g. *Summerfield v. Superior Court*, 144 Ariz. 467, 698 P.2d 712, and within the meaning of the state's vehicular homicide statute, e.g. *Comm. v. Cass*, 392 Mass. 799, 467 N.E.2d 1324. *See also* Child; Children (*Rights of unborn child*); Unborn child; Viable child.

University. A state university is a "person", within meaning of § 1983. 42 U.S.C.A. § 1983. *Uberoi v. University of Colorado, Colo.*, 713 P.2d 894, 900.

Persona /pərsɔwnə/. Lat. In the civil law, character in virtue of which certain rights belong to a man and certain duties are imposed upon him. Thus one man may unite many characters (*personæ*), as, for example, the characters of father and son, of master and servant.

Personable /pərsənəbəl/. Having the rights and powers of a person; able to hold or maintain a plea in court; also capacity to take anything granted or given.

Persona conjuncta æquiparatur interesse proprio /pərsɔwnə kənʃŋktə ekwəpəreýtər intərəsiy prɔw-priyow/. A personal connection [literally, a united person, union with a person] is equivalent to one's own interest; nearness of blood is as good a consideration as one's own interest.

Persona designata /pərsɔwnə dəzəgnéytə/. A person pointed out or described as an individual, as opposed to a person ascertained as a member of a class, or as filling a particular character.

Persona ecclesiæ /pərsɔwnə ekliýziyiy/. The parson or personation of the church.

Persona est homo cum statu quodam consideratus /pərsɔwnə èst hówmow kəm státyuw kwówdəm kənsidərəytəs/. A person is a man considered with reference to a certain *status*.

Person aggrieved. To have standing as a "person aggrieved" under equal employment opportunities provisions of Civil Rights Act, or to assert rights under any federal regulatory statute, a plaintiff must show (1) that

he has actually suffered an injury, and (2) that the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute in question. *Foust v. Transamerica Corp., D.C.Cal.*, 391 F.Supp. 312, 314.

As contemplated by federal rule governing standing to object to alleged illegal search and seizure is one who is the victim of the search and seizure, as distinguished from one who claims prejudice only through the use of evidence gathered in a search directed at someone else. *Cochran v. U.S., C.A.Colo.*, 389 F.2d 326, 327.

Test of whether a petitioner is a "person aggrieved" and thereby entitled to seek review of an order of referee in bankruptcy is whether his property may be diminished, his burden increased or his rights detrimentally affected by order sought to be reviewed. In *re Capitano, D.C.La.*, 315 F.Supp. 105, 107, 108.

See also Aggrieved party; Standing to sue doctrine.

Personal. Appertaining to the person; belonging to an individual; limited to the person; having the nature or partaking of the qualities of human beings, or of movable property. In *re Steimes' Estate*, 150 Misc. 279, 270 N.Y.S. 339.

As to *personal* Action; Assets; Chattel; Contract; Covenant; Credit; Demand; Disability; Franchise; Injury; Judgment; Knowledge; Liberty; Notice; Obligation; Property; Replevin; Representative; Right; Security; Service; Servitude; Statute; Tax; Tithes; Tort; and Warranty, see those titles.

Personal belongings. In probate law, term is a broad classification and in absence of restriction may include most or all of the testator's personal property. *Goggans v. Simmons, Tex.Civ.App.*, 319 S.W.2d 442, 445. *See also* Personal effects.

Personal defenses. In commercial law, term usually refers to defenses that cannot be asserted against a holder in due course in enforcing an instrument. Also refers to defenses of a principal debtor against a creditor that cannot be asserted derivatively by a surety.

Personal effects. Articles associated with person, as property having more or less intimate relation to person of possessor; "effects" meaning movable or chattel property of any kind. Usual reference is to such items as the following owned by a decedent at the time of death: clothing, furniture, jewelry, stamp and coin collections, silverware, china, crystal, cooking utensils, books, cars, televisions, radios, etc.

Term "personal effects" when employed in a will enjoys no settled technical meaning and, when used in its primary sense, without any qualifying words, ordinarily embraces such tangible property as is worn or carried about the person, or tangible property having some intimate relation to the person of the testator or testatrix; where it is required by the context within which the term appears, it may enjoy a broader meaning. In *re Stengel's Estate, Mo.App.*, 557 S.W.2d 255, 260.

Personal holding company. Type of corporation subject to special Personal Holding Company Tax (I.R.C. § 541 et seq.) on undistributed income so as to preclude use of such organization by individuals in high tax brackets to avoid taxes. Typically, such corporations have a limited number of shareholders and the major sources of revenue are from passive income such as dividends, interest, annuities, royalties, rent, and the like.

Personal holding company income. Income as defined by I.R.C. § 543. Such income includes interest, dividends, certain rents and royalties, income from the use of corporate property by certain shareholders, income from certain personal service contracts, and distributions from estates and trusts. Such income is relevant in determining whether a corporation is a personal holding company and is therefore subject to the penalty tax on personal holding companies.

Personal holding company tax. Federal tax imposed on personal holding companies and designed to force the distribution of corporate earnings through the threat of a penalty tax on the corporation. I.R.C. § 541.

Personal injury. See Injury.

Personal judgment. See Judgment (*Personal judgment*).

Personalia personam sequuntur /pərsənəyl(i)yə pərsónwəm sək-wántər/. Personal things follow the person.

Personal income. The income which an individual earns or receives. See Income.

Personalis actio /pərsənəyləs áksh(i)yow/. Lat. *Civil law*. A personal action; an action against the person (*in personam*).

Old English law. A personal action. In this sense, the term was borrowed from the civil law by Bracton. The English form is used as the designation of one of the chief divisions of civil actions.

Personaliter /pərsənəylətər/. In old English law, personally; in person.

Personal jurisdiction. The power of a court over the person of a defendant in contrast to the jurisdiction of a court over a defendant's property or his interest therein; *in personam* as opposed to *in rem* jurisdiction. See *In personam jurisdiction*.

Personal liability. A kind of responsibility for the payment or performance of an obligation which exposes the personal assets of the responsible person to payment of the obligation. See *e.g.* Surety.

The liability of the stockholders in corporations, under certain statutes, by which they may be held individually responsible for the debts of the corporation, either to the extent of the par value of their respective holdings of stock, or to twice that amount, or without limit, or otherwise, as the particular statute directs. This may be required by state statute of stockholders of a new corporation that is undercapitalized.

Personal property. See Property.

Personal property tax. Tax on such items of personal property as household furniture, jewelry, etc. levied by local or state governments.

Personal recognizance. See Release on own recognizance.

Personalty. Personal property; movable property; chattels; property that is not attached to real estate. See also Property (*Personal property*).

Quasi personalty. Things which are movable in point of law, though fixed to things real, either actually, as emblements (*fructus industriales*), fixtures, etc.; or fictitiously, as chattels-real, leases for years, etc.

Persona non grata /pərsónwə nòn grátə/°gréytə/. Person not wanted; an undesirable person. In international law and diplomatic usage, a person not acceptable (for reasons peculiar to himself) to the court or government to which it is proposed to accredit him in the character of an ambassador or minister.

Persona standi in iudicio /pərsónwə stánday in juwdish(i)yow/. Capacity of standing in court or in judgment; capacity to be a party to an action; capacity or ability to sue.

Personate /pərsənəyt/. To assume the person (character) of another, without his consent or knowledge, in order to deceive others, and, in such feigned character, to fraudulently do some act or gain some advantage, to the harm or prejudice of the person counterfeited. To pass one's self off as another having a certain identity. Lane v. U. S., C.C.A. Ohio, 17 F.2d 923. See also Impersonation.

Personero /pərsównérow/. In Spanish law, an attorney. So called because he represents the *person* of another, either in or out of court.

Person in loco parentis /pərsən in lówkow pərentəs/. In place of parent. One who has assumed status and obligations of parent without formal adoption. Workman v. Workman, Okl., 498 P.2d 1384, 1386. See *In loco parentis*.

Personne /pərsón/. Fr. A person. This term is applicable to men and women, or to either.

Perspiciua vera non sunt probanda /pərspikyuwə vírə nòn sànt prówbándə/. Plain truths need not be proved.

Per stirpes /pə stərpiz/. Lat. By roots or stocks; by representation. This term, derived from the civil law, is much used in the law of descents and distribution, and denotes that method of dividing an intestate estate where a class or group of distributees take the share which their deceased would have been entitled to, had he or she lived, taking thus by their right of representing such ancestor, and not as so many individuals. It is the antithesis of *per capita* (*q.v.*). Buxton v. Noble, 146 Kan. 671, 73 P.2d 43, 47.

Persuade. To induce one by argument, entreaty, or expostulation into a determination, decision, conclusion, belief, or the like; to win over by an appeal to one's reason and feelings, as into doing or believing some-

- thing; to bring oneself or another to belief, certainty or conviction; to argue into an opinion or procedure. *La Page v. U. S., C.C.A.Minn., 146 F.2d 536, 538.*
- Persuasion.** The act of persuading; the act of influencing the mind by arguments or reasons offered, or by anything that moves the mind or passions, or inclines the will to a determination. For Fair persuasion, see that title.
- Pertain.** To belong or relate to, whether by nature, appointment, or custom.
- Pertenencia** /pɛrtɛnɛnsiya/. In Spanish law, the claim or right which one has to the property in anything; the territory which belongs to any one by way of jurisdiction or property; that which is accessory or consequent to a principal thing, and goes with the ownership of it.
- Perticata terræ** /pɛrdakɛytə tɛhriy/. The fourth part of an acre.
- Pertinent** /pɛrtənənt/. Applicable; relevant. Evidence is called "pertinent" when it is directed to the issue or matters in dispute, and legitimately tends to prove the allegations of the party offering it; otherwise it is called "impertinent." A pertinent hypothesis is one which, if sustained, would logically influence the issue. *Vaughn v. State, 136 Tex.Cr.R. 455, 125 S.W.2d 568, 570. See Material; Relevant.*
- Per totam curiam** /pɛr tɔwtəm kyúriyəm/. L. Lat. By the whole court. A common phrase in the old law reports.
- Per tout et non per my** /pɛr túw(t) ey nɔn pɛr míy/. L. Fr. By the whole, and not by the moiety. Where an estate in fee is given to a man and his wife, they cannot take the estate by moieties, but both are seised of the entirety, *per tout et non per my.*
- Perturbation** /pɛrtərbéyshən/. In old English ecclesiastical courts, a "suit for perturbation of seat" is the technical name for an action growing out of a disturbance or infringement of one's right to a pew or seat in a church.
- Perturbatrix** /pɛrtərbéytræks/. A woman who breaks the peace.
- Per universitatem** /pɛr yúvnəvɛrsətɛytəm/. Lat. In the civil law, by an aggregate or whole; as an entirety. The term described the acquisition of an entire estate by one act or fact, as distinguished from the acquisition of single or detached things.
- Per varios actus legem experientia facit** /pɛr vériyows æktəs líyjam ɛkspiriyénsh(iy)ə fɛsət/. By various acts experience frames the law.
- Per verba de futuro** /pɛr vérbə diy fyɛtyúrow/. Lat. By words of the future [tense]. A phrase applied to contracts of marriage.
- Per verba de præsenti** /pɛr vérbə diy prézéntay/. Lat. By words of the present [tense]. A phrase applied to contracts of marriage.
- Perverse verdict.** A verdict whereby the jury refuses to follow the direction of the judge on a point of law.
- Per vivam vocem** /pɛr váyvəm vówsəm/. Lat. In old English law, by the living voice; the same with *viva voce.*
- Per year.** In a contract, is equivalent to the word "annually." *See Annual.*
- Pesa** /píyzə/. A weight of two hundred and fifty-six pounds.
- Pessimi exempli** /pɛsəmay əgzɛmplay/. Lat. Of the worst example.
- Petens** /pétənz/. Lat. In old English law, a demandant; the plaintiff in a real action.
- Peter-pence.** An ancient levy or tax of a penny on each house throughout England, paid to the Pope. It was called "Peter-pence," because collected on the day of St. Peter, *ad vincula*; by the Saxons it was called "Romefeoh," "Romescot," and "Rome-pennyng," because collected and sent to Rome; and, lastly, it was called "hearth money," because every dwelling-house was liable to it, and every religious house, the abbey of St. Albans alone excepted.
- Petit** /pétiy/pétiy(t)/. Fr. Small; minor; inconsiderable. Used in several compounds, and sometimes written "petty." As to *petit* Jury; Larceny; Sergeanty; and Treason, see those titles.
- Petit cape** /pétiy kéyp(iy)/. A judicial writ, issued in the old actions for the recovery of land, requiring the sheriff to take possession of the estate, where the tenant, after having appeared in answer to the summons, made default in a subsequent stage of the proceedings.
- Petite assize** /pétiyt əsáyz/pétiy/. Used in contradistinction from the *grand assize*, which was a jury to decide on questions of property. *Petite assize*, a jury to decide on questions of possession.
- Petitio** /pétish(iy)ow/. Lat. *Civil law.* The plaintiff's statement of his cause of action in an action *in rem.* *Old English law.* Petition or demand; the count in a real action; the form of words in which a title to land was stated by the demandant, and which commenced with the word "*peto.*"
- Petition.** A written address, embodying an application or prayer from the person or persons preferring it, to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favor, privilege, or license. A formal written request addressed to some governmental authority. The right of the people to petition for redress of grievances is guaranteed by the First Amendment, U.S. Constitution.
- A written request to a board for action on some matter therein laid before it. *McKillop v. County Bd. of Ed. of Sanborn County, 78 S.D. 587, 105 N.W.2d 671, 675.* For example, a formal paper filed with the N.L.R.B. seeking a secret ballot election among a certain group of employees (bargaining unit).
- A formal written application to a court requesting judicial action on a certain matter. A recital of facts

which give rise to a cause of action. *Matthews v. Simmons*, Tex.Civ.App., 589 S.W.2d 156, 159. An application made to a court *ex parte*, or where there are no parties in opposition, praying for the exercise of the judicial powers of the court in relation to some matter which is not the subject for a suit or action, or for authority to do some act which requires the sanction of the court; as for the appointment of a guardian, for leave to sell trust property, etc. Formerly, in equity practice the original pleading was denominated a petition or bill. Today, in almost all jurisdictions, whether in law or equity, the initial pleading is a complaint.

Written request to the court for an order after notice. Uniform Probate Code, §§ 1-201(31), 5-103(15).

Petition de droit /pə'tiʃən də drɔɪt/. L. Fr. In old English practice, a petition of right; a form of proceeding to obtain restitution from the crown of either real or personal property, being of use where the crown is in possession of any hereditaments or chattels, and the petitioner suggests such a right as controverts the title of the crown, grounded on facts disclosed in the petition itself. 3 Bl.Comm. 256.

Petitioner. One who presents a petition to a court, officer, or legislative body. The one who starts an equity proceeding or the one who takes an appeal from a judgment. In legal proceedings commenced by petition, the person against whom action or relief is prayed, or who opposes the prayer of the petition, is called the "respondent." See also Plaintiff.

Petition in bankruptcy. A document filed in a court of bankruptcy, or with the clerk, by a debtor seeking the relief provided under the various chapters of the Bankruptcy Code. This is the manner in which a bankruptcy case is commenced. See Bankruptcy Code, § 301 et seq.

Petitioning creditor. The creditor at whose instance an adjudication of bankruptcy is made against a debtor.

Petition of right. In old English law, a proceeding in chancery by which a subject may recover property in the possession of the king. See *Petition de droit*.

Petition of rights. A parliamentary declaration of the liberties of the people, assented to by King Charles I, in 1629. It is to be distinguished from the bill of rights, (1689), which has passed into a permanent constitutional statute.

Petit jury. See Jury.

Petit larceny. See Larceny.

Petitory action /pə'tɪt(ə)riy ə'kʃən/. A droitural action; that is, one in which the plaintiff seeks to establish and enforce, by an appropriate legal proceeding, his right of property, or his title, to the subject-matter in dispute; as distinguished from a *possessory* action, where the right to the possession is the point in litigation, and not the mere right of property. In admiralty, suits to try title to property independent of questions concerning possession are referred to as "petitory suits," which suits must be based on a claim of legal title; the assertion of a mere equitable interest is not sufficient. *Hunt v. A*

Cargo of Petroleum Products Laden on Steam Tanker Hilda, D.C.Pa., 378 F.Supp. 701, 703.

In Louisiana, an action brought by an alleged owner out of possession against one having possession to determine ownership, in which plaintiff must recover on strength of his own title, not on weakness of defendant's title. *Saucier v. Crichton*, C.C.A.La., 147 F.2d 430, 433.

Petronian law. See *Lex Petronia*.

Pettifogger /pétə'fɔgər/. A lawyer who is employed in a small or mean business, or who carries on a disreputable business by unprincipled or dishonorable means.

Petty. Small, minor, of less or inconsiderable importance. The English form of "*petit*," and sometimes used instead of that word in such compounds as "petty jury," "petty larceny," and "petty treason."

See *Misdemeanor*; *Petit*. As to *petty Average*; *Constable*; *Jury*; *Larceny*; and *Session*, see those titles.

Petty cash. Currency maintained for expenditures that are conveniently made with cash on hand. A fund used by business to pay small expenses for such items as travel, stationery, etc. Sometimes called *imprest fund*, it is operated by a voucher system in which the person desiring the money submits a voucher properly authorized and receives the cash.

Petty larceny. See *Larceny*.

Petty offense. A minor crime, the maximum punishment for which is generally a fine or short term in jail or house of correction. In some states, it is a classification in addition to misdemeanor and felony. See *e.g.* 18 U.S.C.A. § 19.

A six month sentence is the constitutional dividing line between serious offenses for which a trial by jury must be afforded and petty offenses. In contempt cases, it is the sentence actually imposed, rather than the penalty authorized by law which is determinative. *Codispoti v. Pennsylvania*, 418 U.S. 506, 519, 94 S.Ct. 2687, 2694, 41 L.Ed.2d 912.

See also *Infraction*; *Misdemeanor*.

Petty officers. Inferior officers in the naval service, of various ranks and kinds, corresponding to the non-commissioned officers in the army. *U. S. v. Fuller*, 160 U.S. 593, 16 S.Ct. 386, 40 L.Ed. 549.

Peyote. A type of cactus called mescal, found in Mexico and southwestern U.S. It contains button-like tubercles that are dried and chewed as an hallucinatory drug. Mescaline is an alkaloid of it.

Phantom stock plan. An employee benefit plan in which benefits are determined by reference to the performance of the corporation's common shares. A deferred compensation unit plan for corporate executives and employees which credits to the unit account of the employee so-called excess market appreciation measured by the difference between the market value of the corporate stock at the time of termination of employment and the market value when the employee entered into the plan. *Lieberman v. Becker*, 38 Del.Ch. 540, 155 A.2d 596.

P.H.V. An abbreviation for "*pro hac vice*," for this turn, for this purpose or occasion.

Phylasist. A jailer.

Physical. Relating or pertaining to the body, as distinguished from the mind or soul or the emotions. Material, substantive, having an objective existence, as distinguished from imaginary or fictitious; real, having relation to facts, as distinguished from moral or constructive.

Physical cruelty. As used in divorce law means actual personal violence, or such a course of physical treatment as endangers life, limb or health, and renders cohabitation unsafe. *Gibson v. Gibson*, 283 S.C. 318, 322 S.E.2d 680, 682.

Physical depreciation. Reduction in value of structure due to actual wear and tear or physical deterioration. *People ex rel. Union Bag & Paper Corporation v. Fitzgerald*, 166 Misc. 237, 2 N.Y.S.2d 290, 295. See Depreciation.

Physical disability. See Disability.

Physical fact. In the law of evidence, a fact having a physical existence, as distinguished from a mere conception of the mind; one which is visible, audible, or palpable, such as the sound of a pistol shot, a man running, impressions of human feet on the ground. See Demonstrative evidence.

Physical fact rule. In evidence, a judge is required to take case from jury if plaintiff's evidence as to physical facts leads to an impossibility in the light of undisputed physical laws. An appellate court is not bound by findings which violate physical laws. *Zollman v. Symington Wayne Corp.*, 438 F.2d 28, 31.

The physical fact rule is that if a driver does not see that which he could or should have seen, he is guilty of negligence as a matter of law. *Pennsylvania Nat. Mut. Cas. Ins. Co. v. Dennis*, 195 Kan. 594, 408 P.2d 575, 579.

Physical force. Force applied to the body; actual violence.

Physical harm. The words "physical harm" are used throughout the Restatement of Torts to denote the physical impairment of the human body, or of land or chattels. Restatement, Second, Torts, § 7. See also Physical injury.

Physical impossibility. Practical impossibility according to the knowledge of the day. *State v. Hillis*, 79 Ind.App. 599, 124 N.E. 515, 516. See Impossibility.

Physical incapacity. In the law of marriage and divorce, impotence, inability to accomplish sexual coition, arising from physical imperfection or malformation.

Physical injury. Bodily harm or hurt, excluding mental distress, fright, or emotional disturbance. See also Physical harm.

Physical necessity. A condition in which a person is absolutely compelled to act in a particular way by overwhelming superior force; as distinguished from moral necessity, which arises where there is a duty incumbent

upon a rational being to perform, which he ought at the time to perform. See Necessity.

Physician. A practitioner of medicine; a person duly authorized or licensed to treat diseases; one lawfully engaged in the practice of medicine.

Physician-patient privilege. See Patient-physician privilege.

Physiotherapy /fiziowθéhrepi/. Treatment of disease by physical remedies rather than drugs. Physical therapy.

Piacle /páyakəl/. An obsolete term for a serious crime.

Pia fraud /páyə frós/. Lat. A pious fraud; a subterfuge or evasion considered morally justifiable on account of the ends sought to be promoted. Particularly applied to an evasion or disregard of the laws in the interests of religion or religious institutions, such as circumventing the statutes of mortmain.

Picaroon /pikəruwn/. A robber; a plunderer.

Picketing. Term refers to presence at an employer's business by one or more employees and/or other persons to publicize labor dispute, influence employees or customers to withhold their work or business, respectively, or show union's desire to represent employees; picketing is usually accompanied by patrolling with signs. *C. Comella, Inc. v. United Farm Workers Organizing Committee*, 33 Ohio App.2d 61, 292 N.E.2d 647, 655, 62 O.O.2d 128. Patrolling the entrance of a business by members of a labor union in order to inform other employees and the public of the existence of a strike and to influence or deter them from entering. See also Labor picketing; Secondary picketing; Unlawful picketing. Compare Boycott.

Peaceable picketing, in which laboring men and women have right to participate during labor dispute, means tranquil conduct, conduct devoid of noise or tumult, the absence of a quarrelsome demeanor, and a course of conduct that does not violate or disturb the public peace. *Ex parte Bell*, 37 Cal.App.2d 582, 100 P.2d 339, 340. It connotes peaceable methods of presenting a cause to the public in the vicinity of the employer's premises. *Music Hall Theatre v. Moving Picture Mach. Operators Local No. 165*, 249 Ky. 639, 61 S.W.2d 283.

Pick of land. A narrow slip of land running into a corner.

Pickpocket. A thief who secretly steals money or other property from the person of another.

Piecework. Work done or paid for by the piece or quantity. *Calascibett v. Highway Freight Co.*, 18 N.J. Misc. 144, 11 A.2d 408, 409.

Piepoudre. See Court of Piepoudre.

Pierage /píraj/. The duty for maintaining piers and harbors.

Piercing the corporate veil. Judicial process whereby court will disregard usual immunity of corporate officers or entities from liability for wrongful corporate activities; e.g. when incorporation exists for sole purpose of

perpetrating fraud. The doctrine which holds that the corporate structure with its attendant limited liability of stockholders may be disregarded and personal liability imposed on stockholders, officers and directors in the case of fraud or other wrongful acts done in name of corporation. The court, however, may look beyond the corporate form only for the defeat of fraud or wrong or the remedying of injustice. *Hanson v. Bradley*, 298 Mass. 371, 381, 10 N.E.2d 259, 264. *See also* Instrumentality rule.

Pignoratio /pignərəyʃh(iy)ow/. Lat. In the civil law, the contract of pledge; and also the obligation of such contract. Sealing up (*obsignatio*). A shutting up of an animal caught in one's field and keeping it till the expenses and damage have been paid by its master.

Pignoratitia actio /pignərətʃʃh(iy)ə əkʃh(iy)ow/. Lat. In the civil law, an action of pledge, or founded on a pledge, which was either *directa*, for the debtor, after payment of the debt, or *contraria*, for the creditor.

Pignorative contract /pignərəyʃtəv kɔntrəkt/. In the civil law, a contract of pledge, hypothecation, or mortgage of realty. In such contract the nominal vendor continues to be the owner and the nominal purchaser has only a pledge or mortgage for his debt which he must enforce in the usual way. *Jackson v. Golson*, La.App., 91 So.2d 394, 399.

Pignoris capio /pignərəs kəpiyow/. Lat. In Roman law, this was the name of one of the *legis actiones*. It was employed only in certain particular kinds of pecuniary cases, and consisted in that the creditor, without preliminary suit and without the co-operation of the magistrate, by reciting a prescribed formula, took an article of property from the debtor to be treated as a pledge or security. The proceeding bears a marked analogy to distress at common law.

Pignus /pignəs/. Lat. In the civil law, a pledge or pawn; a delivery of a thing to a creditor, as security for a debt. Also a thing delivered to a creditor as security for a debt.

Pilfer /pɪlfər/. To pilfer, in the plain and popular sense, means to steal. *See* Larceny; Theft.

Pilferage /pɪlf(ə)rəj/. Petty larceny; stealing of small items, generally of stored goods.

Pilferer /pɪlfərər/. One who steals petty things, or a small part of a thing.

Pillage /pɪləj/. Plunder; the forcible taking of private property by an invading or conquering army from the enemy's subjects.

Pillory /pɪləriy/. A frame erected on a pillar, and made with holes and movable boards, through which the heads and hands of criminals were put.

Pimp. One who obtains customers ("tricks") for a whore or prostitute. *See also* Pander.

Pin-money. A small allowance set apart by a husband for the personal expenses of his wife; for her dress and pocket money.

Pint. A liquid measure of half a quart, or the eighth part of a gallon.

Pioneer patent. *See* Patent.

Pious uses /piyəs yúwsəz/. *See* Charitable use.

Piracy. Those acts of robbery and depredation upon the high seas which, if committed on land, would have amounted to a felony. Brigandage committed on the sea or from the sea. Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life. 18 U.S.C.A. § 1651. *See also* Air piracy.

The term is also applied to the illegal reprinting or reproduction of copyrighted matter or to unlawful plagiarism from it; and, similarly, to the unlawful reproduction or distribution of property protected by patent and trademark laws. *See also* Infringement; Plagiarism.

Pirata est hostis humani generis /pəriyətə èst hóstəs hyuwméynay jénərəs/. A pirate is an enemy of the human race.

Pirate. One guilty of the crime of piracy.

Piscary /pískəriy/. The right of fishing. Thus, common of piscary is the right of fishing in waters belonging to another person.

Pistol. A short firearm, intended to be aimed and fired from one hand. *Campbell v. Commonwealth*, 295 Ky. 511, 174 S.W.2d 778, 779.

PITI. Principal, interest, taxes and insurance; the most common components of monthly mortgage payments.

P.J. An abbreviation for "presiding judge" (or justice).

PKPA. *See* Parental Kidnapping Prevention Act.

P.L. An abbreviation for "Pamphlet Laws" or "Public Laws."

Placard. An edict; a declaration; a manifesto. Also an advertisement or public notification.

Place. An old form of the word "pleas." Thus the "Court of Common Pleas" was sometimes called the "Court of Common Place."

Place, n. This word is a very indefinite term. It is applied to any locality, limited by boundaries, however large or however small. It may be used to designate a country, state, county, town, or a very small portion of a town. The extent of the locality designated by it must generally be determined by the connection in which it is used. In its primary and most general sense means locality, situation, or site, and it is also used to designate an occupied situation or building. *See also* Site; Situs.

Place, v. To arrange for something as to place a mortgage or to place an order. *See also* Placement.

Place lands. Lands granted which were within certain limits on each side of the road, and which became instantly fixed by the adoption of the line of the road. There is a well-defined difference between place lands and "indemnity lands." *See* Indemnity.

Placement. The act of selling a new issue of securities or arranging a loan or mortgage. The act of finding employment for a person as in the case of an employment agency. *See also* Finder; Offering.

Place of abode. One's residence or domicile (*q.v.*).

Place of business. The location at which one carries on his business or employment. Under many state statutes, service of process may be made at one's place of business and jurisdiction may be acquired by a court whose territorial district includes one's place of business. *See also* Domicile.

Place of contract. The place (country or state) in which a contract is made, and whose law must determine questions affecting the execution, validity, and construction of the contract. *Scudder v. Union Nat. Bank*, 91 U.S. 406, 412, 23 L.Ed. 245.

Place of delivery. The place where delivery is to be made of goods sold. If no place is specified in the contract, the articles sold must, in general, be delivered at the place where they are at the time of the sale. *Hatch v. Standard Oil Co.*, 100 U.S. 124, 25 L.Ed. 554. *See* U.C.C. §§ 2-503, 2-504.

Place of employment. Within the safe place statutes, a place where active work, either temporary or permanent, is being conducted in connection with a business for profit; that is, where some process or operation related to such industry, trade or business is carried on and where any person is directly or indirectly employed by another.

Placer /pléysər/. In mining law, a superficial deposit of sand, gravel, or disintegrated rock, carrying one or more of the precious metals, along the course or under the bed of a watercourse, ancient or current, or along the shore of the sea. Under the acts of congress, the term includes all forms of mineral deposits, except veins of quartz or other rock in place. 30 U.S.C.A. § 35.

Placer claim. A mining claim located on the public domain for the purpose of placer mining, that is, ground within the defined boundaries which contains mineral in its earth, sand, or gravel; ground which includes valuable deposits not "in place," that is, not fixed in rock, or which are in a loose state. *U. S. v. Iron Silver Min. Co.*, 128 U.S. 673, 9 S.Ct. 195, 32 L.Ed. 571; *Clipper Min. Co. v. Eli Min. Co.*, 194 U.S. 220, 24 S.Ct. 632, 48 L.Ed. 944.

Placer location. A placer claim located and occupied on the public domain.

Place where. A phrase used in the older reports, being a literal translation of *locus in quo* (*q.v.*).

Placit /plásæt/, or **placitum** /plásæt(əm)/. Decree; determination.

Placita /plásætə/. *See* Placitum.

Placitabile /plásætébəliy/. In old English law, pleadable.

Placita communia /plásætə kəmyúwn(i)yə/. Common pleas. All civil actions between subject and subject.

Placita coronæ /plásætə kərówniy/. Pleas of the crown. All trials for crimes and misdemeanors, wherein the king is plaintiff, on behalf of the people.

Placita de transgressione contra pacem regis, in regno Angliæ vi et armis facta, secundum legem et consuetudinem Angliæ sine brevi regis placitari non debent /plásætə diy trənzgrəshiyówniy kóntrə péysəm riyjəs, in régnov ængliiy váy èt árməs fáktə, səkándəm liyjəm èt kónswət(y)úwdənəm ængliiy sáyniy briyvay riyjəs plásətéray nòn débənt/. Pleas of trespass against the peace of the king in the kingdom of England, made with force and arms, ought not, by the law and custom of England, to be pleaded without the king's writ.

Placita juris /plásætə júrés/. Pleas or rules of law; particular and positive learnings of laws; grounds and positive learnings received with the law and set down; as distinguished from maxims or the formulated conclusions of legal reason.

Placita negativa duo exitum non faciunt /plásætə nègətáyvə d(y)úwov égzətəm nòn fásh(iy)ənt/. Two negative pleas do not form an issue.

Placitare /plásətériy/. To plead.

Placitory /plásət(ò)riy/. Relating to pleas or pleading.

Placitum /plásætəm/. In civil law, an agreement of parties; that which is their *pleasure* to arrange between them.

An imperial ordinance or constitution; literally, the prince's pleasure.

A judicial decision; the judgment, decree, or sentence of a court.

In old English law, a public assembly at which the king presided, and which comprised men of all degrees, met for consultation about the great affairs of the kingdom.

A court; a judicial tribunal; a lord's court. *Placita* was the style or title of the courts at the beginning of the old *nisi prius* record.

A suit or cause in court; a judicial proceeding; a trial. *Placita* were divided into *placita coronæ* (crown cases or pleas of the crown, *i.e.*, criminal actions) and *placita communia* (common cases or common pleas, *i.e.*, private civil actions).

A fine, mulct, or pecuniary punishment.

A pleading or plea. In this sense, the term was not confined to the defendant's answer to the declaration, but included all the pleadings in the cause, being *nomen generalissimum*.

In the old reports and abridgments, "*placitum*" was the name of a paragraph or subdivision of a title or page where the point decided in a cause was set out separately. It is commonly abbreviated "pl."

Placitum aliud personale, aliud reale, aliud mixtum /plásætəm áliyəd pərsənéyliy, áliyəd riyéyliy, áliyəd míkstəm/. Pleas [*i.e.*, actions] are personal, real, and mixed.

Placitum fractum /pləsətəm fræktəm/. A day past or lost to the defendant.

Placitum nominatum /pləsətəm nòmənəytəm/. The day appointed for a criminal to appear and plead and make his defense.

Plagiarism /pléjjerizəm/. The act of appropriating the literary composition of another, or parts or passages of his writings, or the ideas or language of the same, and passing them off as the product of one's own mind. If the material is protected by copyright, such act may constitute an offense of copyright infringement.

To be liable for plagiarism it is not necessary to exactly duplicate another's literary work, it being sufficient if unfair use of such work is made by lifting of substantial portion thereof, but even an exact counterpart of another's work does not constitute plagiarism if such counterpart was arrived at independently. *O'Rourke v. RKO Radio Pictures, D.C.Mass., 44 F.Supp. 480, 482, 483.*

See also Copyright; Fair use doctrine; Infringement.

Plagiarist /pléjjerəst/, or **plagiary** /pléjjerihri/. One who publishes the thoughts and writings of another as his own.

Plagiarius /pléjjeriyəs/. Lat. In the civil law, a kidnapper.

Plagium /pléj(ji)əm/. Lat. In the civil law, kidnapping. The offense of enticing away and stealing men, children, and slaves. The persuading a slave to escape from his master, or the concealing or harboring him without the knowledge of his master.

Plaideur /plèydár/. Fr. An obsolete term for an attorney who pleaded the cause of his client; an advocate.

Plain error rule. This rule that plain errors affecting substantial rights may be considered on motion for new trial or on appeal though not raised in trial court if manifest injustice or miscarriage of justice has resulted, is invoked on case to case basis, but there must be sound, substantial manifestation, a strong, clear showing, that injustice or miscarriage of justice will result if the rule is not invoked. *State v. Meiers, Mo., 412 S.W.2d 478, 480.* For there to be "plain error" warranting reversal absent objection, there must be legal impropriety affecting defendant's substantial rights, sufficiently grievous to justify notice by reviewing court and to convince it that, of itself, error possessed clear capacity to bring about unjust result. *State v. Harris, A.D., 174 A.2d 645, 646, 70 N.J.Super. 9.* Doctrine which encompasses those errors which are obvious and highly prejudicial, which affect the substantial rights of the accused, and which, if uncorrected, would be an affront to the integrity and reputation of judicial proceedings. *U. S. v. McCord, 166 U.S.App.D.C. 1, 501 F.2d 334, 341.*

Plain sight rule. See Plain view doctrine.

Plaint /pléynt/. In civil law, a complaint; a form of action, particularly one for setting aside a testament alleged to be invalid. This word is the English equivalent of the Latin "*querela*."

In English practice, a private memorial tendered in open court to the judge, wherein the party injured sets forth his cause of action. A proceeding in inferior courts by which an action is commenced without original writ. This mode of proceeding is commonly adopted in cases of replevin.

Plaintiff. A person who brings an action; the party who complains or sues in a civil action and is so named on the record. A person who seeks remedial relief for an injury to rights; it designates a complainant. *City of Vancouver v. Jarvis, 76 Wash.2d 110, 455 P.2d 591, 593.* The prosecution (*i. e.* State or United States) in a criminal case.

Plaintiff in error. In current nomenclature, "appellant" is the accepted word to indicate the party who seeks appellate review, and not *plaintiff in error*, as formerly.

Plain view doctrine. In search and seizure context, objects falling in plain view of officer who has the right to be in position to have that view are subject to seizure without a warrant and may be introduced in evidence. *Harris v. U. S., 390 U.S. 234, 236, 88 S.Ct. 992, 993, 19 L.Ed.2d 1069.* Under "plain view doctrine," warrantless seizure of incriminating evidence may be permitted when police are lawfully searching specified area if it can be established that police had prior justification for intrusion into area searched, that police inadvertently came across item seized, and that it was immediately apparent to the police that the item seized was evidence. *Washington v. Chrisman, 455 U.S. 1, 5, 102 S.Ct. 812, 816, 70 L.Ed.2d 778.* However, the plain view doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges. *Coolidge v. New Hampshire, 403 U.S. 443, 466, 91 S.Ct. 2022, 2038, 29 L.Ed.2d 564.*

Plan. A delineation; a design; a draft, form or representation. The representation of anything drawn on a plane, as a map or chart; a scheme; a sketch. Also, a method of design or action, procedure, or arrangement for accomplishment of a particular act or object. *Shainwald v. City of Portland, 153 Or. 167, 55 P.2d 1151, 1156.* Method of putting into effect an intention or proposal.

Planned unit development (PUD). An area with a specified minimum contiguous acreage to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

Area of land controlled by landowner to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any, the plan for which does not correspond in lot size, bulk or type of dwelling or commercial or industrial use, density, lot coverage and required open space to the regulations established in any one or more districts, created from time to time, under the provisions of a municipal zoning ordinance enacted pursuant to the conventional zoning enabling act of the state.

Planning. In municipal law, term connotes systematic development of municipality to promote general welfare and prosperity of its people with greatest efficiency and economy, while zoning is concerned primarily with use of property. *Forest Const. Co. v. Planning and Zoning Commission of Town of Bethany*, 155 Conn. 169, 236 A.2d 917, 922.

Planning board or commission. The agency of a local government which recommends approval or disapproval of proposed building projects, real estate developments, and the like, in their jurisdiction. A higher authority such as the city council usually makes the final decision based on the recommendation of such board or commission.

Plantation. In English law, a colony; an original settlement in a new country.

In American law, a farm; a large cultivated estate. Term used chiefly in the southern states to refer to large farms on which cotton, tobacco, sugar, and like crops are grown.

Plat or plot. A map of a specific land area such as a town, section, or subdivision showing the location and boundaries of individual parcels of land subdivided into lots, with streets, alleys, easements, etc., usually drawn to a scale. *See also* Plat map.

Platform. A statement of principles and of policies adopted by a party convention as a basis for the party's appeal for public support.

Plat map. A plat which gives legal descriptions of pieces of property by lot, street, and block numbers. A plat map is generally drawn after the property has been described by some other means, such as a Government Survey System. Once a plat map is set, legal descriptions are defined by referring to the given map, in a lot and block description.

Play-debt. Debt contracted by gaming.

Plea. In common law pleading (now obsolete with adoption of Rules of Civil Procedure) a pleading; any one in the series of pleadings. More particularly, the first pleading on the part of the defendant. In the strictest sense, the answer which the defendant in an action at law made to the plaintiff's declaration, and in which he set up matter of *fact* as defense, thus distinguished from a demurrer, which interposed objections on grounds of *law*.

In equity pleading (now obsolete with adoption of Rules of Civil Procedure) a special answer showing or relying upon one or more things as a cause why the suit should be either dismissed or delayed or barred. A short statement, in response to a bill in equity, of facts which, if inserted in the bill, would render it demurrable.

Affirmative plea. In equity pleading, one which sets up a single fact, not appearing in the bill, or sets up a number of circumstances all tending to establish a single fact, which fact, if existing, destroys the complainant's case. Such is obsolete under Rules of Civil Procedure. *See* Affirmative defense.

Anomalous plea. One which is partly affirmative and partly negative. Obsolete under Rules of Civil Procedure.

Common pleas. In common law pleading, common causes or suits; civil actions brought and prosecuted between subjects or citizens, as distinguished from criminal cases. Such are obsolete under Rules of Civil Procedure.

Criminal pleas. The defendant's response to a criminal charge (guilty, not guilty, or *nolo contendere*). If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty. Fed.R.Crim.P. 11(a). *See also* Alford plea; Arraignment; Guilty plea; Insanity; *Nolo contendere*; Not guilty; Plea bargaining; Standing mute.

Dilatory pleas. *See* Dilatory.

Double plea. In common law pleading, one having the technical fault of duplicity; one consisting of several distinct and independent matters alleged to the same point and requiring different answers. This does not present any problem under Rules of Civil Procedure which permits party to plead as many separate claims or defenses, regardless of consistency. Fed.R.Civil P. 8(e)(2).

False plea. A sham plea (*q.v. infra*).

Insanity plea. *See* Insanity.

Negative plea. In equity pleading, one which does not undertake to answer the various allegations of the bill, but specifically denies some particular fact or matter the existence of which is essential to entitle the complainant to any relief. Abolished under Rules of Civil Procedure. *See* Denial.

Peremptory pleas. In common law pleading, "pleas in bar" are so termed in contradistinction to that class of pleas called "dilatory pleas." The former, *viz.*, peremptory pleas, are usually pleaded to the merits of the action, with the view of raising a material issue between the parties; while the latter class, *viz.*, dilatory pleas, are generally pleaded with a view of retarding the plaintiff's proceedings, and not for the purpose of raising an issue upon which the parties may go to trial and settle the point in dispute. Peremptory pleas are also called "pleas in bar," while dilatory pleas are said to be in abatement only. Abolished under Rules of Civil Procedure.

Plea agreements. *See* Plea bargaining.

Plea in abatement. In common law pleading, a plea which, without disputing merits of plaintiff's claim, objects to place, mode, or time of asserting it. It allows plaintiff to renew suit in another place or form, or at another time, and does not assume to answer action on its merits, or deny existence of particular cause of action on which plaintiff relies. A plea in abatement sets forth facts extrinsic to merits which affect only manner in which action is framed or circumstances under which it is sought to be prosecuted, and does not destroy the right of action but merely suspends or postpones its

prosecution. *U. S. v. Brodson*, C.A.Wis., 234 F.2d 97, 99. In states which have adopted rules patterned on the Federal Rules of Civil Procedure, the plea in abatement has been replaced by a motion. *See, e.g.*, Fed.R.Civ.P. 12(b). *See* Abatement of action.

Plea in bar. A plea which goes to *bar* the plaintiff's action; that is, to defeat it absolutely and entirely. A plea in bar sets forth matters which per se destroy right of action and bar its prosecution absolutely, such as bar of statute of limitations or constitutional guarantee against self-incrimination. *U. S. v. Brodson*, C.A.Wis., 234 F.2d 97, 99. A plea in bar is one that denies a plaintiff's right to maintain the action and which, if established, will destroy the action. *Gillikin v. Gillikin*, 248 N.C. 710, 104 S.E.2d 861, 862.

Plea in discharge. In common law pleading, one which admits that the plaintiff had a cause of action, but shows that it was discharged by some subsequent or collateral matter, as, payment or accord and satisfaction. Abolished under Rules of Civil Procedure. *See* Affirmative defense.

Plea in reconvention. In the civil law, a plea which sets up new matter, not in defense to the action, but by way of cross-complaint, set-off, or counterclaim.

Plea of confession and avoidance. In common law pleading, one which admits that plaintiff had a cause of action, but which avers that it has been discharged by some subsequent or collateral matter. Abolished under Rules of Civil Procedure. *See* Affirmative defense.

Plea of guilty. A confession of guilt in open court. *See also* Criminal pleas, above, and Guilty plea.

Plea of nolo contendere /pliy əv nówlow kənténdəriy/. *See* Nolo contendere.

Plea of release. In common law pleading, one which admits the cause of action, but sets forth a release subsequently executed by the party authorized to release the claim. Abolished by Rules of Civil Procedure. *See* Affirmative defense.

Sham plea. A false plea; a plea of false or fictitious matter, subtly drawn so as to entrap an opponent, or create delay. A vexatious or false defense, resorted to under the old system of pleading for purposes of delay and annoyance. Such a plea may be ordered stricken on motion under Rules of Civil P. 12(f).

Special plea. In common law pleading, a special kind of plea in bar, distinguished by this name from the general issue, and consisting usually of some new affirmative matter, though it may also be in the form of a traverse or denial. Abolished under Rules of Civil Procedure.

Special plea in bar. In common law pleading, one which advances new matter. It differs from the general, in this: that the latter denies some material allegation, but never advances new matter. Abolished under Rules of Civil Procedure.

Plea agreement. *See* Plea bargaining.

Plea bargaining. The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge. Plea bargaining procedures in the federal courts are governed by Fed.R.Crim.P. 11(e).

Plead. To make, deliver, or file any pleading; to conduct the pleadings in a cause. To interpose any pleading in a civil action. More particularly, to deliver in a formal manner the defendant's answer to the plaintiff's declaration, complaint or to the indictment, as the case may be. *See* Pleadings.

Pleader. A person whose business it was to draw pleadings. Formerly, when pleading at common law was a highly technical and difficult art, there was a class of men known as "special pleaders not at the bar," who held a position intermediate between counsel and attorneys. In current usage, the pleader is the party asserting a particular pleading.

Pleadings. The formal allegations by the parties to a lawsuit of their respective claims and defenses, with the intended purpose being to provide notice of what is to be expected at trial.

Rules or Codes of Civil Procedure. Unlike the rigid technical system of common law pleading, pleadings under federal and state rules or codes of civil procedure have a far more limited function, with determination and narrowing of facts and issues being left to discovery devices and pre-trial conferences. In addition, the rules and codes permit liberal amendment and supplementation of pleadings.

The Field Code (*q.v.*) of New York was the first major state effort to simplify pleading requirements. This was followed by similar state civil procedure codes, and by the Federal Rules of Civil Procedure at the federal level.

Under rules of civil procedure the pleadings consist of a complaint, an answer, a reply to a counterclaim, an answer to a cross-claim, a third party complaint, and a third party answer. Fed.R.Civil P. 7(a).

For *amendment of pleadings*, *see* Amendment. For *judgment on pleadings*, *see* Judgment. *See also* Affirmative defense; Alternative pleading; Defective pleading; Responsive pleading; Sham (*Sham pleading*); Supplemental pleading; Variance.

Affirmative pleadings. *See* Affirmative defense.

Common law pleading. The system of rules and principles, established in the common law, according to which the pleadings or responsive allegations of litigating parties were framed with a view to preserve technical propriety and to produce a proper issue.

The process performed by the parties to a suit or action, in alternately presenting written statements of their contention, each responsive to that which precedes, and each serving to narrow the field of controversy, until there evolves a single point, affirmed on one side

and denied on the other, called the "issue," upon which they then go to trial.

The individual allegations of the respective parties to an action at common law proceeded from them alternately in the order and under the following distinctive names: The plaintiff's *declaration*, the defendant's *plea*, the plaintiff's *replication*, the defendant's *rejoinder*, the plaintiff's *surrejoinder*, the defendant's *rebutter*, the plaintiff's *surrebutter*; after which they have no distinctive names.

Pleading Fifth Amendment. See Self-incrimination.

Plead over. To pass over, or omit to notice, a material allegation in the last pleading of the opposite party; to pass by a defect in the pleading of the other party without taking advantage of it. In another sense, to plead the general issue, after one has interposed a demurrer or special plea which has been dismissed by a judgment of *respondeat ouster*. Obsolete under Rules of Civil Procedure.

Plea in abatement. See Plea (*Plea in abatement*).

Plea negotiations. See Plea bargaining.

Plea of privilege. In Texas, objection to venue is raised by a plea of privilege to be sued in the county of one's residence, and such plea if filed in due time, must be sustained unless the case falls within one of the exceptions in the venue statute.

Plebeity /pləbiyətɪ/ or **plebity** /pləbətɪ/. The common or meaner sort of people; the plebeians.

Plebeyos /pləbéyows/. In Spanish law, commons; those who exercise any trade, or who cultivate the soil.

Plebiscite /plébasàyt/'sət/'siyt/. A vote of the people expressing their choice for or against a proposed law or enactment, submitted to them, and which, if adopted, will work a change in the constitution, or which is beyond the powers of the regular legislative body. See also Referendum.

Plebiscitum /pləbasáyətm/. Lat. In Roman law, a law enacted by the *plebs* or commonalty (that is, the citizens, with the exception of the patricians and senators), at the request or on the proposition of a plebeian magistrate, such as a "tribune."

Plebs /plébz/. Lat. In Roman law, the commonalty or citizens, exclusive of the patricians and senators.

Pledge. A bailment, pawn, or deposit of personal property to a creditor as security for some debt or engagement. Personal property transferred to pledgee as security for pledgor's payment of debt or other obligation. *Jacobs v. Great Pacific Century Corp.*, 204 N.J.Super. 605, 499 A.2d 1023, 1025. A pledge, considered as a transaction, is a bailment or delivery of goods or property by way of security for a debt or engagement, or as security for the performance of an act. Another definition is that a pledge is a security interest in a chattel or in an intangible represented by an indispensable instrument (such as formal, written evidence of an interest in an intangible so representing the intangible that the enjoyment, transfer, or enforcement of the intangible

depends upon possession of the instrument), the interest being created by a bailment for the purpose of securing the payment of a debt or the performance of some other duty. A pledge is a promise or agreement by which one binds himself to do or forbear something. A lien created by delivery of personal property by owner to another, upon express or implied agreement that it shall be retained as security for existing or future debt. *Arco Petroleum Products Co., a Div. of Atlantic Richfield Co. v. R & D Automotive, Inc.*, 74 Ill.Dec. 197, 200, 118 Ill.App.3d 634, 455 N.E.2d 227, 230.

Much of the law of pledges has been replaced by the provisions for secured transactions in Article 9 of the U.C.C.

See also Bailment; Collateral; Hypothecate; Pawn; Secured transaction; Security. Compare Assignment.

Pledgee. The party to whom goods are pledged, or delivered in pledge. A person holding property as collateral security for his own benefit. *Raible v. Puerto Rico Indus. Development Co., C.A.Puerto Rico*, 392 F.2d 424, 426.

Pledgery. Suretyship, or an undertaking or answering for another.

Pledges. In common law pleading, those persons who became sureties for the prosecution of the suit. Their names were anciently appended at the foot of the declaration. In time it became purely a formal matter, because the plaintiff was no longer liable to be amerced for a false claim, and the fictitious persons John Doe and Richard Roe became the universal pledges, or they might be omitted altogether; or inserted at any time before judgment; they are now omitted.

Pledgor /pléjər/. The party delivering goods in pledge; the party pledging.

Plegii de retorno habendo /pléjɪyay diy rətórnəw həbéndəw/. In common law, pledges to return the subject of distress, should the right be determined against the party bringing the action of replevin.

Plegiis acquietandis /pléjɪyəs əkwáyətándəs/. A writ that anciently lay for a surety against him for whom he was surety, if he paid not the money at the day.

Pleito /pléytow/. In Spanish law, the pleadings in a cause.

Plena ætas /plɪnə iytəs/. Lat. In old English law, full age.

Plena et celeris justitia fiat partibus /plɪnə èt sélərəs jəstɪʃh(i)yə fáyət pártəbəs/. Let full and speedy justice be done to the parties.

Plena forisfactura /plɪnə fòrəsfæktyúrə/. A forfeiture of all that one possesses.

Plena probatio /plɪnə prəwbéyʃh(i)yəw/. In the civil law, a term used to signify full proof (that is, proof by two witnesses), in contradistinction to *semi-plena probatio*, which is only a presumption.

Plenary /plɪnərtɪy/plén'/. In old English law, fullness; a state of being full. A term applied to a benefice

when full, or possessed by an incumbent. The opposite state to a *vacation*, or vacancy.

Plenary. Full, entire, complete, absolute, perfect, unqualified. *Mashunkashey v. Mashunkashey*, 191 Okl. 501, 134 P.2d 976, 979.

Plenary action. A complete and formal hearing or trial on the merits as distinguished from a summary hearing which is commonly less strict and more informal. *May v. Henderson*, 268 U.S. 111, 45 S.Ct. 456, 69 L.Ed. 870.

Plenary confession. A full and complete confession. An admission or confession, whether in civil or criminal law, is said to be "plenary" when it is, if believed, conclusive against the person making it.

Plenary jurisdiction. Full and complete jurisdiction or power of a court over the subject matter as well as the parties to a controversy. *See also* Jurisdiction.

Plenary powers. Authority and power as broad as is required in a given case.

Plenary proceedings. *See* Plenary action.

Plenary session. A meeting of all members of a deliberative body, as distinguished from a meeting of a committee of the same body.

Plenary suit. One that proceeds on formal pleadings. *Central Republic Bank and Trust Co. v. Caldwell*, C.C.A. Mo., 58 F.2d 721. *See also* Plenary action.

Plene /plĩnyĩ/. Lat. Completely; fully; sufficiently.

Plene administravit /plĩnyĩ ædĩnæstrĩyvat/. A plea by an executor or administrator that he has fully administered all the assets that have come to his hands, and that no assets remain out of which the plaintiff's claim could be satisfied.

Plene administravit præter /plĩnyĩ ædĩnæstrĩyvat prĩytər/. A plea by an executor or administrator that he has "fully administered" all the assets that have come to his hands, "except" assets to a certain amount, which are not sufficient to satisfy the plaintiff.

Plene computavit /plĩnyĩ kũmpytĩyvat/. He has fully accounted. A plea in an action of account render, alleging that the defendant has fully accounted.

Plenipotentiary /plẽnəpətėnsh(iy)ĩryĩ/. One who has full power to do a thing; a person fully commissioned to act for another. A term applied in international law to ministers and envoys of the second rank of public ministers.

Plene dominium /plĩnəm dəmĩnyəm/. Lat. In the civil law, full ownership; the property in a thing united with the usufruct.

Plevin /plėvən/. A warrant, or assurance.

Plight. In old English law, an estate, with the habit and quality of the land; extending to a rent charge and to a possibility of dower.

Plot. *See* Plat or plot.

Plottage. A term used in appraising land values and particularly in eminent domain proceedings to designate

the additional value given to city lots by the fact that they are contiguous, which enables the owner to utilize them as large blocks of land. Plottage is a recognized concept in the field of eminent domain, referring to an added increment of value which may accrue to two or more vacant and unimproved contiguous parcels of land held in one ownership because of their potentially enhanced marketability by reason of their greater use adaptability as a single unit; simplistically stated, an assemblage of vacant and unimproved contiguous parcels held in one ownership may have a greater value as a whole than the sum of their values as separate constituent parcels and, hence, plottage value may be considered in determining fair market value. *State ex rel. State Highway Commission of Missouri v. Armacost Motors, Inc.*, Mo.App., 552 S.W.2d 360, 364.

Plow back. To retain earnings for continued investment in the business. To reinvest the earnings and profits into the business instead of paying them out as dividends or withdrawals by partners or proprietor.

Plunder, v. To pillage or loot. To take property from persons or places by open force, and this may be in course of a war, or by unlawful hostility, as in the case of pirates or robbers. The term is also used to express the idea of taking property from a person or place, without just right, but not expressing the nature or quality of the wrong done.

Plunder, n. Personal property belonging to an enemy, captured and appropriated on land; booty. Also the act of seizing such property. *See* Booty; Prize.

Plunderage. In maritime law, the embezzlement of goods on board of a ship is so called.

Plural. Containing more than one; consisting of or designating two or more.

Plurality /plurælədiĩ/. The excess of the votes cast for one candidate over those cast for any other. Where there are only two candidates, he who receives the greater number of the votes cast is said to have a *majority*; when there are more than two competitors for the same office, the person who receives the greatest number of votes has a *plurality*, but he has not a majority unless he receives a greater number of votes than those cast for all his competitors combined, or, in other words, more than one-half of the total number of votes cast.

A plurality normally refers to the state of being numerous; a large number or quantity; while it may perhaps mean two, it embraces any number in excess of two. *Technograph Printed Circuits, Limited v. Bendix Aviation Corp.*, D.C.Md., 218 F.Supp. 1, 52.

An opinion of an appellate court in which more justices join than in any concurring opinion (though not a majority of the court) is a plurality opinion as distinguished from a majority opinion in which a larger number of the justices on the panel join than not.

Plural marriage. *See* Marriage; Polygamy.

Pluries fi. fa. /pl(y)ũriyĩz fĩy(əray) fėy(shiyəs)/. A writ issued where other commands of the court have proved

ineffectual. Process that issues in the third instance, after the first and the alias have been ineffectual.

Pluries writs of execution. Third and subsequent writs of execution issued to enforce a judgment that was not satisfied by the sheriff acting under the original and alias writs of execution.

Plus exempla quam peccata nocent /plás əgzéplə kwəm pəkéytə nósənt/. Examples hurt more than crimes.

Plus peccat author quam actor /plás pəkət óθər kwəm əktər/ "pəkət óktər". The originator or instigator of a crime is a worse offender than the actual perpetrator of it. Applied to the crime of subornation of perjury.

Plus petitio /plás pətísh(iy)ow/. In Roman law, a phrase denoting the offense of claiming more than was just in one's pleadings. Prior to Justinian's time, this offense was in general fatal to the action; but, under the legislation of the emperors Zeno and Justinian, the offense (if *re, loco, or causa*) exposed the party to the payment of three times the damage, if any, sustained by the other side, and (if *tempore*) obliged him to postpone his action for double the time, and to pay the costs of his first action before commencing a second.

Plus valet consuetudo quam concessio /plás vələt kónswətyúwdow kwəm kənsəsh(iy)ow/. Custom is more powerful than grant.

Plus valet unus oculatus testis quam auriti decem /plás vələt yúwnəs ókyələydəs téstəs kwəm órətay désəm/. One eye-witness is of more weight than ten ear-witnesses [or those who speak from hearsay].

Plus vident oculi quam oculus /plás vidənt ókyələy kwəm ókyələs/. Several eyes see more than one.

P.M. An abbreviation for "postmaster;" also for "*post-meridiam,*" afternoon.

Pneumoconiosis /núwmowkòwniyówsəs/. A generic term including all lung diseases caused by dust particles of any sort. *Genesco, Inc. v. Greeson*, 105 Ga.App. 798, 125 S.E.2d 786, 789. See *Black Lung Benefits Act*.

P.O. An abbreviation of "public officer;" also of "post-office."

Poach. To steal or destroy game on another's land. See *Poaching*.

Poaching. In criminal law, the unlawful entry upon land for the purpose of taking or destroying fish or game. The illegal taking or killing of fish or game.

Pocket veto. The act of the President in retaining a legislative bill without approving or rejecting it at the end of the legislative session and, in effect, vetoing it by such inactivity. See U.S. Constitution, Art. I, Sec. 7, Cl. 2.

P.O.D. account. An account payable on request to one person during lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees. Uniform Probate Code, § 6-101(11).

Pœna /píynə/. Lat. Punishment; a penalty.

Pœna ad paucos, metus ad omnes perveniat /píynə àd pókwos, miytəs àd ómniyz pərviyn(iy)ət/. If punishment be inflicted on a few, a dread comes to all.

Pœna corporalis /píynə kòrpərəyləs/. Corporal punishment.

Pœna potius molliendæ quam exasperandæ sunt /píyniy pówsh(iy)əs mòliyéndiy kwəm əgzəsparéndiy sánt/. Punishments should rather be softened than aggravated.

Pœnæ sint restringendæ /píyniy sint rèstrinjéndiy/. Punishments should be restrained.

Pœnæ suos tenere debet actores et non alios /píynə súwows təniriy débət əktóriyz èt nón əliyows/. Punishment ought to be inflicted upon the guilty, and not upon others.

Pœna ex delicto defuncti hæres teneri non debet /píynə èks dəlíktow dəfóyktay híriyz təniray nón débət/. The heir ought not to be bound by a penalty arising out of the wrongful act of the deceased.

Pœnalis /pənəyləs/. Lat. In the civil law, penal; imposing a penalty; claiming or enforcing a penalty. *Actiones pœnales*, penal actions.

Pœna non potest, culpa perennis erit /píynə nón pówtəst, kálpə pərénəs éhrət/. Punishment cannot be, crime will be, perpetual.

Pœna pilloralis /píynə pilərəyləs/. In old English law, punishment of the pillory.

Pœna suos tenere debet actores et non alios /píynə s(y)úwows təniriy débət əktóriyz èt nón əliyows/. Punishment ought to bind the guilty, and not others.

Pœna tolli potest, culpa perennis erit /píynə tólay pówtəst, kálpə pərénəs éhrət/. The punishment can be removed, but the crime remains.

Pœnitentia /pənətəns(iy)ə/piyn^o/. Lat. In the civil law, repentance; reconsideration; changing one's mind; drawing back from an agreement already made, or rescinding it.

Locus pœnitentiæ. Room or place for repentance or reconsideration; an opportunity to withdraw from a negotiation before finally concluding the contract or agreement. Also, in criminal law, an opportunity afforded by the circumstances to a person who has formed an intention to kill or to commit another crime, giving him a chance to reconsider and relinquish his purpose.

Point. A distinct proposition or question of law arising or propounded in a case. See also *Issue*.

In the case of shares of stock, a point means \$1. In the case of bonds a point means \$10, since a bond is quoted as a percentage of \$1,000. In the case of market averages, the word point means merely that and no more. If, for example, the Dow-Jones Industrial Average rises from 870.25 to 871.25, it has risen a point. A point in this average, however, is not equivalent to \$1.

Real estate financing. The word "point" as used in home mortgage finance industry denotes a fee or charge equal to one percent of principal amount of loan which is collected by lender at time the loan is made. It is a fee or charge which is collected only once, at inception of loan, and is in addition to constant long-term stated interest rate on face of loan. *B. F. Saul Co. v. West End Park North, Inc.*, 250 Md. 707, 246 A.2d 591, 595, 597.

Point reserved. When, in the progress of the trial of a cause, an important or difficult point of law is presented to the court, and the court is not certain of the decision that should be given, it may *reserve* the point, that is, decide it provisionally as it is asked by the party, but reserve its more mature consideration for the hearing on a motion for a new trial, when, if it shall appear that the first ruling was wrong, the verdict will be set aside. The point thus treated is technically called a "point reserved."

Points. See Point.

Points of law. Those distinct propositions of law on which each side relies in a lawsuit, and on which the court bases its decision (opinion) on.

Point system. The "point system", with respect to suspension of license of operator of a motor vehicle, automatically fixes penalty points following conviction of moving traffic violations and provides for mandatory suspension of the driver's license of a person who has accumulated a statutory prescribed number of points within a year involved. *Sturgill v. Beard*, Ky, 303 S.W.2d 908, 909.

Poison. A substance having an inherent deleterious property which renders it, when taken into the system, capable of destroying life. A substance which, on being applied to the human body, internally or externally, is capable of destroying the action of the vital functions, or of placing the solids and fluids in such a state as to prevent the continuance of life.

Poisonous tree doctrine. Doctrine refers to an illegal arrest or search which leads officers to evidence seized in a proper manner that may be inadmissible because of the taint of the original illegality. *Com. v. Spofford*, 343 Mass. 703, 180 N.E.2d 673. Sometimes also referred to as "fruit of poisonous tree" doctrine (*q.v.*).

Poison pill. A defensive tactic used by a company that is a target of an unwanted takeover to make its shares or financial condition less attractive to an acquirer. For instance, a firm may issue a new series of preferred shares that give shareholders the right to compel their redemption at a premium price after a takeover. See also Lockup; Porcupine provisions; White knight.

Polar star rule. The rule that the intent of the maker of a written document, as gathered from its four corners, shall prevail unless such intent conflicts with some statutory provision within the jurisdiction, or is against public policy. *Hanks v. McDanel*, 307 Ky. 243, 210 S.W.2d 784, 786.

Pole. A measure of length, equal to five yards and a half.

Police. Branch of the government which is charged with the preservation of public order and tranquillity, the promotion of the public health, safety, and morals, and the prevention, detection, and punishment of crimes. See also Internal police; Peace (*Peace officers*); Sheriff.

Police court. The name of an inferior court in several of the states, which has jurisdiction over minor offenses and city ordinances, concurrent jurisdiction in certain matters with justices of the peace, and the powers of a committing magistrate in respect to more serious crimes, and, in some states, a limited jurisdiction for the trial of civil causes.

Police jury. In Louisiana, the governing bodies of the parishes, which are political subdivisions of the state, comparable to counties in other states. *National Liberty Ins. Co. of America v. Police Jury of Natchitoches Parish*, C.C.A.La., 96 F.2d 261, 262.

Police justice. A magistrate charged exclusively with the duties incident to the common-law office of a conservator or justice of the peace; the prefix "police" serving merely to distinguish them from justices having also civil jurisdiction.

Police magistrate. An inferior judicial officer having jurisdiction of minor criminal offenses, breaches of police regulations, and the like; so called to distinguish them from magistrates who have jurisdiction in civil cases also, as justices of the peace.

Police officer. One of the staff of persons employed in cities and towns to enforce the municipal laws and ordinances for preserving the peace, safety, and good order of the community. Also called "policeman" or "policewoman"; "patrolman" or "patrolwoman", or "peace officer". See also Peace (*Peace officers*).

Police power. An authority conferred by the American constitutional system in the Tenth Amendment, U.S. Const., upon the individual states, and, in turn, delegated to local governments, through which they are enabled to establish a special department of police; adopt such laws and regulations as tend to prevent the commission of fraud and crime, and secure generally the comfort, safety, morals, health, and prosperity of its citizens by preserving the public order, preventing a conflict of rights in the common intercourse of the citizens, and insuring to each an uninterrupted enjoyment of all the privileges conferred upon him or her by the general laws.

The power of the State to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. The police power is subject to limitations of the federal and State constitutions, and especially to the requirement of due process. Police power is the exercise of the sovereign right of a government to promote order, safety, security, health, morals and general welfare within constitutional limits and is an essential attribute

of government. *Marshall v. Kansas City, Mo.*, 355 S.W.2d 877, 883.

Policy. The general principles by which a government is guided in its management of public affairs, or the legislature in its measures.

A general term used to describe all contracts of insurance. *See* Policy of insurance.

This term, as applied to a law, ordinance, or rule of law, denotes its general purpose or tendency considered as directed to the welfare or prosperity of the state or community.

A species of "lottery" whereby the chance is determined by numbers; "numbers game" also being a lottery. *People v. Hines*, 258 App.Div. 466, 17 N.Y.S.2d 141, 142. Policy is a lottery or game of chance where bettors select numbers to bet on and place the bet with a policy writer. *State v. Harris, Mo.App.*, 325 S.W.2d 352, 354. *See* Lottery.

Public policy. That principle of the law which holds that no subject can lawfully do that which has a tendency to be injurious to the public or against the public good. The principles under which the freedom of contract or private dealings is restricted by law for the good of the community. The term "policy," as applied to a statute, regulation, rule of law, course of action, or the like, refers to its probable effect, tendency, or object, considered with reference to the social or political well-being of the state. Thus, certain classes of acts are said to be "against public policy," when the law refuses to enforce or recognize them, on the ground that they have a mischievous tendency, so as to be injurious to the interests of the state, apart from illegality or immorality.

Policyholder. The person who owns the policy of insurance whether he is the insured or not. In most states, any person with an insurable interest may be a policyholder.

Policy of insurance. An instrument in writing, by which one party (insurer), in consideration of a premium, engages to indemnify another (insured) against a contingent loss, by making him a payment in compensation, whenever the event shall happen by which the loss is to accrue. Contract whereby insurer, in return for premiums, engages, on happening of designated event, to pay certain sum as provided. In *re O'Neill's Estate*, 143 Misc. 69, 255 N.Y.S. 767, 771. The evidence delivered to the insured of the contract of the insurer, and ordinarily, of itself, constitutes complete evidence of the contract. *United Ben. Life Ins. Co. v. McCrory, C.A. Neb.*, 414 F.2d 928, 932.

The written instrument in which a contract of insurance is set forth.

See also Face of policy; Floater policy; Homeowners policy; Master policy.

Assessable policy. A policy under which a policyholder may be held liable for losses of the insurance company beyond its reserves.

Blanket policy. A policy of fire insurance which contemplates that the risk is shifting, fluctuating, or varying, and is applied to a class of property rather than to any particular article or thing.

The term "specific" as applied in insurance phraseology is frequently used in contrast with "blanket insurance" and denotes coverage of a particular piece of property or property at a specific location, as contrasted with blanket insurance which covers the same and other property in several different locations.

Class of life insurance policies. Those policies issued in the same calendar year, upon the lives of persons of the same age, and on the same plan of insurance.

Endowment policy. A policy which agrees to pay to the insured, if living at the expiration of a certain period, a specified amount of money, and in the event of his death in the interim, agrees to pay the face amount of the policy to his designated beneficiary. *Silen v. Silen*, 44 Wash.2d 884, 271 P.2d 674, 676.

Extended policy. A policy which provides protection beyond the time when premiums are no longer paid.

Floater policy. A policy of fire insurance not applicable to any specific described goods, but to any and all goods which may at the time of the fire be in a certain building.

Incontestable policy. A policy which contains a provision to the effect that the company after the policy has been in force cannot contest, challenge or cancel the policy on the basis of statements made in the application. The period of contestability may be one, two or three years.

Interest policy. One where the assured has a real, substantial, and assignable interest in the thing insured; as opposed to a wager policy.

Master policy. In group life, medical, etc. insurance, the single policy under which the participants are covered. The individuals covered by the master policy receive a certificate indicating their participation.

Mixed policy. A policy of marine insurance in which not only the time is specified for which the risk is limited, but the voyage also is described by its local termini; as opposed to policies of insurance for a particular voyage, without any limits as to time, and also to purely time policies, in which there is no designation of local termini at all.

Open policy. One in which the value of the subject insured is not fixed or agreed upon in the policy as between the assured and the underwriter, but is left to be estimated in case of loss. The term is opposed to "valued policy," in which the value of the subject insured is fixed for the purpose of the insurance, and expressed on the face of the policy. But this term is also sometimes used to describe a policy in which an aggregate amount is expressed in the body of the policy, and the specific amounts and subjects are to be indorsed from time to time.

Paid-up policy. In life insurance, a policy on which no further payments are to be made in the way of annual premiums.

Participating policy. A policy commonly found in mutual insurance companies and in some stock companies in which the insured participates in the profits by receiving dividends or rebates from future premiums.

Policy loan. An advancement on life policy without a personal obligation on the part of the policyholder as to repayment. Board of Assessors of the Parish of Orleans v. New York Life Ins. Co., 216 U.S. 517, 30 S.Ct. 385, 54 L.Ed. 597. A loan made by an insurance company which takes the policy's cash reserve as security for the loan.

Policy reserves. Funds held by insurance company specifically to meet its policy obligations.

Term policy. In life insurance, a policy which gives protection for a specified period of time but no cash or reserve value is created in the policy. See Insurance.

Time policy. In fire insurance, one made for a defined and limited time, as, one year. In marine insurance, one made for a particular period of time, irrespective of the voyage or voyages upon which the vessel may be engaged during that period.

Valued policy. One in which the value of the thing insured, and also the amount to be paid thereon in the event of loss, is settled by agreement between the parties and inserted in the policy.

Voyage policy. A policy of marine insurance effected for a particular voyage or voyages of the vessel, and not otherwise limited as to time.

Wager policy. An insurance upon a subject-matter in which the party assured has no real, valuable, or insurable interest. A mere wager policy is that in which the party assured has no interest in the thing assured, and could sustain no possible loss by the event insured against, if he had not made such wager. Such policies are generally illegal, or not otherwise written, because the insured does not have an insurable interest.

Policy value. The amount of cash available to the policyholder on the surrender or cancellation of the insurance policy.

Policy year. In insurance, the year which commences with the date of the commencement or anniversary of the policy.

Politiæ legibus non leges politiis adaptanda /pəlishiy(iy) lījəbəs nən lījijz pəlishiyəs ədəptəndiy/. Politics are to be adapted to the laws, and not the laws to politics.

Political. Pertaining or relating to the policy or the administration of government, state or national. Pertaining to, or incidental to, the exercise of the functions vested in those charged with the conduct of government; relating to the management of affairs of state, as political theories; of or pertaining to exercise of rights and privileges or the influence by which individuals of a

state seek to determine or control its public policy; having to do with organization or action of individuals, parties, or interests that seek to control appointment or action of those who manage affairs of a state. State ex rel. Maley v. Civic Action Committee, 238 Iowa 851, 28 N.W.2d 467, 470.

Political action committees. See PAC.

Political corporation. A public or municipal corporation; one created for political purposes, and having for its object the administration of governmental powers of a subordinate or local nature.

Political crime. In general, any crime directly against the government; e.g. treason; sedition. It includes any violent political disturbance without reference to a specific crime. See also Political offenses.

Political law. That branch of jurisprudence which treats of the science of politics, or the organization and administration of government. More commonly called "Political science."

Political liberty. See Liberty.

Political offenses. As a designation of a class of crimes usually excepted from extradition treaties, this term denotes crimes which are incidental to and form a part of political disturbances; but it might also be understood to include offenses consisting in an attack upon the political order of things established in the country where committed, and even to include offenses committed to obtain any political object. Under extradition treaties is an offense committed in the course of and incidental to a violent political disturbance, such as war, revolution and rebellion; an offense is not of a political character simply because it was politically motivated. Escobedo v. U.S., C.A.Fla., 623 F.2d 1098, 1104. See also Political crime.

Political office. See Office.

Political party. An association of individuals whose primary purposes are to promote or accomplish elections or appointments to public offices, positions, or jobs. State ex rel. Corrigan v. Cleveland-Cliffs Iron Co., 169 Ohio St. 42, 157 N.E.2d 331, 333. A committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of presidential or vice presidential electors or of any individual whose name is presented for election to any federal, state, or local elective public office, whether or not such individual is elected. Cal.Rev. & Tax Code § 24434(b)(1)(C).

Political questions. Questions of which courts will refuse to take cognizance, or to decide, on account of their purely political character, or because their determination would involve an encroachment upon the executive or legislative powers.

"Political question doctrine" holds that certain issues should not be decided by courts because their resolution is committed to another branch of government and/or because those issues are not capable, for one reason or

another, of judicial resolution. *Islamic Republic of Iran v. Pahlavi*, 116 Misc.2d 590, 455 N.Y.S.2d 987, 990.

A matter of dispute which can be handled more appropriately by another branch of the government is not a "justiciable" matter for the courts. However, a state apportionment statute is not such a political question as to render it nonjusticiable. *Baker v. Carr*, 369 U.S. 186, 208-210, 82 S.Ct. 691, 705-706, 7 L.Ed.2d 663.

Compare Justiciable controversy.

Political rights. Those which may be exercised in the formation or administration of the government. Rights of citizens established or recognized by constitutions which give them the power to participate directly or indirectly in the establishment or administration of government.

Political subdivision. A division of the state made by proper authorities thereof, acting within their constitutional powers, for purpose of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public. *State ex rel. Maisano v. Mitchell*, 155 Conn. 256, 231 A.2d 539, 542.

Political trial. Term loosely applied to trials in which the parties represent fundamentally different political convictions and in which the parties or one of them attempts to litigate their political beliefs.

Politics. The science of government; the art or practice of administering public affairs.

Polity. The form of government; civil constitution.

Polity approach. The "polity approach" under which a civil court may properly resolve church property disputes requires court to determine whether church organization is congregational or hierarchical and then resolve dispute in accordance with decision by proper church-governing body. *Bernson v. Koch*, 35 Colo.App. 257, 534 P.2d 334, 337.

Poll, v. To single out, one by one, of a number of persons. To examine each juror separately, after a verdict has been given, as to his concurrence in the verdict. *See* Polling the jury.

Poll, n. A head; an individual person; a register of persons. In the law of elections, a list or register of heads or individuals who may vote in an election; the aggregate of those who actually cast their votes at the election, excluding those who stay away.

Polling the jury. A practice whereby the jurors are asked individually whether they assented, and still assent, to the verdict. *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335, 337. To poll a jury is to call the names of the persons who compose a jury and require each juror to declare what his verdict is before it is recorded. This may be accomplished by questioning them individually or by ascertaining fact of unanimous concurrence by general question, and once concurrence has been determined, the polling is at an end. *Fortenberry v. New York Life Ins. Co.*, C.A.Tenn., 459 F.2d 114, 115.

If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged. *Fed.R.Crim.P.* 31.

Polls. The place where electors cast in their votes.

Poll-tax. A capitation tax; a tax of a specific sum levied upon each person within the jurisdiction of the taxing power and within a certain class (as, all males of a certain age, etc.) without reference to his property or lack of it. A tax upon the privilege of being; it is a sum levied upon persons without regard to property, occupation, income or ability to pay. *Tiefel v. Gilligan*, Ohio Com.Pl., 41 Ohio Misc. 76, 322 N.E.2d 916, 920.

Poll taxes as a prerequisite to voting in federal elections are prohibited by the 24th Amendment and as to state elections such were held to be unconstitutional in *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed.2d 169.

Po. lo. suo. An old abbreviation for the words "*ponit loco suo*" (puts in his place), used in warrants of attorney.

Pollute. To corrupt or defile. The contamination of soil, air and water by noxious substances and noises. *See also* Pollution.

Pollution. Contamination of the environment by a variety of sources including but not limited to hazardous substances, organic wastes and toxic chemicals. Pollution is legally controlled and enforced through various federal and state laws and agencies, including common law nuisance laws, *e.g.*, *Boomer v. Atlantic Cement Co.*, 26 N.Y.2d 219, 309 N.Y.S.2d 312, 257 N.E.2d 870. Examples of federal laws are the Clean Water Act, 33 U.S.C.A. § 1251 et seq. and the Clean Air Act, 31 U.S.C.A. § 7401 et seq. *See also* Environmental Protection Agency; Hazardous substance; Superfund; Toxic waste.

Polyandry /póliyændriy/. The civil condition of having more husbands than one to the same woman; a social order permitting plurality of husbands.

Polygamia est plurium simul virorum uxorumve conubium /pòlégémiyè èst pl(y)úriyèm sáyml vòròrèm àksərámviy kən(y)úwbiyèm/. Polygamy is the marriage with many husbands or wives at one time.

Polygamy /pəligəmiy/. The offense of having several wives or husbands at the same time, or more than one wife or husband at the same time. Bigamy literally means a second marriage distinguished from a third or other; while polygamy means many marriages,—implies more than two. Polygamy is a crime in all states.

A person is guilty of polygamy, a felony of the third degree, if he marries or cohabits with more than one spouse at a time in purported exercise of the right of plural marriage. The offense is a continuing one until all cohabitation and claim of marriage with more than one spouse terminates. This section does not apply to parties to a polygamous marriage, lawful in the country of which they are residents or nationals, while they are in transit through or temporarily visiting this State. *Model Penal Code*, § 230.1.

Polygarchy /pólægàrkiy/. A term sometimes used to denote a government of many or several; a government where the sovereignty is shared by several persons; a collegiate or divided executive.

Polygraph. Also known as a lie detector, it is an electro-mechanical instrument used to determine whether an examinee is truthfully answering questions. It simultaneously measures and records certain physiological changes in the human body which it is believed are involuntarily caused by an examinee's conscious attempt to deceive an interrogator. *U.S. v. DeBetham*, D.C.Cal., 348 F.Supp. 1377, 1384. Though historically inadmissible on grounds of unreliability, polygraph evidence is increasingly being admitted if, for example, the parties stipulate in advance to its admission or it is being offered to impeach or corroborate witness testimony. *U.S. v. Piccinonna*, C.A.Fla., 885 F.2d 1529.

With certain exceptions, employers engaged in commerce are statutorily prohibited from requiring employees or prospective employees to submit to a polygraph test. Employee Polygraph Protection Act of 1988, 29 U.S.C.A. § 2001 et seq.

See also Lie detector.

Polyopsony. The condition of a market characterized by the fewness of buyers. The fewness has an effect on the price of the materials or products.

Polypoly. A market condition characterized by the fewness of sellers where this has a direct effect on prices.

Pomerene Bills of Lading Act. Federal Bills of Lading Act, 49 U.S.C.A. §§ 81-124. See Bill of lading acts.

Pond. A body of stagnant water without an outlet, larger than a puddle and smaller than a lake; or a like body of water with a small outlet.

Great ponds. In Maine and Massachusetts, natural ponds having a superficial area of more than ten acres, and not appropriated by the proprietors to their private use prior to a certain date.

Private pond. A body of water wholly on the lands of a single owner, or of a single group of joint owners or tenants in common, which did not have any such connection with any public waters that fish could pass from one to the other. At common law, if pond was so connected with public waters that at time of high water, fish could go in and out, it was not "private pond" from which defendants could seine fish whether fish might go out same day or next season.

Public pond. In New England, a great pond; a pond covering a superficial area of more than ten acres.

Ponderantur testes, non numerantur /póndarántər téstiyz nó n(y)úwmərántər/. Witnesses are weighed, not counted.

Pondus /póndəs/. In old English law, poundage; *i.e.*, a duty paid to the crown according to the weight of merchandise.

Pondus regis /póndəs riyjəs/. The king's weight; the standard weight appointed by the king.

Pone /pówniy/. In old English practice, an original writ formerly used for the purpose of removing suits from the court-baron or county court into the superior courts of common law. It was also the proper writ to remove all suits which were before the sheriff by writ of justices. But this writ is now in disuse, the writ of *certiorari* being the ordinary process by which at the present day a cause is removed from a county court into any superior court.

Ponendis in assisis /pónéndəs in əsáyzəs/. An old writ directing a sheriff to impanel a jury for an assize or real action.

Ponendum in ballium /pónéndəm in béliyəm/. An old writ commanding that a prisoner be bailed in cases bailable.

Ponendum sigillum ad exceptionem /pónéndəm səjiləm əd əksəpshiyównəm/. A writ by which justices were required to put their seals to exceptions exhibited by a defendant against a plaintiff's evidence, verdict, or other proceedings, before them.

Pone per vadium /pówniy pər védyiyəm/. In English practice, an obsolete writ to the sheriff to summon the defendant to appear and answer the plaintiff's suit, on his putting in sureties to prosecute. It was so called from the words of the writ, "*pone per vadium et salvos plegios*," "put by gage and safe pledges, A. B., the defendant."

Ponit se super patriam /pównət siy s(y)úwpər.pátri-yəm/. Lat. He puts himself upon the country. The defendant's plea of not guilty in a criminal action was recorded, in old English practice, in these words, or in the abbreviated form "*po. se.*"

Pool. A combination of persons or corporations engaged in the same business, or for the purpose of engaging in a particular business or commercial or speculative venture, where all contribute to a common fund, or place their holdings of a given stock or other security in the hands and control of a managing member or committee, with the object of eliminating competition as between the several members of the pool, or of establishing a monopoly or controlling prices or rates by the weight and power of their combined capital, or of raising or depressing prices on the stock market, or simply with a view to the successful conduct of an enterprise too great for the capital of any member individually, and on an agreement for the division of profits or losses among the members, either equally or pro rata. Also, a similar combination not embracing the idea of a pooled or contributed capital, but simply the elimination of destructive competition between the members by an agreement to share or divide the profits of a given business or venture, as, for example, a contract between two or more competing railroads to abstain from "rate wars" and (usually) to maintain fixed rates, and to divide their earnings from the transportation of freight in fixed proportions. Such type pooling arrangements are illegal under the Sherman Antitrust Act. See also Cartel; Trust.

In various methods of gambling, a "pool" is a sum of money made up of the stakes contributed by various persons, the whole of which is then wagered as a stake on the event of a race, game, or other contest, and the winnings (if any) are divided among the contributors to the pool pro rata. Or it is a sum similarly made up by the contributions of several persons, each of whom then makes his guess or prediction as to the event of a future contest or hazard, the successful bettor taking the entire pool. Such pools are distinct from the practice of book-making. *U. S. v. Berent*, C.A.Nev., 523 F.2d 1360, 1361.

A body of standing water, without a current or issue, accumulated in a natural basin or depression in the earth, and not artificially formed. *See* Pond.

Pooling agreement. A contractual arrangement among shareholders relating to the voting of their shares. So long as such agreement is limited to voting as shareholders, it is enforceable.

Pooling of interests. A method of accounting for mergers in which the acquired company's assets are recorded on the acquiring company's books at their cost when originally acquired. No goodwill account is created under the pooling method.

Poor debtors' oath. *See* Pauper's oath; Poverty affidavit.

Pope. The bishop of Rome, and supreme head of the Roman Catholic Church.

Popular sense. In reference to the construction of a statute, this term means that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

Populiscitum /pòpyələsáyətəm/. Lat. In Roman law, a law enacted by the people; a law passed by an assembly of the Roman people, in the *comitia centuriata*, on the motion of a senator; differing from a *plebiscitum*, in that the latter was always proposed by one of the tribunes.

Populus /póp(y)ələs/. Lat. In Roman law, the people; the whole body of Roman citizens, including as well the patricians as the plebeians.

Porción /pòrθ(i)yówn/. In Spanish law, a part or portion; a lot or parcel; an allotment of land.

Porcupine provisions. Defensive provisions in articles of incorporation or bylaws designed to make unwanted takeover attempts impossible or impractical without the consent of the target's management. *See also* Lockup; Poison pill; White knight.

Pornographic. That which is of or pertaining to obscene literature; obscene; licentious. Material is pornographic or obscene if the average person, applying contemporary community standards, would find that the work taken as a whole appeals to the prurient interest and if it depicts in a patently offensive way sexual conduct and if the work taken as a whole lacks serious literary, artistic, political or scientific value. *Miller v. California*, 413 U.S. 15, 24-25, 93 S.Ct. 2607, 2615, 37 L.Ed.2d 419. *See also* Dominant theme; Obscene; Pander (*Pandering of obscenity*); Prurient interest.

Pornography. *See* Pornographic.

Port. A place for the loading and unloading of the cargoes of vessels, and the collection of duties or customs upon imports and exports. A place, on the seacoast, great lakes, or on a river, where ships stop for the purpose of loading and unloading cargo, or for purpose of taking on or letting off passengers, from whence they depart, and where they finish their voyage. A port is a place intended for loading or unloading goods; hence includes the natural shelter surrounding water, as also sheltered water produced by artificial jetties, etc. *The Balldhill*, C.C.A.N.Y., 42 F.2d 123, 125.

Foreign port. One exclusively within the jurisdiction of a foreign nation, hence one without the United States. But the term is also applied to a port in any state other than the state where the vessel belongs or her owner resides. Port other than home port.

Free port. *See* that title.

Home port. The port at which a vessel is registered or enrolled or where the owner resides.

Port charges, dues, or tolls. Pecuniary exactions upon vessels availing themselves of the commercial conveniences and privileges of a port. *Christianssand Shipping Co. v. Marshall*, D.C.Pa., 22 F.2d 192, 194.

Port of call. Port at which ships usually stop on a route or voyage.

Port of delivery. The port which is to be the terminus of any particular voyage, and where the vessel is to unlade or deliver her cargo, as distinguished from any port at which she may touch, during the voyage, for other purposes.

Port of departure. The port from which vessel clears and departs upon start of voyage. As used in the United States statutes requiring a ship to procure a bill of health from the consular officer at the place of departure, is not the last port at which the ship stops while bound for the United States, but the port from which she cleared.

Port of destination. The port at which a voyage is to end. In maritime law and marine insurance, the term includes both ports which constitute the termini of the voyage; the home port and the foreign port to which the vessel is consigned as well as any usual stopping places for the receipt or discharge of cargo.

Port of discharge. In a policy of marine insurance, means the place where the substantial part of the cargo is discharged, although there is an intent to complete the discharge at another basin.

Port of entry. One of the ports designated by law, at which a custom-house or revenue office is established for the execution of the laws imposing duties on vessels and importations of goods. Port where immigrants arrive. 8 U.S.C.A. § 1221.

Port-reeve, or port-warden. An officer maintained in some ports to oversee the administration of the local regulations; a sort of harbor-master.

Port-risk. In marine insurance, a risk upon a vessel while lying in port, and before she has taken her departure upon another voyage. *See also* Port risk insurance.

Port toll. The toll paid for bringing goods into a port.

Portal-to-Portal Act. Federal statute regulating pay for non-productive time required of employee to reach place of employment and to return in some instances.

Port authority. Governmental agency authorized by a state or the federal government to regulate and plan traffic through a port, and also commonly charged with responsibility of encouraging or securing businesses to locate on land or areas served by port. Sometimes such authorities also have responsibility over establishment and maintenance of airports, bridges, tollways, and surface transportation in metropolitan area of port; *e.g.* New York Port Authority, which is operated jointly by New York and New Jersey under an interstate compact.

Portfolio. In investments, the collective term for all the securities (which may consist of various types) held by one person or institution.

Portfolio income. Income from interest, dividends, rentals, royalties, capital gains, or other investment sources. Portfolio income is not considered passive income, therefore net passive losses cannot be used to offset net portfolio income. *See also* Passive investment income; Passive loss.

Portio legitima /pórsh(iy)ow læjídəmə/. Lat. In the civil law, the birthright portion; that portion of an inheritance to which a given heir is entitled, and of which he cannot be deprived by the will of the decedent, without special cause, by virtue merely of his relationship to the testator.

Portion. An allotted part; a share, a parcel; a division in a distribution; a share of an estate or the like, received by gift or inheritance. *Lecompte v. Davis' Ex'r*, 285 Ky. 433, 148 S.W.2d 292, 295. *See* Per capita; Per stirpes.

Portion disponible. Fr. In French law, that part of a man's estate which he may bequeath to other persons than his natural heirs. A parent leaving one legitimate child may dispose of one-half only of his property; one leaving two, one-third only; and one leaving three or more, one-fourth only; and it matters not whether the disposition is *inter vivos* or by will.

Portoria /portóriyə/. In the civil law, duties paid in ports on merchandise. Taxes levied in old times at city gates. Tolls for passing over bridges.

Port risk insurance. In contradistinction to voyage or time insurance, means insurance upon a vessel while lying in port, and before she has taken her departure on another voyage. *Bristol S.S. Corp. v. London Assur.*, D.C.N.Y., 404 F.Supp. 749, 752.

Portsale. In old English law, an auction; a public sale of goods to the highest bidder; also a sale of fish as soon as it is brought into the haven.

Portus est locus in quo exportantur ewrimportantur merces /pórtəs ɛst lówkəs in kwów ɛksportántər ɛd ɪmpórtántər mársiyz/. A port is a place where goods are exported or imported.

Position. Extent of person's investment in a particular security or market.

Position of United States. Phrase "the position of the United States" within meaning of section of Equal Access to Justice Act (5 U.S.C.A. § 504; 28 U.S.C.A. § 2412) permitting government, when it loses a case, to avoid liability for attorney fees if it can show that its "position" was substantially justified refers to the arguments relied upon the government in litigation. *Spencer v. N.L.R.B., C.A.*, 712 F.2d 539, 547, 229 U.S.App.D.C. 225. *See also* Equal Access to Justice Act.

Positive. Laid down, enacted, or prescribed. Express or affirmative. Direct, absolute, explicit. As to *positive* Condition; Fraud; Proof; and Servitude, see those titles.

Positive evidence. Direct evidence. Eye witness testimony. Direct proof of the fact or point in issue; evidence which, if believed, establishes the truth or falsehood of a fact in issue, and does not arise from any presumption. It is distinguished from circumstantial evidence. *See also* Evidence.

Positive law. Law actually and specifically enacted or adopted by proper authority for the government of an organized jural society. *See also* Legislation.

Positive wrong. A wrongful act, wilfully committed. *Padgett v. Missouri Motor Distributing Corporation*, Mo., 177 S.W.2d 490, 492.

Positivi juris /pözətáyvay júrs/. Lat. Of positive law.

Posito uno oppositorum, negatur alterum /pəzish(iy)ow yúwnow əpözətóram nəgéytər oltrəm/. One of two opposite positions being affirmed, the other is denied.

Posse /pósiy/. Lat. A possibility. A thing is said to be *in posse* when it may possibly be; *in esse* when it actually is. Group of people acting under authority of police or sheriff and engaged in searching for a criminal or in making an arrest. Same as *Posse comitatus (q.v.)*.

Posse comitatus /pósiy kómətéytəs/. Lat. The power or force of the county. The entire population of a county above the age of fifteen, which a sheriff may summon to his assistance in certain cases, as to aid him in keeping the peace, in pursuing and arresting felons, etc. *Williams v. State*, 253 Ark. 973, 490 S.W.2d 117, 121.

Possess. To occupy in person; to have in one's actual and physical control; to have the exclusive detention and control of; to have and hold as property; to have a just right to; to be master of; to own or be entitled to.

Term "possess," under narcotic drug laws, means actual control, care and management of the drug. *Collini v. State, Tex.Cr.App.*, 487 S.W.2d 132, 135. Defendant "possesses" controlled substance when defendant knows of substance's presence, substance is immediately accessible, and defendant exercises "dominion or control"

over substance. *State v. Hornaday*, 105 Wash.2d 120, 713 P.2d 71, 74.

See also *Hold*; *Possession*.

Possessio /pəzəsh(iy)ow/. Lat. *Civil law*. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. This condition of fact is called "detention," and it forms the substance of possession in all its varieties.

Old English law. Possession; seisin. The detention of a corporeal thing by means of a physical act and mental intent, aided by some support of right.

General Classification

Pedis possessio /piydəs pəzəsh(iy)ow/. A foothold; an actual possession of real property, implying either actual occupancy or enclosure and use.

Possessio bona fide /pəzəsh(iy)ow bównə fáydíy/. Possession in good faith. *Possessio mala fide*, possession in bad faith. A possessor *bona fide* is one who believes that no other person has a better right to the possession than himself. A possessor *mala fide* is one who knows that he is not entitled to the possession.

Possessio bonorum /pəzəsh(iy)ow bównórəm/. In the civil law, the possession of goods. More commonly termed "*bonorum possessio*" (*q.v.*).

Possessio civilis /pəzəsh(iy)ow sívələs/. In Roman law, a legal possession, *i.e.*, a possessing accompanied with the intention to be or to thereby become owner; and, as so understood, it was distinguished from "*possessio naturalis*," otherwise called "*nuda detentio*," which was a possessing without any such intention. *Possessio civilis* was the basis of *usucapio* or of *longi temporis possessio*, and was usually (but not necessarily) adverse possession.

Possessio fratris /pəzəsh(iy)ow frátrəs/. The possession or seisin of a brother; that is, such possession of an estate by a brother as would entitle his sister of the whole blood to succeed him as heir, to the exclusion of a half-brother. Hence, derivatively, that doctrine of the older English law of descent which shut out the half-blood from the succession to estates; a doctrine which was abolished by the descent act, 3 & 4 Wm. IV, c. 106.

Possessio longi temporis /pəzəsh(iy)ow lónjay témpərəs/. See *Usucapio*.

Possessio naturalis /pəzəsh(iy)ow nàtyərəyləs/. See *Possessio civilis*, above.

Possessio est quasi pedis positio /pəzəsh(iy)ow èt kwéysay piydəs pəzish(iy)ow/. Possession is, as it were, the position of the foot.

Possessio fratris de feodo simplici facit sororem esse hæredem /pəzəsh(iy)ow frátrəs díy fyúwdow simpləsay féysət sərórəm ésiy həriydəm/. The brother's possession of an estate in fee-simple makes the sister to be heir.

Possession. Having control over a thing with the intent to have and to exercise such control. *Oswald v. Weigel*, 219 Kan. 616, 549 P.2d 568, 569. The detention and control, or the manual or ideal custody, of anything

which may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Act or state of possessing. That condition of facts under which one can exercise his power over a corporeal thing at his pleasure to the exclusion of all other persons.

The law, in general, recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it. The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

Generally, "possession" within context of title insurance policies refers to open, visible and exclusive use. *Happy Canyon Inv. Co. v. Title Ins. Co. of Minnesota*, Colo.App., 560 P.2d 839, 842.

See also *Adverse possession*; *Constructive possession*; *Contentious possession*; *Exclusive possession*; *Hold*; *Noctorious possession*; *Occupancy*; *Repossession*.

Actual possession. Exists where the thing is in the immediate occupancy and physical control of the party. *Field Furniture Co. v. Community Loan Co.*, 257 Ky. 825, 79 S.W.2d 211, 215. See also general definition above.

Adverse possession. See *Adverse possession*.

Chose in possession. A thing (subject of personal property) in actual possession, as distinguished from a "chose in action," which is not presently in the owner's possession, but which he has a right to demand, receive, or recover by suit.

Civil possession. In modern civil law and in the law of Louisiana, that possession which exists when a person ceases to reside in a house or on the land which he occupied, or to detain the movable which he possessed, but without intending to abandon the possession. It is the detention of a thing by virtue of a just title and under the conviction of possessing as owner. A fiction resulting from the registry of the title of the original owner.

Constructive possession. Possession not actual but assumed to exist, where one claims to hold by virtue of some title, without having the actual occupancy, as, where the owner of a tract of land, regularly laid out, is in possession of a part, he is constructively in possession of the whole. See also general definition above.

Corporeal possession. The continuing exercise of a claim to the exclusive use of a material thing. The elements of this possession are first, the mental attitude of the claimant, the intent to possess, to appropriate to oneself; and second, the effective realization of this attitude. All

the authorities agree that an intent to exclude others must coexist with the external facts, and must be fulfilled in the external physical facts in order to constitute possession.

Criminal law. Possession as necessary for conviction of offense of possession of controlled substances with intent to distribute may be constructive as well as actual, U. S. v. Craig, C.A.Tenn., 522 F.2d 29, 31; as well as joint or exclusive, Garvey v. State, 176 Ga.App. 268, 335 S.E.2d 640, 647. The defendants must have had dominion and control over the contraband with knowledge of its presence and character. U. S. v. Morando-Alvarez, C.A. Ariz., 520 F.2d 882, 884. See also Possess.

Possession, as an element of offense of stolen goods, is not limited to actual manual control upon or about the person, but extends to things under one's power and dominion. McConnell v. State, 48 Ala.App. 523, 266 So.2d 328, 333.

Possession as used in indictment charging possession of stolen mail may mean actual possession or constructive possession. U. S. v. Ellison, C.A.Cal., 469 F.2d 413, 415.

To constitute "possession" of a concealable weapon under statute proscribing possession of a concealable weapon by a felon, it is sufficient that defendant have constructive possession and immediate access to the weapon. State v. Kelley, 12 Or.App. 496, 507 P.2d 837, 839.

Derivative possession. The kind of possession of one who is in the lawful occupation or custody of the property, but not under a claim of title of his own, but under a right derived from another, as, for example, a tenant, bailee, licensee, etc.

Dispossession. The act of ousting or removing one from the possession of property previously held by him, which may be tortious and unlawful, as in the case of a forcible amotion, or in pursuance of law, as where a landlord "dispossesses" his tenant at the expiration of the term or for other cause by the aid of judicial process. See Dispossession proceedings; Ejectment; Eviction; Process (Summary process).

Estate in possession. An estate whereby a present interest passes to and resides in the tenant, not depending on any subsequent circumstance or contingency. An estate where the tenant is in actual pernancy, or receipt of the rents and other advantages arising therefrom.

Exclusive possession. See Exclusive possession.

Hostile possession. This term, as applied to an occupant of real estate holding adversely, is not construed as implying actual enmity or ill will, but merely means that he claims to hold the possession in the character of an owner, and therefore denies all validity to claims set up by any and all other persons. See Adverse possession.

Naked possession. The actual occupation of real estate, but without any apparent or colorable right to hold and continue such possession; spoken of as the lowest and most imperfect degree of title.

Natural possession. That by which a man detains a thing corporeally, as, by occupying a house, cultivating ground, or retaining a movable in possession; natural possession is also defined to be the corporeal detention of a thing which we possess as belonging to us, without any title to that possession or with a title which is void.

Notorious possession. See Notorious possession.

Open possession. Possession of real property is said to be "open" when held without concealment or attempt at secrecy, or without being covered up in the name of a third person, or otherwise attempted to be withdrawn from sight, but in such a manner that any person interested can ascertain who is actually in possession by proper observation and inquiry. See Adverse possession.

Peaceable possession. See Peaceable.

Pedal possession. In establishing title by adverse possession this means actual possession; that is, living upon or actually occupying the land, or placing improvements directly upon it.

Possession, writ of. Where the judgment in an action of ejectment is for the delivery of the land claimed, or its possession, this writ is used to put the plaintiff in possession. It is in the nature of execution.

Quasi possession. Is to a right what possession is to a thing, it is the exercise or enjoyment of the right, not necessarily the continuous exercise, but such an exercise as shows an intention to exercise it at any time when desired.

Scrambling possession. By this term is meant a struggle for possession on the land itself, not such a contest as is waged in the courts, or possession gained by an act of trespass, such as building a fence.

Unity of possession. Joint possession of two rights by several titles, as where a lessee of land acquires the title in fee-simple, which extinguishes the lease. The term also describes one of the essential properties of a joint estate, each of the tenants having the entire possession as well of every parcel as of the whole.

Vacant possession. An estate which has been abandoned, vacated, or forsaken by the tenant. The abandonment must be complete in order to make the possession vacant, and, therefore, if the tenant have goods on the premises it will not be so considered.

Possession is nine-tenths of the law. This adage is not to be taken as true to the full extent, so as to mean that the person in possession can only be ousted by one whose title is nine times better than his, but it places in a strong light the legal truth that every claimant must succeed by the strength of his own title, and not by the weakness of his antagonist's.

Possession vaut titre /pəzəʃən vóv títr(ə)/. Fr. In English law, as in most systems of jurisprudence, the fact of possession raises a *prima facie* title or a presumption of the right of property in the thing possessed. In other words, the possession is as good as the title (about).

Possessio pacifica per annos 60 facit jus /pəzəʃh(iy)ow pəʃifəkə pər ənəʊs səksəʃjəntə feɪsət jəs/. Peaceable possession for sixty years gives a right.

Possessor. One who possesses; one who has possession. *See also* Occupant.

Possessor bona fide /pəzəsər bɔwnə faydiy/. He is a *bona fide* possessor who possesses as owner by virtue of an act sufficient in terms to transfer property, the defects of which he was ignorant of. He ceases to be a *bona fide* possessor from the moment these defects are made known to him, or are declared to him by a suit instituted for the recovery of the thing by the owner.

Possessor mala fide /pəzəsər mələ faydiy/. The possessor in bad faith is he who possesses as master, but who assumes this quality, when he well knows that he has no title to the thing, or that his title is vicious and defective.

Possessory. Relating to possession; founded on possession; contemplating or claiming possession.

Possessory action. *See* next title.

Possessory action. An action which has for its immediate object to obtain or recover the actual *possession* of the subject-matter; as distinguished from an action which merely seeks to vindicate the plaintiff's *title*, or which involves the bare right only; the latter being called a "petitory" action; *e.g.* summary process action to dispossess tenant for non-payment of rent. A "possessory action" is one brought by a possessor of immovable property to be maintained in his possession when his possession has been disturbed or to be restored to possession from which he has been evicted. *Mott v. Smith*, La.App., 273 So.2d 675, 677. *See also* Ejectment; Eviction; Process (*Summary process*).

An action founded on possession. Trespass for injuries to personal property is called a "possessory" action, because it lies only for a plaintiff who, at the moment of the injury complained of, was in actual or constructive, immediate, and exclusive possession.

Admiralty practice. One which is brought to recover the possession of a vessel, had under a claim of title.

Old English law. A real action which had for its object the regaining possession of the freehold, of which the demandant or his ancestors had been unjustly deprived by the present tenant or possessor thereof.

Possessory claim. The title of a pre-emptor of public lands who has filed his declaratory statement but has not paid for the land.

Possessory interest. Right to exert control over specific land to exclusion of others. Right to possess property by virtue of an interest created in the property though it need not be accompanied by title; *e.g.* right of a tenant for years.

A possessory interest in land exists in a person who has (a) a physical relation to the land of a kind which gives a certain degree of physical control over the land, and an intent so to exercise such control as to exclude other members of society in general from any present

occupation of the land; or (b) interests in the land which are substantially identical with those arising when the elements stated in Clause (a) exist. Restatement, Property, § 7.

Possessory lien. A lien is possessory where the creditor has the right to hold possession of the specific property until satisfaction of the debt or performance of an obligation.

Possessory warrant. The proceeding by possessory warrant is a summary remedy for the recovery of a personal chattel which has been taken by fraud, violence, enticement, or seduction from the possession of the party complaining or which, having been in his recent possession, has disappeared and is believed to be in the possession of the party complained against. The purpose of the proceeding is to protect and quiet the possession of personalty, but only as against acts which are inhibited by statute.

Possibilitas /pɔsəbilitətəs/. Lat. Possibility; a possibility. *Possibilitas post dissolutionem executionis nunquam reviviscatur*, a possibility will never be revived after the dissolution of its execution. *Post executionem status, lex non patitur possibilitatem*, after the execution of an estate the law does not suffer a possibility.

Possibility. An uncertain thing which may happen. A contingent interest in real or personal estate.

It is either *near* (or *ordinary*), as where an estate is limited to one after the death of another, or *remote* (or *extraordinary*), as where it is limited to a man, provided he marries a certain woman, and that she shall die and he shall marry another.

See also Impossibility; Probability.

Bare possibility. The same as a *naked possibility*. *See below*.

Naked possibility. A bare chance or expectation of acquiring a property or succeeding to an estate in the future, but without any present right in or to it which the law would recognize as an estate or interest.

Possibility coupled with an interest. An expectation recognized in law as an estate or interest, such as occurs in executory devises and shifting or springing uses. Such a possibility may be sold or assigned.

Possibility of reverter. Future estate left in creator or in his successors in interest upon simultaneous creation of estate that will terminate automatically within a period of time defined by occurrence of specified event. *United Methodist Church in West Sand Lake v. Kunz*, 78 Misc.2d 565, 357 N.Y.S.2d 637, 640. The interest which remains in a grantor or testator after the conveyance or devise of a fee simple determinable and which permits the grantor to be revested automatically of his estate on breach of the condition.

Possibility on a possibility. A remote possibility, as if a remainder be limited in particular to A.'s son John, or Edward, it is bad if he have no son of that name, for it is too remote a possibility that he should not only have a son, but a son of that particular name.

Possible. Capable of existing, happening, being, becoming or coming to pass; feasible, not contrary to nature of things; neither necessitated nor precluded; free to happen or not; contrasted with impossible. In another sense, the word denotes improbability, without excluding the idea of feasibility. It is also sometimes equivalent to "practicable" or "reasonable," as in some cases where action is required to be taken "as soon as possible." *See also* Potential.

Post. Lat. After; as occurring in a report or a textbook, term is used to send the reader to a subsequent part of the book. Same as "infra."

Post, n. Military establishment where body of troops is stationed; also place where soldier is stationed.

Post, v. To bring to the notice or attention of the public by affixing to a post or wall, or putting up in some public place; to display in a conspicuous manner; to announce, publish or advertise by use of placard. To place in mails. In accounting, to transfer an entry from an original record to a ledger. As regards posting of bail, *see* Bail. *See also* Posting.

Post-act. An after-act; an act done afterwards.

Postage. Charges for postal service.

Postal. Relating to the mails; pertaining to the post-office.

Postal currency. During a brief period following soon after the commencement of the civil war in the United States, when specie change was scarce, postage stamps were popularly used as a substitute; and the first issues of paper representatives of parts of a dollar, issued by authority of congress, were called "postal currency." This issue was soon merged in others of a more permanent character, for which the later and more appropriate name is "fractional currency."

Postal order. A money order. A letter of credit furnished by the government, at a small charge, to facilitate the transmission of money.

Postal Service. The United States Postal Service replaced the Post Office Department in 1971. It is administered by a governing board whose members are appointed by the President. The head of the Service is the Postmaster General.

Post-conviction remedies. *Federal.* A federal prisoner, attacking the constitutionality of his sentence, may move the court which imposed the sentence to vacate, set aside or correct the same. This motion, under 28 U.S.C.A. § 2255, must normally be made before the prisoner can seek habeas corpus relief.

State. Almost every state has one or more post-conviction procedures that permit prisoners to challenge at least some constitutional violations. A substantial group of states have adopted special post-conviction statutes or court rules, roughly similar to section 2255 of 28 U.S.C.A., that encompass all constitutional claims. *Case v. Neb.*, 381 U.S. 336, 338, 85 S.Ct. 1486, 14 L.Ed.2d 422. Others, following the federal habeas corpus statute, have held that at least some constitutional violations

are jurisdictional defects cognizable under a common law or statutory writ of habeas corpus. *Ex Parte Story*, 88 Okl.Cr. 358, 203 P.2d 474. The writ of coram nobis is also viewed in several states as an appropriate remedy for presenting certain types of constitutional claims. *People v. Cooper*, 307 N.Y. 253, 120 N.E.2d 813. In addition, several states have adopted the Uniform Post Conviction Procedure Act.

See also Habeas corpus.

Post-date. To date an instrument as of a time later than that at which it is really made. The negotiability of an instrument is not affected by the fact that it is post-dated. U.C.C. § 3-114.

Post-dated check. A check issued before the stated date of the instrument. One delivered prior to its date, generally payable at sight or on presentation on or after day of its date. *See* Post-date.

Post diem /pówst dáym/. After the day; as, a plea of payment *post diem*, after the day when the money became due.

Post disseisin /pówst dásíyzən/. In old English law, the name of a writ, which lies for him who, having recovered lands and tenements by force of a novel disseisin, is again disseised by a former disseisor.

Postea /pówstiyə/. In the common-law practice, a formal statement, indorsed on the *nisi prius* record, which gives an account of the proceedings at the trial of the action.

Posted waters. Waters flowing through or lying upon inclosed or cultivated lands, which are preserved for the exclusive use of the owner or occupant by his posting notices (according to the statute) prohibiting all persons from shooting, trapping, or fishing thereon, under a prescribed penalty.

Posteriora derogant prioribus /póstiriyórə déragənt prayórəbəs/. Posterior things derogate from things prior.

Postiores /pástèriyóriz/. Lat. This term was used by the Romans to denote the descendants in a direct line beyond the sixth degree.

Posteriority /pástèrhriyóhrtiy/. This is a word of comparison and relation in tenure, the correlative of which is the word "priority." Thus, a man who held lands or tenements of two lords was said to hold of his more ancient lord by priority, and of his less ancient lord by posteriority. It has also a general application in law consistent with its etymological meaning, and, as so used, it is likewise opposed to priority.

Posterity /póstèhrtiy/. All the descendants of a person in a direct line to the remotest generation.

Post executionem status lex non patitur possibilitatem /pówst èksəkyúwshiyównəm stéytəs léks nòn pátətər pòsəbilətéytəm/. After the execution of the estate the law suffers not a possibility.

Post facto /pówst fáktow/. After the fact. *See* Ex post facto.

Post-factum, or postfactum /pòwstfáktəm/. An after-act; an act done afterwards; a post-act.

Post-fine. In old conveyancing, a fine or sum of money, (otherwise called the "king's silver") formerly due on granting the *licentia concordandi*, or leave to agree, in levying a fine of lands. It amounted to three-twentieths of the supposed annual value of the land, or ten shillings for every five marks of land.

Post hoc /pòwst hák/. Lat. After this; after this time; hereafter.

Posthumous. That which is done after the death of a person as the publication of a book after the death of the author, or the birth of a child after the death of its father.

Posthumous child /pòstyəmàs cháyld/. Child born after the death of his or her father. *See* Unborn child.

Posthumous work /pòstyəmàs wérk/. Work on which original copyright has been taken out by someone to whom literary property passed before publication. *Shapiro, Bernstein & Co. v. Bryan, C.C.A.N.Y., 123 F.2d 697, 699.*

Posthumus pro nato habetur /pòstyəmàs pròw néytow hóbíytər/. A posthumous child is considered as though born [at the parent's death].

Posting. In accounting, the act of transferring an original entry to a ledger. The act of mailing a document. Form of substituted service of process consisting of displaying the process in a prominent place when other forms of service are unavailing.

The process of posting of a check means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank: verification of any signature; ascertaining that sufficient funds are available; affixing a "paid" or other stamp; entering a charge or entry to a customer's account; correcting or reversing an entry or erroneous action with respect to the item. U.C.C. § 4-109.

In connection with trespass statutes, the act of placing or affixing signs on private property in a manner to give notice of the trespass. *E.g. La.R.S. 14:63.5*

Postliminium /pòwstlèminiyəm/. Lat. In the civil law, a doctrine or fiction of the law by which the restoration of a person to any *status* or right formerly possessed by him was considered as relating back to the time of his original loss or deprivation; particularly in the case of one who, having been taken prisoner in war, and having escaped and returned to Rome, was regarded, by the aid of this fiction, as having never been abroad, and was thereby reinstated in all his rights.

The term is also applied, in international law, to the recapture of property taken by an enemy, and its consequent restoration to its original owner.

Postliminium fingit eum qui captos est in civitate semper fuisse /pòwstlèminiyəm finjət iyəm kwáy káptows èst in sivətétyiy sémpər fyuwísiy/. Postliminy

feigns that he who has been captured has never left the state.

Postliminy /pòwstlímány/. *See* Postliminium.

Post litem motam /pòwst láytəm mówtəm/. Lat. After suit moved or commenced. Depositions in relation to the subject of a suit, made after litigation had commenced, were formerly sometimes so termed.

Postman. A letter-carrier; mailman. In England, a senior barrister in the court of exchequer, who had precedence in motions, so called from the place where he sat; such ceased to exist when the court was absorbed into the Queen's Bench Division of the High Court in 1873.

Postmark. A stamp or mark put on letters or other mailable matter received at the post-office for transmission through the mails.

Postmaster. An officer of the United States Postal Service appointed to take charge of a local post-office and transact the business of receiving and forwarding the mails at that point, and such other business as is committed to him under the postal laws.

Postmaster general. The head of the U.S. Postal Service.

Post-mortem /pòwstmórtəm/. After death; pertaining to matters occurring after death. A term generally applied to an autopsy or examination of a dead body, to ascertain the cause of death, or to the inquisition for that purpose by the coroner.

Postnati /pòwstnéytay/. Those born after. *See* Post natus.

Post natus /pòwst néytəs/. Born afterwards. A term once used in private international law to designate a person who was born *after* some historic event (such as the American Revolution or the act of union between England and Scotland), and whose rights or *status* will be governed or affected by the question of his birth before or after such event.

Post-notes /pòwstnòwts/. A species of bank-notes payable at a future time, and not on demand.

Post-nuptial /pòwstnùpshəl/. After marriage.

Post-nuptial agreement. Agreements or settlements made after marriage between spouses still married to determine the rights of each in the others' property in the event of divorce or death. They take the form of separation agreements, property settlements in contemplation of a separation or divorce, or property settlements where there is no intention of the parties to separate. *Friedlander v. Friedlander, 80 Wash.2d 293, 494 P.2d 208, 212. Compare* Pre-nuptial agreement; Separation agreement.

Post-nuptial settlement. *See* Post-nuptial agreement.

Post-obit. Lat. An agreement by which the obligor borrows a certain sum of money and promises to pay a larger sum, exceeding the lawful rate of interest, upon the death of a person from whom he has some expectation, if the obligor be then living.

Post-obit bond. A bond given by an expectant, to become due on the death of a person from whom he will have property. A bond or agreement given by a borrower of money, by which he undertakes to pay a larger sum, exceeding the legal rate of interest, on or *after the death* of a person from whom he has expectations, in case of surviving him. Such are common in England.

Postpone. To put off; defer; delay; continue; adjourn; as when a hearing is *postponed*. Also to place after; to set below something else; as when an earlier lien is for some reason *postponed* to a later lien. The term carries with it the idea of deferring the doing of something or the taking effect of something until a future or later time. *Gartner v. Roth*, 26 Cal.2d 184, 157 P.2d 361, 363.

Post prolem suscitatum /pòwst pròwləm sàsətétəm/. After issue born (raised).

Post-terminal sittings. Sittings after term. *See* Sitting.

Post terminum /pòwst tórmenəm/. After term, or post-term. The return of a writ not only after the day assigned for its return, but after the term also, for which a fee was due.

Post-trial discovery. Under rules procedure, a party may take depositions pending appeal to perpetuate the testimony of witness for use in the event of further proceedings in the trial court. Fed.R.Civil P. 27(b).

Post-trial motions. Generic term to describe those motions which are permitted after trial such as motion for new trial (Fed.R.Civil P. 59), and motion for relief from judgment (Rule 60).

Post-trial remedies. *See* Post-conviction remedies; Post-trial motions.

Postulatio /pòshələysh(iy)ow/. Lat. In old English ecclesiastical law, a species of petition for transfer of a bishop.

In Roman law, a request or petition. This was the name of the first step in a criminal prosecution, corresponding somewhat to "swearing out a warrant" in modern criminal law. The accuser appeared before the praetor, and stated his desire to institute criminal proceedings against a designated person, and prayed the authority of the magistrate therefor.

Postulatio actionis /pòsələysh(iy)ow àkshiyównəs/. In Roman law, the demand of an action; the request made to the praetor by an *actor* or plaintiff for an action or formula of suit; corresponding with the application for a writ in old English practice. Or, as otherwise explained, the *actor's* asking of leave to institute his action, on appearance of the parties before the praetor.

Pot. Jargon name for marihuana.

Potable. Suitable for drinking; drinkable.

Pot-de-vin /pòwd(ə)vén/. In French law, a sum of money frequently paid, at the moment of entering into a contract, beyond the price agreed upon. It differs from *arrha*, in this: that it is no part of the price of the thing sold, and that the person who has received it cannot, by

returning double the amount, or the other party by losing what he has paid, rescind the contract.

Potentate /pòwtántèyt/. A person who possesses great power or sway; a prince, sovereign, or monarch.

By the naturalization law of the United States, an alien is required to renounce all allegiance to any foreign "prince, potentate, or sovereign whatever."

Potentia /pəténsh(iy)ə/. Lat. Possibility; power.

Potentia debet sequi justitiam, non antecedere /pəténsh(iy)ə débət sékway jəstish(iy)əm, nòn àntəsıyđerıy/. Power ought to follow justice, not go before it.

Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quæ nunquam venit in actum /pəténsh(iy)ə ést d(y)úwpleks, rəmówtə èt prəpı́kwə; èt pəténsh(iy)ə rəmowtısamə èt véynə ést kwıy nàpkwəm víynət in àktəm/. Possibility is of two kinds, remote and near; that which never comes into action is a power the most remote and vain.

Potentia inutilis frustra est /pəténsh(iy)ə inyúwtələs frástrə ést/. Useless power is to no purpose.

Potential. Existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future installments or payments on a contract or engagement already made. Things having a "potential existence" may be the subject of mortgage, assignment, or sale. *See* Possible.

Potentia non est nisi ad bonum /pəténsh(iy)ə nòn ést náysay àd bównəm/. Power is not conferred but for the public good.

Potentia propinqua /pəténsh(iy)ə prəpı́kwə/. Common possibility. *See* Possibility.

Potestas /pətéstəs/. Lat. In the civil law, power; authority, domination; empire. *Imperium*, or the jurisdiction of magistrates. The power of the father over his children, *patria potestas*. The authority of masters over their slaves.

Potestas stricte interpretatur /pətéstəs strıktıy intàr-prétéytər/. A power is strictly interpreted.

Potestas suprema seipsum dissolvere potest, ligare non potest /pətéstəs səprıymə sıyıpəm dəzólvrıy pòwtəst ləgériy nòn pòwtəst/. Supreme power can dissolve [unloose] but cannot bind itself.

Potest quis renunciare pro se et suis juri quod pro se introductum est /pòwtəst kwıs rənəshıyériy pròw sıy èt syúwəs júray kwòd pər sıy intrədàktəm ést/. One may relinquish for himself and his heirs a right which was introduced for his own benefit.

Potior est conditio defendentis /pówsh(iy)ər ést kəndish(iy)ow dəfəndéntəs/. Better is the condition of the defendant [than that of the plaintiff].

Potior est conditio possidentis /pówsh(iy)ər èst kəndish(iy)ow pəsidiyéntəs/. Better is the condition of the possessor.

Potomac mortgages. "Deeds of trust", sometimes called "Potomac mortgages", are utilized interchangeably with mortgages in the Maryland counties which are adjacent to the District of Columbia. *Tolzman v. Gwynn*, 267 Md. 96, 296 A.2d 594, 595.

Pound. A place, inclosed by public authority, for the detention of stray animals; e.g. dog pound. Place where impounded property is held until redeemed.

A pound *overt* is said to be one that is open overhead; a pound *covert* is one that is closed, or covered over, such as a stable or other building.

A measure of weight, equal to 16 avoirdupois ounces or 7,000 grains; the pound troy 12 ounces or 5,760 grains.

Basic monetary unit of United Kingdom; also called pound sterling.

Poundage fees. A fee awarded to the sheriff in the nature of a percentage commission upon monies recovered pursuant to a levy or execution or attachment. *Southern Industries, Inc. v. Jeremias*, 64 A.D.2d 178, 411 N.Y.S.2d 945, 951. The money which an owner of animals (or other property) impounded must pay to obtain their release.

In old English law, a subsidy to the value of twelve pence in the *pound*, granted to the king, of all manner of merchandise of every merchant, as well denizen as alien, either exported or imported.

Pound breach. The common law offense of breaking a pound, for the purpose of taking out the cattle or goods impounded.

Pour acquit. Fr. In French law, the formula which a creditor prefixes to his signature when he gives a receipt.

Pour appuyer. For the support of, or "in the support of."

Pour appuyer nouvelle demande. In support of his new action.

Pour autrui. For others.

Pour compte de qui il appartient. Fr. For account of whom it may concern.

Pour faire proclamer. L. Fr. An ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, etc.

Pour-over. Provision in a will which directs the distribution of property into a trust. Also, a similar provision in a trust which directs property into a will.

Pour-over trust. See Pour-over; Trust.

Pour-over will. See Pour-over.

Pourparler. Fr. In French law, the preliminary negotiations or bargainings which lead to a contract between the parties. As in English law, these form no part of the contract when completed. The term is also used in this sense in international law and the practice of diplomacy.

Pourparty /púrpartiy/pár°/. To make *pourparty* is to divide and sever the lands that fall to parceners, which, before partition, they held jointly and *pro indiviso*.

Pourpresture /púrpréstýər/pár°/. In old English law, an inclosure. Anything done to the nuisance or hurt of the public demesnes, or the highways, etc., by inclosure or building, endeavoring to make that private which ought to be public. The difference between a *pourpresture* and a public nuisance is that *pourpresture* is an invasion of the *jus privatum* of the crown; but where the *jus publicum* is violated it is a nuisance.

Pour seisir terres /púr sízər téhriyz/. L. Fr. An ancient writ whereby the crown seized the land which the wife of its deceased tenant, who held *in capite*, had for her dower, if she married without leave.

Poursuivant /púrswəvənt/. The king's messenger; a royal or state messenger. In the heralds' college, a functionary of lower rank than a herald, but discharging similar duties, called also "poursuivant at arms"; originally attendants of the king during battle.

Pourveyance /purvéyəns/pər°/. In old English law, the providing corn, fuel, victuals, and other necessaries for the king's house.

Pourveyor, or purveyor /pərvéyər/. A buyer; one who provided for the royal household.

Poverty. The state or condition of being poor. See also Indigent.

Poverty affidavit. An affidavit, made and filed by person seeking public assistance, appointment of counsel, waiver of court fees, or other free services or benefits, that he or she is in fact, financially unable to pay for such.

Document signed under oath which may be the basis of a court's permitting one to proceed in forma pauperis. See e.g. 28 U.S.C.A. § 1915; Fed.R.App.P., Form 4. Leave to proceed on appeal in forma pauperis from district court to court of appeals is governed by Fed.R. App.P. 24.

See also Pauper's oath.

Power. The right, ability, authority, or faculty of doing something. Authority to do any act which the grantor might himself lawfully perform. *Porter v. Household Finance Corp. of Columbus, D.C. Ohio*, 385 F.Supp. 336, 341.

A power is an ability on the part of a person to produce a change in a given legal relation by doing or not doing a given act. Restatement, Second, Agency, § 6; Restatement, Property, § 3.

In a restricted sense a "power" is a liberty or authority reserved by, or limited to, a person to dispose of real

or personal property, for his own benefit, or benefit of others, or enabling one person to dispose of interest which is vested in another.

See also Authority; Beneficial power; Capacity; Concurrent power; Control; Delegation of powers; Donee of power; Enumerated powers; Executive powers; Governmental powers; Judicial power; Legislative power; Police power; Right.

Appendant or appurtenant powers. Those existing where the donee of the power has an estate in the land and the power is to take effect wholly or in part out of that estate, and the estate created by its exercise affects the estate and interest of the donee of the power.

Collateral powers. Those in which the donee of the power has no interest or estate in the land which is the subject of the power. Also called *naked powers*.

Constitutional powers. The right to take action in respect to a particular subject-matter or class of matters, involving more or less of discretion, granted by the constitution to the several departments or branches of the government, or reserved to the people. Powers in this sense are generally classified as legislative, executive, and judicial (*q.v.*); and further classified as enumerated (or express), implied, inherent, resulting, or sovereign powers.

Commerce powers. Power of Congress to regulate commerce with foreign nations, and among the several states. Art. I, § 8, Cl. 3, U.S.Const.

Enforcement powers. The 13th, 14th, 15th, 19th, 23rd, 24th, and 26th Amendments each contain a section providing, in these or equivalent words, that "Congress shall have the power to enforce by appropriate legislation, the provisions of this article."

Enumerated or express powers. Powers expressly provided for in Constitution; *e.g.*, U.S.Const. Art. I, § 8.

Implied powers. Such as are necessary to make available and carry into effect those powers which are expressly granted or conferred, and which must therefore be presumed to have been within the intention of the constitutional or legislative grant. *See Enforcement powers, above; also Necessary and proper powers, below. See also* Penumbra doctrine.

Inherent powers. Powers which necessarily inhere in the government by reason of its role as a government; *e.g.* conducting of foreign affairs. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 315, 316, 57 S.Ct. 216, 81 L.Ed. 255. *See also* Supremacy clause.

Necessary and proper powers. Art. I, § 8, Cl. 18 gives Congress power "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers (*i.e.* those enumerated in clauses 1-17), and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." *See also* Penumbra doctrine.

Preemptive powers. *See* Preemption; Supremacy clause.

Reserved or residual state powers. The powers not delegated to the United States by the Constitution, nor

prohibited by it to the States, are reserved to the States respectively, or to the people. 10th Amend., U.S.Const.

Resulting powers. Those powers which "result from the whole mass of the powers of the National Government and from the nature of political society." *American Ins. Co. v. Canter*, 26 U.S. (1 Pet.) 516, 7 L.Ed. 242.

Spending power. Power of Congress "to pay the debts and provide for the common defense and general welfare of the United States." Art. I, § 8, Cl. 1, U.S.Const.

Taxing power. Power of Congress "to lay and collect taxes, duties, imports and excises." Art. I, § 8, Cl. 1.

Corporate powers. The right or capacity to act or be acted upon in a particular manner or in respect to a particular subject; as, the power to have a corporate seal, to sue and be sued, to make by-laws, to carry on a particular business or construct a given work.

General and special powers. A power is general when it authorizes the alienation in fee, by means of a conveyance, will, or charge, of the lands embraced in the power to any alienee whatsoever. It is special (1) when the persons or class of persons to whom the disposition of the lands under the power is to be made are designated, or (2) when the power authorizes the alienation, by means of a conveyance, will, or charge, of a particular estate or interest less than a fee.

General and special powers in trust. A general power is in trust when any person or class of persons other than the grantee of such power is designated as entitled to the proceeds or any portion of the proceeds or other benefits to result from the alienation. A special power is in trust (1) when the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power, or (2) when any person or class of persons other than the holder is designated as entitled to any benefit from the disposition or charge authorized by the power.

Implied powers. Powers not granted in express terms but existing because they are necessary and proper to carry into effect some expressly granted power. *See also* *Constitutional powers, above.*

Inherent powers. Those which are enjoyed by the possessors of natural right, without having been received from another. Such are the powers of a people to establish a form of government, of a father to control his children. Some of these are regulated and restricted in their exercise by law, but are not technically considered in the law as powers.

Inherent agency power is a term used in the Restatement of Agency to indicate the power of an agent which is derived not from authority, apparent authority or estoppel, but solely from the agency relation and exists for the protection of persons harmed by or dealing with a servant or other agent. Restatement, Second, Agency § 8A.

Ministerial powers. *See* Ministerial.

Naked power. One which is simply collateral and without interest in the donee, which arises when, to a mere stranger, authority is given of disposing of an interest,

in which he had not before, nor has by the instrument creating the power, any estate whatsoever.

Power of revocation. A power which is to divest or abridge an existing estate.

Powers in gross. Those which give a donee of the power, who has an estate in the land, authority to create such estates only as will not attach on the interest limited to him or take effect out of his interest, but will take effect after donee's estate has terminated.

Real property law. An authority to do some act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner granting or reserving such power might himself perform for any purpose. An authority expressly reserved to a grantor, or expressly given to another, to be exercised over lands, etc., granted or conveyed at the time of the creation of such power. *See* Power of alienation.

For other compound terms, such as Power of appointment; Power of sale; etc., see the following titles.

Power coupled with an interest. A right or power to do some act, together with an interest in the subject-matter on which the power is to be exercised. It is distinguished from a *naked* power, which is a mere authority to act, not accompanied by any interest of the donee in the subject-matter of the power. *Arcweld Mfg. Co. v. Burney*, 12 Wash.2d 212, 121 P.2d 350, 355.

Power of acceptance. Capacity of offeree, upon acceptance of terms of offer, to create binding contract.

Power of alienation. The power to sell, transfer, assign or otherwise dispose of property.

Power of appointment. A power or authority conferred by one person by deed or will upon another (called the "donee") to appoint, that is, to select and nominate, the person or persons who are to receive and enjoy an estate or an income therefrom or from a fund, after the testator's death, or the donee's death, or after the termination of an existing right or interest.

A power of appointment may be exercisable by deed or by will depending upon the terms established by the donor of the power, and is defined, generally, as power or authority given to person to dispose of property, or interest therein, which is vested in person other than donee of the power. *In re Conroy's Estate*, 67 C.A.3d 734, 136 Cal.Rptr. 807, 809.

Powers are either: *Collateral*, which are given to strangers; *i.e.*, to persons who have neither a present nor future estate or interest in the land. These are also called simply "collateral," or powers not coupled with an interest, or powers not being interests. Or they are powers relating to the land. These are called "*appendant*" or "*appurtenant*," because they strictly depend upon the estate limited to the person to whom they are given. Thus, where an estate for life is limited to a man, with a power to grant leases in possession, a lease granted under the power may operate wholly out of the life-estate of the party executing it, and must in every case have its operation out of his estate during his life.

Such an estate must be created, which will attach on an interest actually vested in himself. Or they are called "*in gross*," if given to a person who had an interest in the estate at the execution of the deed creating the power, or to whom an estate is given by the deed, but which enabled him to create such estates only as will not attach on the interest limited to him. Of necessity, therefore, where a man seised in fee settles his estate on others, reserving to himself only a particular power, the power is in gross.

An important distinction is established between *general* and *particular* powers. By a general power we understand a right to appoint to whomsoever the donee pleases including himself or his estate. By a particular power it is meant that the donee is restricted to some objects designated in the deed or will creating the power.

A general power is *beneficial* when no person other than the grantee has, by the terms of its creation, any interest in its execution. A general power is *in trust* when any person or class of persons, other than the grantee of such power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from the alienation.

When a power of appointment among a class requires that each shall have a share, it is called a "distributive" or "non-exclusive" power; when it authorizes, but does not direct, a selection of one or more to the exclusion of the others, it is called an "exclusive" power, and is also distributive; when it gives the power of appointing to a certain number of the class, but not to all, it is exclusive only, and not distributive. A power authorizing the donee either to give the whole to one of a class or to give it equally among such of them as he may select (but not to give one a larger share than the others) is called a "mixed" power.

For the estate tax and gift tax effects of powers of appointment, see I.R.C. §§ 2041 and 2514.

See also General power of appointment; Illusory appointment; Limited power of appointment.

Special power of appointment. A power of appointment that cannot be exercised in favor of the donee or his or her estate but may be exercised only in favor of identifiable person(s) other than the donee. *See also* Limited power of appointment.

Testamentary power. A power of appointment that can only be exercised through a will (*i.e.*, upon the death of the holder).

Power of attorney. An instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of principal. *Complaint of Bankers Trust Co.*, C.A.Pa., 752 F.2d 874, 885. An instrument authorizing another to act as one's agent or attorney. The agent is attorney in fact and his power is revoked on the death of the principal by operation of law. Such power may be either general (full) or special (limited).

Durable power of attorney. Exists when person executes a power of attorney which will become or remain effec-

tive in the event he or she should later become disabled. Uniform Probate Code § 5-501.

Power of disposition. Every power of disposition is deemed absolute, by means of which the donee of such power is enabled in his life-time to dispose of the entire fee for his own benefit; and, where a general and beneficial power to devise the inheritance is given to a tenant for life or years, it is absolute, within the meaning of the statutes of some of the states. *See* Power of appointment.

Power of sale. A clause commonly inserted in mortgages and deeds of trust, giving the mortgagee (or trustee) the right and power, on default in the payment of the debt secured, to advertise and sell the mortgaged property at public auction (but without resorting to a court for authority), satisfy the creditor out of the net proceeds, convey by deed to the purchaser, return the surplus, if any, to the mortgagor, and thereby divest the latter's estate entirely and without any subsequent right of redemption.

Power of termination. The interest left in the grantor or testator after the conveyance or devise of a fee simple on condition subsequent or conditional fee, *e.g.* "to A on condition that the property be used for church purposes." When such property is no longer used for church purposes, the grantor may enter or commence an action for entry based on the breach of the condition. However, he is not automatically revested. He must enter or commence an action.

P.P. An abbreviation for "*propria persona*," in his proper person, in his own person, and for *per procuracion* (*q.v.*).

P.P.I. Policy proof of interest, *i.e.*, in the event of loss, the insurance policy is to be deemed sufficient proof of interest.

Practicable, practicably. Practicable is that which may be done, practiced, or accomplished; that which is performable, feasible, possible; and the adverb *practicably* means in a practicable manner. Within liability policy providing that when accident occurred, written notice should be given by or on behalf of insured to insurer or any of its authorized agents as soon as practicable, "practicable" was held to mean feasible in the circumstances. *Frey v. Security Ins. Co. of Hartford, D.C.Pa., 331 F.Supp. 140, 143.*

Practice. Repeated or customary action; habitual performance; a succession of acts of similar kind; custom; usage. Application of science to the wants of men. The exercise of any profession.

The form or mode or proceeding in courts of justice for the enforcement of rights or the redress of wrongs, as distinguished from the substantive law which gives the right or denounces the wrong. The form, manner, or order of instituting and conducting an action or other judicial proceeding, through its successive stages to its end, in accordance with the rules and principles laid down by law or by the regulations and precedents of the courts. The term applies as well to the conduct of

criminal as to civil actions, to proceedings in equity as well as at law, and to the defense as well as the prosecution of any proceeding. *Wells Lamont Corp. v. Bowles, Em.App., 149 F.2d 364, 366.*

Practice of law. The rendition of services requiring the knowledge and the application of legal principles and technique to serve the interests of another with his consent. *R.J. Edwards, Inc. v. R.L. Hert, Okl., 504 P.2d 407, 416.* It is not limited to appearing in court, or advising and performing of services in the conduct of the various shapes of litigation, but embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and in larger sense includes legal advice and counsel and preparation of legal instruments by which legal rights and obligations are established. *Washington State Bar Ass'n v. Great Western Union Federal Sav. and Loan Ass'n, 91 Wash.2d 48, 586 P.2d 870.* A person engages in the "practice of law" by maintaining an office where he is held out to be an attorney, using a letterhead describing himself as an attorney, counseling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate. *State v. Schumacher, 214 Kan. 1, 519 P.2d 1116, 1127.*

Practice of medicine. The treatment of injuries as well as the discovery of the cause and nature of disease, and the administration of remedies, or the prescribing of treatment therefor.

Practice acts. Statutes that govern practice and procedure in courts (*e.g.*, Title 28, United States Code). Such acts are frequently supplemented with court rules (*e.g.*, Fed.Rules of Civil Procedure).

Practice court. In English law, a court attached to the court of king's bench, which heard and determined common matters of business and ordinary motions for writs of *mandamus*, prohibition, etc. It was usually called the "bail court." It was held by one of the puisne justices of the king's bench. *See also* Moot court.

Practices. A succession of acts of a similar kind or in a like employment.

Practitioner. He who is engaged in the exercise or employment of any art or profession as contrasted with one who teaches such. *See* Practice.

Præptores /priyseptóriyz/. Lat. In old English law, masters. The chief clerks in chancery were formerly so called, because they had the direction of making out remedial writs.

Præptories /præséptariyz/. In feudal law, a kind of benefices, so called because they were possessed by the more eminent templars whom the chief master by his authority created and called "Præptores Templi."

Præcipe /præsépiy/. Lat. In practice, an original writ drawn up in the alternative, commanding the defendant to do the thing required, or show the reason why he had not done it. It includes an order to the clerk of court to issue an execution on a judgment already rendered.

Yazoo & M.V.R. Co. v. Clarksdale, 257 U.S. 10, 42 S.Ct. 27, 66 L.Ed. 104.

A paper upon which the particulars of a writ are written. It is filed in the office out of which the required writ is to issue. Also an order, written out and signed, addressed to the clerk of a court, and requesting him to issue a particular writ.

Præcipe quod reddat /præsəpi kwòd rédət/. Command that he render. A writ directing the defendant to restore the possession of land, employed at the beginning of a common recovery.

Præcipe, tenant to the /ténənt tə ðə præsəpi/. A person having an estate of freehold in possession, against whom the *præcipe* was brought by a tenant in tail, seeking to bar his estate by a recovery.

Præcipitium /præsəpish(iy)əm/. The punishment of casting headlong from some high place.

Præco /priykw/. Lat. In Roman law, a herald or crier.

Præcognita /priykógnətə/. Things to be previously known in order to the understanding of something which follows.

Prædia /priyd(i)yə/. In the civil law, lands; estates; tenements; properties. See *Prædium*.

Prædia bellica /priyd(i)yə béləkə/. Booty. Property seized in war.

Prædial /priydiəl/. That which arises immediately from the ground: as, grain of all sorts, hay, wood, fruits, herbs, and the like.

Prædial servitude /priydiəl sɜrvət(y)uwd/. A right which is granted for the advantage of one piece of land over another, and which may be exercised by every possessor of the land entitled against every possessor of the servient land. It always presupposes two pieces of land (*prædia*) belonging to different proprietors; one burdened with the servitude, called "*prædium serviens*," and one for the advantage of which the servitude is conferred, called "*prædium dominans*."

Prædial tithes /priydiəl týðz/. Such as arise merely and immediately from the ground; as grain of all sorts, hops, hay, wood, fruit, herbs.

Prædia stipendiaria /priyd(i)yə stəpəndiyériyə/. In the civil law, provincial lands belonging to the people.

Prædia tributaria /priydiə tribiyətériyə/. In the civil law, provincial lands belonging to the emperor.

Prædictus /prædiktəs/. Lat. Aforesaid. In civil law pleading, of the three words, "*idem*," "*prædictus*," and "*præfatus*," "*idem*" was most usually applied to plaintiffs or demandants; "*prædictus*," to defendants or tenants, places, towns, or lands; and "*præfatus*," to persons named, not being *actors* or parties. These words may all be rendered in English by "said" or "aforesaid."

Prædium /priydiyəm/. Lat. In the civil law, land; an estate; a tenement; a piece of landed property.

Prædium dominans /priydiyəm dómənənz/. In the civil law, the name given to an estate to which a servitude is due; the dominant tenement.

Prædium serviens /priydiyəm sɜrviyənz/. In the civil law, the name of an estate which suffers a servitude or easement to another estate; the servient tenement.

Prædium servit prædio /priydiyəm sɜrvət priydiyow/. Land is under servitude to land [*i.e.*, servitudes are not personal rights, but attach to the dominant tenement].

Prædium urbanum /priydiyəm ɜrbéynəm/. In the civil law, a building or edifice intended for the habitation and use of man, whether built in cities or in the country.

Prædo /priydow/. Lat. In Roman law, a robber.

Præfatus /præféytəs/. Lat. Aforesaid. Sometimes abbreviated to "*præfat*," and "*p. fat*."

Præfecturæ /priyfekt(y)úriy/. In Roman law, conquered towns, governed by an officer called a "prefect," who was chosen in some instances by the people, in others by the prætors.

Præfectus vigilum /præféktəs vɜjiliyəm/. Lat. In Roman law, the chief officer of the night watch. His jurisdiction extended to certain offenses affecting the public peace, and even to larcenies; but he could inflict only slight punishments.

Præfectus villæ /præféktəs viliiy/. The mayor of a town.

Præfine /priyfəyn/. The fee paid on suing out the writ of covenant, on levying fines, before the fine was passed.

Præjuramentum /priyjurəméntəm/. In old English law, a preparatory oath.

Prælegatum /priyləgéytəm/. Lat. In Roman law, a payment in advance of the whole or part of the share which a given heir would be entitled to receive out of an inheritance; corresponding generally to "advancement" in English and American law.

Præmium /priymiyəm/. Lat. Reward; compensation. *Præmium assecurationis*, compensation for insurance; premium of insurance.

Præmium emancipationis /priymiyəm əmənsəpèy-shiyównəs/. In Roman law, a reward or compensation anciently allowed to a father on emancipating his child, consisting of one-third of the child's separate and individual property, not derived from the father himself.

Præmium pudicitie /priymiyəm pyúwdəsishiyiy/. The price of chastity; or compensation for loss of chastity. A term applied to bonds and other engagements given for the benefit of a seduced female. Sometimes called "*præmium pudoris*."

Præmunire /priymywnáryiy/. In old English law, an offense against the king and his government, though not subject to capital punishment. So called from the words of the writ which issued preparatory to the prosecution: "*Præmunire facias A. B. quod sit coram nobis*," etc.; "Cause A. B. to be forewarned that he appear before us to answer the contempt with which he stands charged." The statutes establishing this offense, the first of which

was made in the thirty-first year of the reign of Edward I, were framed to encounter the perceived papal usurpations in England; the original meaning of the offense called "*præmunire*" being the introduction of a foreign power into the kingdom, and creating *imperium in imperio*, by paying that obedience to papal process which constitutionally belonged to the king alone. The penalties of *præmunire* were afterwards applied to other heinous offenses. 4 Bl.Comm. 103-117.

Prænomen /priynówmæn/. Lat. Forename, or first name. The first of the three names by which the Romans were commonly distinguished. It marked the individual, and was commonly written with one letter; as "A." for "Aulus," "C." for "Caius," etc.

Præpositus /priypózætəs/. In old English law, an officer next in authority to the alderman of a hundred, called "*præpositus regius*;" or a steward or bailiff of an estate, answering to the "*wicnere*."

Also the person from whom descents are traced under the old canons.

Præpositus villæ /priypózætəs víliy/. A constable of a town, or petty constable.

Præpropera consilia raro sunt prospera /priyprówpərə kənsil(i)yə rərow sənt prósperə/. Hasty counsels are rarely prosperous.

Præscriptio /præskrípsh(iy)ow/. Lat. In the civil law, that mode of acquisition whereby one becomes proprietor of a thing on the ground that he has for a long time possessed it as his own; prescription. It was anciently distinguished from "*usucapio*" (*q.v.*), but was blended with it by Justinian.

Præscriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis /præskrípsh(iy)ow èst tíf(y)ələs èks yúws(y)uw èt témpariy səbstənsihiyəm kəpiyènz əb októhrétéydiy líjyəs/. Prescription is a title by authority of law, deriving its force from use and time.

Præscriptio et executio non pertinent ad valorem contractus, set ad tempus et modum actionis instituendæ /præskrípsh(iy)ow ed èksəkyúwsh(iy)ow nɔn pərtənənt əd vəlórəm kənrəktəs, séd əd témpəs èt mówdəm əkshiyównəs instityuwéndiy/. Prescription and execution do not affect the validity of the contract, but the time and manner of bringing an action.

Præscriptiones /præskrípshiyówniyz/. Lat. In Roman law, forms of words (of a qualifying character) inserted in the *formulæ* in which the claims in actions were expressed; and, as they occupied an early place in the *formulæ*, they were called by this name, *i.e.*, qualifications *preceding* the claim. For example, in an action to recover the arrears of an annuity, the claim was preceded by the words "so far as the annuity is due and unpaid," or words to the like effect ("*cujus rei dies fuit*").

Præsentare nihil aliud est quam præsto dare seu offere /prézəntəriy náy(h)əl əliyəd èst kwəm priystow dériy syúw oféhriy/. To present is no more than to give or offer on the spot.

Præsentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis /prézəns(hiy)ə kórpərəs tólət ərórəm nómnəs, èt véhrətəs nómnəs tólət ərórəm dèmənstréyshiyównəs/. The presence of the body cures error in the name; the truth of the name cures an error of description.

Præses /priysiyz/. Lat. In Roman law, a president or governor. Called a "*nomen generale*," including pro-consuls, legates, and all who governed provinces.

Præstare /priystériy/. Lat. In Roman law, "*præstare*" meant to make good, and, when used in conjunction with the words "*dare*," "*facere*," "*oportere*," denoted obligations of a personal character, as opposed to real rights.

Præstat cautela quam medela /priystæt kotiyə kwəm mədíylə/. Prevention is better than cure.

Præsumatur pro justitia sententiæ /priyz(y)əméytər prów jəstísh(iy)ə senténshiyiy/. The presumption should be in favor of the justice of a sentence.

Præsumitur pro legitimatione /prəz(y)úwmətər prów læjítəmèyshiyówniy/. The presumption is in favor of legitimacy.

Præsumitur pro negante /prəz(y)úwmətər prów nəgántiy/. It is presumed for the negative. The rule of the house of lords when the numbers are equal on a motion.

Præsumptio /prézám(p)sh(iy)ow/. Lat. Presumption; a presumption. Also intrusion, or the unlawful taking of anything.

Præsumptio, ex eo quod plerumque fit /prézám(p)sh(iy)ow èks iyow kwòd plərəmkwiy fit/. Presumptions arise from what generally happens.

Præsumptio fortior /prézám(p)sh(iy)ow fórs(hiy)ər/. A strong presumption; a presumption of fact entitled to great weight. One which determines the tribunal in its belief of an alleged fact, without, however, excluding the belief of the possibility of its being otherwise; the effect of which is to shift the burden of producing evidence to the opposite party, and, if this proof be not made, the presumption is held for truth. *See* Presumption.

Præsumptio hominis /prézám(p)sh(iy)ow hómənəs/. The presumption of the man or individual; that is, natural presumption unfettered by strict rule.

Præsumptio juris /prézám(p)sh(iy)ow júrs/. A legal presumption or presumption of law; that is, one in which the law assumes the existence of something until it is disproved by evidence; a conditional, inconclusive, or rebuttable presumption.

Præsumptio juris et de jure /prézám(p)sh(iy)ow júrs èt diy júriy/. A presumption of law and of right; a presumption which the law will not suffer to be contradicted; a conclusive or irrebuttable presumption.

Præsumptio muciana /prézám(p)sh(iy)ow myúwshiyéynə/. In Roman law, a presumption of law that property in the hands of a wife came to her as a gift from her husband and was not acquired from other

sources; available only in doubtful cases and until the contrary is shown.

Præsumptiones sunt conjecturæ ex signo verisimili ad probandum assumptæ /præzəm(p)shiyówniysz sânt kônjektyúriy èks signow vèhrásímalay æd præbândam æsímptiy/. Presumptions are conjectures from probable proof, assumed for purposes of evidence.

Præsumptio violenta piena probatio /præzəm(p)sh(iy)ow vâyléntæ pliyânæ præbéysh(iy)ow/. Strong presumption is full proof.

Præsumptio violenta valet in lege /præzəm(p)sh(iy)ow vâyléntæ vâlet in líyjy/. Strong presumption is of weight in law.

Præteritio /prêtáris(h)ow/. Lat. A passing over or omission. Used in the Roman law to describe the act of a testator in excluding a given heir from the inheritance by silently passing him by, that is, neither instituting nor formally disinheriting him.

Prætextu liciti non debet admitti illicitum /præ-tékst(y)uw lísetay nòn débæt ædmítay ælísetəm/. Under pretext of legality, what is illegal ought not to be admitted.

Prætextus /prætékstəs/. Lat. A pretext; a pretense or color. *Prætextu cuius*, by pretense, or under pretext whereof.

Prætor /priýtər/. Lat. In Roman law, a municipal officer of the city of Rome, being the chief judicial magistrate, and possessing an extensive equitable jurisdiction.

Prætor fidei-commissarius /priýtər fáydíyàz kòm-æsíriyəs/. In the civil law, a special prætor created to pronounce judgment in cases of trusts or *fidei-commissa*.

Prætorian law /prætóriyən ló/. See *Lex prætoria*.

Prævaricator /prævérækeytər/ˈværekéy°. Lat. In the civil law, one who betrays his trust, or is unfaithful to his trust. An advocate who aids the opposite party by betraying his client's cause.

Pragmatica /pragmátiykə/. In Spanish colonial law, an order emanating from the sovereign, and differing from a *cedula* only in form and in the mode of promulgation.

Prairie /prériy/. An extensive tract of level or rolling land, destitute of trees, covered with coarse grass, and usually characterized by a deep, fertile soil.

Pratique /prátiyk/. A license for the master of a ship to traffic in the ports of a given country, or with the inhabitants of a given port, upon the lifting of quarantine or production of a clean bill of health.

Praxis /práksəs/. Lat. Use; practice.

Praxis judicum est interpres legum /práksəs júwd-ikəm èst intérpriyaz líygəm/. The practice of the judges is the interpreter of the laws.

Prayer. The request contained in a bill in equity that the court will grant the process, aid, or relief which the complainant desires. Also, by extension, the term is applied to that part of the bill which contains this

request. Under modern rules practice, the pleader does not pray for relief, but, rather, demands it. Fed.R.Civil P. 8(a). See *Prayer for relief*.

Prayer for relief. That portion of a complaint (more properly called "demand for relief") in a civil action which sets forth the requested relief or damages to which the pleader deems himself entitled. This is a requisite element of the complaint. Fed.R.Civil P. 8(a).

Prayer of process. A petition with which a bill in equity used to conclude, to the effect that a writ of subpoena might issue against the defendant to compel him to answer upon oath all the matters charged against him in the bill.

Pray in aid. In old English practice, to call upon for assistance. In real actions, the tenant might *pray in aid* or call for assistance of another, to help him to plead, because of the feebleness or imbecility of his own estate.

In current English practice, term refers to practice of attorney in action involving several parties to claim benefit for his client of argument used by another counsel for his client.

Preamble. A clause at the beginning of a constitution or statute explanatory of the reasons for its enactment and the objects sought to be accomplished. Generally, a preamble is a declaration by the legislature of the reasons for the passage of the statute and is helpful in the interpretation of any ambiguities within the statute to which it is prefixed. *Griffith v. New Mexico Public Service Comm.*, 86 N.M. 113, 520 P.2d 269, 271. It has been held however to not be an essential part of act, and neither enlarges nor confers powers. *Portland Van & Storage Co. v. Hoss*, 139 Or. 434, 9 P.2d 122, 126.

Preappointed evidence. The kind and degree of evidence prescribed in advance (as, by statute) as requisite for the proof of certain facts or the establishment of certain instruments. It is opposed to *casual* evidence, which is left to grow naturally out of the surrounding circumstances.

Preaudience /priyódiyans/. The right of being heard before another. A privilege belonging to the English bar, the members of which are entitled to be heard in their order, according to rank, beginning with the Attorney and Solicitor General, and Queen's Counsel, and ending with barristers at large.

Prebend. In English ecclesiastical law, a stipend granted in cathedral churches; also, but improperly, a prebendary. A simple prebend is merely a revenue; a prebend with dignity has some jurisdiction attached to it. The term "prebend" is generally confounded with "canonicate;" but there is a difference between them. The former is the stipend granted to an ecclesiastic in consideration of his officiating and serving in the church; whereas the canonicate is a mere title or spiritual quality which may exist independently of any stipend.

Fixed portion of rents and profits of cathedral church used for maintenance of prebendaries.

Prebendary /prébændèry/. An ecclesiastical person serving on the staff of a cathedral, and receiving a stated allowance or stipend from the income or endowment of the cathedral, in compensation for his services.

Precaria /prækérijy/ or **preces** /priysiyz/. In old English law, day-works which the tenants of certain manors were bound to give their lords in harvest time. *Magna precaria* was a great or general reaping day.

Precaious /prækérijəs/. Liable to be returned or rendered up at the mere demand or request of another; hence, held or retained only on sufferance or by permission; and, by an extension of meaning, doubtful, uncertain, dangerous, very liable to break, fail, or terminate.

Precaious loan. A bailment by way of loan which is not to continue for any fixed time, but may be recalled at the mere will and pleasure of the lender (*e.g.* a demand loan). A loan, the repayment of which is in doubt or uncertain. A non-performing loan.

Precaious possession. In modern civil law, possession is called "precaious" which one enjoys by the leave of another and during his pleasure.

Precaious right. The right which the owner of a thing transfers to another, to enjoy the same until it shall please the owner to revoke it.

Precaious trade. In international law, such trade as may be carried on by a neutral between two belligerent powers by the mere sufferance of the latter.

Precaium /prækérijəm/. Lat. In the civil law, a convention whereby one allows another the use of a thing or the exercise of a right gratuitously until revocation. The bailee acquires thereby the lawful possession of the thing, except in certain cases. The bailor can redemand the thing at any time, even should he have allowed it to the bailee for a designated period.

Precaory /prékət(ə)riy/. Having the nature of prayer, request, or entreaty; conveying or embodying a recommendation or advice or the expression of a wish, but not a positive command or direction.

Precaory trust. A trust created by certain words, which are more like words of entreaty and permission than of command or certainty. Examples of such words, which the courts have held sufficient to constitute a trust, are "wish and request," "have fullest confidence," "heartily beseech," and the like. *See* Trust.

Precaory words. Words of entreaty, request, desire, wish, or recommendation, employed in wills, as distinguished from direct and imperative terms. Mere precaory words or expressions in a trust or will are ineffective to dispose of property. There must be a command or order as to the disposition of property.

Precaution /prækóshən/. Previous action; proven foresight; care previously employed to prevent mischief or to secure good result; or a measure taken beforehand; an active foresight designed to ward off possible problems, accidents, liability, or secure good results. *Rincon v. Berg Co., Tex.Civ.App., 60 S.W.2d 811, 813.*

Precedence /présədəns/ or **precedency** /présədənsiy/. The act or state of going before; adjustment of place. The right of being first placed in a certain order. *See also* Preference; Precedent; Priority.

Precedence, patent of. In old English law, a grant from the crown to such barristers as it thinks proper to honor with that mark of distinction, whereby they are entitled to such rank and preaudience as are assigned in their respective patents.

Precedent /présədənt/. An adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Courts attempt to decide cases on the basis of principles established in prior cases. Prior cases which are close in facts or legal principles to the case under consideration are called precedents. A rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases. *See also* Stare decisis.

A course of conduct once followed which may serve as a guide for future conduct. *See* Custom and usage; Habit.

Precedent condition. Such as must happen or be performed before an estate can vest or be enlarged. *See* Condition.

Precedents sub silentio /présədənts səb səlénsh(iy)ow/. Silent uniform course of practice, uninterrupted though not supported by legal decisions.

Prece partium /priysiy páresh(iy)əm/. The continuance of a suit by consent of both parties.

Precept /priysept/. An order, writ, warrant, or process. An order or direction, emanating from authority, to an officer or body of officers, commanding him or them to do some act within the scope of their powers. An order in writing, sent out by a justice of the peace or other like officer, for the bringing of a person or record before him. Precept is not to be confined to civil proceedings, and is not of a more restricted meaning than "process." It includes warrants and processes in criminal as well as civil proceedings.

Rule imposing standard of conduct or action.

In English law, the direction issued by a sheriff to the proper returning officers of cities and boroughs within his jurisdiction for the election of members to serve in parliament. The direction by the judges or commissioners of assize to the sheriff for the summoning a sufficient number of jurors. The direction issued by the clerk of the peace to the overseers of parishes for making out the jury lists. Written command of justice of the peace or other like officer for the bringing of a person or record before him. In old English criminal law, instigation to commit a crime.

In old French law, a kind of letters issued by the king in subversion of the laws, being orders to the judges to do or tolerate things contrary to law.

Precept of attachment. Precept of attachment is an order to attach the goods and property of the defendant issued by a court generally after the action has been

commenced when a writ of attachment has not been used.

Preces /priysiyz/. Lat. In Roman law, prayers. One of the names of an application to the emperor.

Preces primariae /priysiyz præmériyiy/. In English ecclesiastical law, a right of the crown to name to the first prebend that becomes vacant after the accession of the sovereign, in every church of the empire. This right was exercised by the crown of England in the reign of Edward I.

Precinct /priysɪŋkt/. A constable's or police district. A small geographical unit of government. An election district created for convenient localization of polling places. A county or municipal subdivision for casting and counting votes in elections.

Precipe /prəsəpiy/. Another form of the name of the written instructions to the clerk of court; also spelled "præcipe" (*q.v.*).

Precipitation /prəsipətéyshən/. Hastening occurrence of event or causing to happen or come to crisis suddenly, unexpectedly or too soon.

Preciput. In French law, a portion of an estate or inheritance which falls to one of the coheirs over and above his equal share with the rest, and which is to be taken out before partition is made.

Precise /prəsáys/. Having determinate limitations. To the point.

Preclude /prəkl(y)úwd/. Estop. To prohibit or prevent from doing something; *e.g.* injunction.

Precludi non /prəkl(y)úwdáy nón/. Lat. In common law pleading, the commencement of a replication to a plea in bar, by which the plaintiff "says that, by reason of anything in the said plea alleged, he *ought not to be barred* from having and maintaining his aforesaid action against him, the said defendant, because he says," etc.

Preclusion order. Under Fed.R.Civil P. 37(b)(2)(B), a party to an action who fails to comply with an order for discovery may be precluded from supporting or opposing designated claims or defenses.

Preconization /priykənəzéyshən/. Proclamation.

Precontract. A contract or engagement made by a person, which is of such a nature as to preclude him from lawfully entering into another contract of the same nature.

Predatory intent. In purview of Robinson-Patman Act, means that alleged price discriminator must have at least sacrificed present revenues for purpose of driving competitor out of market with hope of recouping losses through subsequent higher prices. *International Air Industries, Inc. v. American Excelsior Co., C.A.Tex., 517 F.2d 714, 723. See also Predatory pricing.*

Predatory pricing. As antitrust violation, consists of pricing below appropriate measure of cost for purpose of eliminating competitors in short run and reducing competition in long run. *Cargill, Inc., v. Monfort of Colorado, 479 U.S. 104, 117, 107 S.Ct. 484, 493, 93 L.Ed.2d 427.*

An inference to be drawn from predatory pricing is that defendant is acting with anticompetitive intent. *Double H Plastics, Inc. v. Sonoco Products Co., D.C.Pa., 575 F.Supp. 389, 394. See also Predatory intent.*

Predecease. To die before another person.

Predecessor. One who goes or has gone before; the correlative of "successor." One who has filled an office or station before the present incumbent. Applied to a body politic or corporate, in the same sense as "ancestor" is applied to a natural person.

Predial servitude /priydiyál sárvət(y)úwd/. A charge laid on an estate for the use and utility of another estate belonging to another owner. A charge on one estate for the stipulated benefit of another estate; the benefit must be attributable to any person who may own the dominant estate at any time. *Guillotte v. Wells, C.A.La. App., 485 So.2d 187, 189.* To exist, there must be two different estates, servient and dominant, belonging to different owners, with benefit to dominant estate. *Marina Enterprises v. Ahoy Marine Services, C.A.La.App., 496 So.2d 1080, 1082. See Prædial servitude.*

Predisposition. For purposes of entrapment defense, may be defined as defendant's inclination to engage in illegal activity for which he has been charged, *i.e.*, that he is ready and willing to commit the crime. It focuses on defendant's state of mind before government agents suggest that he commit crime. *U.S. v. Ortiz, C.A.Utah, 804 F.2d 1161, 1165. See also Premeditation.*

Predominant. Something greater or superior in power and influence to others with which it is connected or compared.

Preemption /priyé(m)pshən/. Doctrine adopted by U.S. Supreme Court holding that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws. As such, a state may not pass a law inconsistent with the federal law. Examples are federal laws governing interstate commerce. *See also Federal preemption; Supremacy clause.*

As applied to state action versus local action, "preemption" means that where legislature has adopted scheme for regulation of given subject, local legislative control over such phases of subject as are covered by state regulation ceases. *Hutchcraft Van Service, Inc. v. City of Urbana Human Relations Commission, 60 Ill. Dec. 532, 536, 104 Ill.App.3d 817, 433 N.E.2d 329, 333.*

In international law, the right of pre-emption was formerly the right of a nation to detain the merchandise of strangers passing through her territories or seas, in order to afford to her subjects the preference of purchase.

In old English law, the first buying of a thing. A privilege formerly enjoyed by the crown, of buying up provisions and other necessities, by the intervention of the king's purveyors, for the use of his royal household, at an appraised valuation, in preference to all others, and even without consent of the owner.

Preemption claimant. One who has settled upon land subject to pre-emption, with the intention to acquire title to it, and has complied, or is proceeding to comply, in good faith, with the requirements of the law to perfect his right to it. *Hosmer v. Wallace*, 97 U.S. 575, 581, 24 L.Ed. 1130. *See* Preemption right.

Preemption doctrine. *See* Preemption.

Preemption entry. *See* Entry.

Preemption right. A privilege accorded by the government to the actual settler upon a certain limited portion of the public domain, to purchase such tract at a fixed price to the exclusion of all other applicants. *Nix v. Allen*, 112 U.S. 129, 5 S.Ct. 70, 28 L.Ed. 675. One who, by settlement upon the public land, or by cultivation of a portion of it, has obtained the right to purchase a portion of the land thus settled upon or cultivated, to the exclusion of all other persons.

Preemptive right. The privilege of a stockholder to maintain a proportionate share of ownership by purchasing a proportionate share of any new stock issues. An existing stockholder in most jurisdictions has the right to buy additional shares of a new issue to preserve his equity before others have a right to purchase shares of the new issue. The purpose of such rights is to protect shareholders from dilution of value and control when new shares are issued. In modern corporation statutes, preemptive rights may be limited or denied. *See also* Stock.

Pre-existing duty. A common law rule which holds that where a party does or promises to do what he or she is already legally obligated to do, there exists no sufficient consideration to support this new promise. The Uniform Commercial Code has eliminated the "pre-existing duty" rule in sales contracts. UCC § 209-1). *Palmer v. Safe Auto Sales, Inc.*, 114 Misc.2d 964, 452 N.Y.S.2d 995, 996.

Prefect. In French law, the name given to the public functionary who is charged in chief with the administration of the laws, in each department of the country. *Crespin v. U. S.*, 168 U.S. 208, 18 S.Ct. 53, 42 L.Ed. 438. The term is also used, in practically the same sense, in Mexico. But in New Mexico, a prefect is a probate judge.

Prefer. To bring before; to prosecute; to try; to proceed with. Thus, preferring an indictment signifies prosecuting or trying an indictment.

To give advantage, priority, or privilege; to select for first payment, as to prefer one creditor over others.

Preference. The paying or securing to one or more of his creditors, by an insolvent debtor, the whole or a part of their claim, to the exclusion or detriment of the rest. The act of an insolvent debtor who, in distributing his property or in assigning it for the benefit of his creditors, pays or secures to one or more creditors the full amount of their claims or a larger amount than they would be entitled to receive on a *pro rata* distribution. *Jackson v. Coons*, 285 Ky. 154, 147 S.W.2d 45, 47. It imports the relation of existing creditors having equal

equities at the time of the transfer whereby the rights of one are advanced over those of another. In *re George Rodman, Inc.*, C.A.Okla., 792 F.2d 125, 127.

In bankruptcy law, a transfer by an insolvent debtor to one or more of his or her creditors whereby the creditor to whom the property was transferred is put in a better position than other creditors with respect to their priority claims to the assets of the insolvent. The bankruptcy trustee may disallow such preferential payments or transfers of property. Bankruptcy Code § 547. *See also* Secured creditor; Voidable preference.

Preference share. One giving its holder a preference, either as to receipt of dividends, or as to payment in case of winding up, or both. In *re Schaffer Stores Co.*, 224 App.Div. 268, 229 N.Y.S. 735, 739.

Preferential assignment. An assignment of property for the benefit of creditors, made by an insolvent debtor, in which it is directed that a preference (right to be paid first in full) shall be given to a creditor or creditors therein named over other creditors. Such assignments are controlled by statute in most states, normally requiring recording, filing of schedules of assets and liabilities, giving notice to creditors, etc. Most all state statutes prohibit preferential assignments as being fraudulent conveyances. *See* Preference.

Preferential claim. *See* Preferential debts.

Preferential debts. In bankruptcy, those debts which are payable in preference to all others; as, wages of employees and administrative costs. Such debts are classified according to priority of claim. *See* Bankruptcy Code § 507.

Preferential dividend. *See* Preferred stock.

Preferential shop. A place of employment in which union members are given preference over nonunion members in matters of employment by agreement with the employer. A labor situation in a business in which preference is given to union men in hiring and layoff, but nonunion men may be hired when members of the union are not available. *See* Right to work laws.

Preferential tariff. A tariff which imposes lower rates of duty on goods imported from some countries ("preferred countries") than on the same goods imported from other countries. *See also* Most favored nation clause.

Preferential transfer. *See* Preference; Preferential assignment.

Preferred. Possessing or accorded a priority, advantage, or privilege. Generally denoting a prior or superior claim or right of payment as against another thing of the same kind or class; *e.g.* creditor with perfected security interest.

Preferred creditor. Creditor with preferential right to payment over junior creditors; *e.g.* creditor with perfected security interest has priority over unsecured creditor. U.C.C. § 9-301. *See also* Preferential debts.

Preferred dividend. *See* Dividend.

Preferred dockets. Lists of preference cases prepared by the clerks when the cases are set for trial. For example, because of the constitutional right to a speedy trial in criminal cases, criminal dockets are normally given preference over civil dockets.

Preferred stock. Stock shares that have preferential rights to dividends or to amounts distributable on liquidation, or to both, ahead of common shareholders. Preferred shares are usually entitled only to receive specified limited amounts as dividends or on liquidation. If preferred shares are entitled to share in excess distributions with common shareholders on some defined basis, they are participating preferred shares. Participating preferred shares may also be called class A common, or some similar designation to reflect its open-ended rights. *See also* Stock.

Callable. Preferred stock which is subject by its terms to being called in for payment at a predetermined price.

Cumulative dividend. If a dividend is passed, it must be paid to the preferred stockholders before the common stockholders receive their current dividend, and hence, the dividends accumulate in connection with this type of preferred stock.

Non-cumulative dividend. Once a preferred dividend is passed in a particular period, the right to that dividend has passed though the preferred stockholder is entitled to his dividend in the next period before the common stockholders receive their dividend.

Participating. That type of preferred stock which is entitled to additional dividends beyond its stated dividend after the common stock dividend has been paid.

Preferred stock bailout. A procedure whereby the issuance, sale, and later redemption or a preferred stock dividend was used by a shareholder to obtain long-term capital gains without any loss of voting control over the corporation. In effect, therefore, the shareholder was able to bail-out corporate profits without suffering the consequences of dividend income treatment. This procedure led to the enactment by Congress of I.R.C. § 306 which, if applicable, converts the prior long-term capital gain on the sale of the stock to ordinary income. Under these circumstances, the amount of ordinary income is limited to the shareholder's portion of the corporation's earnings and profits existing when the preferred stock was issued as a stock dividend. However, the enactment of the Tax Reform Act of 1986 has changed the impact of I.R.C. § 306 substantially due to the repeal of the favorable tax treatment previously given to long term capital gains.

Prior. Preferred stock which takes precedence over other issues of preferred stock of the same corporation.

Preferred stockholders. Beneficial holders of preferred stock shares.

Preferred stockholders' contract. Term used to describe the provisions of the articles of incorporation, the bylaws, or the resolution of the board of directors, creating and defining the rights of holders of the preferred shares in question. Preferred shareholders have only

very limited statutory or common law rights outside of the preferred shareholders' contract.

Pregnancy. The condition resulting from the fertilized ovum. The existence of the condition beginning at the moment of conception and terminating with delivery of the child.

Extra uterine or ectopic pregnancy is the development of the ovum outside of the uterine cavity, as in the Fallopian tubes or ovary. Extra uterine pregnancy commonly terminates by rupture of the sac, profuse internal hemorrhage, and death if not relieved promptly by a surgical operation.

Pregnancy, plea of. A plea which a woman capitally convicted may plead in stay of execution; for this, though it is no stay of judgment, yet operates as a respite of execution until she is delivered. *See also* Matrons, jury of.

Pregnant negative. *See* Negative pregnant.

Prejudice. A forejudgment; bias; partiality; preconceived opinion. A leaning towards one side of a cause for some reason other than a conviction of its justice.

See also Average man test; Bias; Discrimination.

Evidence. Within rule allowing exclusion of relevant evidence if probative value is substantially outweighed by danger of unfair prejudice, means undue tendency to move tribunal to decide on improper basis. *State v. Trafton, Me., 425 A.2d 1320, 1324. See Fed.Evid.R. 403.*

Of judge. That which disqualifies judge is condition of mind, which sways judgment and renders judge unable to exercise his functions impartially in particular case. It refers to mental attitude or disposition of the judge toward a party to the litigation, and not to any views that he may entertain regarding the subject matter involved. *State ex rel. Mitchell v. Sage Stores Co., 157 Kan. 622, 143 P.2d 652, 655.*

Speedy trial. Prejudice with respect to right to speedy trial means actual prejudice to defendant's ability to present effective defense, *U.S. v. Menke, D.C.Pa., 339 F.Supp. 1023, 1026*, and such prejudice is not confined to merely an impairment of the defense but includes any threat to what has been termed an accused's significant stakes, psychological, physical and financial, in the prompt termination of a proceeding which may ultimately deprive him of life, liberty or property. *U.S. v. Dreyer, C.A.N.J., 533 F.2d 112, 115.*

Without prejudice. Where an offer or admission is made "without prejudice," or a motion is denied or a bill in equity dismissed "without prejudice," it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost, except in so far as may be expressly conceded or decided. *See also* Dismissal with prejudice; Dismissal without prejudice.

Prejudicial error. Error substantially affecting appellant's legal rights and obligations. *Erskine v. Upham, 56 Cal.App.2d 235, 132 P.2d 219, 228.* One which affects or presumptively affects the final results of the trial.

State v. Gilchrist, 15 Wash.App. 892, 552 P.2d 690, 693. Such may be ground for new trial and reversal of judgment. Fed.R.Civil P. 59. *See also* Error; Plain error rule.

Prejudicial publicity. Due process requires that all parties to an action, civil or criminal, receive a trial by an impartial jury or tribunal free from outside influences. Extensive newspaper, radio and television coverage of a criminal trial may deprive the defendant of a fair trial. *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600. *See* Gag order; Trial (*Trial by news media*).

Preliminary. Introductory; initiatory; preceding; temporary and provisional; as preliminary examination, injunction, articles of peace, etc.

Preliminary complaint. In some states, a court without jurisdiction to hear a criminal case on its merits may issue a preliminary complaint or process and conduct a probable cause or bind over hearing on such complaint.

Preliminary evidence. Such evidence as is necessary to commence a hearing or trial and which may be received conditionally in anticipation of other evidence linking it to issues in the case. *See* Foundation.

Preliminary examination. *See* Preliminary hearing.

Preliminary hearing. The hearing by a judge to determine whether a person charged with a crime should be held for trial. A hearing held in felony cases prior to indictment during which the state is required to produce sufficient evidence to establish that there is probable cause to believe (a) that a crime has been committed and (b) that the defendant committed it. *See* Fed.R.Crim.P. 5.1.

Preliminary hearing before magistrate is, basically, a first screening of the charge; its function is not to try the defendant, nor does it require the same degree of proof or quality of evidence as is necessary for an indictment or for conviction at trial. Its function is to determine whether there is sufficient evidence to hold an accused for trial. *Mattioli v. Brown*, 71 Misc.2d 99, 335 N.Y.S.2d 613, 615.

Indigent defendants have a right to be represented by counsel at a preliminary examination. *Coleman v. Alabama*, 399 U.S. 1, 90 S.Ct. 1999, 26 L.Ed.2d 387; *Adams v. Illinois*, 405 U.S. 278, 92 S.Ct. 916, 31 L.Ed.2d 202.

Compare Arraignment. *See also* Information.

Preliminary injunction. A preliminary injunction should be granted only upon a clear showing by party seeking the extraordinary remedy of (1) probable success upon a trial on the merits, and (2) likely irreparable injury to him unless the injunction is granted, or (3) if his showing of probable success is limited but he raised substantial and difficult issues meriting further inquiry, that the harm to him outweighs the injury to others if it is denied. *Cohen v. Price Commission*, D.C.N.Y., 337 F.Supp. 1236, 1239. *See* Fed.R.Civil P. 65. *See also* Injunction.

Preliminary proof. In insurance, the first proof offered of a loss occurring under the policy, usually sent in to the underwriters with the notification of claim.

Preliminary prospects. *See* Red herring.

Preliminary warrant. In some jurisdictions, a warrant or order to bring a person to court for a preliminary hearing on probable cause.

Premarital agreements. *See* Antenuptial agreements.

Premeditate. To think of an act beforehand; to contrive and design; to plot or lay plans for the execution of a purpose. *See* Deliberate; Premeditation.

Premeditated design. In homicide cases, the mental purpose, the formed intent, to take human life. Premeditated murder is murder in the first degree.

Premeditatedly. Thought of beforehand, for any length of time, however short.

Premeditation. The act of meditating in advance; deliberation upon a contemplated act; plotting or contriving; a design formed to do something before it is done. Decision or plan to commit a crime, such as murder, before committing it. A prior determination to do an act, but such determination need not exist for any particular period before it is carried into effect. Thought of beforehand for any length of time, however short. *State v. Marston, Mo.*, 479 S.W.2d 481, 484.

Premeditation is one of the elements of first degree murder, and in this context, means that defendant acts with either the intention or the knowledge that he will kill another human being when such intention or knowledge precedes the killing by a length of time to permit reflection. *State v. Clabourne*, 142 Ariz. 335, 690 P.2d 54, 64. *See also* Deliberate; Deliberation; Malice aforethought; Willful.

Premises. That which is put before; that which precedes; the foregoing statements. Thus, in logic, the two introductory propositions of the syllogism are called the "premises," and from them the conclusion is deduced. So, in pleading, the expression "in consideration of the premises" means in consideration of the matters hereinbefore stated.

In conveyancing. That part of a deed which precedes the *habendum*, in which are set forth the names of the parties with their titles and additions, and in which are recited such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the present transaction is founded; and it is here, also, the consideration on which it is made is set down and the certainty of the thing granted.

In equity pleading. The stating part of a bill. It contains a narrative of the facts and circumstances of the plaintiff's case, and the wrongs of which he complains, and the names of the persons by whom done and against whom he seeks redress. In most states equity pleading is obsolete, having been replaced by notice pleading under Rules of Civil Procedure. *See* Complaint.

In estates and property. Land with its appurtenances and structures thereon. Premises is an elastic and

inclusive term, and it does not have one definite and fixed meaning; its meaning is to be determined by its context and is dependent on circumstances in which used, and may mean a room, shop, building, or any definite area. *Allen v. Genry*, Ala., 97 So.2d 828, 832.

A dwelling unit and the structure of which it is a part and faculties and appurtenances therein and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant. *Uniform Residential Landlord and Tenant Act*, 1.301(a).

In criminal law. The term as used in a search warrant includes land, buildings, and appurtenances thereto. *State v. Trujillo*, 95 N.M. 535, 624 P.2d 44.

In workers' compensation acts. "Premises" of the employer as used in workers' compensation acts is not restricted to the permanent site of the statutory employer's business nor limited to property owned or leased by him but contemplates any place under the exclusive control of employer where his usual business is being carried on or conducted. *Boatman v. Superior Outdoor Advertising Co.*, Mo.App., 482 S.W.2d 743, 745.

Premium. A reward for an act done. *Brown v. Board of Police Com'rs of City of Los Angeles*, 58 Cal.App.2d 473, 136 P.2d 617, 619. *See also Bonus.*

A bounty or bonus; a consideration given to invite a loan or a bargain, as the consideration paid to the assignor by the assignee of a lease, or to the transferer by the transferee of shares of stock, etc. So stock is said to be "at a premium" when its market price exceeds its nominal or face value. The excess of issue (or market) price over par value. *See Par.*

In granting a lease, part of the rent is sometimes capitalized and paid in a lump sum at the time the lease is granted. This is called a "premium."

The sum paid or agreed to be paid by an insured to the underwriter (insurer) as the consideration for the insurance. The price for insurance protection for a specified period of exposure.

See also Earned premium; Net premium; Net single premium.

Advance premium. Payment made at the start of the period covered by the insurance policy.

Premium note. A promissory note given by the insured for part or all of the amount of the premium.

Securities. The amount by which a preferred stock or bond may sell above its par (face) value. In the case of a new issue of bonds or stocks, premium is the amount the market price rises over the original selling price. Also refers to a charge sometimes made when a stock is borrowed to make delivery on a short sale. May refer, also, to redemption price of a bond or preferred stock if it is higher than face value.

Unearned premium. Portion of original premium not yet earned by insurance company and therefore due policyholder if the policy should be cancelled. In accounting, the account which reflects that portion of a premium that has been paid for insurance coverage

which has not yet been extended. The basic insurance reserve in the casualty insurance business. Since policyholders typically pay the full premium in advance, the premium is wholly "unearned" when the primary insurer receives it. *United States v. Consumer Life Ins. Co.*, 430 U.S. 725, 729, 97 S.Ct. 1440, 1443, 52 L.Ed.2d 4. *See I.R.C. § 801(c).*

Premium bond. *See Bond.*

Premium loan. Loan made for purpose of paying an insurance premium and secured by the policy.

Premium pudicitiae /priymiyəm pyüwdəsisihiy/. The price of chastity. A compensation for the loss of chastity, paid or promised to, or for the benefit of, a seduced female.

Premium tax. Tax paid by insurer on gross insurance premiums sold in state.

Premunire /prēmōnāyriy/. *See Præmunire.*

Prenatal injuries. *See Child.*

Prenda /prénda/. In Spanish law, pledge.

Prender, prendre /préndər/prónr(ə)/. L. Fr. To take. The power or right of taking a thing without waiting for it to be offered. *See A prendre.*

Prender de baron /préndər də bærən/. L. Fr. In old English law, a taking of husband; marriage. An exception or plea which might be used to disable a woman from pursuing an appeal of murder against the killer of her former husband.

Prenomen /priynówmən/. Lat. The first or Christian name of a person.

Pre-nuptial agreement. One entered into by prospective spouses prior to marriage but in contemplation and in consideration thereof; by it, the property or other financial rights of one or both of the prospective spouses are determined or are secured to one or both of them or their children. *Friedlander v. Friedlander*, 80 Wash.2d 293, 494 P.2d 208, 212. A number of states have adopted the Uniform Premarital Agreement Act which prescribes the content, execution, amendment, etc. of such agreements. *See also Antenuptial agreement; Marital agreements; Post-nuptial agreement.*

Prepaid expense. An expense paid before it is currently due. In accounting, an expenditure for a benefit not yet enjoyed, e.g. pre-paid insurance premiums from the standpoint of the insured. Cash basis as well as accrual basis taxpayers are generally required to capitalize prepayments for rent, insurance, etc. that cover more than one year. Deductions are taken during the period the benefits are received.

Prepaid income. In accounting, income received but not yet earned; also referred to as deferred revenue.

Prepaid interest. Interest paid before the time it is earned.

Prepaid legal services. System by which persons may pay premiums to cover future legal services much the same as payments are made for future medical ex-

penses. Such plan may be either open-ended whereby the person can secure legal services from the attorney of his choice, or closed-end whereby he must secure the services of a particular attorney, group of attorneys, or list of attorneys.

Preparation. With respect to criminal offense, consists in devising or arranging means or measures necessary for its commission, while attempt is direct movement toward commission after preparations are made. *State v. Quick*, 199 S.C. 256, 19 S.E.2d 101, 103. *See also* Aid and abet.

Prepare. To provide with necessary means; to make ready; to provide with what is appropriate or necessary.

Prepayment. Payment of debt obligation or expense before it is due.

Prepayment clause. Provision in mortgage or note giving borrower right to pay off the indebtedness before it becomes due. *See also* Prepayment penalty.

Prepayment penalty. A penalty under a note, mortgage, or deed of trust, imposed when the loan is paid before its due date. Consideration to terminate loan at borrower's election before maturity. *See also* Penalty clause.

Prepayments. Assets representing expenditures for future benefits. Rent and insurance premiums paid in advance are usually classified as current prepayments.

Prepense. Forethought; preconceived; premeditated.

Preponderance of evidence. As standard of proof in civil cases, is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. *Braud v. Kinchen*, La.App., 310 So.2d 657, 659. With respect to burden of proof in civil actions, means greater weight of evidence, or evidence which is more credible and convincing to the mind. That which best accords with reason and probability. The word "preponderance" means something more than "weight"; it denotes a superiority of weight, or outweighing. The words are not synonymous, but substantially different. There is generally a "weight" of evidence on each side in case of contested facts. But juries cannot properly act upon the weight of evidence, in favor of the one having the *onus*, unless it overbear, in some degree, the weight upon the other side.

That amount of evidence necessary for the plaintiff to win in a civil case. It is that degree of proof which is more probable than not.

Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence, which does not necessarily mean the greater number of witnesses, but opportunity for knowledge, information possessed, and manner of testifying determines the weight of testimony.

See also Fair preponderance of evidence.

Prerogative /prəˈrɒɡətɪv/. An exclusive or peculiar right or privilege. The special power, privilege, immu-

nity, right or advantage vested in an official person, either generally, or in respect to the things of his office, or in an official body, as a court or legislature.

Prerogative court. In old English law, a court established for the trial of all testamentary causes, where the deceased left *bona notabilia* within two different dioceses; in which case the probate of wills belonged to the archbishop of the province, by way of special prerogative. And all causes relating to the wills, administrations, or legacies of such persons were originally cognizable herein, before a judge appointed by the archbishop, called the "judge of the prerogative court," from whom an appeal lay to the privy council. The jurisdiction of these courts became obsolete with the transfer of the testamentary jurisdiction of the ecclesiastical courts to the Chancery Division of the High Court.

Prerogative law. That part of the common law of England which is more particularly applicable to the king.

Prerogative writs. In English law, the name was given to certain judicial writs issued by the courts only upon proper cause shown, never as a mere matter of right, the theory being that they involved a direct interference by the government with the liberty and property of the subject, and therefore were justified only as an exercise of the extraordinary power (prerogative) of the crown. In America, issuance is now generally regulated by statute, and such are generally referred to as extraordinary writs or remedies.

Such writs have been abolished in the federal and most state courts with the adoption of Rules of Civil Procedure. The relief formerly available by such writs is now available by appropriate action or motion under the Rules of Civil Procedure. *See* Rule 81. These writs are the writs of mandamus, procedendo, prohibition, quo warranto, habeas corpus, and certiorari.

Pres /préy/. L. Fr. Near. *Cy pres*, so near; as near. *See* *Cy pres*.

Presale. Sale of real estate (e.g., condominium units) before construction has started.

Presbyter /prézbətər/. Lat. In civil and ecclesiastical law, an elder; a presbyter; a priest.

Presbyterianism. One of the principal systems of church polity known as the "Christian Protestant Church", occupying an intermediate position between episcopacy and congregationalism. A religious faith or doctrine, based on the Westminster Confession of Faith and the Larger and Shorter Catechisms.

Presbyterium. That part of the church where divine offices are performed; formerly applied to the choir or chancel, because it was the place appropriated to the bishop, priest, and other clergy, while the laity were confined to the body of the church.

Prescribable /prəskráybəbəl/. That to which a right may be acquired by prescription.

Prescribe. To assert a right or title to the enjoyment of a thing, on the ground of having hitherto had the uninterrupted and immemorial enjoyment of it.

To lay down authoritatively as a guide, direction, or rule; to impose as a peremptory order; to dictate; to point, to direct; to give as a guide, direction, or rule of action; to give law. To direct; define; mark out.

In a medical sense "prescribe" means to direct, designate, or order use of a particular remedy, therapy, medicine, or drug.

Prescription. A direction of remedy or remedies for a disease, illness, or injury and the manner of using them. Also, a formula for the preparation of a drug or medicine.

Prescription is a peremptory and perpetual bar to every species of action, real or personal, when creditor has been silent for a certain time without urging his claim. *Jones v. Butler*, La.App., 346 So.2d 790, 791.

Acquisition of a personal right to use a way, water, light and air by reason of continuous usage. *See also* Prescriptive easement.

International law. Acquisition of sovereignty over a territory through continuous and undisputed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order. *State of Arkansas v. State of Tennessee*, 310 U.S. 563, 60 S.Ct. 1026, 1030, 84 L.Ed. 1362.

Prescription in a que estate. A claim of prescription based on the immemorial enjoyment of the right claimed, by the claimant and those former owners "whose estate" he has succeeded to and holds.

Real property law. The name given to a mode of acquiring title to incorporeal hereditaments by immemorial or long-continued enjoyment. *Hester v. Sawyers*, 41 N.M. 497, 71 P.2d 646, 649. Prescription is the term usually applied to incorporeal hereditaments, while "adverse possession" is applied to lands. *See* Hereditaments.

In Louisiana, prescription is defined as a manner of acquiring the ownership of property, or discharging debts, by the effect of time, and under the conditions regulated by law. Each of these prescriptions has its special and particular definition. The prescription by which the ownership of property is acquired, is a right by which a mere possessor acquires the ownership of a thing which he possesses by the continuance of his possession during the time fixed by law. The prescription by which debts are released, is a peremptory and perpetual bar to every species of action, real or personal, when the creditor has been silent for a certain time without urging his claim. In this sense of the term it is very nearly equivalent to what is elsewhere expressed by "limitation of actions," or rather, the "bar of the statute of limitations."

See also Adverse possession; Prescriptive easement.

Prescriptive easement. A right to use another's property which is not inconsistent with the owner's rights

and which is acquired by a use, open and notorious, adverse and continuous for the statutory period (*e.g.* twenty years). To a certain extent, it resembles title by adverse possession but differs to the extent that the adverse user acquires only an easement and not title. To create an easement by "prescription," the use must have been open, continuous, exclusive, and under claim of right for statutorily prescribed period with knowledge or imputed knowledge of the owner. *Matsu v. Chavez*, 96 N.M. 775, 635 P.2d 584, 587. *See also* Adverse possession.

Presence. Act, fact, or state of being in a certain place and not elsewhere, or within sight or call, at hand, or in some place that is being thought of. The existence of a person in a particular place at a given time particularly with reference to some act done there and then. Besides actual presence, the law recognizes *constructive* presence, which latter may be predicated of a person who, though not on the very spot, was near enough to be accounted present by the law, or who was actively co-operating with another who was actually present.

Presence of an officer. An offense is committed in "presence" or "view" of officer, within rule authorizing arrest without warrant, when officer sees act constituting it, though at distance, or when circumstances within his observation give probable cause for belief that defendant has committed offense, or when he hears disturbance created by offense and proceeds at once to scene, or if offense is continuing, or has not been fully consummated when arrest is made.

Presence of defendant. In the trial of all felonies, the defendant or accused has the right to be present at every stage of the criminal proceeding unless he wilfully and without justification absents himself or by his conduct renders it impossible to conduct the trial. In many states, this rule does not obtain as to misdemeanors. *Fed.R.Crim.P.* 43 specifies when the presence of the defendant is required and not required.

Presence of the court. A contempt is in the "presence of the court," if it is committed in the ocular view of the court, or where the court has direct knowledge of the contempt.

Presence of the testator. Will is attested in presence of testator if witnesses are within range of any of testator's senses. *In re Demaris' Estate*, 166 Or. 36, 110 P.2d 571, 585, 586. *See* Attestation.

Present, n. A gift; a gratuity; anything presented or given.

Present, adj. Now existing; at hand; relating to the present time; considered with reference to the present time. *See also* Presentment.

Present ability. As used in describing an element of the crime of assault, it means immediate or a point near immediate as regards the defendant's capacity to inflict harm. *People v. Ranson*, 40 Cal.App.3d 317, 114 Cal. Rptr. 874, 877.

Present conveyance. A conveyance made with the intention that it take effect at once and not at a future time.

Present danger test. See Clear and present danger doctrine.

Present enjoyment. The immediate or present possession and use of an estate or property, as distinguished from such as is postponed to a future time.

Present estate. An estate in immediate possession; one now existing, or vested at the present time; as distinguished from a *future* estate, the enjoyment of which is postponed to a future time.

Present interest. One which entitles the owner to the immediate possession of the property.

A "present interest", as distinguished from a future interest for purpose of federal gift tax annual exclusion, denotes a present right to realize, enjoy or use donated property. *Duffey v. U. S.*, D.C.Minn., 182 F.Supp. 765, 767. An interest in property is a "present interest" if the donee has the right presently to use, possess, or enjoy it. *Gilmore v. C. I. R.*, C.A. 6th, 213 F.2d 520, 521.

Present sale. A sale which is accomplished by the making of the contract. U.C.C. § 2-106(1).

Present time. A period of appreciable and generally considerable duration within which certain transactions are to take place.

Present use. One which has an immediate existence, and is at once operated upon by the statute of uses.

Presentative advowson /prəzɛntətəv ədvəʊzən/. See Advowson.

Pre-sentence hearing. Procedural step prior to sentencing at which a judge may examine the presentence report and all other relevant material before imposing sentence. Sentencing is a "critical stage" of a criminal prosecution requiring assistance of appointed counsel. *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336. See Pre-sentence investigation; Pre-sentence report.

Pre-sentence investigation. Investigation of the relevant background of a convicted offender, usually conducted by a probation officer attached to a court, designed to act as a sentencing guide for the sentencing judge. See *e.g.* 18 U.S.C.A. § 3552; Fed.R.Crim.P. 32(c). See also Pre-sentence report.

Pre-sentence report. The report prepared from the presentence investigation, which is designed to assist the judge in passing sentence on a convicted defendant. Presentence reports vary in scope and focus, but typically contain at least the following items: (1) complete description of the situation surrounding the criminal activity; (2) offender's educational background; (3) offender's employment background; (4) offender's social history; (5) residence history of the offender; (6) offender's medical history; (7) information about environment to which the offender will return; (8) information about any resources available to assist the offender; (9) probation officer's view of the offender's motivations and ambitions; (10) full description of the defendant's criminal record; and, (11) recommendation as to disposition. See *e.g.*, 18 U.S.C.A. § 3552 and Fed.R.Crim.P. 32(c) with regard to presentence reports in federal criminal cases.

Presenter. Any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. U.C.C. § 5-112(3). See also Presentment.

Presenting bank. Any bank presenting an item except a payor bank, U.C.C. § 4-105(e), i.e., a bank that demands of a drawee or other payor that she pay or accept a draft or other instrument.

Presently. Immediately; now; at once. A right which may be exercised "presently" as opposed to one in reversion or remainder.

Presentment. The written notice taken by a grand jury of any offense, from their own knowledge or observation, without any bill of indictment laid before them at the suit of the government. A presentment is an accusation, initiated by the grand jury itself, and in effect an instruction that an indictment be drawn. *U. S. v. Briggs*, C.A.Fla., 514 F.2d 794, 804. A written accusation of crime made and returned by the grand jury upon its own initiative in the exercise of its lawful inquisitorial powers, is in the form of a bill of indictment, and in practice is signed individually by all the grand jurors who return it. *State v. Hudson*, Tenn.Cr.App., 487 S.W.2d 672, 674. See also Indictment; Information; Presenter.

The production of a negotiable instrument to the drawee for his acceptance, or to the drawer or acceptor for payment; or of a promissory note to the party liable, for payment of the same. Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder. U.C.C. § 3-504(1).

Presentment warranty. See Warranty.

Present recollection recorded. A witness may use any document which helps revive or "jog" his memory of a past event and such document does not thereby become evidence. His testimony is the evidence though the opponent is entitled to see and examine the document and to impeach the credibility of the witness with it. Fed.Evid.R. 612. See also Past recollection recorded.

Present recollection revived. The use by a witness of some writing or other object to refresh his recollection so that he may testify about past events from present recollection. *Askins v. State*, Md.App., 284 A.2d 626, 631. See also Present recollection recorded.

Presents. The present instrument. The phrase "these presents" is used in any legal document to designate the instrument in which the phrase itself occurs.

Present value. Time value of money. Current value of a future payment, or series of payments, discounted at some compound or discount rate. The amount as of a date certain of one or more sums payable in the future, discounted to the date certain. See, *e.g.*, U.C.C. § 2A-103.

Preservation. Keeping safe from harm; avoiding injury, destruction, or decay; maintenance. It is not cre-

ation, but the saving of that which already exists, and implies the continuance of what previously existed. *See* Maintenance.

Preside. To occupy the place of authority as of president, chairman, moderator, etc. To direct, control or regulate proceedings as chief officer, moderator, etc. To possess or exercise authority. To preside over a court is to "hold" it,—to direct, control, and govern it as the chief officer. A judge may "preside" whether sitting as a sole judge or as one of several judges.

President. One placed in authority over others; a chief officer; a presiding or managing officer; a governor, ruler, or director. The chairman, moderator, or presiding officer of a legislative or deliberative body, appointed to keep order, manage the proceedings, and govern the administrative details of their business.

The chief officer of a corporation, company, board, committee, etc., generally having the main direction and administration of their concerns. *Roe v. Bank of Versailles*, 167 Mo. 406, 67 S.W. 303. The term does not ordinarily include "vice president." *First Nat. Bank v. C. H. Meyers & Co.*, Tex.Civ.App., 283 S.W. 265, 266.

The chief executive magistrate of a state or nation, particularly under a democratic form of government; or of a province, colony, or dependency. In the United States, the word is commonly used in reference to the private as well as public character of the nation's chief executive. *U. S. v. Metzdorf*, D.C.Mont., 252 F. 933, 937.

Presidential electors. A body of electors chosen in the different states, whose sole duty it is to elect a president and vice-president of the United States. Each state appoints, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the state is entitled in congress. Const.U.S. Art. 2, § 1; Amendment XII; *McPherson v. Blacker*, 146 U.S. 1, 13 S.Ct. 3, 36 L.Ed. 869. The usual method of appointment is by general ballot, so that each voter in a state votes for the whole number of electors to which his state is entitled. *See* Electoral college.

Presidential powers. *See* Executive powers.

President of the United States. The official title of the chief executive officer of the federal government in the United States.

Press. The aggregate of publications issuing from the press, or the giving publicity to one's sentiments and opinions through the medium of printing; as in the phrase "liberty of the press." Freedom of the press is guaranteed by the First Amendment. *See* Liberty.

In old English practice, a piece or skin of parchment, several of which used to be sewed together in making up a roll or record of proceedings. 1 Bl.Comm. 183.

Pressing seamen. *See* Impressment.

Pressing to death. *See* Peine forte et dure.

Prest. In old English law, a duty in money to be paid by the sheriff upon his account in the exchequer, or for money left or remaining in his hands.

Prestation /prəstéyʃən/. In old English law, a presting or payment of money. A payment or performance; the rendering of a service.

Prestimony /préstəməni/ or **præstimonia** /préstəməni(i)yə/. In canon law, a fund or revenue appropriated by the founder for the subsistence of a priest, without being erected into any title or benefice, chapel, prebend, or priory. It is not subject to the ordinary; but of it the patron, and those who have a right from him, are the collators.

Prest money. In old English law, a payment which binds those who receive it to be ready at all times appointed, being meant especially of soldiers.

Presumably. Fit to be assumed as true in advance of conclusive evidence; credibly deduced; fair to suppose; by reasonable supposition or inference; what appears to be entitled to belief without direct evidence. *See* Presumption.

Presume. To assume beforehand. In a more technical sense, to believe or accept upon probable evidence. *See* Presumption.

Presumed intent. A person is presumed to intend the natural and probable consequences of his voluntary acts. The government is not required in crimes to prove that a defendant intended the precise consequences of his act and his criminal intent can be inferred from his act.

Presumption. An inference in favor of a particular fact. A presumption is a rule of law, statutory or judicial, by which finding of a basic fact gives rise to existence of presumed fact, until presumption is rebutted. *Van Wart v. Cook*, Okl.App., 557 P.2d 1161, 1163. A legal device which operates in the absence of other proof to require that certain inferences be drawn from the available evidence. *Port Terminal & Warehousing Co. v. John S. James Co.*, D.C.Ga., 92 F.R.D. 100, 106.

A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action. A presumption is not evidence. A presumption is either conclusive or rebuttable. Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof. Calif.Evid.Code, § 600.

In all civil actions and proceedings not otherwise provided for by Act of Congress or by the Federal Rules of Evidence, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. Federal Evidence Rule 301.

See also Disputable presumption; Inference; Juris et de jure; Presumptive evidence; Prima facie; Raise a presumption.

Commercial law. A presumption means that the trier of fact must find the existence of the fact presumed unless

and until evidence is introduced which would support a finding of its non-existence. U.C.C. § 1-201(31).

Conclusive presumptions. A conclusive presumption is one in which proof of basic fact renders the existence of the presumed fact conclusive and irrebuttable. Such is created when a jury is charged that it must infer the presumed fact if certain predicate facts are established. *People v. Sellers*, 3 Dept., 109 A.D.2d 387, 492 N.Y.S.2d 127, 128. Few in number and often statutory, the majority view is that a conclusive presumption is in reality a substantive rule of law, not a rule of evidence. An example of this type of presumption is the rule that a child under seven years of age is presumed to be incapable of committing a felony. The Federal Evidence Rules (301, 302) and most state rules of evidence are concerned only with rebuttable presumptions. *Compare Rebuttable presumption, below.*

Conflicting presumptions. *See Inconsistent presumptions below.*

Inconsistent presumptions. If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies. Uniform Rules of Evidence. Rule 301(b).

Irrebuttable presumption. *See Conclusive presumptions, above.*

Mandatory presumption. *See Conclusive presumptions, above.*

Permissive presumption. One which allows, but does not require, trier of fact to infer elemental fact from proof by prosecutor of basic one, and which places no burden of any kind on defendant. *State v. Scott*, 8 Ohio App.3d 1, 8 O.B.R. 1, 455 N.E.2d 1363, 1368.

Presumptions of fact. Such are presumptions which do not compel a finding of the presumed fact but which warrant one when the basic fact has been proved. The trend has been to reject the classifications of presumptions of "fact" and presumptions of "law". *See Inference.*

Presumptions of law. A presumption of law is one which, once the basic fact is proved and no evidence to the contrary has been introduced, compels a finding of the existence of the presumed fact. The presumption of law is rebuttable and in most cases the adversary introduces evidence designed to overcome it. The trend has been to reject the classifications of presumptions of "law" and presumptions of "fact."

Procedural presumption. One which is rebuttable, which operates to require production of credible evidence to refute the presumption, after which the presumption disappears. *Maryland Cas. Co. v. Williams*, C.A.Miss., 377 F.2d 389, 394, 35 A.L.R.3d 275.

Rebuttable presumption. A presumption that can be overturned upon the showing of sufficient proof. In general, all presumptions other than conclusive presumptions are rebuttable presumptions. Once evidence tending to rebut the presumption is introduced, the

force of the presumption is entirely dissipated and the party with the burden of proof must come forward with evidence to avoid a directed verdict. *Compare Conclusive presumptions, above.*

Statutory presumption. A presumption, either rebuttable or conclusive, which is created by statute in contrast to a common law presumption; e.g. I.R.C. § 6062 (individual's name on tax return is prima facie evidence of his authority to sign return).

Presumption of death. A presumption which arises upon the disappearance and continued absence of a person from his customary location or home for an extended period of time, commonly 7 years, without any apparent reason for such absence. *Magers v. Western & Southern Life Ins. Co.*, C.A.Mo., 335 S.W.2d 355.

Presumption of innocence. A hallowed principle of criminal law to the effect that the government has the burden of proving every element of a crime beyond a reasonable doubt and that the defendant has no burden to prove his innocence. It arises at the first stage of the criminal process but it is not a true presumption because the defendant is not required to come forward with proof of his innocence once evidence of guilt is introduced to avoid a directed verdict of guilty.

Presumption of innocence succinctly conveys the principle that no person may be convicted of a crime unless the government carries the burden of proving his guilt beyond a reasonable doubt but it does not mean that no significance at all may be attached to the indictment. *U. S. v. Friday*, D.C.Mich., 404 F.Supp. 1343, 1346.

Presumption of legitimacy. Whenever it is established in an action that a child was born to a woman while she was the lawful wife of a specified man, the party asserting the illegitimacy of the child has the burden of producing evidence and the burden of persuading the trier of fact beyond reasonable doubt that the man was not the father of the child. *Bernheimer v. First Natl. Bank*, 359 Mo. 1119, 225 S.W.2d 745; Model Code of Evidence, Rule 703.

Presumption of survivorship. A presumption of fact, to the effect that one person survived another, applied for the purpose of determining a question of succession or similar matter, in a case where the two persons perished in the same catastrophe, and there are no circumstances extant to show which of them actually died first, except those on which the presumption is founded, viz., differences of age, sex, strength, or physical condition.

Presumption of validity. In patent law, the holder of a patent is entitled to a statutory presumption of validity. *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 335, 338, 91 S.Ct. 1434, 1447, 28 L.Ed.2d 788. 35 U.S.C.A. § 282.

Presumptive. Resting on presumption; created by or arising out of presumption; inferred; assumed; supposed; as, "presumptive" damages, evidence, heir, notice, or title.

Presumptive evidence. Prima facie evidence or evidence which is not conclusive and admits of explanation or contradiction; evidence which must be received and

treated as true and sufficient until and unless rebutted by other evidence, *i.e.*, evidence which a statute says shall be presumptive of another fact unless rebutted. *See* Presumption; Prima facie evidence.

Presumptive trust. Trust raised by implication of law and presumed always to have been contemplated by parties; intention as to which is to be found in nature of transaction but not expressed in deed or instrument of conveyance, and is thus distinguished from "constructive trust." *Kollbaum v. K & K Chevrolet Inc.*, 196 Neb. 555, 244 N.W.2d 173, 174. Also called "Resulting trust."

Prêt /préy/. In French law, a loan. A contract by which one of the parties delivers an article to the other, to be used by the latter, on condition of his returning, after having used it, the same article in nature or an equivalent of the same species and quality.

Prêt à intérêt /préy à ànteréy/. Loan at interest. A contract by which one of the parties delivers to the other a sum of money, or commodities, or other movable or fungible things, to receive for their use a profit determined in favor of the lender.

Prêt à usage /préy à yuwsázh/. Loan to use. A contract by which one of the parties delivers an article to the other, to be used by the latter, the borrower agreeing to return the specific article after having used it. A contract identical with the *commodatum* (*q.v.*) of the civil law.

Pretax earnings. Net income before income taxes.

Prêt de consommation /préy də kònsomasyówn/. Loan for consumption. A contract by which one party delivers to the other a certain quantity of things, such as are consumed in the use, on the undertaking of the borrower to return to him an equal quantity of the same species and quality. A contract identical with the *mutuum* (*q.v.*) of the civil law.

Pretend. To feign or simulate; to hold that out as real which is false or baseless.

Prête-nom /prètnówm/. One who lends his name.

Pretense. *See* False pretenses.

Preter legal /priytər líygəl/. Not agreeable to law; exceeding the limits of law; not legal.

Pretermission. The state of one who is pretermitted, as an heir or child of the testator. The act of omitting a child or heir from a will.

Pretermission statute. Those laws of the various states which make provision for children and heirs who have been omitted from the will of the father or ancestor. Commonly the child takes the same share of the estate which he would have taken if the testator had died intestate unless the omission was intentional and not occasioned by accident or mistake. *Nicholson v. Sorensen*, Alaska, 517 P.2d 766, 768. *See* Pretermitted heir.

Pretermitted heir /priytərmit/. To "pretermitted" is to pass by, to omit or to disregard, *e.g.*, failure of testator to mention his children in his will.

Pretermitted heir /priytərmitəd ér/. A child or other descendant omitted by a testator. Where a testator unintentionally fails to mention in his will, or make provision for, a child, either living at the date of the execution of the will or born thereafter, a statute may provide that such child, or the issue of a deceased child, shall share in the estate as though the testator had died intestate. *In re Price's Estate*, 56 Cal.App.2d 335, 132 P.2d 485. *See* Pretermission statute.

Pretext. Ostensible reason or motive assigned or assumed as a color or cover for the real reason or motive; false appearance, pretense. *See* False pretenses.

In international law, a reason alleged as justificatory, but which is so only in appearance, or which is even absolutely destitute of all foundation. The name of "pretexts" may likewise be applied to reasons which are in themselves true and well-founded, but, not being of sufficient importance for undertaking a war [or other international act], are made use of only to cover ambitious views.

Pretium /priysh(iy)əm/. Lat. Price; cost; value; the price of an article sold.

Pretium affectionis /priysh(iy)əm əfèkshiyównəs/. An imaginary value put upon a thing by the fancy of the owner, and growing out of his attachment for the specific article, its associations, his sentiment for the donor, etc.

Pretium periculi /priysh(iy)əm pèrikyəlay/. The price of the risk, *e.g.*, the premium paid on a policy of insurance; also the interest paid on money advanced on bottomry or respondentia.

Pretium sepulchri /priysh(iy)əm sèpálkray/. A mortuary (*q.v.*).

Pretium succedit in locum rei /priysh(iy)əm sèksíydət ən lówkəm ríyay/. The price stands in the place of the thing sold.

Pretorial court /prətóriyəl kórt/. In the colony of Maryland, formerly a court for the trial of capital crimes, consisting of the lord proprietor or his lieutenant-general, and the council. Also called *Pretorial*.

Pre-trial conference. Procedural device used prior to trial to narrow issues to be tried, to secure stipulations as to matters and evidence to be heard, and to take all other steps necessary to aid in the disposition of the case. Such conferences between opposing attorneys may be called at the discretion of the court. The actions taken at the conference are made the subject of an order which controls the future course of the action. *Fed.R. Civil P. 16. See* Pre-trial order; Summary trial.

Criminal cases. At any time after the filing of the indictment or information the court upon motion of any party or upon its own motion may order one or more conferences to consider such matters as will promote a fair and expeditious trial. At the conclusion of a conference the court shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or his attorney at the conference shall be used

against the defendant unless the admissions are reduced to writing and signed by the defendant and his attorney. Fed.R.Crim.P. 17.1.

Pre-trial discovery. Those devices which may be used by the parties to an action prior to trial to discover evidence and otherwise prepare for trial such as interrogatories, depositions, requests for admission of fact, etc. provided for under rules of procedure and statutes; e.g. Fed.R.Civil P. 26-37. See Discovery.

Pre-trial diversion. A system of recent origin by which certain defendants in criminal cases are referred to community agencies prior to trial while their criminal complaints or indictments are held in abeyance. The defendant may be given job training, counselling, and education. If he responds successfully within a specified period (e.g. 90 days, more or less), the charges against him are commonly dismissed.

Pre-trial hearing. See Pre-trial conference.

Pre-trial intervention. A program that diverts selected criminal defendants from the normal prosecution process in order that they can be rehabilitated and returned to the community as productive citizens with no criminal record. Upon successfully completing the PTL program the pending criminal charges are dismissed. See e.g. N.J.Court Rule 3:28.

Pre-trial order. An order embodying the terms and stipulations agreed upon at the pre-trial conference or hearing. This order governs the conduct of the trial and binds the parties unless, for good cause shown, the trial judge modifies it. Fed.R.Civil P. 16.

Prevail. To be or become effective or effectual, to be in force, to obtain, to be in general use or practice, to be commonly accepted or adopted; to exist. *Atlantic Coast Line R. Co. v. Gamble*, 155 Fla. 678, 21 So.2d 348, 350. To succeed; to win.

Prevailing party. The party to a suit who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not necessarily to the extent of his original contention. The one in whose favor the decision or verdict is rendered and judgment entered. *Jordan v. Elizabethan Manor*, 181 Mont. 424, 593 P.2d 1049, 1055. This may be the party prevailing in interest, and not necessarily the prevailing person. To be such does not depend upon the degree of success at different stages of the suit, but whether, at the end of the suit, or other proceeding, the party who has made a claim against the other, has successfully maintained it.

As used in Federal Civil Procedure Rule 54(d), which provides that costs shall be allowed as of course to prevailing party unless court otherwise directs, "prevailing party" means a party who has obtained some relief in an action, even if that party has not sustained all of his or her claims. *First Commodity Traders, Inc. v. Heinold Commodities, Inc.*, C.A.Ill., 766 F.2d 1007, 1015.

The interpretation of this term is important as regards attorney fees in that by statute in certain cases (e.g., civil rights) attorney fees are awarded to the pre-

vailing party. See e.g., 42 U.S.C.A. § 1988. See also Equal Access to Justice Act.

Prevarication /prəvə'rekəy'shən/. In the civil law, the acting with unfaithfulness and want of probity; deceitful, crafty, or unfaithful conduct; particularly, such as is manifested in concealing a crime.

In English law, a collusion between an informer and a defendant, in order to a feigned prosecution. Any secret abuse committed in a public office or private commission, as by an advocate betraying a client; willful concealment or misrepresentation of truth, by giving evasive or equivocating evidence.

Prevent. To hinder, frustrate, prohibit, impede, or preclude; to obstruct; to intercept. *Orme v. Atlas Gas and Oil Co.*, 217 Minn. 27, 13 N.W.2d 757, 761. To stop or intercept the approach, access, or performance of a thing. See Injunction; Restraining order.

Prevention. In the civil law, the right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.

In canon law, the right which a superior person or officer has to lay hold of, claim, or transact an affair prior to an inferior one, to whom otherwise it more immediately belongs.

Preventive detention. Confinement imposed generally on a defendant in criminal case who has threatened to escape or otherwise violate the law while awaiting trial or disposition, or of a mentally ill person who may harm himself or others. See e.g. 18 U.S.C.A. § 3142. The term is also used to describe the improper use of bail. See also Commitment; Preventive justice.

Preventive injunction. See Restraining order.

Preventive justice. The system of measures taken by government with reference to the direct prevention of crime. It generally consists in obliging those persons whom there is probable ground to suspect of future misbehavior to give full assurance to the public that such offense as is apprehended shall not happen, by requiring pledges or securities to keep the peace, or for their good behavior (e.g. peace bonds).

Preventive remedy. See Injunction; Restraining order.

Previous. Antecedent; prior; before. Sometimes limited in meaning to "next prior to" or "next preceding".

Previously taxed income (PTI). Before the Subchapter S Revision Act of 1982, the undistributed taxable income of an S corporation was taxed to the shareholders as of the last day of the corporation's tax year and usually could be withdrawn by the shareholders without tax consequences at some later point in time. The role of PTI has been taken over by the accumulated adjustments account.

Price. The cost at which something is obtained. Something which one ordinarily accepts voluntarily in exchange for something else. The consideration given for the purchase of a thing. Amount which a prospective seller indicates as the sum for which he is willing to sell; market value. The amount of money given or set as the

amount to be given as a consideration for the sale of a specified thing. The term may be synonymous with cost, and with value, as well as with consideration, though price is not always identical either with consideration. The consideration given for the purchase of a thing. Amount which a prospective seller indicates as the sum for which he is willing to sell; market value. The term may be synonymous with cost, and with value, as well as with consideration, though price is not always identical either with consideration.

See also Asking price; Fair market value; Going price; Liquidation price; Open price term.

Support price. A minimum price set by the government for a particular agricultural raw commodity. For example, the support price of wheat may be set at, say \$2 per bushel. That means that the farmer never has to sell his or her wheat below that support price. *See also* Parity.

Target price. Prices set by the government for particular agricultural commodities such as wheat and corn. If the actual market price falls below the target price, farmers get a subsidy from the government for the difference. *See* Parity.

Unit pricing. Pricing of food products expressed in a well-known unit such as ounces or pounds.

Price current. A list or enumeration of various articles of merchandise, with their prices, the duties, if any, payable thereon, when imported or exported, with the drawbacks occasionally allowed upon their exportation, etc.

Price discrimination. Exists when a buyer pays a price that is different from the price paid by another buyer for an identical product or service. Price discrimination is prohibited if the effect of this discrimination may be to lessen substantially or injure competition, except where it was implemented to dispose of perishable or obsolete goods, was the result of differences in costs incurred, or was given in good faith to meet an equally low price of a competitor. Clayton Act, § 2. *See also* Predatory intent; Robinson-Patman Act.

Price earnings ratio. The market price per share of a company's common stock divided by the company's annual earnings per share. For example, a stock selling for \$50 per share, and earnings of \$5 per share, is said to be selling at a price earnings ratio of 10 to 1.

Price-fixing. A combination formed for the purpose of and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity. *Optivision, Inc. v. Syracuse Shopping Center Associates, D.C. N.Y., 472 F.Supp. 665, 676.* The cooperative setting of price levels or range by competing firms, which would otherwise be set by natural market forces. Such agreements are in violation of the Sherman Antitrust Act. Price-fixing within intent of Sherman Act is either horizontal (dealing with arrangements among competitors, as between competing retailers) or vertical (attempting to control resale price, as agreements between manufac-

turer and retailer). *Knuth v. Erie-Crawford Dairy Coop. Ass'n, D.C.Pa., 326 F.Supp. 48, 53.*

Minimum fee schedules proposed and enforced by state bar associations are within orbit of prohibited price-fixing under Sherman Act. *Goldfarb v. Virginia State Bar, 421 U.S. 773, 95 S.Ct. 2004, 44 L.Ed.2d 572.*

See also Horizontal price-fixing; Peg; Per se violations; Predatory intent; Resale price maintenance; Vertical price-fixing contract.

Price index. A number representing average prices as a percent of the average prevailing at some other time (called the base or base year).

Price leadership. A market condition in which a leader in the industry establishes a price and the others in the field follow suit by adopting that price as their own. Price leadership implies a set of industry practices or customs under which list price changes are normally announced by a specific firm accepted as the leader by others, who follow the leader's initiatives. Such practices have been held to not be in violation of the antitrust laws in the absence of a showing of confederated action or an intent to monopolize. *United States v. United States Steel Corp., 251 U.S. 417, 40 S.Ct. 293, 64 L.Ed. 343; United States v. International Harvester Co., 274 U.S. 693, 47 S.Ct. 748, 71 L.Ed. 1302.*

Price supports. A device used generally by the federal government to keep prices (normally commodity prices) from falling below a predesignated level by such means as loans, subsidies, and government purchases. *See also* Parity; Price.

Priest. A sacerdotal minister of a church. A person in the second order of the ministry, as distinguished from bishops and deacons.

Priest-penitent privilege. In evidence, the recognition of the seal of confession which bars testimony as to the contents of a communication from one to his confessor. Nearly all states provide for this privilege by statute.

Primæ impressionis /práymiy imprèshiyównəs/. A case primæ impressionis (of the first impression) is a case of a new kind, to which no established principle of law or precedent directly applies, and which must be decided entirely by reason as distinguished from authority. *See* First impression case.

Primæ preces /práymiy priýsiyz/. Lat. In the civil law, an imperial prerogative by which the emperor exercised the right of naming to the first prebend that became vacant after his accession, in every church of the empire.

Prima facie /práymə féyshiy(iy)/. Lat. At first sight; on the first appearance; on the face of it; so far as can be judged from the first disclosure; presumably; a fact presumed to be true unless disproved by some evidence to the contrary. *State ex rel. Herbert v. Whims, 68 Ohio App. 39, 38 N.E.2d 596, 599, 22 O.O. 110. See also* Presumption.

Prima facie case. Such as will prevail until contradicted and overcome by other evidence. *Pacific Telephone*

& Telegraph Co. v. Wallace, 158 Or. 210, 75 P.2d 942, 947. A case which has proceeded upon sufficient proof to that stage where it will support finding if evidence to contrary is disregarded. In re Hoagland's Estate, 126 Neb. 377, 253 N.W. 416.

A prima facie case consists of sufficient evidence in the type of case to get plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a nonjury case; it is the evidence necessary to require defendant to proceed with his case. *White v. Abrams*, C.A.Cal., 495 F.2d 724, 729. Courts use concept of "prima facie case" in two senses: (1) in sense of plaintiff producing evidence sufficient to render reasonable a conclusion in favor of allegation he asserts; this means plaintiff's evidence is sufficient to allow his case to go to jury, and (2) courts use "prima facie" to mean not only that plaintiff's evidence would reasonably allow conclusion plaintiff seeks, but also that plaintiff's evidence compels such a conclusion if the defendant produces no evidence to rebut it. *Husbands v. Com. of Pa., D.C.Pa.*, 395 F.Supp. 1107, 1139.

Prima facie evidence. Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence. *State v. Haremza*, 213 Kan. 201, 515 P.2d 1217, 1222.

That quantum of evidence that suffices for proof of a particular fact until the fact is contradicted by other evidence; once a trier of fact is faced with conflicting evidence, it must weigh the prima facie evidence with all of the other probative evidence presented. *Godesky v. Provo City Corp.*, Utah, 690 P.2d 541, 547. Evidence which, standing alone and unexplained, would maintain the proposition and warrant the conclusion to support which it is introduced. An inference or presumption of law, affirmative or negative of a fact, in the absence of proof, or until proof can be obtained or produced to overcome the inference.

See also Presumptive evidence.

Prima facie tort. The infliction of intentional harm, resulting in damage, without excuse or justification, by an act or series of acts which would otherwise be lawful. *Cartwright v. Golub Corp.*, 51 A.D.2d 407, 381 N.Y.S.2d 901, 902. *See also* Strict liability.

Primage /práymej/. In old mercantile law, a small allowance or compensation payable to the master and mariners of a ship or vessel; to the former for the use of his cables and ropes to discharge the goods of the merchant; to the latter for lading and unlading in any port or haven. It is no longer, however, a gratuity to the master, unless especially stipulated; but it belongs to the owners or freighters, and is nothing but an increase of the freight rate.

Prima pars æquitatis æqualitas /práymə párz èkwatétas ækwólátàs/. The radical element of equity is equality.

Primary. First; principal; chief; leading. First in order of time, or development, or in intention. As to *primary* Conveyance; Election; Obligation; and Vein, see those titles.

Primary activity. Concerted action such as a strike or picketing directed against the employer with whom it has a dispute. Compare, secondary activity.

Primary allegation. The opening pleading in a suit in the ecclesiastical court. It is also called a "primary plea."

Primary beneficiary. In life insurance, the person named in the policy who is to receive the proceeds on the death of the insured if such person is alive. If deceased, the proceeds are payable to a secondary beneficiary also designated as such in the policy.

Primary boycott. Action by a union by which it tries to induce people not to use, handle, transport or purchase goods of an employer with which the union has a grievance. *See also* Boycott.

Primary disposal of the soil. In acts of congress admitting territories as states, and providing that no laws shall be passed interfering with the primary disposal of the soil, this means the disposal of it by the United States government when it parts with its title to private persons or corporations acquiring the right to a patent or deed in accordance with law.

Primary election. A preliminary election for the nomination of candidates for office or of delegates to a party convention, designed as a substitute for party conventions. Such elections are classified as closed or open depending on whether or not tests of party affiliation are required. *See also* Closed primary; Election.

Primary evidence. Primary evidence means original or first-hand evidence; the best evidence that the nature of the case admits of; the evidence which is required in the first instance, and which must fail before secondary evidence can be admitted. That evidence which the nature of the case or question suggests as the proper means of ascertaining the truth. It is the particular means of proof which is the most natural and satisfactory of which the case admits, and includes the best evidence which is available to a party and procurable under the existing situation, and all evidence falling short of such standard, and which in its nature suggests there is better evidence of the same fact, is "secondary evidence." *See also* Best evidence.

Primary insurance coverage. Coverage whereby, under terms of policy, liability attaches immediately upon happening of occurrence that gives rise to liability. *Olympic Ins. Co. v. Employers Surplus Lines Ins. Co.*, 126 C.A.3d 593, 178 Cal.Rptr. 908, 910.

Primary jurisdiction. Doctrine of "primary jurisdiction" provides that where the law vests in an administrative agency the power to decide a controversy or treat

an issue, the courts will refrain from entertaining the case until the agency has fulfilled its statutory obligation. *Sunflower Elec. Co-op, Inc. v. Kansas Power and Light Co.*, C.A.Kan., 603 F.2d 791, 796. The doctrine does not involve jurisdiction in the technical sense, but it is a doctrine predicated on an attitude of judicial self-restraint and is applied when the court feels that the dispute should be handled by an administrative agency created by the legislature to deal with such problems. *Kerr v. Department of Game*, 14 Wash.App. 427, 542 P.2d 467, 469. *See also* Exhaustion of administrative remedies.

Primary liability. In commercial law, a description of the nature of a signer's engagement, *i.e.*, his or her contract liability, on an instrument which means that he or she is obligated to pay without someone else refusing to pay. Ordinarily, the liability of a maker or acceptor is primary.

Primary market. In finance, the market where the initial sale by the issuer of new securities occurs; in contrast with secondary market where previously issued securities are traded. *Compare* Secondary market.

Primary obligation. In contract law, the foundational requirement of a contracting party from which other obligations may spring; *e.g.* in a contract of sale, the buyer's primary obligation is to purchase the goods.

Primary powers. The principal authority given by a principal to his agent. It differs from "mediate powers."

Primary purpose. That which is first in intention; which is fundamental. The principal or fixed intention with which an act or course of conduct is undertaken.

Primate. A chief ecclesiastic; an archbishop who has jurisdiction over his province, or one of several metropolitans presiding over others. Exarch comes nearest to it in the Greek church. Thus the archbishop of Canterbury is styled "Primate of all England;" the archbishop of York is "Primate of England."

Prime. To stand first or paramount; to take precedence or priority of; to outrank.

Prime contractor. The party to a building contract who is charged with the total construction and who enters into sub-contracts for such work as electrical, plumbing and the like. Also called "general contractor."

Prime cost. The true price paid for goods upon a *bona fide* purchase.

Prime interest rate. Usually defined as the lowest rate of interest from time to time charged by a specific lender to its most credit worthy customers for short term unsecured loans. The prime rate is often used as the floor or base rate for setting interest rates on other loans (*e.g.* consumer loans).

Prime maker. The person who signs a negotiable instrument such as a note and becomes primarily liable thereon.

Prime minister. The name given to the head of the executive branch of parliamentary government, serving

under the Chief of State who is usually a monarch. In England, he is the head of the cabinet, and usually holds the office of the First Lord of the Treasury. The office was unknown to the law until 1906, when the prime minister was accorded a place in the order of precedence. By constitutional custom the prime minister is a member of the House of Commons and selected by the Queen.

Primer. A law French word, signifying first; primary.

Primer election /práymər əlékshən/. A term used to signify first choice; *e.g.*, the right of the eldest co-parcener to first choose a purpart.

Primer fine /práymər fáyn/. On suing out the writ or *præcipe* called a "writ of covenant," there was due to the crown, by ancient prerogative, a *primer fine*, or a noble for every five marks of land sued for. That was one-tenth of the annual value.

Primer seisin /práymər síyzən/. *See* Seisin.

Prime serjeant /práym sárjənt/. In English law, the king's first serjeant at law.

Prime tenant. *See* Tenant.

Primicerius /práyməsír(i)yəs/. In old English law, the first of any degree of men.

Primitiæ /prəmishiyi/. In old English law, first fruits; the first year's whole profits of a spiritual preferment.

Primitive obligation /prímədəv òbləgéyshən/. *See* Obligation.

Primo beneficio /práymow bènəfish(iy)ow/. Lat. A writ directing a grant of the first benefice in the sovereign's gift.

Primo executiendā est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis /práymow èksəkýüwshiyéndə èst vérbay vís, niy sərmónwnəs vish(iy)ow òbstruwéydər aréysh(iy)ow, sáyviy léks sáyniy argyéméntəs/. The full meaning of a word should be ascertained at the outset, in order that the sense may not be lost by defect of expression, and that the law be not without reasons [or arguments].

Primogeniture /práyməjénətyər/. The state of being the first-born among several children of the same parents; seniority by birth in the same family. The superior or exclusive right possessed by the eldest son, and particularly, his right to succeed to the estate of his ancestor, in right of his seniority by birth, to the exclusion of younger sons.

Primogenitus /práyməjénətəs/. Lat. In old English law, a first-born or eldest son.

Primo venienti /práymow véniyéntay/. Lat. To the one first coming. An executor anciently paid debts as they were presented, whether the assets were sufficient to meet all debts or not.

Primum decretum /práyməm dəkríytəm/. Lat. In the canon law, the first decree; a preliminary decree granted on the non-appearance of a defendant, by which the plaintiff was put in possession of his goods, or of the

thing itself which was demanded. In the courts of admiralty, this name was given to a provisional decree.

Prince. In a general sense, a sovereign; the ruler of a nation or state. More particularly, the son of a king or emperor, or the issue of a royal family; as princes of the blood. The chief of any body of men. In English law, the oldest son of the reigning sovereign is invested as the Prince of Wales.

Princeps /prinseps/. Lat. In the civil law, the prince; the emperor.

Princeps et republica ex justa causa possunt rem meam auferre /prin(t)seps èt rəzpəbləkə èks jəstə kóza pəsənt rém miyəm oféhriy/. The prince and the commonwealth, for a just cause, can take away my property.

Princeps legibus solutus est /prinseps líyjbəs səl(y)úwtəs èst/. The emperor is released from the laws; is not bound by the laws.

Princeps mavult domesticos milites quam stipendiar-ios bellicis opponere casibus /prinseps méyvəlt dəméstəkows mílətiyz kwəm stəpəndiyériyows bələsəs əpəwnəriy kéysəbəs/. A prince, in the chances of war, had better employ domestic than stipendiary troops.

Princess royal /prinsəs róyal/. In English law, the eldest daughter of the sovereign.

Principal, adj. Chief; leading; most important or considerable; primary; original. Highest in rank, authority, character, importance, or degree.

As to *principal* Challenge; Contract; Obligation; Office; and Vein, see those titles.

Principal establishment. In the law concerning domicile, the principal domestic establishment. *Mosely v. Dabezies*, 142 La. 256, 76 So. 705, 706. See Domicile; Resident.

Principal fact. In the law of evidence, a fact sought and proposed to be proved by evidence of other facts (termed "evidentiary facts") from which it is to be deduced by inference. A fact which is the principal and ultimate object of an inquiry, and respecting the existence of which a definite belief is required to be formed.

Principal, n. The source of authority or right. A superintendent, as of a school.

An amount of money that has been borrowed or invested. The capital sum of a debt or obligation, as distinguished from interest or other additions to it. An amount on which interest is charged or earned. Amount of debt, not including interest. The face value of a note, bond, mortgage, etc. that must be repaid as distinct from the interest that is paid thereon. Capital sum placed at interest, due as a debt, or use as a fund, as distinguished from interest or profit. *Klitgaard v. Gaines*, Tex.Civ.App., 479 S.W.2d 765, 770.

See also Coprincipal; Undisclosed principal.

Criminal law. One who is present at and participates in the crime charged or who procures an innocent agent to commit the crime. *State v. Furr*, 292 N.C. 711, 235 S.E.2d 193, 198. A chief actor or perpetrator, or an

aider and abettor actually or constructively present at the commission of the crime, as distinguished from an "accessory." At common law, a principal in the first degree is he that is the actor or absolute perpetrator of the crime; and, in the second degree, he who is present, aiding and abetting the principal in the first degree. The distinction between principals in the first and second degrees has been abrogated in the Model Penal Code and by many state codes.

A "principal" differs from an "accessory before the fact" only in the requirement of presence during commission of crime. *Huff v. State*, 23 Md.App. 211, 326 A.2d 198, 201.

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. Also, whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal. 18 U.S.C.A. § 2.

Principal in the first degree. A principal in the first degree may simply be defined as the criminal actor; the one who actually commits a crime, either by his own hand, or by an inanimate agency, or by an innocent human agent. *Johnson v. State*, 303 Md. 487, 495 A.2d 1, 12. He is the one who, with the requisite mental state, engages in the act or omission concurring with the mental state which causes the criminal result.

Principal in the second degree. To be a principal in the second degree, one must be present at the commission of a criminal offense and aid, counsel, command, or encourage the principal in the first degree in the commission of that offense. This requirement of presence may be fulfilled by constructive presence. A person is constructively present when he is physically absent from the situs of the crime but aids and abets the principal in the first degree at the time of the offense from some distance.

Investments. The person for whom a broker executes an order, or a dealer buying or selling for his own account. The term "principal" may also refer to a person's capital or to the face amount of a bond.

Law of agency. The term "principal" describes one who has permitted or directed another (*i.e.* agent or servant) to act for his benefit and subject to his direction and control, such that the acts of the agent become binding on the principal. Principal includes in its meaning the term "master", a species of principal who, in addition to other control, has a right to control the physical conduct of the species of agents known as servants, as to whom special rules are applicable with reference to harm caused by their physical acts.

If, at the time of a transaction conducted by an agent, the other party thereto has notice that the agent is acting for a principal and of the principal's identity, the principal is a *disclosed* principal. If the other party has notice that the agent is or may be acting for a principal but has no notice of the principal's identity, the principal for whom the agent is acting is a *partially disclosed*

principal. If the other party has no notice that the agent is acting for a principal, the one for whom he acts is an *undisclosed* principal. Restatement, Second, Agency, § 4.

Law of guaranty and suretyship. The person primarily liable, for whose performance of his obligation the guarantor or surety has become bound.

Principal and surety. Relationship between accommodation maker and party accommodated on promissory note is that of "principal and surety." Putney Credit Union v. King, 130 Vt. 86, 286 A.2d 282, 284.

Trust law. Property as opposed to income. The term is often used to designate the corpus of a trust. If, for example, G places real estate in trust with income payable to A for life and the remainder to B upon A's death, the real estate is the principal or corpus of the trust. See also Kentucky Rule. The majority of states have adopted the Uniform Principal and Income Act.

Vice principal. A vice principal is an employee to whom the master delegates those absolute or nondelegable duties cast upon a master for protection of his employees, and who is in charge of the master's business or any department thereof, and whose duties are exclusively supervision, direction and control of the work of subordinate employees engaged therein, whose duty it is to obey him. Haynie v. Haynie, Okl., 426 P.2d 717, 724. Vice principal is servant who, in addition to his authority to direct and supervise work of those under him, has authority to hire and discharge a subordinate servant. Sartain v. Southern Nat. Life Ins. Co., Tex.Civ.App., 364 S.W.2d 245, 252.

Principalis /prinsəpéləs/. Lat. Principal; a principal debtor; a principal in a crime.

Principalis debet semper excuti antequam perveniat ad fideiussores /prinsəpéləs débat sémpər əkskyúwtay əntəkəwəm pərvəniyéytər ət fáydí-yayjəsóriyz/. The principal should always be exhausted before coming upon the sureties.

Principal residence. The residence (which may be a single family home, trailer, condominium, or houseboat) where the taxpayer resides most of the time. For tax purposes, capital gains may be deferred on the sale of the taxpayer's principal residence if a new residence is purchased within a certain period of time.

Principia data sequuntur concomitantia /prinsíp(i)yə déytə səkwántər kənkòmətəns(í)yə/. Given principles are followed by their concomitants.

Principia probant, non probantur /prinsíp(i)yə prówbənt, nón prəbántər/. Principles prove; they are not proved. Fundamental principles require no proof.

Principiis obsta /prinsípiyəs óbstej/. Withstand beginnings; oppose a thing in its early stages, if you would do so with success.

Principiorum non est ratio /prinsípiyórəm nón èst réysh(i)yow/. There is no reasoning of principles; no argument is required to prove fundamental rules.

Principium est potissima pars cujusque rei /prinsípiyəm èst pətísəmə párz kəjəskwiý ríyay/. The principle of anything is its most powerful part.

Principle. A fundamental truth or doctrine, as of law; a comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure, or legal determination. A truth or proposition so clear that it cannot be proved or contradicted unless by a proposition which is still clearer. That which constitutes the essence of a body or its constituent parts. That which pertains to the theoretical part of a science.

Printers Ink Statute. A model statute drafted in 1911 and adopted with some variations in a number of states making it a misdemeanor to advertise a representation that is untrue, deceptive or misleading.

Prior /práyər/. Lat. The former; earlier; preceding; preferable or preferred.

Prior, n. The chief of a convent; next in dignity to an abbot.

Prior, adj. Earlier; elder; preceding; superior in rank, right, or time; as, a prior lien, mortgage, or judgment.

Prior art. In patent law, includes any relevant knowledge, acts, descriptions and patents which pertain to, but predate, invention in question. Mooney v. Brunswick Corp., C.A.Wis., 663 F.2d 724, 733. Anything in tangible form that may properly be relied on by patent office in patent cases in support of rejection on matter of substance, not form, of claim in pending application for patent. Borden, Inc. v. Occidental Petroleum Corp., D.C.Tex., 381 F.Supp. 1178, 1203. Prior art may also be relied on by a court to hold a patent claim invalid, *i.e.*, not novel or not unobvious. 35 U.S.C.A. § 102.

Prior creditor. Generally, the creditor who is accorded priority in payment from the assets of his debtor. See Preferential debts; Preferred creditor.

Prior inconsistent statements. In evidence, prior statements made by the witness which contradict statements made on the witness stand may be introduced to impeach the witness after a foundation has been laid and an opportunity given to the witness to affirm or deny whether such prior statements were made. Such impeachment may be made through the witness himself or through another witness who heard the prior statements or by means of inconsistent prior depositions (Fed.R.Civil P. 32(a)). Such prior inconsistent statements are not admissible to prove the truth of the matter asserted but only to impeach the credibility of the witness. See Fed.Evid.R. 613(b). See also Declaration (*Declaration against interest*); Impeachment.

Priori petenti /práyórəy pəténtay/. To the person first applying. In probate practice, where there are several persons equally entitled to a grant of administration (*e.g.*, next of kin of the same degree), the rule of the court is to make the grant *priori petenti*, to the first applicant.

Priority. Precedence, going before. A legal preference or precedence. The relative ranking of competing

claims to the same property. When two persons have similar rights in respect of the same subject-matter, but one is entitled to exercise his right to the exclusion of the other, he is said to have priority. The order in which claims may be satisfied out of the sale of real property or other assets (*see e.g.* Mortgage (*First mortgage*)). *See also* Preferential debts.

In bankruptcy, refers to secured claims that by statute receive more favorable treatment than other unsecured claims. In a Bankruptcy Code Chapter 7 distribution, priority claims must be paid first. In a Chapter 11 plan, priority claims must be paid in full.

Priority of liens. Liens are ranked in the order in which they are perfected and those which are perfected first are said to be priority liens. For priority of security interests, *see* U.C.C. § 9-301 et seq.

Prior jeopardy. *See* Jeopardy.

Prior lien. This term commonly denotes a first or superior lien, and not one necessarily antecedent in time.

Prior petens /práyər pédanz/. The person first applying.

Prior restraint. A system of "prior restraint" is any scheme which gives public officials the power to deny use of a forum in advance of its actual expression. Sixteenth of September Planning Committee, Inc. v. City and County of Denver, Colo., D.C.Colo., 474 F.Supp. 1333, 1338. In constitutional law, the First Amendment, U.S.Const., prohibits the imposition of a restraint on a publication before it is published. The person defamed is left to his remedy in libel. *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357. Any system of prior restraints of expression bears a heavy presumption against its constitutional validity, and the Government carries a heavy burden of showing justification for imposition of such a restraint. *New York Times Co. v. U.S.*, 403 U.S. 713, 91 S.Ct. 2140, 29 L.Ed.2d 822.

Prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment Rights. *Nebraska Press Association v. Stuart*, 427 U.S. 539, 559, 96 S.Ct. 2791, 2803, 49 L.Ed.2d 683. Three exceptions are recognized: a publication creating a "clear and present danger" to the country, *Schenck v. U.S.*, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470; obscene publications, and publications which invade the zone of personal privacy.

A prohibited prior restraint is not limited to the suppression of a thing before it is released to the public; rather, an invalid prior restraint is an infringement upon constitutional right to disseminate matters that are ordinarily protected by the First Amendment without there first being a judicial determination that the material does not qualify for First Amendment protection. *State v. I, A Woman—Part II*, 53 Wis.2d 102, 191 N.W.2d 897, 902, 903.

See also Censor; Censorship.

Prior tempore potior jure /práyər témpəriy pówsh(iy)ər júry/. He who is first in time is preferred in right.

Prior use doctrine. Between two public bodies, property already devoted to a public use may not be taken for another public use in absence of express legislative authority. *City of Miami v. Florida East Coast Ry. Co.*, Fla.App., 286 So.2d 247, 250.

Prisage /práyəj/. An ancient hereditary revenue of the crown, consisting in the right to take a certain quantity from cargoes of wine imported into England. In Edward I's reign it was converted into a pecuniary duty called "butlerage."

Prise /priyz/. Fr. In French law, prize; captured property.

Prisel en auter lieu /priyzel òn ówtey lyúw/. L. Fr. A taking in another place. A plea in abatement in the action of replevin.

Prison. A public building or other place for the confinement of persons, whether as a punishment imposed by the law or otherwise in the course of the administration of justice. A state or federal correctional institution for incarceration of felony offenders for terms of one year or more. The words "prison" and "penitentiary" are used synonymously to designate institutions for the imprisonment of persons convicted of the more serious crimes, as distinguished from reformatories and county or city jails. *See also* Jail.

Prison breaking, or breach. The common-law offense of one who, being lawfully in custody, escapes from the place where he is confined, by the employment of force and violence. This offense is to be distinguished from "rescue" (*q.v.*), which is a deliverance of a prisoner from lawful custody by a third person, and from "escape" which is an unauthorized departure of a prisoner from legal custody without the use of force. The trend however of modern statutes is to abandon these common-law distinctions based upon the presence or absence of force, and substitute other factors to determine the grade of the offense; with "prison breaking" generally referring to escaping from prison or jail by any means. *See e.g.* 18 U.S.C.A. § 751 et seq.

Prisoner. One who is deprived of his liberty. One who is kept against his will in confinement or custody in a prison, penitentiary, jail, or other correctional institution, as a result of conviction of a crime or awaiting trial.

Prisoner at the bar. An accused person, while on trial before the court, is so called. One accused of crime, who is actually on trial, is in legal effect a "prisoner at the bar," notwithstanding he has given bond for his appearance at the trial. He is a "prisoner" if held in custody either under bond or other process of law, or when physically held under arrest, and when actually on trial he is a "prisoner at the bar."

Prist /príst/. L. Fr. Ready. In the old forms of oral pleading, this term expressed a tender or joinder of issue.

Prius vitiis laboravimus, nunc legibus /práyəs vishiyəs ləbərəyvəməs, nənk liyjbəəs/. We labored first with vices, now with laws.

Privacy laws. Those federal and state statutes which prohibit an invasion of a person's right to be left alone (e.g. to not be photographed in private), and also restrict access to personal information (e.g. income tax returns, credit reports); and overhearing of private communications (e.g. electronic surveillance). Some provide for equitable relief in the form of injunction to prevent the invasion of privacy while others specifically call for money damages and some provide for both legal and equitable protection. See e.g. Fair Credit Reporting Act (15 U.S.C.A. § 1681n-p). See also Privacy, right of.

The federal Privacy Act (5 U.S.C.A. § 552a) provides for making known to the public the existence and characteristics of all personal information systems kept by every Federal agency. The Act permits an individual to have access to records containing personal information on that individual and allows the individual to control the transfer of that information to other Federal agencies for nonroutine uses. The Act also requires all Federal agencies to keep accurate accountings of transfers of personal records to other agencies and outsiders, and to make the accountings available to the individual. The Act further provides for civil remedies for the individual whose records are kept or used in contravention of the requirements of the Act.

Breach of privacy is knowingly and without lawful authority: (a) Intercepting, without the consent of the sender or receiver, a message by telephone, telegraph, letter or other means of private communications; or (b) Divulging, without the consent of the sender or receiver, the existence or contents of such message if such person knows that the message was illegally intercepted, or if he illegally learned of the message in the course of employment with an agency in transmitting it. Kansas Criminal Code 21-4002. See Eavesdropping; Wiretapping.

Privacy, right of. The right to be let alone; the right of a person to be free from unwarranted publicity; and right to live without unwarranted interference by the public in matters with which the public is not necessarily concerned. Term "right of privacy" is generic term encompassing various rights recognized to be inherent in concept of ordered liberty, and such right prevents governmental interference in intimate personal relationships or activities, freedoms of individual to make fundamental choices involving himself, his family, and his relationship with others. *Industrial Foundation of the South v. Texas Indus. Acc. Bd.*, Tex., 540 S.W.2d 668, 679. The right of an individual (or corporation) to withhold himself and his property from public scrutiny, if he so chooses.

It is said to exist only so far as its assertion is consistent with law or public policy, and in a proper case equity will interfere, if there is no remedy at law, to prevent an injury threatened by the invasion of, or infringement upon, this right from motives of curiosity, gain or malice. *Federal Trade Commission v. American Tobacco Co.*, 264 U.S. 298, 44 S.Ct. 336, 68 L.Ed. 696. While there is no right of privacy found in any specific guarantees of the Constitution, the Supreme Court has

recognized that zones of privacy may be created by more specific constitutional guarantees and thereby impose limits upon governmental power. *Paul v. Davis*, 424 U.S. 693, 712, 96 S.Ct. 1155, 1166, 47 L.Ed.2d 405; *Whalen v. Roe*, 429 U.S. 589, 97 S.Ct. 869, 51 L.Ed.2d 64. See also Warren and Brandeis, *The Right to Privacy*, 4 Harv.L.Rev. 193.

Tort actions for invasion of privacy fall into four general classes: *Appropriation*, consisting of appropriation, for the defendant's benefit or advantage, of the plaintiff's name or likeness, *Carlisle v. Fawcett Publications*, 201 Cal.App.2d 733, 20 Cal.Rptr. 405; *Intrusion*, consisting of intrusion upon the plaintiff's solitude or seclusion, as by invading his home (*Ford Motor Co. v. Williams*, 108 Ga.App. 21, 132 S.E.2d 206), eavesdropping (*LaCrone v. Ohio Bell Tel. Co.*, 114 Ohio App. 299, 182 N.E.2d 15, 19 O.O.2d 236); as well as persistent and unwanted telephone calls (*Housh v. Peth*, 165 Ohio St. 35, 133 N.E.2d 340, 59 O.O. 60); *Public disclosure of private facts*, consisting of a cause of action in publicity, of a highly objectionable kind, given to private information about the plaintiff, even though it is true and no action would lie for defamation, *Melvin v. Reid*, 112 Cal.App. 285, 297 P. 91; *False light in the public eye*, consisting of publicity which places the plaintiff in a false light in the public eye, *Norman v. City of Las Vegas*, 64 Nev. 38, 177 P.2d 442.

See also False light privacy; Invasion of privacy.

Private. Affecting or belonging to private individuals, as distinct from the public generally. Not official; not clothed with office. *People v. Powell*, 280 Mich. 699, 274 N.W. 372, 373.

As to *private Act*; *Agent*; *Bill*; *Boundary*; *Business*; *Carrier*; *Chapel*; *Corporation*; *Detective*; *Dwelling*; *Easement*; *Examination*; *Ferry*; *Nuisance*; *Pond*; *Property*; *Prosecutor*; *Fights*; *Road*; *Sale*; *School*; *Seal*; *Statute*; *Stream*; *Trust*; *Water*; *War*; *Way*; *Wharf*; and *Wrong*, see those titles.

Private bank. An unincorporated banking institution owned by an individual or partnership and, depending upon state statutes, subject to or free from state regulation.

Private bill. Legislation for the special benefit of an individual or a locality. Many State constitutions prohibit such legislation except by general law. See also Private law.

Privateer /práyvətír/. A vessel owned, equipped, and armed by one or more private individuals, and duly commissioned by a belligerent power to go on cruises and make war upon the enemy, usually by preying on his commerce. A private vessel commissioned by a nation by the issue of a letter of marque to its owner to carry on all hostilities by sea, presumably according to the laws of war. Formerly a state issued letters of marque to its own subjects, and to those of neutral states as well, but a privateersman who accepted letters of marque from both belligerents was regarded as a pirate. By the Declaration of Paris (April, 1856), privateering was abolished, but the United States, Spain,

Mexico, and Venezuela did not accede to this declaration. It has been thought that the constitutional provision empowering Congress to issue letters of marque deprives it of the power to join in a permanent treaty abolishing privateering. *See* Piracy.

Piracy and privateering are federal offenses. 18 U.S.C.A. § 1651 *et seq.*

Private foundations. An organization which is operated privately for the advancement of charitable or education projects. An organization generally exempt from taxation that is subject to additional statutory restrictions on its activities and on contributions thereto. Excise taxes may be levied on certain prohibited transactions, and the Internal Revenue Code places more stringent restrictions on the deductibility of contributions to private foundations. IRC § 509. *See also* Charitable organizations; Foundation.

Private international law. A name used by some writers to indicate that branch of the law which is now more commonly called "Conflict of laws" (*q.v.*).

Private law. That portion of the law which defines, regulates, enforces, and administers relationships among individuals, associations, and corporations. As used in contradistinction to public law, the term means all that part of the law which is administered between citizen and citizen, or which is concerned with the definition, regulation, and enforcement of rights in cases where both the person in whom the right inheres and the person upon whom the obligation is incident are private individuals. *See also* Private bill; Special law. *Compare* Public law.

Private letter ruling. A written statement issued to the taxpayer by the Internal Revenue Service in which interpretations of the tax laws are made and applied to a specific set of facts. Function of the letter ruling, usually sought by the taxpayer in advance of a contemplated transaction, is to advise the taxpayer regarding the tax treatment he can expect from the I.R.S. in the circumstances specified by the ruling. *U. S. v. Wahlin*, D.C.Wis., 384 F.Supp. 43, 47. *See also* Letter ruling.

Private nuisance. A private nuisance is generally anything that by its continuous use or existence works annoyance, harm, unreasonable interference, inconvenience or damage to another landowner in the enjoyment of his property. *Robie v. Lillis*, 112 N.H. 492, 299 A.2d 155, 158. A nuisance affecting a single individual or definite small number of persons in enjoyment of private rights not common to the public. *Spur Industries, Inc. v. Del E. Webb Development Co.*, 108 Ariz. 178, 494 P.2d 700, 705. It is only a tort, and the remedy therefor lies exclusively with the individual whose rights have been disturbed. *Philadelphia Elec. Co. v. Hercules, Inc.*, C.A.Pa., 762 F.2d 303, 315. *See also* Nuisance. *Compare* Public nuisance.

Private offering. *See* Offering; Private placement.

Private person. Term sometimes used to refer to persons other than those holding public office or in military services.

Private placement. *Adoption.* In adoption cases, the placement of a child for adoption by the mother or parents themselves or by an intermediary like a lawyer or doctor, rather than by an adoption agency. Also sometimes called a "direct" placement.

Securities. The sale of a stock or bond issued directly to private persons, institutional investors, etc., outside of a public offering. Securities Act (1933), § 4(2). *See also* Direct placement; Offering.

Private ruling. *See* Letter ruling; Private letter ruling.

Privation /právéyshən/. A taking away or withdrawing.

Privatio præsупponit habitum /právéysh(i)ow priyspównat hábtəm/. A deprivation presupposes a possession.

Privatis pactionibus non dubium est non lædi jus cæterorum /právéytəs pækshiyównəbəs nòn d(y)úwbíyám èst nòn líyday jəs sètərórám/. There is no doubt that the rights of others [third parties] cannot be prejudiced by private agreements.

Privatorum conventio juri publico non derogat /právytórəm kənvénsh(i)ow júray pəbləkow nòn dérəgət/. The agreement of private individuals does not derogate from the public right [law].

Privatum /právéytəm/. Lat. Private. *Privatum jus*, private law.

Privatum commodum publico cedit /právéytəm kómədəm pəbləkow síydət/. Private good yields to public. The interest of an individual should give place to the public good.

Privatum incommodum publico bono pensatur /právéytəm ínkómədəm pəbləkow bównow penséydtər/. Private inconvenience is made up for by public benefit.

Privies /príviyz/. Those who are partakers or have an interest in any action or thing, or any relation to another. *Brown v. Fidelity Union Trust Co.*, 126 N.J.Eq. 406, 9 A.2d 311, 326; *Hamelik v. Sypek*, 152 Misc. 799, 274 N.Y.S. 875. They are of six kinds:

- (1) Privies of blood; such as the heir to his ancestor.
- (2) Privies in representation; as executors or administrators to their deceased testator or intestate.
- (3) Privies in estate; as grantor and grantee, lessor and lessee, assignor and assignee, etc.
- (4) Privies in respect to contract.
- (5) Privies in respect of estate and contract; as where the lessee assigns his interest, but the contract between lessor and lessee continues, the lessor not having accepted of the assignee.
- (6) Privies in law; as the lord by escheat, a tenant by the curtesy, or in dower, the incumbent of a benefice, a husband suing or defending in right of his wife, etc.

"Privies," in the sense that they are bound by the judgment, are those who acquired an interest in the subject-matter after the rendition of the judgment. "Privies" to a judgment are those whose succession to the rights of property affected occurs after the institution of the suit and form a party to it.

Privigna /prəvignə/. Lat. In the civil law, a stepdaughter.

Privignus /prəvignəs/. Lat. In the civil law, a son of a husband or wife by a former marriage; a stepson.

Privilege. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others.

In tort law, the ability to act contrary to another individual's legal right without that individual having legal redress for the consequences of that act; usually raised by the actor as a defense.

An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires. That which releases one from the performance of a duty or obligation, or exempts one from a liability which he would otherwise be required to perform, or sustain in common with all other persons. *See also* Exemption; Immunity.

See also Doctor-patient privilege; Executive privilege; Husband-wife privilege; Journalist's privilege; Legislative immunity; Marital communications privilege; Newsmen's privilege; Patient-physician privilege; Priest-penitent privilege; Privileged communications; Right; State secrets privilege.

Attorney-client, doctor-patient, etc. privilege. *See* Privileged communications, and *also* specific privileges.

Civil law. A right which the nature of a debt gives to a creditor, and which entitles him to be preferred before other creditors. Civil Code La. art. 3186. It is merely an accessory of the debt which it secures, and falls with the extinguishment of the debt. The civil law privilege became, by adoption of the admiralty courts, the admiralty lien. The J. E. Rumbell, 148 U.S. 1, 13 S.Ct. 498, 37 L.Ed 345.

Communications. *See* Privileged communications.

Deliberative process privilege. This governmental privilege permits government to withhold documents that reflect advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated, and was developed to promote frank and independent discussion among those responsible for making governmental decisions and to protect against premature disclosure of proposed agency policies or decisions. F.T.C. v. Warner Communications Inc., C.A.Cal., 742 F.2d 1156, 1161.

Discovery. When interrogatories, depositions or other forms of discovery seek information which is otherwise privileged, the party from whom it is sought may claim his privilege. Fed.R.Civil P. 26; Fed.R.Crim.P. 16. *See also* Protective order; Work product rule.

Evidence. *See* Privileged communications; Privileged evidence.

Executive privilege. The protection afforded to confidential presidential communications. However, the generalized need for confidentiality of high level communications cannot sustain an absolute unqualified presidential privilege. U. S. v. Nixon, 418 U.S. 683, 94 S.Ct. 3090, 41 L.Ed.2d 1039. *See also* Executive privilege.

Journalist's privilege. *See* Journalist's privilege; Newsmen's privilege; Shield laws.

Libel and slander. An exemption from liability for the speaking or publishing of defamatory words concerning another, based on the fact that the statement was made in the performance of a political, judicial, social, or personal duty. Privilege is either *absolute* or *conditional*. The former protects the speaker or publisher without reference to his motives or the truth or falsity of the statement. This may be claimed in respect, for instance, to statements made in legislative debates, in reports of military officers to their superiors in the line of their duty, and statements made by judges, witnesses, and jurors in trials in court. Conditional privilege (called also "qualified privilege") will protect the speaker or publisher unless actual malice and knowledge of the falsity of the statement is shown. This may be claimed where the communication related to a matter of public interest, or where it was necessary to protect one's private interest and was made to a person having an interest in the same matter. Saroyan v. Burkett, 57 Cal.2d 706, 21 Cal.Rptr. 557, 558, 371 P.2d 293.

For defense of "constitutional privilege" in libel actions, *see* Libel.

Maritime law. An allowance to the master of a ship of the same general nature with primage, being compensation, or rather a gratuity, customary in certain trades, and which the law assumes to be a fair and equitable allowance, because the contract on both sides is made under the knowledge of such usage by the parties.

Parliamentary law. The right of a particular question, motion, or statement to take precedence over all other business before the house and to be considered immediately, notwithstanding any consequent interference with or setting aside the rules of procedure adopted by the house. The matter may be one of "personal privilege," where it concerns one member of the house in his capacity as a legislator, or of the "privilege of the house," where it concerns the rights, immunities, or dignity of the entire body, or of "constitutional privilege," where it relates to some action to be taken or some order of proceeding expressly enjoined by the constitution.

Privilege from arrest. A privilege extended to certain classes of persons, either by the rules of international law, the policy of the law, or the necessities of justice or of the administration of government, whereby they are exempted from arrest on civil process, and, in some cases, on criminal charges, either permanently, as in the case of a foreign minister and his suite, or temporarily, as in the case of members of the legislature, parties and

witnesses engaged in a particular suit, etc. Art. I, § 6, U.S.Const. See also Immunity.

Privilege tax. A tax on the privilege of carrying on a business or occupation for which a license or franchise is required. *Gulf & Ship Island R. Co. v. Hewes*, 183 U.S. 66, 22 S.Ct. 26, 46 L.Ed. 86.

Torts. Privilege is the general term applied to certain rules of law by which particular circumstances justify conduct which otherwise would be tortious, and thereby defeat the tort liability (or defense) which, in the absence of such circumstances, ordinarily would follow from that conduct. In other words, even if all of the facts necessary to a prima facie case of tort liability can be proved, there are additional facts present sufficient to establish some privilege, and therefore defendant has committed no tort. Privileges thus differ from other defenses, such as contributory negligence, which operate to bar plaintiff's recovery but do not negate the tortious nature of defendant's conduct. Conversely, plaintiff's privilege may defeat a defense which defendant otherwise might have had. The term and concept of privilege apply primarily to the intentional torts, but also appear in other areas, such as defamation. See *Libel and slander, above*.

A privilege may be based upon: (a) the consent of the other affected by the actor's conduct, or (b) the fact that its exercise is necessary for the protection of some interest of the actor or of the public which is of such importance as to justify the harm caused or threatened by its exercise, or (c) the fact that the actor is performing a function for the proper performance of which freedom of action is essential. Restatement, Second, Torts, § 10.

Privileges may be divided into two general categories: (1) consent, and (2) privileges created by law irrespective of consent. In general, the latter arise where there is some important and overriding social value in sanctioning defendant's conduct, despite the fact that it causes plaintiff harm.

Privilege is an affirmative defense which must be pleaded by defendant. Fed.R.Civil P. 8(c).

Writ of privilege. A common law process to enforce or maintain a privilege; particularly to secure the release of a person arrested in a civil suit contrary to his privilege.

Privilege against self-incrimination. The privilege derived from the Fifth Amendment, U.S.Const., and similar provisions in the constitutions of states. It requires the government to prove a criminal case against the defendant without the aid of the defendant as a witness against himself, though it protects only communications, not physical evidence such as handwriting and fingerprints. It is invocable by any witness who is called to the witness stand against his wishes whether the proceeding be a trial or grand jury hearing or a proceeding before an investigating body, but it is waived when the witness voluntarily takes the witness stand. See also Immunity; Link-in-chain.

Privileged. Possessing or enjoying a privilege; exempt from burdens; entitled to priority or precedence.

Privileged communications. Those statements made by certain persons within a protected relationship such as husband-wife, attorney-client, priest-penitent and the like which the law protects from forced disclosure on the witness stand at the option of the witness, client, penitent, spouse. In federal courts, the extent and scope of the specific privilege is to be governed by federal common law or state rules governing evidentiary privileges. Fed.Evid. Rule 501. See also Attorney-client privilege; Communication; Conditionally privileged communication; Journalist's privilege; Privilege.

Privileged copyholds. See Copyhold.

Privileged debts. Those which an executor or administrator, trustee in bankruptcy, and the like, may pay in preference to others; such as funeral expenses, servants' wages, and doctors' bills during last sickness, etc. See also Preferential debts.

Privileged evidence. In addition to privileged communications (*q.v.*), privileged evidence may also include governmental secrets or records, identity of informer, grand jury proceedings, certain types of accident reports, and attorney's work product.

Privileges and immunities clause. There are two Privileges and Immunities Clauses in the federal Constitution and Amendments, the first being found in Art. IV, and the second in the 14th Amendment, § 1, second sentence, clause 1. The provision in Art. IV states that "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States," while the 14th Amendment provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

The purpose of these Clauses is to place the citizens of each State upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those states is concerned; to insure that a citizen of State A who ventures into State B be accorded the same privileges that the citizens of State B enjoy. *Toomer v. Witsell*, 334 U.S. 385, 68 S.Ct. 1156, 92 L.Ed. 1460. Pursuing a common calling, plying a trade, and doing business in another state are examples of "privileges" protected by the privileges and immunities clause of the Federal Constitution. *Powell v. Daily*, Wyo., 712 P.2d 356, 359. See also Full faith and credit clause.

Privilegia quæ re vera sunt in præjudicium reipublicæ, magis tamen habent speciosa frontispicia, et boni publici prætextum, quam bonæ et legales concessionis; sed prætextu liciti non debet admitti illicitum /privəliyj(iy)ə kwiy riy vira sánt in præjədish(iy)əm riyaypəbləsiy, méyjas téymən hábənt spiyshiyówsə frəntəspish(iy)ə, èt bównay pəbləsay prətékstəm, kwəm bówniy èt ləgéyliyz kənsəshiyówniyz; sèd prətékst(y)uw lisətay nòn débənt ədmítay əlisətəm/. Privileges which are truly in prejudice of public good have, however, a more specious front and pretext of public good than good and legal grants; but, under pretext of legality, that which is illegal ought not to be admitted.

Privilegium /privəliːj(i)əm/. In Roman law, a special constitution by which the Roman emperor conferred on some single person some anomalous or irregular right, or imposed upon some single person some anomalous or irregular obligation, or inflicted on some single person some anomalous or irregular punishment. When such *privilegia* conferred anomalous rights, they were styled "favorable." When they imposed anomalous obligations, or inflicted anomalous punishments, they were styled "odious." A private law inflicting a punishment or conferring a reward.

In civil law, every peculiar right or favor granted by the law, contrary to the common rule. A species of lien or claim upon an article of property, not dependent upon possession, but continuing until either satisfied or released. Such is the lien, recognized by maritime law, of seamen upon the ship for their wages.

Privilegium clericale /privəliːj(i)əm klɛhrəkɛyli/. The benefit of clergy (*q.v.*).

Privilegium est beneficium personale, et extinguitur cum persona /privəliːj(i)əm ɛst bɛnɛfɪʃ(i)əm pɜːsnɛyliː et ɛkstɪŋgwɛtɜː kəm pɜːsɔːnə/. A privilege is a personal benefit, and dies with the person.

Privilegium est quasi privata lex /privəliːj(i)əm ɛst kwɛysay prayvɛytə lɛks/. Privilege is, as it were, a private law.

Privilegium non valet contra rempublicam /privəliːj(i)əm nɔːn vɛlɛt kɔːntrə rɛmpʊblikəm/. Privilege is of no force against the commonwealth. Even necessity does not excuse, where the act to be done is against the commonwealth.

Privilegium, property propter /prɔːpɜːtiː prɔːptɜː privəliːj(i)əm/. A qualified property in animals *feræ naturæ*; *i.e.*, a privilege of hunting, taking, and killing them, in exclusion of others.

Privity. In its broadest sense, "privity" is defined as mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right. *Petersen v. Fee Intern., Ltd.*, D.C.Okla., 435 F.Supp. 938, 942. Derivative interest founded on, or growing out of, contract, connection, or bond of union between parties; mutuality of interest. *Hodgson v. Midwest Oil Co.*, C.C.A.Wyo., 17 F.2d 71, 75. Thus, the executor is in privity with the testator, the heir with the ancestor, the assignee with the assignor, the donee with the donor, and the lessee with the lessor. *Litchfield v. Crane*, 123 U.S. 549, 8 S.Ct. 210, 31 L.Ed. 199.

Privity signifies that relationship between two or more persons is such that a judgment involving one of them may justly be conclusive upon other, although other was not party to lawsuit. *Gill and Duffus Services, Inc. v. A.M. Nural Islam, C.A.*, 675 F.2d 404, 405, 218 U.S.App.D.C. 385.

Private knowledge; joint knowledge with another of a private concern; cognizance implying a consent or concurrence. *See* Insider; Legal privity; Privy.

Horizontal privity. Such privity is not, in reality, a state of privity but rather one of nonprivity. The term refers to those who are not in the distributive chain of a product but who, nonetheless, use the product and retain a relationship with the purchaser, such as a member of the purchaser's family. *Szajna v. General Motors Corp.*, 115 Ill.2d 294, 104 Ill.Dec. 898, 503 N.E.2d 760, 765. *See also* U.C.C. § 2-318.

Privity of blood. Such existed between an heir and his ancestor (privity in blood inheritable), and between coparceners. This privity was formerly of importance in the law of descent cast.

Privity of contract. That connection or relationship which exists between two or more contracting parties. It was traditionally essential to the maintenance of an action on any contract that there should subsist such privity between the plaintiff and defendant in respect of the matter sued on. However, the absence of privity as a defense in actions for damages in contract and tort actions is generally no longer viable with the enactment of warranty statutes (*see e.g.* U.C.C. § 2-318 below), acceptance by states of doctrine of strict liability (*q.v.*), and court decisions (*e.g.* *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 111 N.E. 1050) which have extended the right to sue for injuries or damages to third party beneficiaries, and even innocent bystanders (*Elmore v. American Motors Corp.*, 70 Cal.2d 578, 75 Cal.Rptr. 652, 451 P.2d 84).

U.C.C. § 2-318 provides three Alternative provisions (A-C) covering third party beneficiaries of express or implied warranties. Most states have enacted Alternative A: "A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section." Other states have further broadened this model provision. For example Massachusetts U.C.C. § 2-318 provides: "Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer, seller, lessor or supplier of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant if the plaintiff was a person whom the manufacturer, seller, lessor or supplier might reasonably have expected to use, consume or be affected by the goods. . . ."

Privity of estate. Mutual or successive relation to the same right in property such as that which exists between lessor and lessee or their successors.

A subtenant, who is in privity of estate with the original lessor, may avail himself of any covenants in the original lease which "touch and concern" the land. *Castle v. Double Time, Inc.*, Okla., 737 P.2d 900.

Privity of possession. Relationship which exists between parties in successive possession of real property. Such

relationship becomes important in cases of adverse possession claims.

Vertical privity. Refers to the relationship between those who are in the distributive chain of a product. *Szajna v. General Motors Corp.*, 115 Ill.2d 294, 104 Ill.Dec. 898, 503 N.E.2d 760, 765.

Privity or knowledge. Under Rev.St. §§ 4283-4286 (46 U.S.C.A. §§ 183-186) withholding the right to limit liability if the shipowner had "privity or knowledge" of the fault which occasioned damages, privity or knowledge must be actual and not merely constructive, and must involve a personal participation of the owner in some fault or act of negligence causing or contributing to the injury suffered. The words import actual knowledge of the things causing or contributing to the loss, or knowledge or means of knowledge of a condition of things likely to produce or contribute to the loss without adopting proper means to prevent it.

Privy. A person who is in privity with another. One who is a partaker or has any part or interest in any action, matter, or thing. In connection with the doctrine of *res judicata*, one who, after the commencement of the action, has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession, purchase or assignment. *Rhyne v. Miami-Dade Water and Sewer Authority*, Fla.App., 402 So.2d 54, 55. See *Insider*; *Privies*; *Privity*.

As an adjective, the word has practically the same meaning as "private."

Privy council. In England, the principal council of the sovereign, composed of the cabinet ministers, and other persons chosen by the king or queen as privy councillors. The Judicial Committee of the Privy Council acts as a court of ultimate appeal in various cases from Crown colonies and the Commonwealth. The importance of the Privy Council has been replaced to a great extent by the Cabinet.

Privy councillor. A member of the privy council.

Privy purse. In England, the income set apart for the sovereign's personal use.

Privy seal. In England, a seal used in making out grants or letters patent, preparatory to their passing under the great seal. A seal which the sovereign uses to such grants or things as pass the great seal. A seal of the British government which is affixed to documents not requiring the great seal.

Privy signet /prívij signət/. In English law, the signet or seal which is first used in making out grants and private letters and which is always in the custody of the Queen's secretaries.

Privy token /prívij tówkən/. A false mark or sign, forged object, counterfeited letter, key, ring, etc., used to deceive persons, and thereby fraudulently obtain possession of property. A false privy token is a false privy document or sign, not such as is calculated to deceive men generally, but designed to defraud one or more

individuals. Cheating by such false token was not indictable at common law.

Privy verdict. A verdict given privily to the judge out of court, but which was of no force unless afterwards affirmed by a public verdict given openly in court. Now generally superseded by the "sealed verdict," *i.e.*, one written out, sealed up, and delivered to the judge or the clerk of the court. See *Sealed verdict*.

Prize. Anything offered as a reward of contest. A reward offered to the person who, among several persons or among the public at large, shall first (or best) perform a certain undertaking or accomplish certain conditions. An award or recompense for some act done; some valuable thing offered by a person for something done by others. It is distinguished from a "bet" or "wager" in that it is known before the event who is to give either the premium or the prize, and there is but one operation until the accomplishment of the act, thing, or purpose for which it is offered.

The fair market value of a prize or award is generally includible in gross income. Certain exceptions are provided where the prize or award is made in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement providing certain other requirements are met. I.R.C. § 74.

A vessel or cargo, belonging to one of two belligerent powers, apprehended or forcibly captured at sea by a war-vessel or privateer of the other belligerent, and claimed as enemy's property, and therefore liable to appropriation and condemnation under the laws of war. The apprehension and detention at sea of a ship or other vessel, by authority of a belligerent power, either with the design of appropriating it, with the goods and effects it contains, or with that of becoming master of the whole or a part of its cargo.

Prize courts. Courts having jurisdiction to adjudicate upon captures made at sea in time of war, and to condemn the captured property as prize if lawfully subject to that sentence. In England, the admiralty courts have jurisdiction as prize courts, distinct from the jurisdiction on the instance side. A special commission issues in time of war to the judge of the admiralty court, to enable him to hold such court. In the United States, the federal district courts have jurisdiction in cases of prize. 28 U.S.C.A. § 1333.

Prize goods. Goods which are taken on the high seas, *jure belli*, out of the hands of the enemy.

Prize law. The system of laws and rules applicable to the capture of prize at sea; its condemnation, rights of the captors, distribution of the proceeds, etc.

Prize money. A dividend from the proceeds of a captured vessel, etc., paid to the captors. *U. S. v. Steever*, 113 U.S. 747, 5 S.Ct. 765, 28 L.Ed. 1133.

Pro. For; in respect of; on account of; in behalf of. The introductory word of many Latin phrases.

Proamita /prowémətə/. Lat. In the civil law, a great paternal aunt; the sister of one's grandfather.

Proamita magna /prowámətə mágnə/. Lat. In the civil law, a great-great-aunt.

Pro and con /prow ɔnd kón/. For and against. A phrase descriptive of the presentation of arguments or evidence on both sides of a disputed question.

Proavia /prowéyv(i)yə/. Lat. In the civil law, a great-grandmother.

Proavunculus /prowávəŋkyələs/. Lat. In the civil law, a great-grandfather's or great-grandmother's brother.

Proavus /prowəvəs/. Lat. In the civil law, a great-grandfather. Employed in making genealogical tables.

Probability. Likelihood; appearance of reality or truth; reasonable ground of presumption; verisimilitude; consonance to reason. The likelihood of a proposition or hypothesis being true, from its conformity to reason or experience, or from superior evidence or arguments adduced in its favor. A condition or state created when there is more evidence in favor of the existence of a given proposition than there is against it.

High probability rule. In admiralty law, a rule relating to the right of insured to abandon a vessel, by virtue of which the right of abandonment does not depend upon the certainty, but upon the high probability of a total loss, either of the property, or voyage, or both. The result is to act not upon certainties, but upon probabilities; and if the facts present a case of extreme hazard, and of probable expense, exceeding half the value of the ship, the insured may abandon, though it should happen that she was afterwards recovered at a less expense.

Probable. Having the appearance of truth; having the character of probability; appearing to be founded in reason or experience. Having more evidence for than against; supported by evidence which inclines the mind to believe, but leaves some room for doubt; likely. *See also* Possible.

Probable cause. Reasonable cause; having more evidence for than against. A reasonable ground for belief in certain alleged facts. A set of probabilities grounded in the factual and practical considerations which govern the decisions of reasonable and prudent persons and is more than mere suspicion but less than the quantum of evidence required for conviction. *US v. Riemer*, D.C. Ohio, 392 F.Supp. 1291, 1294. An apparent state of facts found to exist upon reasonable inquiry (that is, such inquiry as the given case renders convenient and proper), which would induce a reasonably intelligent and prudent man to believe, in a criminal case, that the accused person had committed the crime charged, or, in a civil case, that a cause of action existed. *Cook v. Singer Sewing Mach. Co.*, 138 Cal.App. 418, 32 P.2d 430, 431. *See also* Information and belief; Reasonable and probable cause; Reasonable belief; Reasonable grounds.

Arrest, search and seizure. Reasonable grounds for belief that a person should be arrested or searched. The evidentiary criterion necessary to sustain an arrest or the issuance of an arrest or search warrant. "Probable cause" to arrest exists where facts and circumstances within officers' knowledge and of which they had rea-

sonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been or is being committed; it is not necessary that the officer possess knowledge of facts sufficient to establish guilt, but more than mere suspicion is required. *State v. Phillips*, 67 Hawaii 535, 696 P.2d 346, 350. Probable cause is the existence of circumstances which would lead a reasonably prudent man to believe in guilt of arrested party; mere suspicion or belief, unsupported by facts or circumstances, is insufficient. *State v. Jones*, 248 Or. 428, 435 P.2d 317, 319. It permits an officer to arrest one for a felony without a warrant. Probable cause justifying officer's arrest without warrant has been defined as situation where officer has more evidence favoring suspicion that person is guilty of crime than evidence against such suspicion, but there is some room for doubt. *Nugent v. Superior Court for San Mateo County*, 254 C.A.2d 420, 62 Cal.Rptr. 217, 221.

The finding of probable cause for issuance of an arrest warrant (as required by 4th Amend.) may be based upon hearsay evidence in whole or part. *Fed.R.Crim.P.* 4(b). *See also* Rule 5.1(a) (Preliminary examination), and Rule 41(c) (Search and seizure).

See also Arrest; Probable cause hearing; Search; Search warrant.

False imprisonment action. For arrest which must be shown as justification by defendants in action for false imprisonment is reasonable ground of suspicion supported by circumstances sufficient in themselves to warrant cautious man in believing accused to be guilty, but does not depend on actual state of case in point of fact, as it may turn out upon legal investigation, but on knowledge of facts which would be sufficient to induce reasonable belief in truth of accusation. *Christ v. McDonald*, 152 Or. 494, 52 P.2d 655, 658.

Malicious prosecution action. In context of civil action for malicious prosecution, is such a state of facts in mind of defendant as would lead a person of ordinary caution and prudence to believe, or entertain an honest and strong suspicion, that plaintiff had committed a crime. *Carroll v. Gillespie*, 14 Mass.App. 12, 436 N.E.2d 431, 435. *See* Malicious prosecution.

Probable cause hearing. That procedural step in the criminal process at which the judge or magistrate decides whether a complaint should issue or a person should be bound over to a grand jury on a showing of probable cause. *See e.g. Fed.R.Crim.P.* 5.1(a). *See* Preliminary hearing.

Probable consequence. One that is more likely to follow its supposed cause than it is not to follow it.

Probable evidence. Presumptive evidence is so called, from its foundation in probability. *See* Presumption.

Probably. In all probability; so far as the evidence shows; presumably; likely.

Probandi necessitas incumbit illi qui agit /prøbánday nəsésətəs ənkámbət ilay kwày éyjet/. The necessity of proving lies with him who sues. In other words, the

burden of proof of a proposition is upon him who advances it affirmatively.

Probate. Court procedure by which a will is proved to be valid or invalid; though in current usage this term has been expanded to generally refer to the legal process wherein the estate of a decedent is administered. Generally, the probate process involves collecting a decedent's assets, liquidating liabilities, paying necessary taxes, and distributing property to heirs. These activities are carried out by the executor or administrator of the estate, usually under the supervision of the probate court or other court of appropriate jurisdiction. *See* Letters; Probate court; Probate jurisdiction.

In the canon law, "probate" consisted of *probatio*, the proof of the will by the executor, and *approbatio*, the approbation given by the ecclesiastical judge to the proof.

Probate bond. One required by law to be given to the probate court or judge, as incidental to proceedings in such courts, such as the bonds of executors, administrators, and guardians.

Probate code. The body or system of law relating to all matters of which probate courts have jurisdiction; *e.g.* Uniform Probate Code.

Probate court. A court having general powers over probate of wills, administration of estates, and, in some states, empowered to appoint guardians or approve the adoption of minors. Court with similar functions is called Surrogate or Orphan's Court in certain states. *See also* Court of Orphans; Probate jurisdiction.

Probate duty. A tax laid by government on every will admitted to probate or on the gross value of the personal property of the deceased testator, and payable out of the decedent's estate. *See also* Estate tax; Inheritance tax.

Probate estate. The property of a decedent that is subject to administration by the executor or administrator of an estate.

Probate homestead. *See* Homestead.

Probate jurisdiction. The exercise of the ordinary, generally understood power of a probate, surrogate or orphan's court, which includes the establishment of wills, settlement of decedents' estates, supervision of guardianship of infants, control of their property, and other powers and functions pertaining to such subjects. *See also* Probate court.

Probate proceeding. A general designation of the actions and proceedings whereby the law is administered upon the various subjects within "probate jurisdiction" (*q.v.*).

Probatio /prəbēysh(iy)ow/. Lat. Proof; more particularly direct, as distinguished from indirect or circumstantial evidence.

Probatio mortua /prəbēysh(iy)ow mórtyuwə/. Dead proof; that is proof by inanimate objects, such as deeds or other written evidence.

Probation. The evidence which proves a thing; the act of proving; proof; trial; test. Used in the latter sense when referring to the initial period of employment during which a new, transferred, or promoted employee must prove or show that he is capable of performing the required duties of the job or position before he will be considered as permanently employed in such position. As applied to teachers, term means that teacher is on trial, with his competence and suitability remaining to be finally determined. *Turner v. Board of Trustees, Calexico Unified School Dist.*, 121 Cal.Rptr. 705, 535 P.2d 1171, 1178.

Sentence imposed for commission of crime whereby a convicted criminal offender is released into the community under the supervision of a probation officer in lieu of incarceration. *State v. Fields*, 67 Haw. 268, 686 P.2d 1379, 1387. It is not a matter of right, but rather is an act of grace and clemency available only to those defendants found eligible by the court. *People v. Brown*, 172 Cal.App.2d 30, 342 P.2d 410, 412. It implies that defendant has a chance to prove himself and its purpose is reform and rehabilitation. For this purpose the defendant must agree to specified standards of conduct and the public authority operating through the court impliedly promises that if he makes good, his probation will continue; however, his violation of such standards subjects his liberty to revocation. *Baine v. Beckstead*, 10 Utah 2d 4, 347 P.2d 554, 558.

In determining whether the defendant is entitled to a sentence of probation, the court looks to such matters as the nature and circumstances of the offense, the history and characteristics of the defendant, and the need for the sentence imposed. *See, e.g.*, 18 U.S.C.A. §§ 3553(a), 3561 et seq.; Fed.R.Crim.P. 32.

The defendant is entitled to be represented by counsel in probation proceedings under Sixth Amendment. *Mempa v. Rhay*, 389 U.S. 128, 88 S.Ct. 254, 19 L.Ed.2d 336.

Probationer. A convicted offender who is allowed to go at large, under suspension of sentence, during good behavior.

Probationes debent esse evidentes, id est, perspicuae et faciles intelligi /prəbēyshiyówniyz débənt ésiy èvədéntiyz, id èst, pərspikyaway èt fəssliyz intələjay/. Proofs ought to be evident, that is, perspicuous and easily understood.

Probation officer. One who supervises a person (commonly juveniles) placed on probation by a court in a criminal proceeding. He is required to report to the court the progress of the probationer and to surrender him if he violates the terms and conditions of his probation.

Probatio plena /prəbēysh(iy)ow plíynə/. In the civil law, full proof; proof by two witnesses, or a public instrument.

Probatio semi-plena /prəbēysh(iy)ow sémayplíynə/. In the civil law, half-full proof; half-proof. Proof by one witness, or a private instrument.

Probatio viva /prəbéysh(i)yow váyvə/. Living proof; that is, proof by the mouth of living witnesses.

Probatis extremis, præsumentur media /prəbéytəs əkstriyməs, priyzyəmántər miyd(i)yə/. The extremes being proved, the intermediate proceedings are presumed.

Probative evidence /prówbətəv évəðəns/. In the law of evidence, means having the effect of proof; tending to prove, or actually proving an issue; that which furnishes, establishes, or contributes toward proof. *Akin v. Hill's Estate*, 201 Kan. 306, 440 P.2d 585, 590. Testimony carrying quality of proof and having fitness to induce conviction of truth, consisting of fact and reason co-operating as co-ordinate factors. *Globe Indemnity Co. v. Daviess*, 243 Ky. 356, 47 S.W.2d 990, 992. *See also* Relevant evidence.

Probative facts. In the law of evidence, facts which actually have effect of proving facts sought; evidentiary facts. Matters of evidence required to prove ultimate facts. *Johnson v. Inter-Southern Life Ins. Co.*, 244 Ky. 83, 50 S.W.2d 16. *See* Probative evidence.

Probative value. Evidence has "probative value" if it tends to prove an issue. *U.S. v. Ball*, D.C.Tenn., 547 F.Supp. 929, 934.

Probator /prəbéytər/. In old English law, strictly, an accomplice in felony who to save himself confessed the fact, and charged or accused any other as principal or accessory, against whom he was bound to make good his charge. It also signified an approver, or one who undertakes to prove a crime charged upon another.

Probatum est /prəbéytəm èst/. Lat. It is tried or proved.

Pro bono /prów bównow/. Lit. For the good; used to describe work or services (e.g. legal services) done or performed free of charge.

Pro bono et malo /prów bównow èt mælow/. For good and ill; for advantage and detriment.

Pro bono publico /prów bównow pəbləkow/. For the public good; for the welfare of the whole. For example, "pro bono" legal work is providing legal services to indigents without charge.

Probus et legalis homo /prówbəs èt ləgéyləs hówmow/. Lat. A good and lawful man. A phrase particularly applied to a juror or witness who was free from all exception, and competent in point of law to serve on juries. In the plural form: *probi et legales homines*.

Procedendo /prówsədéndow/. Action wherein court of superior jurisdiction orders court of inferior jurisdiction to proceed to judgment, but has no bearing on nature of judgment to be entered. *State ex rel. Jacobs v. Municipal Court of Franklin County*, 26 Ohio App.2d 113, 269 N.E.2d 629, 631, 55 O.O.2d 245. A writ by which a cause which has been removed from an inferior to a superior court by *certiorari* or otherwise is sent down again to the same court, to be proceeded in there, where it appears to the superior court that it was removed on insufficient grounds.

More commonly, a case returned to a lower court is said to be remanded to such court.

A writ (*procedendo ad iudicium*) which issued out of the common-law jurisdiction of the court of chancery, when judges of any subordinate court delayed the parties for that they would not give judgment either on the one side or on the other, when they ought so to do. In such a case, a writ of *procedendo ad iudicium* was awarded, commanding the inferior court in the sovereign's name to proceed to give judgment, but without specifying any particular judgment. It was the earliest remedy for the refusal or neglect of justice on the part of the courts. *In re Press Printers & Publishers*, C.C.A. N.J., 12 F.2d 660, 664.

A writ by which the commission of a justice of the peace is revived, after having been suspended. 1 Bl. Comm. 353.

Procedendo on aid prayer /prówsədéndow òn éyd pré(yə)r/. If one pray in aid of the crown in real action, and aid be granted, it shall be awarded that he sue to the sovereign in chancery, and the justices in the common pleas shall stay until this writ of *procedendo de loquela* come to them. So, also, on a personal action.

Procedural due process. The guarantee of procedural fairness which flows from both the Fifth and Fourteenth Amendments due process clauses of the Constitution. For the guarantees of procedural due process to apply, it must first be shown that a deprivation of a significant life, liberty, or property interest has occurred. This is necessary to bring the Due Process Clause into play.

Minimal procedural due process is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, they must be notified. *Fuentes v. Shevin*, 407 U.S. 67, 79, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556. Procedures which due process requires beyond that minimum must be determined by a balancing analysis based on the specific factual context. *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 25 L.Ed.2d 287.

Procedural law. That which prescribes method of enforcing rights or obtaining redress for their invasion, *Long v. Storms*, 52 Or.App. 685, 629 P.2d 827, 828; machinery for carrying on procedural aspects of civil or criminal action; e.g. Rules of Civil, Criminal, and Appellate Procedure, as adopted by the Federal and most state courts. *Barker v. St. Louis County*, 340 Mo. 986, 104 S.W.2d 371, 377, 378, 379; *Schultz v. Gosselink*, 260 Iowa 115, 148 N.W.2d 434, 436. As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are "substantive laws" in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are "procedural laws". *State ex rel. Blood v. Gibson Circuit Court*, 239 Ind. 394, 157 N.E.2d 475, 478. *See also* Procedure. *Compare* Substantive law.

Procedure. The mode of proceeding by which a legal right is enforced, as distinguished from the substantive law which gives or defines the right, and which, by

means of the proceeding, the court is to administer; the machinery, as distinguished from its product. That which regulates the formal steps in an action or other judicial proceeding; a form, manner, and order of conducting suits or prosecutions; *e.g.* Rules of Civil or Criminal Procedure. The judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them. *Sims v. United Pacific Ins. Co.*, D.C.Idaho, 51 F.Supp. 433, 435.

Procedure is machinery for carrying on lawsuit including pleading, process, evidence and practice, whether in trial court or appellate court. *Brooks v. Texas Emp. Ins. Ass'n*, Tex.Civ.App., 358 S.W.2d 412, 414.

The law of procedure is what is commonly termed by jurists "adjective law" (*q.v.*).

See also Civil procedure; Criminal procedure; Procedural law; Rules of court. Compare Substantive law.

Proceeding. In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, including all possible steps in an action from its commencement to the execution of judgment. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.

An act which is done by the authority or direction of the court, agency, or tribunal, express or implied; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. All the steps or measures adopted in the prosecution or defense of an action. *Statter v. United States*, C.C.A.Alaska, 66 F.2d 819, 822. The word may be used synonymously with "action" or "suit" to describe the entire course of an action at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of a final judgment, or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party. The proceedings of a suit embrace *all* matters that occur in its progress judicially.

Term "proceeding" may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding. *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351, 110 Cal.Rptr. 353, 365, 515 P.2d 297. A "proceeding" includes action and special proceedings before judicial tribunals as well as proceedings pending before quasi-judicial officers and boards. *State ex rel. Johnson v. Independent School Dist. No. 810, Wabasha County*, 260 Minn. 237, 109 N.W.2d 596, 602. In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights, for relief, for redress of injuries, for damages, or for any remedial object.

"Proceeding" means any action, hearing, investigation, inquest, or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given. Calif.Evid.Code § 901.

Collateral proceeding. One in which the particular question may arise or be involved incidentally, but which is not instituted for the very purpose of deciding such question; as in the rule that a judgment cannot be attacked, or a corporation's right to exist be questioned, in any collateral proceeding. See Collateral estoppel doctrine.

Legal proceedings. See Legal proceedings.

Ordinary proceedings. Those founded on the regular and usual mode of carrying on a suit by due course at common law.

Special proceeding. Generic term for remedies or proceedings which are not ordinary actions; *e.g.* condemnation (Fed.R.Civil P. 71A); vesting title (Rule 70).

A "special proceeding" has reference to such proceedings as may be commenced independently of a pending action by petition or motion upon notice in order to obtain special relief, and, generally speaking, a special proceeding is confined to type of case which was not, under the common-law or equity practice, either an action at law or a suit in equity. *Church v. Humboldt County*, 248 C.A.2d 855, 57 Cal.Rptr. 79, 81.

Summary proceeding. Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, without the aid of a jury, without presentment or indictment, or in other respects out of the regular course of the common law. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings; *e.g.* conciliation or small claims court proceedings as contrasted with usual civil trial.

Supplementary proceeding. A separate proceeding in an original action, in which the court where the action is pending is called upon to exercise its jurisdiction in aid of execution of the judgment in the action. It is a statutory equivalent in actions at law of the creditor's bill in equity, and in the majority of states where law and equity are merged, is provided as a substitute therefor. See *e.g.* Fed.R.Civil P. 69. In this proceeding the judgment debtor is summoned to appear before the court (or a referee or examiner) and submit to an oral examination touching all his property and effects, and if property subject to execution and in his possession or control is thus discovered, he is ordered to deliver it up, or a receiver may be appointed. See Execution; Supplementary proceedings.

Proceeds. Issues; income; yield; receipts; produce; money or articles or other thing of value arising or obtained by the sale of property; the sum, amount, or value of property sold or converted into money or into other property. Proceeds does not necessarily mean only cash or money. *Phelps v. Harris*, 101 U.S. 370, 25 L.Ed. 855. That which results, proceeds, or accrues from some possession or transaction. *State Highway Commission v. Spainhower, Mo.*, 504 S.W.2d 121, 125. The funds received from disposition of assets or from the issue of securities (after deduction of all costs and fees).

As used in context of debtor's sale of collateral, "proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds". U.C.C. § 9-306.

Proceres /prósəriyz/. Nobles; lords. The house of lords in England is called, in Latin, "*Domus Procerum*." Formerly, the chief magistrates in cities.

Process. A series of actions, motions, or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced; normal or actual course of procedure; regular proceeding, as, the process of vegetation or decomposition; a chemical process; processes of nature. *Kelley v. Coe*, App.D.C., 99 F.2d 435, 441.

Process is mode, method or operation whereby a result is produced; and means to prepare for market or to convert into marketable form. *Employment Security Commission of Ariz. v. Bruce Church, Inc.*, 109 Ariz. 183, 507 P.2d 108, 112.

Patent Law

An art or method by which any particular result is produced. An act or series of acts performed upon the subject-matter to be transformed or reduced to a different state or thing. A means or method employed to produce a certain result or effect, or a mode of treatment of given materials to produce a desired result, either by chemical action, by the operation or application of some element or power of nature, or of one substance to another, irrespective of any machine or mechanical device; in this sense a "process" is patentable, though, strictly speaking, it is the art and not the process which is the subject of patent. Broadly speaking, a "process" is a definite combination of new or old elements, ingredients, operations, ways, or means to produce a new, improved or old result, and any substantial change therein by omission, to the same or better result, or by modification or substitution, with different function, to the same or better result, is a new and patentable process.

Civil and Criminal Proceedings

Process is defined as any means used by court to acquire or exercise its jurisdiction over a person or over specific property. *Austin Liquor Mart, Inc. v. Department of Revenue*, 18 Ill.App.3d 894, 310 N.E.2d 719, 728. Means whereby court compels appearance of defendant before it or a compliance with its demands. *Dansby v. Dansby*, 222 Ga. 118, 149 S.E.2d 252, 254.

When actions were commenced by original writ, instead of, as at present, by summons, the method of compelling the defendant to appear was by what was termed "original process," being founded on the original writ, and so called also to distinguish it from "mesne" or

"intermediate" process, which was some writ or process which issued during the progress of the suit. The word "process," however, as now commonly understood, refers to a summons, or, summons and complaint, and, less commonly, to a writ. The content of the summons, and service requirements, are provided for in Rule of Civil Proc. 4.

See also Abuse (Process); Alias process; Compulsory process; Constructive service of process; Due process of law; Executory process; Long arm statutes; Malicious abuse of legal process; Malicious use of process; Prohibition; Service (Service of process); Summons.

Abuse of process. *See Abuse.*

Alias process. *See that title.*

Compulsory process. *See Compulsory.*

Criminal process. *See Warrant.*

Final process. The last process in an action; *i.e.* process issued to enforce execution of judgment.

Irregular process. Term is usually applied to process not issued in strict conformity with the law, whether the defect appears upon the face of the process, or by reference to extrinsic facts, and whether such defects render the process absolutely void or only voidable. Under current practice, a defective summons may be amended under Rule of Civil Proc. 15.

Judicial process. In a wide sense, this term may include all the acts of a court from the beginning to the end of its proceedings in a given cause; but more specifically it means the writ, summons, mandate, or other process which is used to inform the defendant of the institution of proceedings against him and to compel his appearance, in either civil or criminal cases.

Legal process. This term is sometimes used as equivalent to "lawful process." Thus, it is said that legal process means process not merely fair on its face, but in fact valid. But properly it means a summons, writ, warrant, mandate, or other process issuing from a court.

Mesne process. As distinguished from *final* process, this signifies any writ or process issued between the commencement of the action and the suing out of execution. "Mesne" in this connection may be defined as intermediate; intervening; the middle between two extremes. The writ of *capias ad respondendum* was called "mesne" to distinguish it, on the one hand, from the original process by which a suit was formerly commenced; and, on the other, from the final process of execution.

Original process. That by which a judicial proceeding is instituted; process to compel the appearance of the defendant (*i.e.* summons). Distinguished from "mesne" process, which issues, during the progress of a suit, for some subordinate or collateral purpose; and from "final" process, which is process of execution. *See Summons.*

Process of interpleader. A means of determining the right to property claimed by each of two or more persons, which is in the possession of a third. *See Interpleader.*

Process of law. See Due process of law.

Regular process. Such as is issued according to rule and the prescribed practice, or which emanates, lawfully and in a proper case, from a court or magistrate possessing jurisdiction.

Service of process. See Service.

Summary process. Such as is immediate or instantaneous, in distinction from the ordinary course, by emanating and taking effect without intermediate applications or delays. In some jurisdictions (e.g. Massachusetts), term used to describe action for eviction of tenant.

Trustee process. The name given in some states (particularly in New England) to the process of garnishment or foreign attachment.

Void process. Such as was issued without power in the court to award it, or which the court had not acquired jurisdiction to issue in the particular case, or which fails in some material respect to comply with the requisite form of legal process.

Process agent. Person authorized to accept service of process in behalf of another (e.g. on behalf of corporation).

Processioning. Subjecting to some special treatment, to prepare for the market, to convert into marketable form, to make usable, marketable or the like. *State v. Four States Drilling Co.*, 278 Ala. 273, 177 So.2d 828, 831.

A survey and inspection of boundaries formerly performed in some of the American colonies by the local authorities. It was analogous in part to the English perambulation (*q.v.*), and was superseded by the introduction of the practice of accurate surveying and of recording.

Process patent. A process patent describes and claims a new and useful method to produce a desired result or any new or useful improvement thereof. 35 U.S.C.A. §§ 100, 100. See also Process (*Patent Law*).

Process server. Person authorized by law (e.g. sheriff) to serve process papers on defendant.

Processum continuando /prəsésəm kəntinywándow/. In old English practice, a writ for the continuance of process after the death of the chief justice or other justices in the commission of *oyer* and *terminer*.

Processus legis est gravis vexatio; executio legis coronat opus /prəsésəm líjjes ést gréyvas vekséysh(iy)ow; éksəkyúwsh(iy)ow kərównət ówpəs/. The process of the law is a grievous vexation; the execution of the law crowns the work. The proceedings in an action while in progress are burdensome and vexatious; the execution, being the end and object of the action, crowns the labor, or rewards it with success.

Procès-verbal. In French law, a true relation in writing in due form of law, of what has been done and said verbally in the presence of a public officer, and what he himself does upon the occasion. It is a species of inquisition of office, and must be signed by the officer.

Prochein ami /prəshén əmíy/. (Spelled, also, *prochein amy* and *prochain amy*.) Next friend. As an infant cannot legally sue in his own name, the action must be brought by his *prochein ami*; that is, some friend (not being his guardian) who will appear as plaintiff in his name.

Prochronism /pró(w)krə'nizəm/. An error in chronology, consisting in dating a thing before it happened.

Procinctus /prə'siŋ(k)təs/. Lat. In the Roman law, a girding or preparing for battle. *Testamentum in procinctu*, a will made by a soldier, while girding himself, or preparing to engage in battle.

Proclaim. To promulgate; to announce; to publish, by governmental authority, intelligence of public acts or transactions or other matters important to be known by the people. To give wide publicity to; to disclose.

Proclamation. The act of publicly proclaiming or publishing; a formal declaration; an avowal; a public announcement giving notice of a governmental act that has been done or is to be done. The act of causing some governmental matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority, usually by a high governmental executive (President, Governor, Mayor).

The declaration made by the bailiff, by authority of the court, that something is about to be done.

In equity practice, proclamation made by a sheriff upon a writ of attachment, summoning a defendant who has failed to appear personally to appear and answer the plaintiff's bill.

Proclamation by lord of manor. In old English law, proclamation made by the lord of a manor (thrice repeated) requiring the heir or devisee of a deceased copyholder to present himself, pay the fine, and be admitted to the estate; failing which appearance, the lord might seize the lands *quousque* (provisionally).

Proclamation of a fine. In old English law, the notice or proclamation at common law which was made after the engrossment of a fine of lands, and which consisted in its being openly read in court sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which, however, was afterwards reduced to one reading in each term.

Proclamation of exigents /pròkləméyshən əv égzəjənts/. In old English law, when an *exigent* was awarded, a writ of proclamation issued, at the same time, commanding the sheriff of the county wherein the defendant dwelt to make three proclamations thereof in places the most notorious, and most likely to come to his knowledge, a month before the outlawry should take place.

Proclamation of rebellion. In old English law, a proclamation to be made by the sheriff commanding the attendance of a person who had neglected to obey a subpoena or attachment in chancery. If he did not surrender himself after this proclamation, a commission of rebellion issued.

Proclamation of recusants /pròklámeyshən əv rékyazənts/°rəkyúwzənts/. A proclamation whereby recusants were formerly convicted, on non-appearance at the assizes.

Proclamator /pròklámeytər/. An officer of the English court of common pleas.

Pro confesso /pròw kənfésow/. For confessed; as confessed. A term applied to a bill in equity, and the decree founded upon it, where no answer is made to it by the defendant. Under rules practice, this has been replaced by a default for want of prosecution. Fed.R. Civil P. 55(a).

Pro consilio /pròw kənsil(i)yow/. For counsel given. An annuity *pro consilio* amounts to a condition, but in a feoffment or lease for life, etc., it is the consideration, and does not amount to a condition; for the state of the land by the feoffment is executed, and the grant of the annuity is executory.

Pro-consul /pròwkònsəl/. Lat. In the Roman law, originally a consul whose command was prolonged after his office had expired. An officer with consular authority, but without the title of "consul." The governor of a province.

Pro corpore regni /pròw kòrpəri régnay/. In behalf of the body of the realm.

Procreation. The generation of children.

Proctor /pròktər/. One appointed to manage the affairs of another or represent him in judgment. A procurator, proxy, or attorney. Formerly, an officer of the admiralty and ecclesiastical courts whose duties and business correspond exactly to those of an attorney at law or solicitor in chancery. *See also* Power of attorney; Procuration; Proxy.

Procuracy /pròkyərəsiy/. The writing or instrument which authorizes a procurator to act.

Procurador del comun /pròkuraðór dèl komúwn/. Sp. In Spanish law, an officer appointed to make inquiry, put a petitioner in possession of land prayed for, and execute the orders of the executive in that behalf. *Le-compte v. U. S.*, 52 U.S. (11 How.) 115, 126, 13 L.Ed. 627.

Procurare /pròkyərəriy/. Lat. To take care of another's affairs for him, or in his behalf; to manage; to take care of or superintend.

Procuratio /pròkyərəysh(i)yow/. Lat. Management of another's affairs by his direction and in his behalf; procuration; agency.

Procuratio est exhibitio sumptuum necessariorum facta praelatis, qui dioceses peragrando, ecclesias subjectas visitant /pròkyərəysh(i)yow èst èksəbìsh(i)yow sàm(p)tyuwəm nèsəsəriyórəm fəktə prələytəs, kway dáyəsízyyz pèhrəgrándow, əklízyiyəs səbjéktəs vízítənt/. Procuration is the providing of necessaries for the bishops, who, in traveling through their dioceses, visit the churches subject to them.

Procuration /pròkyərəyshən/. Agency; proxy; the act of constituting another one's attorney in fact. The act

by which one person gives power to another to act in his place, as he could do himself. Action under a power of attorney or other constitution of agency. Indorsing a bill or note "by procuration" is doing it as proxy for another or by his authority. The use of the word procuration (usually, *per procuratione*, or abbreviated to *per proc.* or *p. p.*) on a promissory note by an agent is notice that the agent has but a limited authority to sign.

An *express* procuration is one made by the express consent of the parties. An *implied* or *tacit* procuration takes place when an individual sees another managing his affairs and does not interfere to prevent it. Procurations are also divided into those which contain absolute power, or a general authority, and those which give only a limited power.

Also, the act or offence of procuring women for lewd purposes.

See also Proctor; Procure; Proxy.

Procurationem adversus nulla est præscriptio /pròkyərəyshiyównəm ədvərsəs nələ èst prəskrípsh(i)yow/. There is no prescription against procuration.

Procuration fee, or money /pròkyərəyshən fíy/°máníy/. In English law, brokerage or commission allowed to scriveners and solicitors for obtaining loans of money.

Procurator /pròkyərəytər/. In the civil law, a proctor; a person who acts for another by virtue of a procuration.

In old English law, an agent or attorney; a bailiff or servant. A proxy of a lord in parliament.

In ecclesiastical law, one who collected the fruits of a benefice for another. An advocate of a religious house, who was to solicit the interest and plead the causes of the society. A proxy or representative of a parish church.

See Proctor; Procuration.

Procuratores ecclesiæ parochialis /pròkyərətóriyz əklízyiy pərwókiyéyləs/. The old name for churchwardens.

Procurator in rem suam /pròkyərəyðər in réms(y)úwəm/. Proctor (attorney) in his own affair, or with reference to his own property. This term is used in Scotch law to denote that a person is acting under a procuration (power of attorney) with reference to a thing which has become his own property.

Procuratorium /pròkyərətóriyəm/. In old English law, the procuratory or instrument by which any person or community constituted or delegated their *procurator* or proctors to represent them in any judicial court or cause.

Procurator litis /pròkyərəyðər láytəs/. In the civil law, one who by command of another institutes and carries on for him a suit. *Procurator* is properly used of the attorney of *actor* (the plaintiff), *defensor* of the attorney of *reus* (the defendant). It is distinguished from *advocatus*, who was one who undertook the defence of persons, not things, and who was generally the patron of the person whose defence he prepared, the person himself speaking it. It is also distinguished from *cognitor* who

conducted the cause in the presence of his principal, and generally in cases of citizenship; whereas the procurator conducted the cause in the absence of his principal.

Procurator negotiorum /prøkyarétar nægòwshiyòram/. In the civil law, an attorney in fact; a manager of business affairs for another person.

Procurator provinciae /prøkyarétar prævínshiyiy/. In Roman law, a provincial officer who managed the affairs of the revenue, and had a judicial power in matters that concerned the revenue.

Procuratrix /prøkyarétræks/. In old English law, a female agent or attorney in fact.

Procure. To initiate a proceeding; to cause a thing to be done; to instigate; to contrive, bring about, effect, or cause. To persuade, induce, prevail upon, or cause a person to do something. *Rose v. Hunter*, 155 Cal.App.2d 319, 317 P.2d 1027, 1030. To obtain, as a prostitute, for another. Procure connotes action and means to cause, acquire, gain, get, obtain, bring about, cause to be done. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589, 593. To find or introduce;—said of a broker who obtains a customer. To bring the seller and the buyer together so that the seller has an opportunity to sell. *See also* Finder; Pander; Procurer.

Procurement. The act of obtaining, attainment, acquisition, bringing about, effecting. *Ford v. City of Caldwell*, 79 Idaho 499, 321 P.2d 589, 593. *See also* Procure.

Procurement contract. A government contract with a manufacturer or supplier of goods or machinery or services under the terms of which a sale or service is made to the government. Such contracts, including the bidding process, are governed by government regulations, standard forms, etc. *See* Federal Acquisition Regulations.

Procurer /prækýurər/. One who prevails upon, induces or persuades a person to do something. One who procures for another the gratification of his lusts; a pimp; a panderer. One who solicits trade for a prostitute or lewd woman. One that procures the seduction or prostitution of girls. The offense is punishable by statute. *See e.g.* Model Penal Code, § 251.2.

One who uses means to bring anything about, especially one who does so secretly and corruptly. As regards solicitation of crime, *see* Solicitation.

Procureur /prøkyur(y)úr/. In French law, an attorney; one who has received a commission from another to act on his behalf. There were in France two classes of *procureurs*: *Procureurs ad negotia*, appointed by an individual to act for him in the administration of his affairs; persons invested with a power of attorney; corresponding to "attorneys in fact." *Procureurs ad lites* were persons appointed and authorized to act for a party in a court of justice. These corresponded to attorneys at law (now called, in England, "solicitors of the supreme court"). The order of *procureurs* was abolished in 1791, and that of *avoués* established in their place.

Procureur de la république /prøkyur(y)úr də la røypublyk/. (Formerly *procureur du roi*.) In French

law, a public prosecutor, with whom rests the initiation of all criminal proceedings. In the exercise of his office (which appears to include the apprehension of offenders) he is entitled to call to his assistance the public force (*posse comitatus*); and the officers of police are auxiliary to him.

Procureur general, or imperial /prøkyur(y)úr jènəral /'impəriyál/. In French law, an officer of the imperial court, who either personally or by his deputy prosecuted every one who was accused of a crime according to the forms of French law. His functions were apparently confined to preparing the case for trial at the assizes, assisting in that trial, demanding the sentence in case of a conviction, and being present at the delivery of the sentence. He had a general superintendence over the officers of police and of the *juges d'instruction*, and he required from the *procureur du roi* a general report once in every three months.

Procuring cause. The proximate cause; the cause originating a series of events, which, without break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with "efficient cause."

A broker will be regarded as the "procuring cause" of a sale, so as to be entitled to commission, if his or her efforts are the foundation on which the negotiations resulting in a sale are begun. A cause originating a series of events which without break in their continuity result in accomplishment of prime objective of the employment of the broker who is producing a purchaser ready, willing and able to buy real estate on the owner's terms. *Mohamed v. Robbins*, 23 Ariz.App. 195, 531 P.2d 928, 930.

See also Producing cause; Proximate cause.

Pro defectu emptorum /pròw dəfèkt(y)uw em(p)tòrəm/. For want (failure) of purchasers.

Pro defectu exitus /pròw dəfèkt(y)uw égzətəs/. For, or in case of, default of issue.

Pro defectu hæredis /pròw dəfèkt(y)uw hæriydəs/. For want of an heir.

Pro defectu justitiæ /pròw dəfèkt(y)uw jəstíshiyiy/. For defect or want of justice.

Pro defendente /pròw dəfəndéntiy/. For the defendant. Commonly abbreviated "*pro def.*"

Pro derelicto /pròw dəhrèlíktow/. As derelict or abandoned. A species of usucaption in the civil law.

Prodigal. Wasteful; extravagant. A spendthrift.

In civil law, a person who, though of full age, is incapable of managing his affairs, and of the obligations which attend them, in consequence of his bad conduct, and for whom a curator is therefore appointed. *See* Prodigus.

Pro dignitate regali /pròw dignatéyiy rəgéylay/. In consideration of the royal dignity.

Prodigus /pródægəs/. Lat. In Roman law, a prodigal; a spendthrift; a person whose extravagant habits manifested an inability to administer his own affairs, and for whom a guardian might therefore be appointed.

Prodition /prowdīshən/. Treason; treachery.

Proditor /prówdətər/. A traitor.

Proditorie /prówdətóriiy/. Treasonably. This is a technical word formerly used in indictments for treason, when they were written in Latin.

Pro diviso /pròw dāváyow/. As divided; *i.e.*, in severalty.

Pro domino /pròw dómənow/. As master or owner; in the character of master.

Pro donato /pròw dənáyow/. As a gift; as in case of gift; by title of gift. A species of usucaption in the civil law.

Pro dote /pròw dówtiy/. As a dowry; by title of dowry. A species of usucaption.

Produce /pró(w)d(y)uws/, *n.* The product of natural growth, labor, or capital. Articles produced or grown from or on the soil, or found in the soil.

Produce /prəd(y)úws/, *v.* To bring forward; to show or exhibit; to bring into view or notice; as, to present a play, including its presentation in motion pictures. To produce witnesses or documents at trial in obedience to a subpoena (Fed.R.Civil P. 45; Fed.R.Crim.P. 17); or to be compelled to produce materials subject to discovery rules (Fed.R.Civil P. 37; Fed.R.Crim.P. 16).

To make, originate, or yield, as gasoline. To bring to the surface, as oil.

To yield, as revenue. Thus, sums are "produced" by taxation, not when the tax is levied, but when the sums are collected.

Producent /prəd(y)úwsənt/. The party calling a witness under the old system of the English ecclesiastical courts.

Producer. One who produces, brings forth, or generates. Boland v. Cecil, 65 Cal.App.2d Supp. 832, 150 P.2d 819, 822. Term is commonly used to denote person who raises agricultural products and puts them in condition for the market. Tennessee Burley Tobacco Growers' Ass'n v. Commodity Credit Corp., C.A.Tenn., 350 F.2d 34, 41.

Producer price index. Measure of wholesale price changes issued monthly by U.S. Bureau of Labor Statistics. Compare Consumer Price Index.

Producing. Bring about; to cause to happen or take place, as an effect or result. Strong v. Aetna Casualty & Surety Co., Tex.Civ.App., 170 S.W.2d 786, 788.

Producing cause. Respecting broker's commission, is act which, continuing in unbroken chain of cause and effect, produces result. Schebesta v. Stewart, Tex.Civ. App., 37 S.W.2d 781, 786. A producing cause of an employee's death for which compensation is sought is that cause which, in a natural and continuous sequence, produces the death, and without which death would not

have occurred. Jones v. Traders & General Ins. Co., 140 Tex. 599, 169 S.W.2d 160, 162. A producing cause is an efficient, existing, or contributing cause which, in natural and continuing sequence, produces the injury or damage complained of, if any. O. M. Franklin Serum Co. v. C. A. Hoover and Son, Tex.Civ.App., 437 S.W.2d 613, 619. See also Procuring cause; Proximate cause.

Product. With reference to property, term refers to proceeds; yield; income; receipts; return. Goods produced or manufactured, either by natural means, by hand, or with tools, machinery, chemicals, or the like. Something produced by physical labor or intellectual effort or something produced naturally or as result of natural process as by generation or growth. Minnesota Power & Light Co. v. Personal Property Tax, Taxing Dist., City of Fraser, School Dist. No. 695, 289 Minn. 64, 182 N.W.2d 685, 691.

Production. Process or act of producing. That which is produced or made; *i.e.* goods. Fruit of labor, as the productions of the earth, comprehending all vegetables and fruits; the productions of intellect, or genius, as poems and prose compositions; the productions of art, as manufactures of every kind.

Production for commerce. Within Fair Labor Standards Act, includes production of goods which, at time of production, employer, according to normal course of his business, intends or expects to move in interstate commerce immediately following initial sale. Fair Labor Standards Act of 1938, §§ 6, 7; 29 U.S.C.A. §§ 206, 207. Hill v. Janes, D.C.Ky., 59 F.Supp. 569, 572.

Production of suit. In common law pleading, the formula, "and therefore [or thereupon] he brings his suit," etc., with which declarations always conclude. This referred to the production by the plaintiff of his *secta* or suit, *i.e.* persons prepared to confirm what he had stated in the declaration.

Productio sectæ /prədáksh(iy)ow séktiy/. In old English law, production of suit; the production by a plaintiff of his *secta* or witnesses to prove the allegations of his count.

Product liability. Refers to the legal liability of manufacturers and sellers to compensate buyers, users, and even bystanders, for damages or injuries suffered because of defects in goods purchased. A tort which makes a manufacturer liable if his product has a defective condition that makes it unreasonably dangerous to the user or consumer. Cobbins v. General Acc. Fire & Life Assur. Corp., 3 Ill.App.3d 379, 279 N.E.2d 443, 446.

Although the ultimate responsibility for injury or damage in a products liability case most frequently rests with the manufacturer, liability may also be imposed upon a retailer, occasionally upon a wholesaler or middleman, a bailor or lessor, and infrequently upon a party wholly outside the manufacturing and distributing process, such as a certifier. This ultimate responsibility may be imposed by an action by the plaintiff against the manufacturer directly, or by a claim for indemnification, asserted by way of a cross-claim or third party claim by the retailer or wholesaler, or others who might

be held liable for the injury caused by a defective product. Under modern principles of products liability, and with the elimination of privity requirements in most instances, recovery is no longer limited to the purchaser of the product, or even to a user, but may extend to the non-user; the bystander who is injured or damaged by a defective product, for example. However, the term "products liability" normally contemplates injury or damage caused by a defective product, and if loss occurs as a result of a condition on the premises, or as a result of a service, as distinguished from loss occasioned by a defective product, a products liability claim does not ordinarily arise, even though a product may be involved.

For statutory time limits in bringing products liability actions, see Statute (*Statute of repose*).

See also Economic loss; Enterprise liability; Intended use doctrine; Latent defect; Privity; Strict liability; Warranty.

Product liability insurance. Type of insurance coverage which protects manufacturers and suppliers when claims are made for injuries and damage incurred in the use of their goods or products.

Product market. In antitrust law, the product market includes all other products that can be reasonably substituted by consumers for the product of the business under investigation. The determination of the product market is important in the assessment of the market power of the business.

Pro emptore /prɔw em(ptɔriy)/. As a purchaser; by the title of a purchaser. A species of usucaption.

Pro facto /prɔw fæktow/. For the fact; as a fact; considered or held as a fact.

Pro falso clamore suo /prɔw fɔl(t)sow kləmɔriy s(y)úwɔw/. A nominal amercement of a plaintiff for *his false claim*, which used to be inserted in a judgment for the defendant. Obsolete.

Profane. Irreverence toward God or holy things. Writing, speaking, or acting, in manifest or implied contempt of sacred things. *Town of Torrington v. Taylor*, 59 Wyo. 109, 137 P.2d 621, 624; *Duncan v. U. S.*, C.C.A.Or., 48 F.2d 128, 133. That which has not been consecrated.

Profanity. Irreverence towards sacred things; particularly, an irreverent or blasphemous use of the name of God. Vulgar, irreverent, or coarse language. It is a federal offense to utter an obscene, indecent, or profane language on the radio. 18 U.S.C.A. § 1464. See also Obscenity.

Profectitius /prɔw fɛktish(iy)əs/. Lat. In the civil law, that which descends to us from our ascendants.

Profer or **Profert** /prɔw fɛr/. In old English law, an offer or proffer; an offer or endeavor to proceed in an action, by any man concerned to do so. A return made by a sheriff of his accounts into the exchequer; a payment made on such return. See *Profert in curia*.

Profert in curia /prɔfɛrt ən kyúriyɛ(m)/. L. Lat. (Sometimes written *profert in curiam*.) He produces in

court. In old practice, these words were inserted in a declaration, as an allegation that the plaintiff was ready to produce, or did actually produce, in court, the deed or other written instrument on which his suit was founded, in order that the court might inspect the same and the defendant hear it read. The same formula was used where the defendant pleaded a written instrument.

An allegation formally made in a pleading, where a party alleged a deed, that he showed it in court, it being in fact retained in his own custody. But by virtue of the allegation, the deed was then constructively in possession of the court. The profer of any recorded instrument, as letters patent, was equivalent to annexing a copy. This result did not occur, however, in the case of other documents, such as a note.

Profess. To make open declaration of; to make public declaration or avowal.

Professio juris /prɔfɛsh(iy)ɔw júrəs/. In conflicts and contract law, a recognition of the right of parties to a contract to stipulate in the document the law which will govern their contract.

Profession. A vocation or occupation requiring special, usually advanced, education, knowledge, and skill; e.g. law or medical professions. Also refers to whole body of such profession.

The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual.

The term originally contemplated only theology, law, and medicine, but as applications of science and learning are extended to other departments of affairs, other vocations also receive the name, which implies professed attainments in special knowledge as distinguished from mere skill.

Act of professing; a public declaration respecting something. Profession of faith in a religion.

Professional. One engaged in one of learned professions or in an occupation requiring a high level of training and proficiency. *Reich v. City of Reading*, 3 Pa.Cmwth. 511, 284 A.2d 315, 319.

Professional association. Any group of professional people organized to practice their profession together, though not necessarily in corporate or partnership form. A group of professionals organized for education, social activity, lobbying and the like; e.g. bar or medical association. See also Corporation (*Professional corporation*).

Professional conduct or responsibility. As regards the legal profession, see Canon; Model Rules of Professional Conduct.

Professional corporation. See Corporation.

Proffer. To offer or tender, as, the production of a document and offer of the same in evidence.

Proffered evidence. See Proffer.

Proficua /prɔfɪkyuɔw/. L. Lat. In old English law, profits; especially the "issues and profits" of an estate in land.

Profit. Most commonly, the gross proceeds of a business transaction less the costs of the transaction; *i.e.* net proceeds. Excess of revenues over expenses for a transaction; sometimes used synonymously with net income for the period. Gain realized from business or investment over and above expenditures.

Profit means accession of good, valuable results, useful consequences, avail, gain, as an office of profit, excess of returns over expenditures or excess of income over expenditure. *U. S. v. Mintzes, D.C.Md., 304 F.Supp. 1305, 1312.*

The benefit, advantage, or pecuniary gain accruing to the owner or occupant of land from its actual use; as in the familiar phrase "rents, issues and profits," or in the expression "mesne profits."

A division sometimes made of incorporeal hereditaments. Profits are divided into *profits à prendre* and *profits à rendre (q.v.)*.

Community of profits. See that title.

Gross profit. The difference between sales and cost of goods sold, but excluding expenses and taxes. See also Gross income.

Mesne profits. Intermediate profits; that is, profits which have been accruing between two given periods. Value of use or occupation of land during time it was held by one in wrongful possession and is commonly measured in terms of rents and profits. Thus, after a party has recovered the land itself in an action of ejectment, he frequently brings another action for the purpose of recovering the profits which have been accruing or arising out of the land between the time when his title to the possession accrued or was raised and the time of his recovery in the action of ejectment, and such an action is thence termed an "action for mesne profits."

Net profit. The amount arrived at by deducting from total revenue the cost of goods sold and all expenses. See also Net income; Net profits.

Operating profit. The profit arrived at by deducting from sales all expenses attributable to operations but excluding expenses and income related to non-operating activities such as interest payments.

Paper profit. Profit not yet realized as derived from an appreciation in value of an asset not yet sold (*e.g.* gain on an unsold stock).

Profit and loss. The gain or loss arising from goods bought or sold, or from carrying on any other business, the former of which, in bookkeeping, is placed on the creditor's side; the latter on the debtor's side. See also Profit and loss account; Profit and loss statement.

Profit à prendre /prófəd à prándər/. Called also "right of common." A right exercised by one person in the soil of another, accompanied with participation in the profits of the soil thereof. A right to take a part of the soil or produce of the land. A right to take from the soil, such as by logging, mining, drilling, etc. The taking (profit) is the distinguishing characteristic from an easement.

Right of "profit à prendre" is a right to make some use of the soil of another, such as a right to mine metals, and it carries with it the right of entry and the right to remove and take from the land the designated products or profit and also includes right to use such of the surface as is necessary and convenient for exercise of the profit. *Costa Mesa Union School Dist. of Orange County v. Security First Nat. Bank, 254 Cal.App.2d 4, 62 Cal.Rptr. 113, 118.*

Profit à rendre /prófəd à rándər/. Such as is received at the hands of and rendered by another. The term comprehends rents and services.

Surplus profits. Within the meaning of a statute prohibiting the declaration of corporate dividends other than from such profits, means the excess of receipts over expenditures, or net earnings or receipts, or gross receipts, less expenses of operation. Of a corporation, the difference over and above the capital stock, debts, and liabilities.

Undistributed profits. Profits which have not been distributed to the stockholders in the form of dividends though earned by the corporation. See also Undistributed profits tax.

Undivided profits. See that title.

Profit and loss account. A transfer account of all income and expense accounts which is closed into the retained earnings of a corporation or the capital account of a partnership.

Profit and loss statement. A statement showing the income, costs and expenses of a business over a specific period of time; the difference being the income or loss for the period. See also Income statement.

Profiteering. Taking advantage of unusual or exceptional circumstances to make excessive profits; *e.g.* selling of scarce or essential goods at inflated prices during time of emergency or war. See Insider trading.

Profit margin. Sales minus all expenses as a single amount. The ratio of income to sales revenue. Frequently used to mean the ratio of sales minus all operating expenses divided by sales. A high profit margin is desirable as it indicates that a company is receiving a good return on the cost of goods sold.

Profit-sharing plan. A plan established and maintained by an employer to provide for the participation in the profits of the company by the employees or their beneficiaries. In order to qualify for tax benefits, the plan must provide a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan after a fixed number of years, the attainment of a stated age, or upon the prior occurrence of some event such as layoff, illness, disability, retirement, death, or severance of employment. Such plans are regulated by the federal Employee Retirement Income Security Act (ERISA). See also Employee Stock Ownership Plan (ESOP).

Qualified profit sharing plan. An employer-sponsored plan that meets the requirements of I.R.C. § 401. If these requirements are met, none of the employer's contributions to the plan will be taxed to the employee until distributed to him or her (§ 402). The employer will be allowed a deduction in the year the contributions are made (§ 404).

Pro forma /pròw fórmə/. As a matter of form or for the sake of form. Used to describe accounting, financial, and other statements or conclusions based upon assumed or anticipated facts.

The phrase "pro forma," in an appealable decree or judgment, usually means that the decision was rendered, not on a conviction that it was right, but merely to facilitate further proceedings. *Cramp & Sons S. & E. Bldg. Co. v. Turbine Co.*, 228 U.S. 645, 33 S.Ct. 722, 57 L.Ed. 1003.

Progener /pròw jynər/. Lat. In the civil law, a grandson-in-law.

Progressive tax. A type of graduated tax which applies higher tax rates as the income of the taxpayer increases. *Compare* Regressive tax.

Pro hac vice /pròw hæk váysiy/. For this turn; for this one particular occasion. For example, an out-of-state lawyer may be admitted to practice in a local jurisdiction for a particular case only.

Prohibet ne quis faciat in suo quod nocere possit alieno /pròw(h)əbýtər nìy kwìs fəshiyət ìn s(y)úwòw kwòd nòsəriy pòsət əliiyínòw/. It is forbidden for any one to do or make on his own [land] what may injure another's.

Prohibit. To forbid by law; to prevent;—not synonymous with "regulate."

Prohibited degrees. Those degrees of relationship by consanguinity which are so close that marriage between persons related to each other in any of such degrees is forbidden by law; *e.g.* brother and sister.

Prohibitio de vasto, directa parti /pròw(h)əbìsh(iy)òw diy vèstòw, dèréktə pártay/. A judicial writ which was formerly addressed to a tenant, prohibiting him from waste, pending suit.

Prohibition. Inhibition; interdiction. Act or law prohibiting something, as 18th Amendment to U.S.Const. (1920) prohibited the manufacture, sale, or transportation of intoxicating liquors, except for medicinal purposes (such Prohibition Amendment was repealed by 21st Amendment in 1933).

Writ or process. Prohibition is that process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi-judicial powers from exceeding its jurisdiction in matters over which it has cognizance or usurping matters not within its jurisdiction to hear or determine. *The Florida Bar, Fla.*, 329 So.2d 301, 302. A means of restraint on judicial personnel or bodies to prevent usurpation of judicial power, and its essential function is to confine inferior courts to their proper jurisdiction and to prevent them from acting

without or in excess of their jurisdiction; it is preventive in nature rather than corrective. *State ex rel. McDonnell Douglas Corp. v. Gaertner*, Mo.App., 601 S.W.2d 295, 296.

The writ of prohibition is the counterpart of the writ of mandamus.

Pro illa vice /pròw ìlə váysiy/. For that turn.

Pro indefenso /pròw ìndəfénsòw/. As undefended; as making no defense.

Pro indiviso /pròw ìndəváyzów/. As undivided; in common. The joint occupation or possession of lands. Thus, lands held by coparceners are held *pro indiviso*; that is, they are held undividedly, neither party being entitled to any specific portions of the land so held, but both or all having a joint interest in the undivided whole.

Pro interesse suo /pròw ìntərəsìy s(y)úwòw/. According to his interest; to the extent of his interest. Thus, a third party may be allowed to intervene in a suit *pro interesse suo*.

Examination pro interesse suo. When a person claims to be entitled to an estate or other property sequestered, whether by mortgage, judgment, lease, or otherwise, or has a title paramount to the sequestration, he should apply to the court to direct an inquiry whether the applicant has any, and what, interest in the property; and this inquiry is called an "examination *pro interesse suo*." *Krippendorf v. Hyde*, 110 U.S. 276, 4 S.Ct. 27, 28 L.Ed. 145; *Hitz v. Jenks*, 185 U.S. 155, 22 S.Ct. 598, 46 L.Ed. 851.

Projectio /prəjéksh(iy)òw/. Lat. In old English law, a throwing up of earth by the sea.

Projet /pròwzhéy/. Fr. In international law, the draft of a proposed treaty or convention.

Projet de loi /pròwzhéy dəlwá/. A bill in a legislative body.

Pro læsione fidei /pròw liyzhìyówniy fáydìyà/. For breach of faith.

Pro legato /pròw ləgéytòw/. As a legacy; by the title of a legacy. A species of usucaption.

Prolem ante matrimonium natam, ita ut post legitimam, lex civilis succedere facit in hereditate parentum; sed prolem, quam matrimonium non parit, succedere non sinit lex anglorum /pròwləm ántiy mättrəmówn(i)yəm néytəm, áytə àt pówst ləjítáməm, léks sívələs səkshiytəriy féysət ìn hərədətéytyi pərəntəm; sèd pròwləm, kwàm mättrəmówn(i)yəm nòn pèrət, səkshiydəriy nòn sáynt léks ənglórəm/. The civil law permits the offspring born before marriage, provided such offspring be afterwards legitimized, to be the heirs of their parents; but the law of the English does not suffer the offspring not produced by the marriage to succeed.

Proles /pròwliyz/. Lat. Offspring; progeny; the issue of a lawful marriage. In its enlarged sense, it signifies any children.

Proles sequitur sortem paternam /prówliyz sékwətər sórdəm pətárnəm/. The offspring follows the condition of the father.

Proletariat, proletariate /pròwletériyət/"tár"/. The class or body of proletarians. The class of unskilled laborers, without property or capital, engaged in the lower grades of work. The class of *proletarii* (see the next title); the lowest stratum of the people of a country, consisting mainly of the waste of other classes, or of those fractions of the population who, by their isolation and their poverty, have no place in the established order of society.

Proletarius /pròwletériyəs/. Lat. In Roman law, a proletary; a person of poor or mean condition; one among the common people whose fortunes were below a certain valuation; one of a class of citizens who were so poor that they could not serve the state with money, but only with their children (*proles*).

Prolicide /prówlásəyd/. A word used to designate the destruction of the human offspring. Jurists divide the subject into *feticide*, or the destruction of the *fetus in utero*, and *infanticide*, or the destruction of the new-born infant. See also Abortion.

Prolivity /prówliksədiy/. The unnecessary and superfluous statement of facts in pleading or in evidence.

Prolocutor /prəlók(y)ətər/prówlòk(y)ətər/. In ecclesiastical law, the president or chairman of a convocation. The speaker of the house of lords is called the prolocutor. The office belongs to the lord chancellor by prescription.

Prolongation /prówlɔŋgəyshən/. Time added to the duration of something; an extension of the time limited for the performance of an agreement.

Pro majori cautela /prów məjórəy kòtiylə/. For greater caution; by way of additional security. Usually applied to some act done, or some clause inserted in an instrument, which may not be really necessary, but which will serve to put the matter beyond any question.

Promatertera /pròwmətértərə/. Lat. In the civil law, a maternal great-aunt; the sister of one's grandmother.

Promatertera magna /pròwmətértərə mægna/. Lat. In the civil law, a great-great-aunt.

Promise. A declaration which binds the person who makes it, either in honor, conscience, or law, to do or forbear a certain specific act, and which gives to the person to whom made a right to expect or claim the performance of some particular thing. A declaration, verbal or written, made by one person to another for a good or valuable consideration, in the nature of a covenant by which the promisor binds himself to do or forbear some act, and gives to the promisee a legal right to demand and enforce a fulfillment. An express undertaking, or agreement to carry a purpose into effect. *E. I. Du Pont De Nemours & Co. v. Claiborne-Reno Co.*, C.C.A.Iowa, 64 F.2d 224.

An undertaking, however expressed, either that something shall happen, or that something shall not happen,

in the future. *Plumbing Shop, Inc. v. Pitts*, 67 Wash.2d 514, 408 P.2d 382, 384.

A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made. A promise may be stated in words either oral or written, or may be inferred wholly or partly from conduct. Restatement, Second, Contracts §§ 2, 4.

While a "promise" is sometimes loosely defined as a declaration by any person of his intention to do or forbear from anything at the request or for the use of another, it is to be distinguished, on the one hand, from a mere declaration of intention involving no engagement or assurance as to the future, and, on the other, from "agreement," which is an obligation arising upon reciprocal promises, or upon a promise founded on a consideration.

See also Aleatory promise; Breach of promise; Collateral promise; Conditional promise; Gratuitous promise; Illusory promise; Implied promise; Offer; Raising a promise.

Commercial law. An undertaking to pay and it must be more than an acknowledgment of an obligation. U.C.C. § 3-102(1)(c).

Fictitious promise. Sometimes called "implied promises," or "promises implied in law," occur in the case of those contracts which were invented to enable persons in certain cases to take advantage of the old rules of pleading peculiar to contracts, and which are not now of practical importance.

Illusory promise. A promise in which the promisor does not bind himself to do anything and hence it furnishes no basis for a contract because of the lack of consideration; e.g. a promise to buy whatever goods the promisor chooses to buy.

Mutual promises. Promises simultaneously made by and between two parties; each promise being the consideration for the other.

Naked promise. One given without any consideration, equivalent, or reciprocal obligation, and for that reason not enforceable at law.

New promise. An undertaking or promise, based upon and having relation to a former promise which, for some reason, can no longer be enforced, whereby the promisor recognizes and revives such former promise and engages to fulfill it.

Parol promise. A simple contract; a verbal promise.

Promise implied in fact. Promise implied in fact is merely tacit promise, one which is inferred in whole or in part from expressions other than words by promisor. *Cooke v. Adams*, Miss., 183 So.2d 925, 927.

Promise implied in law. Promise implied in law is one in which neither words nor conduct of party involved are promissory in form or justify inference of promise and term is used to indicate that party is under legally enforceable duty as he would have been, if he had in fact

made promise. *Cooke v. Adams*, Miss., 183 So.2d 925, 927.

Promise of marriage. A contract mutually entered into by a man and a woman that they will marry each other.

Promise to pay the debt of another. Within the statute of frauds, a promise to pay the debt of another is an undertaking by a person not before liable, for the purpose of securing or performing the same duty for which the party for whom the undertaking is made, continues liable.

Promisee. One to whom a promise has been made.

Promisor. One who makes a promise.

Promissor /prəmísər/. Lat. In the civil law, a promiser; properly the party who undertook to do a thing in answer to the interrogation of the other party, who was called the "stipulator."

Promissory /próməs(ò)riy/. Containing or consisting of a promise; in the nature of a promise; stipulating or engaging for a future act or course of conduct.

As to *promissory Oath*; *Representation*; and *Warranty*, see those titles.

Promissory estoppel. That which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise. "*Moore*" *Burger, Inc. v. Phillips Petroleum Co., Tex.*, 492 S.W.2d 934. Elements of a "promissory estoppel" are a promise clear and unambiguous in its terms, reliance by the party to whom the promise is made, with that reliance being both reasonable and foreseeable, and injury to the party asserting the estoppel as a result of his reliance. *James King & Son, Inc. v. De Santis Const. No. 2 Corp.*, 97 Misc.2d 1063, 413 N.Y.S.2d 78, 81. See *Restatement, Second, Contracts*, § 90.

Promissory fraud. A promise to perform made at a time when the promisor has a present intention not to perform. It is a misrepresentation of the promisor's frame of mind and is, for that reason a fact which makes it the basis of an action for deceit. It is sometimes called common law fraud.

Promissory note. A promise or engagement, in writing, to pay a specified sum at a time therein stated, or on demand, or at sight, to a person therein named, or to his order, or bearer. An unconditional written promise, signed by the maker, to pay absolutely and at all events a sum certain in money, either to the bearer or to a person therein designated or his order, at a time specified therein, or at a time which must certainly arrive.

A signed paper promising to pay another a certain sum of money. An unconditional written promise to pay a specified sum of money on demand or at a specified date. Such a note is negotiable if signed by the maker and containing an unconditional promise to pay a

sum certain in money either on demand or at a definite time and payable to order or bearer. U.C.C. § 3-104.

Promissory warranty. In insurance law, a promissory warranty is an absolute undertaking by insured, contained in a policy or in an instrument properly incorporated by reference, that certain facts or conditions pertaining to the risk insured against shall continue, or shall be done or omitted. *Reid v. Hardware Mut. Ins. Co. of Carolinas*, 252 S.C. 339, 166 S.E.2d 317, 321.

Promote. To contribute to growth, enlargement, or prosperity of; to forward; to further; to encourage; to advance.

Promoter. One who promotes, urges on, encourages, incites, advances, etc. One promoting a plan by which it is hoped to insure the success of a business, entertainment, etc. venture.

The persons who, for themselves or others, take the preliminary steps to the founding or organization of a corporation or other venture. Those persons who first associate themselves together for the purpose of organizing the company, issuing its prospectus, procuring subscriptions to the stock, securing a charter, etc. Incorporators. *Dickerman v. Northern Trust Co.*, 176 U.S. 181, 20 S.Ct. 311, 44 L.Ed. 423.

Prompt. To act immediately, responding on the instant.

Prompt delivery. Delivery as promptly as possible, all things considered.

Promptly. Adverbial form of the word "prompt," which means ready and quick to act as occasion demands. The meaning of the word depends largely on the facts in each case, for what is "prompt" in one situation may not be considered such under other circumstances or conditions. To do something "promptly" is to do it without delay and with reasonable speed. Application of *Beatlie*, 4 Storey 506, 180 A.2d 741, 744.

Prompt shipment. Shipment within a reasonable time, all things considered.

Promulgare /prò(w)məlgéry/. Lat. In Roman law, to make public; to make publicly known; to promulgate. To publish or make known a law after its enactment.

Promulgate or promulgation. /prò(w)məlgéyt/prəmálgéyt/. To publish; to announce officially; to make public as important or obligatory. The formal act of announcing a statute or rule of court. An administrative order that is given to cause an agency law or regulation to become known and obligatory.

Promutuum /prəmyúwtuywəm/. Lat. In the civil law, a *quasi* contract, by which he who receives a certain sum of money, or a certain quantity of fungible things, which have been paid to him through mistake, contracts towards the payer the obligation of returning him as much.

Pronepos /prównepòs/. Lat. In the civil law, a great-grandson.

Proneptis /prownéptəs/. Lat. In the civil law, a great-granddaughter; a niece's daughter.

Pro non scripto /prów nòn skríptow/. As not written; as though it had not been written; as never written.

Pronotary /prównówtəriy/. First notary. *See* Prothonotary.

Pronounce. To utter formally, officially, and solemnly; to declare or affirm; to declare aloud and in a formal manner. In this sense a court is said to "pronounce" judgment or a sentence.

Pronunciation /prənənsiyéyshən/. L. Fr. A sentence or decree.

Pronurus /prównərəs/. Lat. In the civil law, the wife of a grandson or great-grandson.

Proof. The effect of evidence; the establishment of a fact by evidence. *New England Newspaper Pub. Co. v. Bonner*, C.C.A.Mass., 77 F.2d 915, 916. Any fact or circumstance which leads the mind to the affirmative or negative of any proposition. The conviction or persuasion of the mind of a judge or jury, by the exhibition of evidence, of the reality of a fact alleged. *Ellis v. Wolfe-Shoemaker Motor Co.*, 227 Mo.App. 508, 55 S.W.2d 309.

The establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. *Calif. Evidence Code*, § 190.

See also Burden of going forward; Burden of persuasion; Burden of producing evidence; Burden of proof; Clear and convincing proof; Clear evidence or proof; Degree of proof; Evidence; Failure of proof; Inference; Offer of proof; Presumption; Reasonable doubt; Testimony.

Evidence and proof distinguished. Proof is the logically sufficient reason for assenting to the truth of a proposition advanced. In its juridical sense it is a term of wide import, and comprehends everything that may be adduced at a trial, within the legal rules, for the purpose of producing conviction in the mind of judge or jury, aside from mere argument; that is, everything that has a probative force intrinsically, and not merely as a deduction from, or combination of, original probative facts. But "evidence" is a narrower term, and includes only such kinds of proof as may be legally presented at a trial, by the act of the parties, and through the aid of such concrete facts as witnesses, records, or other documents. Thus, to urge a presumption of law in support of one's case is adducing proof, but it is not offering evidence. "Belief" is a subjective condition resulting from proof. It is a conviction of the truth of a proposition, existing in the mind, and induced by persuasion, proof, or argument addressed to the judgment. Proof is the result or effect of evidence, while evidence is the medium or means by which a fact is proved or disproved, but the words "proof" and "evidence" may be used interchangeably. Proof is the perfection of evidence; for without evidence there is no proof, although there may be evidence which does not amount to proof; for example, if a man is found murdered at a spot where another has been seen walking but a short time before, this fact will be *evidence* to show that the latter was the murderer, but, standing alone, will be very far from *proof* of it.

Affirmative proof. Evidence establishing the fact in dispute by a preponderance of the evidence. *See also* Preponderance of evidence.

Burden of proof. *See* that title.

Degree of proof. Refers to effect of evidence rather than medium by which truth is established, and in this sense expressions "preponderance of evidence" and "proof beyond reasonable doubt" are used. *See also* Degree of proof.

Full proof. *See* Full.

Half proof. *See* Half.

Negative proof. *See* *Positive proof, below*.

Positive proof. Direct or affirmative proof. That which directly establishes the fact in question; as opposed to *negative proof*, which establishes the fact by showing that its opposite is not or cannot be true.

Preliminary proof. *See* Preliminary.

Proof beyond a reasonable doubt. Such proof as precludes every reasonable hypothesis except that which it tends to support and which is wholly consistent with defendant's guilt and inconsistent with any other rational conclusion. *State v. Dubina*, 164 Conn. 95, 318 A.2d 95, 97. Such is the required standard of proof in criminal cases. *See also* Reasonable doubt. *Compare* Probable cause.

Proof evident or presumption great. As used in constitutional provisions that accused shall be bailable unless for capital offenses when the "proof is evident" or "presumption great," means evidence clear and strong, and which leads well guarded, dispassionate judgment to conclusion that accused committed offense and will be punished capitally. *Ex parte Coward*, 145 Tex.Cr.R. 593, 170 S.W.2d 754, 755; *Ex parte Goode*, 123 Tex.Cr.R. 492, 59 S.W.2d 841.

Proof of claim. Statement under oath filed in a bankruptcy proceeding by a creditor in which the creditor sets forth the amount owed and sufficient detail to identify the basis for the claim. Also used in probate proceedings to submit the amount owed by the decedent to the creditor and filed with the court for payment by the fiduciary. *See* Bankruptcy Code § 501.

Proof of debt. The formal establishment by a creditor of his debt or claim, in some prescribed manner (as, by his affidavit or otherwise), as a preliminary to its allowance, along with others, against an estate or property to be divided, such as the estate of a bankrupt or insolvent, a deceased person or a firm or company in liquidation. *See* *Proof of claim, above*.

Proof of loss. A formal statement made by the policyowner to the insurer regarding a loss, intended to give insurer enough information to enable it to determine the extent of its liability under a policy or bond.

Proof of service. Evidence submitted by a process server that he has made service on a defendant in an action. It is also called a return of service. *Fed.R.Civil P.* 4.

Proof of will. A term having the same meaning as "probate," (*q.v.*), and used interchangeably with it.

Standard of proof. A statement of how convincing the evidence must be in order for a party to comply with his/her burden of proof. The main standards of proof are: proof beyond a reasonable doubt (in criminal cases only), proof by clear and convincing evidence, and proof by a preponderance of the evidence.

Pro opere et labore /pròw ópàriy èt làbóriy/. For work and labor.

Propagate /própàgèyt/. To cause to spread.

Pro partibus liberandis /pròw pártàbàs liberéndàs/. An ancient writ for partition of lands between co-heirs.

Propatruus /prowpàtruwàs/. Lat. In the civil law, a great-grandfather's brother.

Propatruus magnus /prowpàtruwàs màgnàs/. In the civil law, a great-great-uncle.

Proper. That which is fit, suitable, appropriate, adapted, correct. Reasonably sufficient. Peculiar; naturally or essentially belonging to a person or thing; not common; appropriate; one's own. *See also* Reasonable.

Proper care. That degree of care which a prudent man should use under like circumstances. *Baskin v. Montgomery Ward & Co., C.C.A.N.C., 104 F.2d 531, 533.*

Proper evidence. Such evidence as may be presented under the rules established by law and recognized by the courts; *i.e.* admissible evidence; material, relevant evidence. *See e.g. Fed.R.Evid. 402.*

Proper feuds. In feudal law, the original and genuine feuds held by purely military service.

Proper independent advice. As to donor means that he had preliminary benefit of conferring upon subject of intended gift with a person who was not only competent to inform him correctly of its legal effect, but who was so disassociated from interests of donee as to be in position to advise with donor impartially and confidentially as to consequences to donor of his proposed gift.

Proper lookout. Duty, as imposed by law on all motorists, that requires motorist to use care, prudence, watchfulness, and attention of an ordinarily prudent person under same or similar circumstances. The duty of seeing that which is clearly visible or which in exercise of ordinary care would be visible, including watchfulness of movements of one's own vehicle as well as other things seen or seeable. *Lewis v. Super Valu Stores, Inc., D.C. Iowa, 249 F.Supp. 852, 853.* Such lookout as person of ordinary care and prudence would have kept under same or similar conditions. *Duncan v. Durham, Tex. Civ.App., 356 S.W.2d 377, 380. See also Lookout.*

Properly payable. Description of a check implying that the drawee-payor bank can and should pay it, and has a right to charge the amount against the drawer's account even though an overdraft results. *See U.C.C. § 4-104(1)(i).*

Proper party. As distinguished from a necessary party, is one who has an interest in the subject-matter of the

litigation, which may be conveniently settled therein. One without whom a substantial decree may be made, but not a decree which shall completely settle all the questions which may be involved in the controversy and conclude the rights of all the persons who have any interest in the subject of the litigation. *See Fed.R.Civil P. 19.*

A proper party is one who may be joined in action but whose nonjoinder will not result in dismissal. *Jones Knitting Corp. v. A. M. Pullen & Co., D.C.N.Y., 50 F.R.D. 311, 314.* Those without whom cause might proceed but whose presence will allow judgment more clearly to settle controversy among all parties. *Cities Service Oil Co. v. Kronewitter, 199 Kan. 228, 428 P.2d 804, 807. See also Parties.*

Property. That which is peculiar or proper to any person; that which belongs exclusively to one. In the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. *Fulton Light, Heat & Power Co. v. State, 65 Misc.Rep. 263, 121 N.Y.S. 536.* The term is said to extend to every species of valuable right and interest. More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude every one else from interfering with it. That dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects. The exclusive right of possessing, enjoying, and disposing of a thing. The highest right a man can have to anything; being used to refer to that right which one has to lands or tenements, goods or chattels, which no way depends on another man's courtesy.

The word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species of valuable right and interest, and includes real and personal property, easements, franchises, and incorporeal hereditaments, and includes every invasion of one's property rights by actionable wrong. *Labberton v. General Cas. Co. of America, 53 Wash.2d 180, 332 P.2d 250, 252, 254.*

Property embraces everything which is or may be the subject of ownership, whether a legal ownership, or whether beneficial, or a private ownership. *Davis v. Davis, Tex.Civ.App., 495 S.W.2d 607, 611.* Term includes not only ownership and possession but also the right of use and enjoyment for lawful purposes. *Hoffmann v. Kinealy, Mo., 389 S.W.2d 745, 752.*

Property, within constitutional protection, denotes group of rights inhering in citizen's relation to physical thing, as right to possess, use and dispose of it. *Cereghino v. State By and Through State Highway Commission, 230 Or. 439, 370 P.2d 694, 697.*

Goodwill is property, *Howell v. Bowden, Tex.Civ.App., 368 S.W.2d 842, 848;* as is an insurance policy and rights incident thereto, including a right to the proceeds, *Harris v. Harris, 83 N.M. 441, 493 P.2d 407, 408.*

Criminal law. "Property" means anything of value, including real estate, tangible and intangible personal property, contract rights, choses-in-action and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power. Model Penal Code, § 223.0. *See also Property of another, below.*

See also Chattel; Community property; Incorporeal property; Intangible property; Interest; Land; Literary property; Lost property; Marital property.

Classification

Property is either: real or immovable; or, personal or movable. Calif.Civil Code, § 657.

Absolute property. In respect to chattels, personal property is said to be "absolute" where a man has, solely and exclusively, the right and also the possession of movable chattels. In the law of wills, a bequest or devise "to be the absolute property" of the beneficiary may pass a title in fee simple. Or it may mean that the property is to be held free from any limitation or condition or free from any control or disposition on the part of others. *See Fee simple.*

Common property. A term sometimes applied to lands owned by a local government and held in trust for the common use of the inhabitants. Property owned by tenants in common. Also property owned jointly by husband and wife under the community property system. *See Community property, also Public property, below.*

Community property. *See that title.*

Ganancial property. *See that title.*

General property. The right and property in a thing enjoyed by the *general owner*. *See Owner.*

Intangible property. Property which cannot be touched because it has no physical existence such as claims, interests, and rights. *See also Intangible asset.*

Literary property. *See Literary.*

Mislaid property. Property which the owner has voluntarily parted with, with the intention of retrieving it later, but which cannot now be found. Does not include intentionally hidden property, and is distinguished from "lost" property which the owner has parted with casually and involuntarily. *Rofrano v. Duffy, C.A.N.Y., 291 F.2d 848, 850.*

Mixed property. Property which is personal in its essential nature, but is invested by the law with certain of the characteristics and features of real property. Heirlooms, fixtures, and title-deeds to an estate are of this nature.

Movable property. Property the location of which can be changed, including things growing on, affixed to, or found in land, and documents although the rights represented thereby have no physical location. "Immovable property" is all other property. Model Penal Code, § 223.0.

Personal property. In broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in realty, or any right or interest which one has in things movable.

Generally, all property other than real estate; as goods, chattels, money, notes, bonds, stocks and choses in action generally, including intangible property. *Bismarck Tribune Co. v. Omdahl, N.D., 147 N.W.2d 903, 906.* It is sometimes designated as personalty when real estate is termed realty. Personal property also can refer to property which is not used in a taxpayer's trade or business or held for the production or collection of income. When used in this sense, personal property could include both realty (*e.g.*, a personal residence) and personalty (*e.g.*, personal effects such as clothing and furniture).

Personal property includes money, goods, chattels, things in action, and evidences of debt. Calif.Evid.Code.

Personal property is divisible into (1) corporeal personal property, which includes movable and tangible things, such as animals, furniture, merchandise, etc.; and (2) incorporeal personal property, which consists of such rights as personal annuities, stocks, shares, patents, and copyrights.

Private property. As protected from being taken for public uses, is such property as belongs absolutely to an individual, and of which he has the exclusive right of disposition. Property of a specific, fixed and tangible nature, capable of being in possession and transmitted to another, such as houses, lands, and chattels. *Scranton v. Wheeler, 179 U.S. 141, 21 S.Ct. 48, 45 L.Ed. 126.*

Property of another. Includes property in which any person other than the actor has an interest which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement. Model Penal Code, § 223.0.

Property tax. *See that title.*

Public property. This term is commonly used as a designation of those things which are *publici juris (q.v.)*, and therefore considered as being owned by "the public," the entire state or community, and not restricted to the dominion of a private person. It may also apply to any subject of property owned by a state, nation, or municipal corporation as such. *See also State property, below.*

Qualified property. Property in chattels which is not in its nature permanent, but may at some times subsist and not at other times; such for example, as the property a man may have in wild animals which he has caught and keeps, and which are his only so long as he retains

possession of them. Any ownership not absolute. See also *Special property, below*.

Real property. Land, and generally whatever is erected or growing upon or affixed to land. Also rights issuing out of, annexed to, and exercisable within or about land. A general term for lands, tenements, and hereditaments; property which, on the death of the owner intestate, passes to his heir.

Real or immovable property consists of: Land; that which is affixed to land; that which is incidental or appurtenant to land; that which is immovable by law; except that for the purposes of sale, emblements, industrial growing crops and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale, shall be treated as goods and be governed by the regulating the sales of goods. Calif.Civil Code, § 658.

Separate property. See that title.

Special property. Property of a qualified, temporary, or limited nature; as distinguished from absolute, general, or unconditional property. Such is the property of a bailee in the article bailed, of a sheriff in goods temporarily in his hands under a levy, of the finder of lost goods while looking for the owner, of a person in wild animals which he has caught. See also *Qualified property, above*.

State property. The State is the owner of all land below tide water, and below ordinary high-water mark, bordering upon tide water within the State; of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it to its own use; of all property dedicated to the State; and of all property of which there is no other owner. Calif.Civil Code, § 670.

Tangible property. All property which is touchable and has real existence (physical) whether it is real or personal.

Unclaimed property. The majority of states have adopted the Uniform Disposition of Unclaimed Property Act.

Property of the debtor. As used in Bankruptcy Code, "property of the debtor" includes property of which debtor has possession, either actual or constructive, and it is not limited to property title to which is in the debtor. In re Kassuba, D.C.Ill., 396 F.Supp. 324, 326.

Property right. A generic term which refers to any type of right to specific property whether it is personal or real property, tangible or intangible; e.g. professional baseball player has valuable property right in his name, photograph and image, and such right may be saleable by him. Cepeda v. Swift & Co., C.A.Mo., 415 F.2d 1205, 1206.

Property settlement. Term as used in divorce parlance is used interchangeably in describing two different bases for division of marital property: (1) based upon agreement of the parties and approval by the court, and (2) based upon an award by the court after trial on the merits. Marshall v. Marshall, 135 Mich.App. 702, 355

N.W.2d 661, 665. Agreement made between spouses as an incident of a divorce proceeding. Such agreement may contain provisions for division of property owned or acquired by the spouses during the marriage, periodic payments by one of the spouses or a lump sum payment or one time conveyance of property. See Equitable distribution; Marital property; Separate property; Separation agreement. Compare Post-nuptial agreement; Pre-nuptial agreement.

Property tax. An *ad valorem* tax, usually levied by a city or county government, on the value of real or personal property that the taxpayer owns on a specified date. The tax is generally expressed as a uniform rate per thousand of valuation. See *Ad valorem*.

Property torts. Such involve injury or damage to property, real or personal, in contrast to "personal torts" which involve injuries to person, i.e., the body, reputation, or feelings. Travelers Indem. Co. v. Chumbley, Mo.App., 394 S.W.2d 418, 422.

Propinqui et consanguinei /prəpɪŋkwiy èt kɒnsæŋgwiŋiyay/. Lat. The nearest of kin to a deceased person.

Propiedad /prɒwprɪyeyðáð/. In Spanish law, property.

Propinquier excludit propinquum; propinquus remotum; et remotus remotiorem /prəpɪŋkwiyər əkskl(y)úwdət prəpɪŋkwəm, prəpɪŋkwəs rəmɔwtəm, èt rəmɔwtəs rəmɔwshiyórəm/. He who is nearer excludes him who is near; he who is near, him who is remote; he who is remote, him who is remoter.

Propinquity /prəpɪŋkwədiy/. Kindred; parentage; nearness; proximity.

Propior sobrino, propior sobrina /prówpɪyər səbráy-nɔw/"səbráyɲə/. Lat. In the civil law, the son or daughter of a great-uncle or great-aunt, paternal or maternal.

Propios, proprios /prówp(r)iyòws/. In Spanish law, certain portions of ground laid off and reserved when a town was founded in Spanish America as the unalienable property of the town, for the purpose of erecting public buildings, markets, etc., or to be used in any other way, under the direction of the municipality, for the advancement of the revenues or the prosperity of the place.

Propone /prəpówn/. In ecclesiastical and probate law, to bring forward for adjudication; to exhibit as basis of a claim; to proffer for judicial action.

Proponent /prəpównənt/. The propounder of a thing. Thus, the proponent of a will is the party who offers it for probate (*q.v.*).

Proportional representation. A method of election which gives representation to minority interests. In connection with elections for political office, the Supreme Court has held that the Constitution does not require proportional representation. Davis v. Bandemer, 478 U.S. 109, 129, 106 S.Ct. 2797, 2809, 92 L.Ed.2d 85.

Proportionate /prəpórshənət/. Adjusted to something else according to certain rate of comparative relation. *See Pro rata.*

Proposal. An offer; something proffered. An offer, by one person to another, of terms and conditions with reference to some work or undertaking, or for the transfer of property, the acceptance whereof will make a contract between them. Signification by one person to another of his willingness to enter into a contract with him on the terms specified in the offer.

The initial overture or preliminary statement for consideration by the other party to a proposed agreement. As so used, it is not an offer but it contemplates an offer and hence, its acceptance does not ripen into a contract. *See also Offer.*

Propositio indefinita æquipollet universali /pröpəzish(iy)ow indéfənáyət èkwəpólət yùwnəvərséy-lay/. An indefinite proposition is equivalent to a general one.

Proposition. An offer to do a thing. *See Offer; Proposal.*

Propositus /prəpózətəs/. Lat. The person proposed; the person from whom a descent is traced.

Pro possessione præsumitur de jure /pròw pəzəshiyówniy prəz(y)úmətər diy júriy/. From possession arises a presumption of law.

Pro possessore /pròw pòwzəsóriy/. As a possessor; by title of a possessor.

Pro possessore habetur qui dolo injuriave desiit considerare /pròw pòwzəsóriy hábiytər kwáy dówlow ənjúriyévviy désiyət pòsədíríy/. He is esteemed a possessor whose possession has been disturbed by fraud or injury.

Pro posse suo /pròw pòsiy s(y)úwów/. To the extent of his power or ability.

Propound. To offer; to propose. An executor or other person is said to propound a will when he takes proceedings for obtaining probate solemn form.

Prop.Reg. An abbreviation for Proposed Regulation (*e.g.* Proposed Treasury Regulation). A Regulation may first be issued in proposed form to give interested parties the opportunity for comment. When and if a Proposed Regulation is finalized, it is designated as a Regulation (abbreviated Reg.).

Propria persona /prówpriyə pərsównə/. *See In propria persona.*

Proprietary, n. /prəpráyət(èh)riy/. A proprietor or owner; one who has the exclusive title to a thing; one who possesses or holds the title to a thing in his own right; one who possesses the dominion or ownership of a thing in his own right. The grantees of Pennsylvania and Maryland and their heirs were called the proprietaries of those provinces.

Proprietary, adj. /prəpráyət(èh)riy/. Belonging to ownership; owned by a particular person; belonging or pertaining to a proprietor; relating to a certain owner or proprietor.

Proprietary articles. Goods manufactured under some exclusive individual right to make and sell them. The term is so used in the internal revenue laws of the United States. *Ferguson v. Arthur*, 117 U.S. 482, 6 S.Ct. 861, 29 L.Ed. 979.

Proprietary capacity. Used to describe functions of a city or town when it engages in a business-like venture as contrasted with a governmental function. *See Proprietary functions, below.*

Proprietary capital. In accounting, that account in a sole proprietorship which represents the original investment in addition to accumulated profits.

Proprietary duties. Those duties of a municipality which are not strictly governmental duties. *See also Governmental duties.*

Proprietary functions. Functions which city or town, in its discretion, may perform when considered to be for best interests of its citizens. *Sarmiento v. City of Corpus Christi*, Tex.Civ.App., 465 S.W.2d 813, 816, 819. "Governmental function" has to do with administration of some phase of government, that is to say, dispensing or exercising some element of sovereignty, while "proprietary function" is one designed to promote comfort, convenience, safety and happiness of citizens. *McPhee v. Dade County*, Fla.App., 362 So.2d 74, 79. *See also Governmental duties; Governmental functions.*

Proprietary governments. This expression is used by Blackstone to denote governments granted out by the crown to individuals, in the nature of feudatory principalities, with inferior regalities and subordinate powers of legislation such as formerly belonged to the owners of counties palatine. 1 Bl.Comm. 108.

Proprietary information. In trade secret law, information in which the owner has a protectable interest.

Proprietary interest. The interest of an owner of property together with all rights appurtenant thereto such as the right to vote shares of stock and right to participate in managing if the person has a proprietary interest in the shares. *Stroh v. Blackhawk Holding Corp.*, 48 Ill.2d 471, 272 N.E.2d 1.

Proprietary lease. Type of lease in cooperative apartment between owner-cooperative and tenant-stockholder.

Proprietary rights. Those rights which an owner of property has by virtue of his ownership. *Douglas v. Taylor*, Tex.Civ.App., 497 S.W.2d 308, 310. A right customarily associated with ownership, title, and possession and is an interest or right of one who exercises dominion over a thing or property, of one who manages and controls. *Green v. Lewis*, 221 Va. 547, 272 S.E.2d 181, 185. *See also Proprietary interest, above.*

Proprietas /prəpráyətəs/. Lat. In the civil and old English law, property; that which is one's own; ownership.

Proprietas nuda, naked or mere property of ownership; the mere title, separate from the usufruct.

Proprietas plena, full property, including not only the title, but the usufruct, or exclusive right to the use.

Proprietas totius navis carinæ causam sequitur /prəpráyætæs towshíyəs néyvəs kəráyniy kózəm sékwətər/. The property of the whole ship follows the condition of the keel. If a man builds a vessel from the very keel with the materials of another, the vessel belongs to the owner of the materials.

Proprietas verborum est salus proprietatum /prəpráyætæs vərbórəm ést sáels prəpráyétéytəm/. Propriety of words is the salvation of property.

Proprietary probanda, de /diy prəpráyétéytəm prɔwbændə/. A writ addressed to a sheriff to try by an inquest in whom certain property, previous to distress, subsisted.

Proprietates verborum servandæ sunt /prəpráyétéytíyz vərbórəm sərbándiy sánt/. The proprieties of words [proper meanings of words] are to be preserved or adhered to.

Propriété /prowpriyeyté/. The French law term corresponding to our "property," or the right of enjoying and of disposing of things in the most absolute manner, subject only to the laws.

Proprietor /prəpráyətər/. Owner of proprietorship. One who has the legal right or exclusive title to property, business, etc. In many instances it is synonymous with owner.

Proprietorship. A business which is owned by a person who has either the legal right and exclusive title, or dominion, or the ownership of that business. *Shermco Industries, Inc. v. Secretary of U.S. Air Force, D.C.Tex., 452 F.Supp. 306, 314.* A business, usually unincorporated, owned and controlled exclusively by one person. Such a business is commonly designated a "sole proprietorship" (*q.v.*).

Propriety. As used in Massachusetts colonial ordinance of 1741 term is nearly, if not precisely, equivalent to property.

In old English law, property; propriety in action; propriety in possession; mixed propriety.

Proprios /prówpriyows/. In Spanish and Mexican law, productive lands, the usufruct of which had been set apart to the several municipalities for the purpose of defraying the charges of their respective governments.

Proprio vigore /prówpriyow vэгóriy/. Lat. By its own force; by its intrinsic meaning.

Propter /próptər/. For; on account of. The initial word of several Latin phrases.

Propter affectum /próptər éféktəm/. For or on account of some affection or prejudice. The name of a species of *challenge* (*q.v.*).

Disqualifications of jurors on account of some bias or partiality toward one side or other of litigation, and objections of this class may be made even after jury has returned its verdict. *Partin v. Henderson, Tenn.App., 686 S.W.2d 587, 589.*

Propter defectum /próptər dəféktəm/. On account of or for some defect. The name of a species of *challenge* (*q.v.*).

Propter defectum sanguinis /próptər dəféktəm sáŋgwə-nəs/. On account of failure of blood.

Propter delictum /próptər dəlíktəm/. For or on account of crime. The name of a species of *challenge* (*q.v.*).

Propter honoris respectum /próptər (h)ənórəs rəspék-təm/. On account of respect of honor or rank. *See Challenge.*

Propter impotentiam /próptər ímpóténsh(iy)əm/. On account of helplessness. The term describes one of the grounds of a qualified property in wild animals, consisting in the fact of their inability to escape; as is the case with the young of such animals before they can fly or run. 2 Bl.Comm. 394.

Propter privilegium /próptər prívílyj(iy)əm/. On account of privilege. The term describes one of the grounds of a qualified property in wild animals, consisting in the special privilege of hunting, taking and killing them, in a given park or preserve, to the exclusion of other persons. 2 Bl.Comm. 394.

Pro querente /prów kwərəntiy/. For the plaintiff; usually abbreviated *pro quer.*

Pro rata /prów réytə/. Proportionately; according to a certain rate, percentage, or proportion. According to measure, interest, or liability. According to a certain rule or proportion. For example, if a corporation has ten shareholders each of whom owns 10% of the stock, a pro-rata dividend distribution of \$1,000 would mean that each shareholder would receive \$100. *See also Per capita; Pro rate.*

Pro rata clause. Such clause commonly used as other insurance provision in automobile liability policy provides that when an insured has other insurance available, company will be liable only for proportion of loss represented by ratio between its policy limit and total limits of all available insurance. *Putnam v. New Amsterdam Cas. Co., 48 Ill.2d 71, 269 N.E.2d 97, 99.* Provision in insurance policy to the effect that the insurer will not be liable for a greater proportion of any loss than the amount of the policy bears to the total amount of insurance on the property.

Pro-rata distribution clause. In fire insurance, provision in the policy that the amount of insurance written shall apply to each parcel of property in the proportion which the value of each parcel bears to the total value of all the property insured under the policy.

Pro rate. To divide, share, or distribute proportionally; to assess or apportion pro-rata.

The act of adjusting, dividing or prorating property taxes, interest, insurance premiums, rental income, etc., between buyer and seller proportionately to time of use, or the date of closing. *See also Pro rata.*

Pro re nata /prów ríy néytə/. For the affair immediately in hand; for the occasion as it may arise; adapted to meet the particular occasion. Thus, a course of judicial

action adopted under pressure of the exigencies of the affair in hand, rather than in conformity to established precedents, is said to be taken *pro re nata*.

Prorogation /pròwrəgáyshən/. Prolonging or putting off to another day. The discontinuation or termination of a session of the legislature, parliament, or the like. In English law, a prorogation is the continuance of the parliament from one session to another, as an adjournment is a continuation of the session from day to day.

In the civil law, the giving time to do a thing beyond the term previously fixed.

Prorogue. To direct suspension of proceedings of parliament; to terminate a legislative session.

Pro salute animæ /pròw səl(y)úwtiy ánəmiy/. For the good of his soul. All prosecutions in the ecclesiastical courts are *pro salute animæ*; hence it will not be a temporal damage founding an action for slander that the words spoken put any one in danger of such a suit.

Proscribed /prəskráybd/. In the civil law, among the Romans, a man was said to be "proscribed" when a reward was offered for his head; but the term was more usually applied to those who were sentenced to some punishment which carried with it the consequences of civil death.

Pro se /pròw síy/. For one's own behalf; in person. Appearing for oneself, as in the case of one who does not retain a lawyer and appears for himself in court.

Prosecute. To follow up; to carry on an action or other judicial proceeding; to proceed against a person criminally. To "prosecute" an action is not merely to commence it, but includes following it to an ultimate conclusion. *See also* Prosecution.

Prosecuting attorney. The name of the public officer who is appointed or elected in each judicial district, circuit, or county, to conduct criminal prosecutions on behalf of the State or people. Federal prosecutors (U.S. Attorneys) represent the United States in prosecuting federal crimes.

A locally elected officer who represents the State in securing indictments and informations and in prosecuting criminal cases. Also called district or county attorney or State's attorney.

See also Prosecutor; States Attorney; United States Attorney.

Prosecuting witness. The private person upon whose complaint or information a criminal accusation is founded and whose testimony is mainly relied on to secure a conviction at the trial. In a more particular sense, the person who was chiefly injured, in person or property, by the act constituting the alleged crime (as in case of robbery, assault, criminal negligence, bastardy, and the like), and who instigates the prosecution and gives evidence.

Prosecutio legis est gravis vexatio, executio legis coronat opus /pròsəkyúwsh(iy)ow líjəs èst grévəs vekséysh(iy)ow, èksəkyúwsh(iy)ow líjəs kərównət

ówpəs/. Litigation is vexatious, but an execution crowns the work.

Prosecution. A criminal action; a proceeding instituted and carried on by due course of law, before a competent tribunal, for the purpose of determining the guilt or innocence of a person charged with crime. *U. S. v. Reisinger*, 128 U.S. 398, 9 S.Ct. 99, 32 L.Ed. 480. The continuous following up, through instrumentalities created by law, of a person accused of a public offense with a steady and fixed purpose of reaching a judicial determination of the guilt or innocence of the accused.

By an extension of its meaning, "prosecution" is also used to designate the government (state or federal) as the party proceeding in a criminal action, or the prosecutor, or counsel; as when we speak of "the evidence adduced by the prosecution."

The term is also used respecting civil litigation, and includes every step in action, from its commencement to its final determination. *The Brazil*, C.C.A.III., 134 F.2d 929, 930.

The Fifth Amendment, U.S.Const., requires that all prosecutions for infamous *federal* crimes (*i.e.* federal offenses carrying a term of imprisonment in excess of one year) be commenced by grand jury indictment. This requirement, however, does not apply to *state* prosecutions for such crimes, which may be prosecuted on the basis of an information. *Hurtado v. California*, 110 U.S. 516, 4 S.Ct. 111, 28 L.Ed.2d 232.

Malicious prosecution. *See* that title.

Prosecution history estoppel. An equitable tool for determining the permissible scope of patent claims. *Builders Concrete Inc. v. Bremerton Concrete Products Co.*, 757 F.2d 255, 258. It limits the scope of patent claims based on arguments and claim amendments made during prosecution to obtain allowance of the patent. *Advance Transformer Co. v. Levinson*, 837 F.2d 1081, 1083. This doctrine applies both to claim amendments to overcome rejections based on prior art, and to arguments submitted to obtain the patent. *Hughes Aircraft Co. v. United States*, 717 F.2d 1351, 1362. *See also* File wrapper estoppel.

Prosecutor. One who prosecutes another for a crime in the name of the government. One who instigates the prosecution upon which an accused is arrested or who prefers an accusation against the party whom he suspects to be guilty, as does a district, county, or state's attorney on behalf of the state, or a United States Attorney for a federal district on behalf of the U.S. government. *People v. Pohl*, 47 Ill.App.2d 232, 197 N.E.2d 759, 764. A District Attorney or any other public servant who represents the people in a criminal action. *New York Penal Code*, § 1.20(31). *See also* Prosecuting attorney.

Private prosecutor. One who sets in motion the machinery of criminal justice against a person whom he suspects or believes to be guilty of a crime, by laying an accusation before the proper authorities, and who is not himself an officer of the government. *Compare Public prosecutor, below.*

Prosecutor of the pleas. This name was given in New Jersey to the county officer who was charged with the prosecution of criminal actions, corresponding to the "district attorney" or "county attorney" in other states.

Public prosecutor. An officer of government (such as a state's attorney or district attorney) whose function is the prosecution of criminal actions, or suits partaking of the nature of criminal actions. *See also* Prosecuting attorney.

Prosecutrix /prɒsəkjuːtrɪks/. A female prosecutor.

Prosequi /prɒsəkwaɪ/. Lat. To follow up or pursue; to sue or prosecute. *See* Nolle prosequi.

Prosequitur /prɒsɛkwətər/. Lat. He follows up or pursues; he prosecutes. *See* Non pros.

Prosocer /prɒwsəsər/. Lat. In the civil law, a father-in-law's father; a grandfather of wife.

Prosocerus /prɒsɔːsərəs/. Lat. In the civil law, a wife's grandmother.

Pro socio /prɒw sɔʊsh(iy)ow/. For a partner; the name of an action in behalf of a partner. A title of the civil law.

Pro solido /prɒw sɔlədow/. For the whole; as one; jointly; without division.

Prospective /prɒspɛktɪv/. In the future; looking forward; contemplating the future.

Prospective damages /prɒspɛktɪv dæməjz/. *See* Damages.

Prospective law /prɒspɛktɪv lɔ/. One applicable only to cases which shall arise after its enactment.

Prospectus. A document published by a corporation, or by persons acting as its agents or assignees, setting forth the nature and objects of an issue of shares, debentures, or other securities created by the company or corporation, the investment or risk characteristics of the security and inviting the public to subscribe to the issue. The principal document of a registration statement required by law to be furnished an investor prior to any purchase. It is the document which is to contain all material facts concerning a company and its operations so that a prospective investor may make an informed decision as to the merit of an investment.

Federal securities laws (15 U.S.C.A. § 77a) require that corporations making public stock offerings file a copy of the prospectus with the SEC and also provide a copy to all prospective purchasers. The content of the prospectus is governed by federal securities laws and regulations.

The term "prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or television, which offers any security for sale or confirms the sale of any security. Securities Act of 1933, § 1; 15 U.S.C.A. § 77b(10).

See also Offering circular; Red herring.

Prostitute. One who permits common indiscriminate sexual activity for hire, in distinction from sexual activi-

ty confined exclusively to one person. *Com. v. King*, 374 Mass. 5, 372 N.E.2d 196, 202. A person who engages or agrees or offers to engage in sexual conduct with another person in return for a fee. N.Y. Penal Law § 230.00. *See also* Pander.

The word in its most general sense means the act of setting one's self to sale, or of devoting to infamous purposes what is in one's power: as, the prostitution of talents or abilities; the prostitution of the press, etc.

Prostitution. Act of performing, or offering or agreeing to perform a sexual act for hire. Engaging in or agreeing or offering to engage in sexual conduct with another person under a fee arrangement with that person or any other person. Ariz. Crim. Code § 13-3211(5). Includes any lewd act between persons for money or other consideration. Cal. Penal Law § 647(b). Within meaning of statute proscribing prostitution, comprises conduct of all male and female persons who engage in sexual activity as a business. *Com. v. King*, 374 Mass. 5, 372 N.E.2d 196, 203.

A person is guilty of prostitution, a petty misdemeanor, if he or she: (a) is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or (b) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity. Model Penal Code, § 251.2.

See also Mann Act; Pander.

Pro tanto /prɒw tæntow/. For so much; for as much as may be; as far as it goes. Partial payment made on a claim. Commonly used in eminent domain cases to describe a partial payment made for the taking by the government without prejudice to the right of the petitioner to bring action for the full amount that he claims is due.

Protected class. Under Title VII of the Civil Rights Act of 1964, one of the groups the law sought to protect, including groups based on race, sex, national origin, and religion.

Protection. In old English law, a writ by which the king might, by a special prerogative, privilege a defendant from all personal and many real suits for one year at a time, and no longer, in respect of his being engaged in his service out of the realm. In former times the name "protection" was also given to a certificate given to a sailor to show that he was exempt from impressment into the royal navy.

In mercantile law, the name of a document generally given by notaries public to sailors and other persons going abroad, in which it is certified that the bearer therein named is a citizen of the United States.

In public commercial law, a system by which a government imposes customs duties upon commodities of foreign origin or manufacture when imported into the country, for the purpose of stimulating and developing the home production of the same or equivalent articles, by discouraging the importation of foreign goods, or by raising the price of foreign commodities to a point at which the home producers can successfully compete with them. *See* Protective tariff.

Protection order. Order issued by court in domestic violence or abuse cases to, for example, protect spouse from physical harm by other spouse or child from abuse by parent(s). Such order may be granted immediately by court in cases where immediate and present danger of violence or abuse is shown. Such emergency orders are granted in *ex parte* type proceeding and are temporary in duration pending full hearing by court with all involved parties present. See *e.g.* Minn.St. § 518B.01.

Protectio trahit subjectionem, et subjectio protectionem /prəjéksh(iy)ow tréy(h)ət səbjékshiyównəm, èt səbjéksh(iy)ow prətékshiyównəm/. Protection draws with it subjection, and subjection protection. The protection of an individual by government is on condition of his submission to the laws, and such submission on the other hand entitles the individual to the protection of the government.

Protective committee. A group of security holders or preferred stockholders appointed to protect the interest of their group at a time of liquidation or reorganization of corporation.

Protective custody. The condition of one who is held under authority of law for his own protection as in the case of a material witness whose safety is in jeopardy, or one who is drunk in public though public drunkenness may not be a criminal offense, or of a person who because of mental illness or drug addiction may harm himself or others.

Protective order. Any order or decree of a court whose purpose is to protect a person from further harassment or abusive service of process or discovery; see *e.g.* Fed.R. Civil P. 26(c); Fed.R.Crim.P. 16(d)(1). See also Gag order; Protection order.

Protective tariff. A law imposing duties on imports, with the purpose and the effect of discouraging the importation of competitive products of foreign origin, and consequently of stimulating and protecting the home production of the same or equivalent articles.

Protective trust. A species of spendthrift trust (*q.v.*) containing a provision for forfeiture to protect against creditors and voluntary alienation.

Pro tem /pròw tém/. Abbreviation for "pro tempore" which means, literally, for the time being. Hence, one who acts as a substitute on a temporary basis is said to serve *pro tem*.

Pro tempore /pròw témpəriy/. For the time being; temporarily; provisionally.

Protest. A formal declaration made by a person interested or concerned in some act about to be done, or already performed, whereby he expresses his dissent or disapproval, or affirms the act against his will. The object of such a declaration is generally to save some right which would be lost to him if his implied assent could be made out, or to exonerate himself from some responsibility which would attach to him unless he expressly negated his assent.

A notarial act, being a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill or note, in which it is declared that the bill or note described was on a certain day presented for payment (or acceptance), and that such payment or acceptance was refused, and stating the reasons, if any, given for such refusal, whereupon the notary *protests* against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor. It denotes also all the steps or acts accompanying dishonor necessary to charge an indorser.

A protest is a certificate of dishonor made under the hand and seal of a United States consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person. U.C.C. § 3-509. See also Dishonor.

Protest is a condition on the liability of a drawer or indorser of any draft that on its face appears to be drawn or payable outside of the United States. U.C.C. § 3-501(3).

A formal declaration made by a minority (or by certain individuals) in a legislative body that they dissent from some act or resolution of the body, usually adding the grounds of their dissent. The term, in this sense, refers to such a proceeding in the English House of Lords.

The formal statement, usually in writing, made by a person who is called upon by public authority to pay a sum of money, in which he declares that he does not concede the legality or justice of the claim or his duty to pay it, or that he disputes the amount demanded; the object being to save his right to recover or reclaim the amount, which right would be lost by his acquiescence. Thus, taxes may be paid under "protest."

The name of a paper served on a collector of customs by an importer of merchandise, stating that he believes the sum charged as duty to be excessive, and that, although he pays such sum for the purpose of getting his goods out of the custom-house, he reserves the right to bring an action against the collector to recover the excess.

In maritime law, a written statement by the master of a vessel, attested by a proper judicial officer or a notary, to the effect that damage suffered by the ship on her voyage was caused by storms or other perils of the sea, without any negligence or misconduct on his own part.

Notice of protest. A notice given by the holder of a bill or note to the drawer or indorser that the bill has been protested for refusal of payment or acceptance. U.C.C. § 3-509.

Waiver of protest. As applied to a note or bill, a waiver of protest implies not only dispensing with the formal act known as "protest," but also with that which ordinarily must precede it, viz., demand and notice of non-payment.

Protestando /prò(w)təstándow/. L. Lat. Protesting. The emphatic word formerly used in pleading by way of protestation. See Protestation.

Protestants. Those who adhered to the doctrine of Luther; so called because, in 1529, they protested against a decree of the emperor Charles V and of the diet of Spires, and declared that they appealed to a general council. The name is now applied indiscriminately to all the sects, of whatever denomination, who have seceded from the Church of Rome.

Protestation. In old pleading, the indirect affirmation or denial of the truth of some matter which cannot with propriety or safety be positively affirmed, denied, or entirely passed over. The exclusion of a conclusion.

Protest fee. Fee charged by banks or other financial agencies when items (such as checks) presented for collection cannot be collected.

Prothonotary /pròwtənòwdəriy/pròwθə°. The title given (in e.g. Pennsylvania) to an officer who officiates as principal clerk of some courts.

Protocol /pròwtəkòl/. A brief summary of the text of a document. Also, the minutes of a meeting which are generally initialed by the parties present to reflect their assent to the accuracy of the minutes.

A section of the Department of State charged with the preparation of agreements and treatises. Commonly, term refers to the etiquette of diplomacy and the ranking of officials.

Protutor /prowt(y)úwtər/. Lat. In the civil law, he who, not being the tutor of a minor, has administered his property or affairs as if he had been, whether he thought himself legally invested with the authority of a tutor or not. He who marries a woman who is tutrix becomes, by the marriage, a protutor. The protutor is equally responsible with the tutor.

Prout patet per recordum /prówət péytət pər rəkòrdəm/. As appears by the record. In the Latin phraseology of pleading, this was the proper formula for making reference to a record.

Provable. Susceptible of being proved.

Prove. To establish or make certain; to establish a fact or hypothesis as true by satisfactory and sufficient evidence. *Lawson v. Superior Court In and For Los Angeles County*, 155 Cal.App.2d 755, 318 P.2d 812, 814. As used in legal matters and proceedings means to establish, to render or make certain. *Texas & N. O. R. Co. v. Flowers*, Tex.Civ.App., 336 S.W.2d 907, 914. See also Proof.

Prover. In old English law, a person who, on being indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and appealed or accused others, his accomplices, in the same crime, in order to obtain his pardon.

Provide. To make, procure, or furnish for future use, prepare. To supply; to afford; to contribute.

Provided. The word used in introducing a proviso (*q.v.*). Ordinarily it signifies or expresses a condition; but this is not invariable, for, according to the context, it may import a covenant, or a limitation or qualification, or a restraint, modification, or exception to something which precedes.

Provided by law. This phrase when used in a constitution or statute generally means prescribed or provided by some statute.

Province. The district into which a country has been divided; as, the province of Quebec in Canada. More loosely, a sphere of activity or a profession such as medicine or law.

Provincialis /prəvínshiyéləs/. Lat. In the civil law, one who has his domicile in a province.

Provision. Foresight of the chance of an event happening, sufficient to indicate that any present undertaking upon which its assumed realization might exert a natural and proper influence was entered upon in full contemplation of it as a future possibility.

In commercial law, funds remitted by the drawer of a bill of exchange to the drawee in order to meet the bill, or property remaining in the drawee's hands or due from him to the drawer, and appropriated to that purpose.

Provisional. Temporary; preliminary; tentative; taken or done by way of precaution or *ad interim*.

A term of the check collection process describing payment, credit or other settlement for a check or other item when the person giving the settlement reserves a right, by law or agreement, to recover the payment or credit if the item is not finally paid.

Provisional committee. A committee appointed for a temporary occasion.

Provisional court. A federal court with jurisdiction and powers governed by the order from which it derives its authority. A provisional court established in conquered or occupied territory by military authorities, or the provisional government, is a federal court deriving its existence and all its powers from the federal government.

Provisional government. One temporarily established in anticipation of and to exist and continue until another (more regular or more permanent) shall be organized and instituted in its stead.

Provisional injunction. Term sometimes used for interlocutory or temporary injunction.

Provisional remedy. A remedy provided for present need or for the immediate occasion; one adapted to meet a particular exigency. Particularly, a temporary process available to a plaintiff in a civil action, which secures him against loss, irreparable injury, dissipation of the property, etc., while the action is pending. Such include the remedies of injunction, appointment of a receiver, attachment, or arrest.

Provisional seizure. A remedy known under the law of Louisiana, and substantially the same in general nature as attachment of property in other states.

Proviso /prəváyow/. A condition, stipulation, limitation, or provision which is inserted in a deed, lease, mortgage, or contract, and on the performance or non-performance of which the validity of the instrument frequently depends; it usually begins with the word "provided."

A limitation or exception to a grant made or authority conferred, the effect of which is to declare that the one shall not operate, or the other be exercised, unless in the case provided.

A clause or part of a clause in a statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent.

A "proviso" is used to limit, modify or explain the main part of section of statute to which it is appended. *Saginaw County Tp. Officers Ass'n v. City of Saginaw*, 373 Mich. 477, 130 N.W.2d 30, 32. The office of a "proviso" in a statute is to restrict or make clear that which has gone before. *Allen v. Burkhart*, Okl., 377 P.2d 821, 827. A clause engrafted on a preceding enactment for the purpose of restraining or modifying the enacting clause or of excepting something from its operation which would otherwise have been within it. *Stoller v. State*, 171 Neb. 93, 105 N.W.2d 852, 856. A proviso is sometimes misused to introduce independent pieces of legislation. *Cox v. Hart*, 260 U.S. 427, 43 S.Ct. 154, 157, 67 L.Ed. 332. Its proper use, however, is to qualify what is affirmed in the body of the act, section, or paragraph preceding it, or to except something from the act, but not to enlarge the enacting clause. And it cannot be held to enlarge the scope of the statute.

Exception and proviso distinguished. See *Exception*.

Proviso est providere præsentia et futura, non præterita /prəváyow èst prəvədíríy prəzénsh(iy) èt f(y)ətýúrá, nòn prətéhrtət/. A proviso is to provide for the present or future, not the past.

Provisor /prəváyər/. In old English law, a provider, or purveyor. Also a person nominated to be the next incumbent of a benefice (not yet vacant) by the pope. He that hath the care of providing things necessary; but more especially one who sued to the court of Rome for a provision.

Proviso, trial by. In old English practice, a trial brought on by the defendant, in cases where the plaintiff, after issue joined, neglects to proceed to trial; so called from a clause in the writ to the sheriff, which directs him, in case two writs come to his hands, to execute but one of them. The defendant may take out a *venire facias* to the sheriff, which hath in it these words, *Proviso quod*, etc., provided that if the plaintiff shall take out any writ to that purpose, the sheriff shall summon but one jury on them both.

Provocation. The act of inciting another to do a particular deed. That which arouses, moves, calls forth, causes, or occasions. Such conduct or actions on the part of one person towards another as tend to arouse rage, resentment, or fury in the latter against the former, and thereby cause him to do some illegal act against or in relation to the person offering the provocation. See also *Procurer*.

Provocation which will reduce killing to manslaughter must be of such character as will, in mind of average reasonable man, stir resentment likely to cause violence, obscure the reason, and lead to action from passion rather than judgment. There must be a state of passion without time to cool placing defendant beyond control of his reason. Provocation carries with it the idea of some physical aggression or some assault which suddenly arouses heat and passion in the person assaulted.

Provoke. To excite; to stimulate; to arouse. To irritate, or enrage.

Provost-Marshal. In military law, the officer acting as the head of the military police of any post, camp, city or other place in military occupation, or district under the reign of martial law. He or his assistants may, at any time, arrest and detain for trial, persons subject to military law committing offenses, and may carry into execution any punishments to be inflicted in pursuance of a court martial.

Proxeneta /pròksəniyətə/. Lat. In the civil law, a broker; one who negotiated or arranged the terms of a contract between two parties, as between buyer and seller; one who negotiated a marriage; a match-maker.

Proximate. Immediate; nearest; direct, next in order. In its legal sense, closest in causal connection. *Armijo v. World Ins. Co.*, 78 N.M. 204, 429 P.2d 904, 905. Next in relation to cause and effect.

Proximate cause. That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred. *Wisniewski v. Great Atlantic & Pac. Tea Co.*, 226 Pa.Super. 574, 323 A.2d 744, 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

The last negligent act contributory to an injury, without which such injury would not have resulted. The

dominant, moving or producing cause. The efficient cause; the one that necessarily sets the other causes in operation. The causes that are merely incidental or instruments of a superior or controlling agency are not the proximate causes and the responsible ones, though they may be nearer in time to the result. It is only when the causes are independent of each other that the nearest is, of course, to be charged with the disaster. Act or omission immediately causing or failing to prevent injury; act or omission occurring or concurring with another, which, had it not happened, injury would not have been inflicted. *Herron v. Smith Bros.*, 116 Cal.App. 518, 2 P.2d 1012, 1013.

See also Concurrent causes; Efficient cause; Immediate cause; Legal cause.

Proximate consequence or result. One which succeeds naturally in the ordinary course of things. A consequence which, in addition to being in the train of physical causation, is not entirely outside the range of expectation or probability, as viewed by ordinary men. *The Mars, D.C.N.Y.*, 9 F.2d 183, 184. One ordinarily following from the negligence complained of, unbroken by any independent cause, which might have been reasonably foreseen. One which a prudent and experienced man, fully acquainted with all the circumstances which in fact existed, would, at time of the negligent act, have thought reasonably possible to follow, if it had occurred to his mind. *Coast S. S. Co. v. Brady, C.C.A.Ala.*, 8 F.2d 16, 19. A mere possibility of the injury is not sufficient, where a reasonable man would not consider injury likely to result from the act as one of its ordinary and probable results.

Proximate damages. See Damages.

Proximately. Directly or immediately. Pertaining to that which in an ordinary natural sequence produces a specific result, no independent disturbing agency intervening. *Weaver v. Landis*, 66 Cal.App.2d 34, 151 P.2d 884, 886. See Proximate; Proximate cause.

Proximity. Kindred between two persons. Quality or state of being next in time, place, causation, influence, etc.; immediate nearness.

Proximus est cui nemo antecedit, supremus est quem nemo sequitur /próksəməs ɛst k(yuw)əy nɪmow æntəsɪydət, səprɪməs ɛst kwém nɪmow sékwətər/. He is next whom no one precedes; he is last whom no one follows.

Proxy. (Contracted from procuracy.) A person who is substituted or deputed by another to represent him and act for him, particularly in some meeting or public body. An agent representing and acting for principal. Also the instrument containing the appointment of such person. *Cliffs Corporation v. United States, C.C.A.Ohio*, 103 F.2d 77, 80.

Written authorization given by one person to another so that the second person can act for the first, such as that given by a shareholder to someone else to represent him and vote his shares at a shareholders' meeting. Depending on the context, proxy may also refer to the

grant of authority itself (the appointment), or the document granting the authority (the appointment form). See also Power of attorney; Proxy statement; Voting trust.

Proxy marriage. A marriage contracted or celebrated through agents acting on behalf of one or both parties. A proxy marriage differs from the more conventional ceremony only in that one or both of the contracting parties are represented by an agent; all the other requirements having been met. *State v. Anderson*, 239 Or. 200, 396 P.2d 558, 561.

Proxy statement. Information required by SEC to be given stockholders as a prerequisite to solicitation of proxies for a security subject to the requirements of Securities Exchange Act. The purpose of the proxy statement is to provide shareholders with the appropriate information to permit an intelligent decision on whether to permit their shares to be voted as solicited for particular matter at forthcoming stockholders meeting. See also Buried facts doctrine.

Prudence. Carefulness, precaution, attentiveness, and good judgment, as applied to action or conduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. This term, in the language of the law, is commonly associated with Care and Diligence and contrasted with Negligence. See those titles.

Prudent. Sagacious in adapting means to end; circumspect in action, or in determining any line of conduct. Practically wise, judicious, careful, discreet, circumspect, sensible. *Tureen v. Peoples Motorbus Co. of St. Louis, Mo.App.*, 97 S.W.2d 847, 848. In defining negligence, practically synonymous with cautious.

Prudenter agit qui præcepto legis obtemperat /pruw-déntər éyjt kwày præséptow líyjas obtémpərət/. He acts prudently who obeys the command of the law.

Prudent Man Rule. An investment standard. In some states, the law requires that a fiduciary, such as a trustee for pension funds, may invest the trust's or fund's money only in a list of securities designated by the state—the so-called legal list. In other states, the trustee may invest in a security if it is one which a prudent man of discretion and intelligence, who is seeking a reasonable income and preservation of capital, would buy. For example, New York's "prudent man rule," trustee is bound to employ such diligence and such prudence in care and management of fund as, in general, prudent men of discretion and intelligence in such matters employ in their own like affairs. *Withers v. Teachers' Retirement System of City of New York, D.C.N.Y.*, 447 F.Supp. 1248, 1254. A federal "prudent man rule" which governs investment of pension funds is found in ERISA § 404(a)(1); 29 U.S.C.A. § 1104(a)(1).

Prurient interest. A shameful or morbid interest in nudity, sex, or excretion. *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 498, 105 S.Ct. 2794, 2799, 86 L.Ed.2d 394. Model Penal Code § 251.4(1). An obsessive interest in immoral and lascivious matters. An excessive or unnatural interest in sex. One of the criteria of obsceni-

ty enunciated in *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607, 37 L.Ed.2d 419, is whether the material appeals to the "prurient interest" in sex. *See also* *Obscene*; *Obscenity*.

P.S. An abbreviation for "Public Statutes;" also for "postscript."

Pseudo /s(y)úwdow/. False, counterfeit, pretended, spurious.

Pseudograph /s(y)úwdagræf/. False writing.

P.S.I.A. An abbreviation for "pounds per square inch absolute."

Psychoneurosis /sâykown(y)erówsæs/. *See* *Insanity*.

Psychosis /saykówsæs/. A severe mental disorder in which the patient departs from the normal pattern of thinking, feeling, and acting. There is generally a loss of contact with reality. Progressive deterioration may occur. *See also* *Insanity*.

Psychotherapy /sâykowθéhrəpiy/. A method or system of alleviating or curing certain forms of disease, particularly diseases of the nervous system or such as are traceable to nervous disorders, by suggestion, persuasion, encouragement, the inspiration of hope or confidence, the discouragement of morbid memories, associations, or beliefs, and other similar means addressed to the mental state of the patient, without (or sometimes in conjunction with) the administration of drugs or other physical remedies.

PTI. *See* *Previously taxed income*; *Pre-trial intervention*.

Puberty. The earliest age at which persons are capable of begetting or bearing children. In the civil and common law, the age at which one became capable of contracting marriage. It was in boys fourteen, and in girls twelve years.

Public, n. The whole body politic, or the aggregate of the citizens of a state, nation, or municipality. The inhabitants of a state, county, or community. In one sense, everybody, and accordingly the body of the people at large; the community at large, without reference to the geographical limits of any corporation like a city, town, or county; the people. In another sense the word does not mean all the people, nor most of the people, nor very many of the people of a place, but so many of them as contradistinguishes them from a few. Accordingly, it has been defined or employed as meaning the inhabitants of a particular place; all the inhabitants of a particular place; the people of the neighborhood. Also, a part of the inhabitants of a community.

Public, adj. Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; open to common use. Belonging to the people at large; relating to or affecting the whole people of a state, nation, or community; not limited or restricted to any particular class of the community. *Peacock v. Retail Credit Co.*, D.C.Ga., 302 F.Supp. 418, 423.

As to *public* Accounts; Acknowledgment; Act; Adjuster; Administrator; Agent; Attorney; Auction; Breach; Blockade; Boundary; Business; Capacity; Carrier; Chapel; Charge; Charity; Company; Corporation; Debt; Document; Domain; Easement; Enemy; Ferry; Fund; Good; Grant; Health; Highway; Holiday; Hospital; House; Indecent; Institution; Market; Minister; Money; Necessity; Notice; Nuisance; Office; Officer; Peace; Policy; Pond; Property; Prosecutor; Record; Revenue; River; Road; Sale; School; Seal; Square; Stock; Store; Tax; Things; Thoroughfare; Trial; Trust; Trustee; Verdict; Vessel; War; Works; Worship, and Wrong; *see* those titles.

Public accommodation. Within the meaning of the Civil Rights Act of 1964, which prohibits racial discrimination in such places, it is generally a business establishment, affecting interstate commerce or supported in its activities by State action, which provides lodging, food, entertainment or other services and is open to the public. 42 U.S.C.A. § 2000a(b).

Public advocate. One who may or may not be an attorney who purports to represent the public at large in matters of public concern such as utility rates, environmental quality, and other consumer matters. *See also* *Ombudsman*.

Public agency. A department or agency of government which has official or quasi official status. An administrative body.

Publican /pábləkən/. In the civil law, a farmer of the public revenue; one who held a lease of some property from the public treasury; a collector of taxes and tolls.

In English law, a person authorized by license to keep a public house, and retail therein, for consumption on or off the premises where sold, all intoxicating liquors; also termed "licensed victualler." A victualler; one who serves food or drink prepared for consumption on the premises.

Publicanus /pábləkéynəs/. Lat. In Roman law, a farmer of the customs; a publican.

Public appointments. Public offices or positions which are to be filled by the appointment of individuals, under authority of law, instead of by election.

Publication. To make public; to make known to people in general; to bring before public; to exhibit, display, disclose or reveal. *Tiffany Productions v. Dewing*, D.C. Md., 50 F.2d 911, 914. The act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny. An advising of the public; a making known of something to them for a purpose. It implies the means of conveying knowledge or notice. *See also* *Notice*; *Proclamation*; *Publish*.

Term "publication" is both a business term meaning printing and distribution of written materials and a legal term meaning communication of libelous matter to a third person. *Applewhite v. Memphis State University*, Tenn., 495 S.W.2d 190, 192. *See also* *Law of libel*, *below*; and *Libel*; *Utter*.

As descriptive of the publishing of laws and ordinances, it means printing or otherwise reproducing cop-

ies of them and distributing them in such a manner as to make their contents easily accessible to the public.

Copyright law. The act of making public a book, writing, chart, map, etc.; that is, offering or communicating it to the public by the sale or distribution of copies. Publication, as used in connection with common-law copyrights, is employed to denote those acts of an author or creator which evidence a dedication of his work to public and on which depends the loss of his common-law copyright. *Vic Alexander & Associates v. Cheyenne Neon Sign Co., Wyo., 417 P.2d 921, 923. See also Common-law copyright.*

As defined in Copyright Act, "publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication. 17 U.S.C.A. § 101.

Law of libel. The act of making the defamatory matter known publicly, of disseminating it, or communicating it to one or more persons (*i.e.* to third person or persons). The reduction of libelous matter to writing and its delivery to any one other than the person injuriously affected thereby. *Great Atlantic & Pac. Tea Co. v. Paul, 256 Md. 643, 261 A.2d 731, 734, 735.* To communicate defamatory words orally or in writing or in print to some third person capable of understanding their defamatory import and in such a way that he did so understand; publication is an essential element of a libel action and, without publication, there is no libel. *Houston Belt & Terminal Ry. Co. v. Wherry, Tex.Civ.App., 548 S.W.2d 743, 751. See also Libel.*

Law of wills. The formal declaration made by a testator at the time of signing his will that it is his last will and testament. The act or acts of the testator by which he manifests that it is his intention to give effect to the paper as his last will and testament; any communication indicating to the witness that the testator intends to give effect to the paper as his will, by words, sign, motion, or conduct.

Service of process. Under Rules of Civil Procedure, publication of a summons is the process of giving it currency as an advertisement in a newspaper, under the conditions prescribed by law, as a means of giving notice of the suit to a defendant upon whom personal service cannot be made. *See e.g. New York CPLR § 315. See also Service (Service by publication).*

Public authority. An agency established by government though not a department thereof but subject to some governmental control, *e.g. Mass. Port Authority. Opinion of the Justices, 334 Mass. 721, 136 N.E.2d 223, 235.*

Public building. One of which the possession and use, as well as the property in it, are in the public. Any building held, used, or controlled exclusively for public purposes by any department or branch of government,

state, county, or municipal, without reference to the ownership of the building or of the realty upon which it is situated. A building belonging to or used by the public for the transaction of public or quasi public business.

Public character. An individual who asks for and desires public recognition, such as a political figure, statesman, author, artist, or inventor. *See also Public figure.*

Public contract. Any contract in which there are public funds provided though private persons may perform the contract and the subject of the contract may ultimately benefit private persons. *Nat'l Sur. Corp. v. Edison, 240 Ark. 641, 401 S.W.2d 754.*

Public controversy. A "public controversy," in which a person must have voluntarily involved himself in order to qualify as a public figure for purposes of a libel or slander action, is not simply a matter of interest to the public but must be a real dispute, the outcome of which affects the general public or some segment of it in an appreciable way. *Re v. Gannett Co., Inc., Del.Super., 480 A.2d 662, 665.*

Public convenience and necessity. The common criterion used in public utility matters when a board or agency is faced with a petition for action at the request of the utility. In a statute requiring the issuance of a certificate of public convenience and necessity by the Public Utilities Commission for the operation of a public transportation line, "convenience" is not used in its colloquial sense as synonymous with handy or easy of access, but in accord with its regular meaning of suitable and fitting, and "public convenience" refers to something fitting or suited to the public need. *See also Public utility.*

Public corporations. An artificial person (*e.g. municipality or a government corporation*) created for the administration of public affairs. Unlike a private corporation it has no protection against legislative acts altering or even repealing its charter. Instrumentalities created by state, formed and owned by it in public interest, supported in whole or part by public funds, and governed by managers deriving their authority from state. *Sharon Realty Co. v. Westlake, Ohio Com.Pl., 188 N.E.2d 318, 323, 25 O.O.2d 322.* A public corporation is an instrumentality of the state, founded and owned in the public interest, supported by public funds and governed by those deriving their authority from the state. *York County Fair Ass'n v. South Carolina Tax Commission, 249 S.C. 337, 154 S.E.2d 361, 362.*

Term is also commonly used to distinguish a corporation whose stock is owned and traded by the public from a corporation with closely held shares (*i.e. close or private corporation*).

See also Municipal corporation.

Public defender. An attorney appointed by a court or employed by a government agency whose work consists primarily in defending indigent defendants in criminal cases. Federal Public Defender Organizations and Community Defender Organizations are provided for under

18 U.S.C.A. § 3006A. Most states also have public defender programs. *See also* Counsel, right to; Legal aid; Legal Services Corporation.

Public domain. Land and water in possession of and owned by the United States and the states individually, as distinguished from lands privately owned by individuals or corporations. *See also* Public lands.

Copyright law. Public ownership status of writings, documents, or publications that are not protected by copyrights.

Public entity. Public entity includes a nation, state, county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic. Calif.Evid. Code.

Public exchange offer. *See* Offering.

Public figure. Term "public figure," for purposes of determining standard to be applied in defamation action, includes artists, athletes, business people, dilettantes, and anyone who is famous or infamous because of who he is or what he has done. *Rosanova v. Playboy Enterprises, Inc.*, D.C.Ga., 411 F.Supp. 440, 444. Public figures, for libel purposes, are those who have assumed roles of special prominence in society; commonly, those classed as public figures have thrust themselves to forefront of particular public controversies in order to influence resolution of issues involved. *Mills v. Kingsport Times-News*, D.C.W.Va., 475 F.Supp. 1005, 1009. Persons so classified are required to prove actual notice to recover in libel actions. *Hustler Magazine v. Falwell*, 485 U.S. 46, 108 S.Ct. 876, 99 L.Ed.2d 41.

In determining whether plaintiff in libel action is "public figure" required to show "actual malice" of publisher or broadcaster, it is preferable to look to nature and extent of his participation in particular controversy giving rise to the defamation, and he should not be deemed public personality for all aspects of his life in absence of clear evidence of general fame or notoriety in community and pervasive involvement in affairs of society. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789. *See* Libel.

For right of privacy action purposes, includes anyone who has arrived at position where public attention is focused upon him as a person. *Dietemann v. Time, Inc.*, D.C.Cal., 284 F.Supp. 925, 930. *See* Invasion of privacy.

Public funds. Moneys belonging to government, or any department of it, in hands of public official. *Droste v. Kerner*, 34 Ill.2d 495, 217 N.E.2d 73, 78.

Public hearing. Public hearing before any tribunal or body means right to appear and give evidence and also right to hear and examine witnesses whose testimony is presented by opposing parties. *North State, Astor, Lake Shore Drive Ass'n v. City of Chicago*, 131 Ill.App.2d 251, 266 N.E.2d 742, 746.

Publici juris /públesay júres/. Lat. Of public right. The word "public" in this sense means pertaining to the people, or affecting the community at large; that which concerns a multitude of people; and the word "right," as

so used, means a well-founded claim; an interest; concern; advantage; benefit. This term, as applied to a thing or right, means that it is open to or exercisable by all persons. It designates things which are owned by "the public," that is, the entire state or community, and not by any private person. When a thing is common property, so that any one can make use of it who likes, it is said to be *publici juris*; as in the case of light, air, and public water.

Public interest. Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national government. *Russell v. Wheeler*, 165 Colo. 296, 439 P.2d 43, 46.

If by public permission one is making use of public property and he chances to be the only one with whom the public can deal with respect to the use of that property, his business is affected with a public interest which requires him to deal with the public on reasonable terms. The circumstances which clothe a particular kind of business with a "public interest," as to be subject to regulation, must be such as to create a peculiarly close relation between the public and those engaged in it and raise implications of an affirmative obligation on their part to be reasonable in dealing with the public. One does not devote his property or business to a public use, or clothe it with a public interest, merely because he makes commodities for and sells to the public in common callings such as those of the butcher, baker, tailor, etc. *Chas. Wolff Packing Co. v. Court of Industrial Relations of State of Kansas*, 262 U.S. 522, 43 S.Ct. 630, 633, 67 L.Ed. 1103. A business is not affected with a public interest merely because it is large, or because the public has concern in respect of its maintenance, or derives benefit, accommodation, ease, or enjoyment from it. *Tyson & Bro.-United Theatre Ticket Offices v. Banton*, 273 U.S. 418, 47 S.Ct. 426, 71 L.Ed. 718.

Public invitee. A public invitee to whom owner of property owes duty to exercise ordinary care for his safety is person who is invited to enter or remain on land as member of public for purpose for which land is held open to public. *Lemon v. Busey*, 204 Kan. 119, 461 P.2d 145, 149. *See also* Business (*Business invitee*); Invitee.

Publicist /públesəst/. One versed in, or writing upon, public law, the science and principles of government, or international law.

Public lands. The general public domain; unappropriated lands; lands belonging to the United States and which are subject to sale or other disposal under general laws, and not reserved or held back for any special governmental or public purpose. *Newhall v. Sanger*, 92 U.S. 761, 763, 23 L.Ed. 769.

Public land system. Legal descriptions of land by reference to the public land survey.

Public law. A general classification of law, consisting generally of constitutional, administrative, criminal, and international law, concerned with the organization of the state, the relations between the state and the people who compose it, the responsibilities of public officers to the state, to each other, and to private persons, and the relations of states to one another. An act which relates to the public as a whole. It may be (1) general (applying to all persons within the jurisdiction), (2) local (applying to a geographical area), or (3) special (relating to an organization which is charged with a public interest).

That portion of law that defines rights and duties with either the operation of government, or the relationships between the government and individuals, associations, and corporations.

That branch or department of law which is concerned with the state in its political or sovereign capacity, including constitutional and administrative law, and with the definition, regulation, and enforcement of rights in cases where the state is regarded as the subject of the right or object of the duty,—including criminal law and criminal procedure,—and the law of the state, considered in its *quasi* private personality, *i.e.*, as capable of holding or exercising rights, or acquiring and dealing with property, in the character of an individual. That portion of law which is concerned with political conditions; that is to say, with the powers, rights, duties, capacities, and incapacities which are peculiar to political superiors, supreme and subordinate. In one sense, a designation given to international law, as distinguished from the laws of a particular nation or state. In another sense, a law or statute that applies to the people generally of the nation or state adopting or enacting it, is denominated a public law, as contradistinguished from a private law, affecting only an individual or a small number of persons.

See also General law. *Compare* Private bill; Private law; Special law.

Public liability insurance. Type of insurance coverage which protects against claims arising from the conduct, property and agents of the insured and which indemnifies against loss arising from liability.

Publicly. Openly. In public, well known, open, notorious, common, or general, as opposed to private, secluded, or secret.

Publicly held. Corporation whose stock is held by and available to the public. Shares of publicly held corporations are usually traded on a securities exchange or over-the-counter. *Compare* Corporation (*Close Corporation*).

Public nuisance. A condition dangerous to health, offensive to community moral standards, or unlawfully obstructing the public in the free use of public property. Any unreasonable interference with rights common to all members of community in general and encompasses public health, safety, peace, morals or convenience. *State ex inf. Ashcroft v. Kansas City Firefighters Local*

No. 42, Mo.App., 672 S.W.2d 99, 114. It is one affecting rights enjoyed by citizens as part of public and must affect a considerable number of people or an entire community or neighborhood, *Spur Industries, Inc. v. Del E. Webb Development Co., 108 Ariz. 178, 494 P.2d 700, 705;* although extent of damage may be unequal, *Kitsap County v. Kev, Inc., 720 P.2d 818, 821.* *Compare* Private nuisance.

Public offense. An act or omission forbidden by law, and punishable as by law provided. Term used to describe a crime as distinguished from an infringement of private rights. A public offense, the commission of which authorizes private person to arrest another, includes misdemeanors. *People v. Sjosten, 262 C.A.2d 539, 68 Cal.Rptr. 832, 835.* *See* Crime.

Public offering. *See* Offering.

Public office. Essential characteristics of "public office" are: (1) authority conferred by law, (2) fixed tenure of office, and (3) power to exercise some portion of sovereign functions of government; key element of such test is that "officer" is carrying out sovereign function. *Spring v. Constantino, 168 Conn. 563, 362 A.2d 871, 875.* Essential elements to establish public position as "public office" are: position must be created by constitution, legislature, or through authority conferred by legislature, portion of sovereign power of government must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control of superior power other than law, and position must have some permanency and continuity. *State ex rel. Eli Lilly and Co. v. Gaertner, Mo.App., 619 S.W.2d 761, 764.*

Public official. A person who, upon being issued a commission, taking required oath, enters upon, for a fixed tenure, a position called an office where he or she exercises in his or her own right some of the attributes of sovereign he or she serves for benefit of public. *Macy v. Heverin, 44 Md.App. 358, 408 A.2d 1067, 1069.* The holder of a public office though not all persons in public employment are public officials, because public official's position requires the exercise of some portion of the sovereign power, whether great or small. *Town of Arlington v. Bds. of Conciliation and Arbitration, Mass., 352 N.E.2d 914.*

Public passage. A right, subsisting in the public, to pass over a body of water, whether the land under it be public or owned by a private person. This term is synonymous with public highway, with this difference: by the latter is understood a right to pass over the land of another; by the former is meant the right of going over the water which is on another's land.

Public place. A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public (*e.g.* a park or public beach). Also, a place in which the public has an interest as affecting the safety, health,

morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to and fro.

Public policy. Community common sense and common conscience, extended and applied throughout the state to matters of public morals, health, safety, welfare, and the like; it is that general and well-settled public opinion relating to man's plain, palpable duty to his fellowmen, having due regard to all circumstances of each particular relation and situation. *Hammonds v. Aetna Cas. & Sur. Co.*, D.C.Ohio, 243 F.Supp. 793, 796.

Public policy doctrine. Doctrine whereby a court may refuse to enforce contracts that violate law or public policy. *United Paperworkers International Union v. Nisco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 373, 98 L.Ed.2d 286. Invoked, for example, to preclude the contractually authorized termination of an employee who refuses to participate in a violation of law. *Phipps v. Clark Oil & Refining Corp.*, Minn., 408 N.W.2d 569, 571. See Whistle-blower Acts.

Public policy limitation. A concept developed by the courts precluding an income tax deduction for certain expenses related to activities deemed to be contrary to the public welfare. In this connection, Congress has incorporated into the Internal Revenue Code specific disallowance provisions covering such items as illegal bribes, kickbacks, and fines and penalties. I.R.C. §§ 162(c) and (f).

Public purpose. In the law of taxation, eminent domain, etc., this is a term of classification to distinguish the objects for which, according to settled usage, the government is to provide, from those which, by the like usage, are left to private interest, inclination, or liberality. The constitutional requirement that the purpose of any tax, police regulation, or particular exertion of the power of eminent domain shall be the convenience, safety, or welfare of the entire community and not the welfare of a specific individual or class of persons. "Public purpose" that will justify expenditure of public money generally means such an activity as will serve as benefit to community as a body and which at same time is directly related function of government. *Pack v. Southern Bell Tel. & Tel. Co.*, 215 Tenn. 503, 387 S.W.2d 789, 794.

The term is synonymous with governmental purpose. As employed to denote the objects for which taxes may be levied, it has no relation to the urgency of the public need or to the extent of the public benefit which is to follow; the essential requisite being that a public service or use shall affect the inhabitants as a community, and not merely as individuals. A public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.

Public record. Public records are those records which a governmental unit is required by law to keep or which it is necessary to keep in discharge of duties imposed by

law; e.g. records of land transactions kept at county court house; records of court cases kept by clerk of court. *Curran v. Board of Park Com'rs, Lake County Metropolitan Park Dist.*, Com.Pl., 22 Ohio Misc. 197, 259 N.E.2d 757, 759, 51 O.O.2d 321. Elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it. *Nero v. Hyland*, 76 N.J. 213, 386 A.2d 846, 851. A record is a "public record" within purview of statute providing that books and records required by law to be kept by county clerk may be received in evidence in any court if it is a record which a public officer is required to keep and if it is filed in such a manner that it is subject to public inspection. *In re LaSarge's Estate*, Okl., 526 P.2d 930, 933. For purposes of right-to-know law, includes decisions which establish, alter, or deny rights, privileges, immunities, duties, or obligations. *Lamolinaro v. Barger*, 30 Pa. Cmwlth. 307, 373 A.2d 788, 790. See also Record.

Public safety. A state may exercise its police power (derivatively, a city or town) by enacting laws for the protection of the public from injury and dangers.

Public sale. Sale at auction of property upon notice to public of such. May result from e.g. tax foreclosure. See also Sheriff's sale.

Public service. A term applied to the objects and enterprises of certain kinds of corporations, which specially serve the needs of the general public or conduce to the comfort and convenience of an entire community, such as railroad, gas, water, and electric light companies; and companies furnishing public transportation. A public service or quasi public corporation is one private in its ownership, but which has an appropriate franchise from the state to provide for a necessity or convenience of the general public, incapable of being furnished by private competitive business, and dependent for its exercise on eminent domain or governmental agency. It is one of a large class of private corporations which on account of special franchises conferred on them owe a duty to the public which they may be compelled to perform. See also Public corporations.

Public service commission. A board or commission created by the legislature to exercise power of supervision or regulation over public utilities or public service corporations. An administrative agency established by the State legislature to regulate rates and services of electric, gas, telephone, and other public utilities. Such a commission is a legal, administrative body, provided for the administration of certain matters within the police power, with power to make regulations as to certain matters when required for the public safety and convenience, and to determine facts on which existing laws shall operate.

Public service corporation. A utility company privately owned but regulated by the government. It may sell gas, water or electricity but its rates are established by the state. It may be a broadcasting company. See also Public convenience and necessity; Public utility.

Public trial. Term "public trial" contemplated by Constitution (Amend. VI) is a trial which is not secret, one that the public is free to attend. To a great extent, it is a relative term and its meaning depends largely on circumstances of each particular case. *Hampton v. People*, 171 Colo. 153, 465 P.2d 394, 399. Court session which is "public" is also "open", and, therefore, under normal conditions, a "public trial" is one which is open to general public at all times. *People v. Valenzuela*, 259 C.A.2d 826, 66 Cal.Rptr. 825, 829.

Although the right of public access to criminal trials is of constitutional stature, it is not absolute. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 581 n. 18, 100 S.Ct. 2814, 65 L.Ed.2d 973. However, the circumstances under which the press and public can be barred from a criminal trial are limited. Where the state attempts to deny the right of access in order to inhibit the disclosure of sensitive information, it must be shown that the denial is necessitated by a compelling governmental interest and is narrowly tailored to serve that interest. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 606, 607, 102 S.Ct. 2613, 2620, 73 L.Ed.2d 248.

Public, true, and notorious. The old form by which charges in the *allegations* in the ecclesiastical courts were described at the end of each particular.

Public trust. See Charitable trust; Trust.

Public trust doctrine. Provides that submerged and submersible lands are preserved for public use in navigation, fishing and recreation and state, as trustee for the people, bears responsibility of preserving and protecting the right of the public to the use of the waters for those purposes. *Oregon Shores Conservation Coalition v. Oregon Fish and Wildlife Com'n*, 62 Or.App. 481, 662 P.2d 356, 364.

Public trustee. County official who is appointed to act for the public in administering deeds of trust.

Publicum jus /póbləkəm jés/. Lat. In the civil law, public law; that law which regards the state of the commonwealth.

Public use. *Eminent domain.* The constitutional and statutory basis for taking property by eminent domain. For condemnation purposes, "public use" is one which confers some benefit or advantage to the public; it is not confined to actual use by public. It is measured in terms of right of public to use proposed facilities for which condemnation is sought and, as long as public has right of use, whether exercised by one or many members of public, a "public advantage" or "public benefit" accrues sufficient to constitute a public use. *Montana Power Co. v. Bokma*, Mont., 457 P.2d 769, 772, 773.

Public use, in constitutional provisions restricting the exercise of the right to take private property in virtue of eminent domain, means a use concerning the whole community as distinguished from particular individuals. But each and every member of society need not be equally interested in such use, or be personally and directly affected by it; if the object is to satisfy a great

public want or exigency, that is sufficient. *Rindge Co. v. Los Angeles County*, 262 U.S. 700, 43 S.Ct. 689, 692, 67 L.Ed. 1186. The term may be said to mean public usefulness, utility, or advantage, or what is productive of general benefit. It may be limited to the inhabitants of a small or restricted locality, but must be in common, and not for a particular individual. The use must be a needful one for the public, which cannot be surrendered without obvious general loss and inconvenience. A "public use" for which land may be taken defies absolute definition for it changes with varying conditions of society, new appliances in the sciences, changing conceptions of scope and functions of government, and other differing circumstances brought about by an increase in population and new modes of communication and transportation. *Katz v. Brandon*, 156 Conn. 521, 245 A.2d 579, 586.

See also Condemnation; Eminent domain.

Patent law. Within statute providing that patent is invalid if invention was in "public use" more than one year prior to date of application for patent is defined as any nonsecret use of a completed and operative invention in its natural and intended way. *Atlas Chemical Industries, Inc. v. Moraine Products, C.A.Mich.*, 509 F.2d 1, 4. In patent law, a public use is entirely different from a use by the public. If an inventor allows his machine to be used by other persons generally, either with or without compensation, or if it is, with his consent, put on sale for such use, then it will be in "public use" and on public sale.

Public utility. A privately owned and operated business whose services are so essential to the general public as to justify the grant of special franchises for the use of public property or of the right of eminent domain, in consideration of which the owners must serve all persons who apply, without discrimination. It is always a virtual monopoly.

A business or service which is engaged in regularly supplying the public with some commodity or service which is of public consequence and need, such as electricity, gas, water, transportation, or telephone or telegraph service. *Gulf States Utilities Co. v. State*, Tex.Civ.App., 46 S.W.2d 1018, 1021. Any agency, instrumentality, business industry or service which is used or conducted in such manner as to affect the community at large, that is, which is not limited or restricted to any particular class of the community. The test for determining if a concern is a public utility is whether it has held itself out as ready, able and willing to serve the public. The term implies a public use of an article, product, or service, carrying with it the duty of the producer or manufacturer, or one attempting to furnish the service, to serve the public and treat all persons alike, without discrimination. It is synonymous with "public use," and refers to persons or corporations charged with the duty to supply the public with the use of property or facilities owned or furnished by them. *Buder v. First Nat. Bank in St. Louis, C.C.A.Mo.*, 16 F.2d 990, 992. To constitute a true "public utility," the devotion to public use must be of such character that the

public generally, or that part of it which has been served and which has accepted the service, has the legal right to demand that that service shall be conducted, so long as it is continued, with reasonable efficiency under reasonable charges. The devotion to public use must be of such character that the product and service is available to the public generally and indiscriminately, or there must be the acceptance by the utility of public franchisees or calling to its aid the police power of the state.

Public Utility Holding Company Act. Federal statute enacted in 1935 to protect public, investors and consumers from economic effect of complex, unwieldy and dishonest organization of public utilities and particularly from effect of false, misleading and irresponsible security advertising. In re Com. & Southern Corp., C.A.Del. 1951, 186 F.2d 708. 15 U.S.C.A. §§ 79-79Z.

Public vessel. See Vessel.

Public Vessels Act. Federal law which provides for libel in personam against the United States or a petition impleading the United States for damages caused by public vessels of the United States. 46 U.S.C.A. § 781-790.

Public way. See Highway (*Public highway*).

Public welfare. The prosperity, well-being, or convenience of the public at large, or of a whole community, as distinguished from the advantage of an individual or limited class. It embraces the primary social interests of safety, order, morals, economic interest, and non-material and political interests. In the development of our civic life, the definition of "public welfare" has also developed until it has been held to bring within its purview regulations for the promotion of economic welfare and public convenience.

Publish. To make public; to circulate; to make known to people in general. To issue; to put into circulation. To utter; to present (*e.g.* a forged instrument) for payment. To declare or assert, directly or indirectly, by words or actions, that a forged instrument is genuine. An advising of the public or making known of something to the public for a purpose. *Estill County v. Noland*, 295 Ky. 753, 175 S.W.2d 341, 346. See also Publication; Utter.

Publisher. One who by himself or his agent makes a thing publicly known. One whose business is the manufacture and sale of books, pamphlets, magazines, newspapers, or other literary productions. One who publishes, especially one who issues, or causes to be issued, from the press, and offers for sale or circulation matter printed, engraved, or the like.

P.U.C. Public Utilities Commission.

PUD. Planned Unit Development. In zoning, a device which has as its goal a self-contained mini-community, built within a zoning district, under density and use rules controlling the relation of private dwellings to open space, of homes to commercial establishments, and of high income dwellings to low and moderate income housing. See Planned unit development.

Pudicity /pyuwdísətíy/. Chastity; purity; continence; modesty; the abstaining from all unlawful carnal commerce or connection.

Pudzeld /wúdgèld/. In old English law, supposed to be a corruption of the Saxon "*wudgeld*" (woodgeld), a freedom from payment of money for taking *wood* in any forest.

Pueblo /p(yu)wé(y)blow/. In Spanish law, people; all the inhabitants of any country or place, without distinction. A town, township, or municipality. A small settlement or gathering of people, a steady community; the term applies equally whether the settlement be a small collection of Spaniards or Indians. *Pueblo of Santa Rosa v. Fall*, 56 App.D.C. 259, 12 F.2d 332, 335. This term "*pueblo*," in its original signification, means "people" or "population," but is used in the sense of the English word "town." It has the indefiniteness of that term, and, like it, is sometimes applied to a mere collection of individuals residing at a particular place, a settlement or village, as well as to a regularly organized municipality. *Trenouth v. San Francisco*, 100 U.S. 251, 25 L.Ed. 626.

Community dwelling, constructed of stone or adobe, resided in by Indian tribes of the southwestern United States. Term may also refer to inhabitants of such dwelling or of the entire village.

Puer /pyúwær/. Lat. In the civil law, a child; one of the age from seven to fourteen, including, in this sense, a girl. But it also meant a "boy," as distinguished from a "girl," or a servant.

Puerility /p(y)üwærilətíy/. In the civil law, a condition intermediate between infancy and puberty, continuing in boys from the seventh to the fourteenth year of their age, and in girls from seven to twelve.

Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum / pyúwærý sánt diy sǎngwóniy pæréntəm, sèd péytər èt méytər nón sánt diy sǎngwóniy pyuwærorəm/. Children are of the blood of their parents, but the father and mother are not of the blood of the children.

Pueritia /p(y)üwærish(iy)ə/. Lat. In the civil law, childhood; the age from seven to fourteen. The age from birth to fourteen years in the male, or twelve in the female.

Puffer. A person employed by the owner of property which is sold at auction to attend the sale and run up the price by making spurious bids. See also Puffing.

Puffing. An expression of opinion by seller not made as a representation of fact. *Gulf Oil Corp. v. Federal Trade Commission*, C.C.A.5, 150 F.2d 106, 109. Exaggeration by a salesperson concerning quality of goods (not considered a legally binding promise); usually concerns opinions rather than facts. Advertising which merely states in general terms that advertiser's product is superior is only "puffing" and is not actionable in action by competitor. *Smith-Victo Corp. v. Sylvia Elec. Products, Inc.*, D.C.Ill. 242 F.Supp. 302, 308.

Term also describes secret bidding at auction by or on behalf of seller. *Feaster Trucking Service, Inc. v. Parks-Davis Auctioneers, Inc.*, 211 Kan. 78, 505 P.2d 612, 617.

Puis /pwíy/pwís/. Fr. In law. Afterwards; since.

Puis darrein continuance /pwís dárən kəntínyuwəns/. Since the last continuance. In common law pleading, the name of a plea which a defendant was allowed to put in, after having already pleaded, where some *new* matter of defense arose after issue joined; such as payment, a release by the plaintiff, the discharge of the defendant under an insolvent or bankrupt law, and the like.

Puisne. Junior, inferior, as in "puisne judges of the English High Court, meaning those without distinction or title." Supreme Court Act, § 4, 1981.

Pullman abstention. This doctrine allows federal courts to stay proceedings before it in order to provide state courts opportunity to settle underlying, unsettled questions of state law, thus avoiding possibility of federal court's unnecessarily deciding constitutional questions. *North Dixie Theatre, Inc. v. McCullion, D.C.Ohio*, 613 F.Supp. 1339, 1343.

Pulsare /pəlsəri/. Lat. In the civil law, to beat; to accuse or charge; to proceed against at law.

Pulsator /pəlsərtər/. The plaintiff, or actor.

Punctum temporis /pŋktəm tēmpərəs/. Lat. A point of time; an indivisible period of time; the shortest space of time; an instant.

Pundbrech /páwndbriych/. In old English law, pound-breach; the offense of breaking a pound. The illegal taking of cattle out of a pound by any means whatsoever.

Punishable. Deserving of or capable or liable to punishment; capable of being punished by law or right. *People v. Superior Court of City and County of San Francisco*, 116 Cal.App. 412, 2 P.2d 843, 844. See Criminal.

Punishment. Any fine, penalty, or confinement inflicted upon a person by the authority of the law and the judgment and sentence of a court, for some crime or offense committed by him, or for his omission of a duty enjoined by law. A deprivation of property or some right. But does not include a civil penalty redounding to the benefit of an individual, such as a forfeiture of interest. *People v. Vanderpool*, 20 Cal.2d 746, 128 P.2d 513, 515. See also Sentence.

Cruel and unusual punishment. As prohibited by Eighth Amendment, is such punishment as would amount to torture or barbarity, and any cruel and degrading punishment not known to the common law, and also any punishment so disproportionate to the offense as to shock the moral sense of the community. In *re Kemmler*, 136 U.S. 436, 10 S.Ct. 930, 34 L.Ed. 519. Punishment which is excessive for the crime committed is cruel and unusual. *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982. Such punishment cannot be defined with specificity; it is flexible and tends to broaden as society tends to pay more regard to human decency and dignity and becomes, or likes to think that it becomes, more humane. *Holt v. Sarver, D.C.Ark.*, 309

F.Supp. 362, 365, 380. The death penalty is not per se cruel and unusual punishment within the prohibition of the 8th Amendment, U.S.Const., but states must follow strict safeguards in the sentencing of one to death. *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859.

The fundamental respect for humanity underlying the Eighth Amendment requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death. *Woodson v. North Carolina*, 428 U.S. 280, 304, 96 S.Ct. 2978, 49 L.Ed.2d 944; *Roberts v. Louisiana*, 431 U.S. 633, 637, 97 S.Ct. 1993, 1995, 52 L.Ed.2d 637.

See also Capital (*Capital punishment*); Corporal punishment; Excessive punishment; Hard labor; Sentence.

Cumulative punishment. An increased punishment inflicted for a second or third conviction of the same offense, under the statutes relating to habitual criminals. To be distinguished from a "cumulative sentence," as to which see Sentence.

Infamous punishment. Punishment by imprisonment, particularly in a penitentiary. Sometimes, imprisonment at hard labor regardless of the place of imprisonment. *U. S. v. Moreland*, 258 U.S. 433, 42 S.Ct. 368, 66 L.Ed. 700.

Punitive. Relating to punishment; having the character of punishment or penalty; inflicting punishment or a penalty.

Punitive damages. See Damages.

Punitive statute. One which creates forfeiture or imposes penalty.

Pupillus /pyuwpiłəs/. Lat. In the civil law, a ward or infant under the age of puberty; a person under the authority of a *tutor* (*q.v.*).

Pupillus pati posse non intelligitur /pyuwpiłəs péytay pōsiy nōn intəlǐjətər/. A pupil or infant is not supposed to be able to suffer, *i.e.*, to do an act to his own prejudice.

Pur /pər/púr/. L. Fr. By or for. Used both as a separable particle, and in the composition of such words as "purparty," "purlieu."

Pur autre vie /pər ó(w)tra váy/pür ówtra víy/. For (or during) the life of another. An estate *pur autre vie* is an estate in lands which a person holds for the life of another person.

Pur cause de vicinage /pər kóz də vəsáynəj/pür kówz də visinázh/. By reason of neighborhood. See Common.

Purchase. Transmission of property from one person to another by voluntary act and agreement, founded on a valuable consideration. *Spur Independent School Dist. v. W. A. Holt Co., Tex.Civ.App.*, 88 S.W.2d 1071, 1073. To own by paying or by promising to pay an agreed price which is enforceable at law. *First Nat. Bank & Trust Co. of Chickasha v. U.S., C.A.Okla.*, 462 F.2d 908, 910. In a technical and broader meaning relative to land, gener-

ally means the acquisition of real estate by any means whatever except by descent. *Oklahoma City v. Board of Education of Oklahoma City*, 181 Okl. 539, 75 P.2d 201.

Includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property. U.C.C. § 1-201(32). The term "purchase" includes any contract to purchase or otherwise acquire. Securities Exchange Act, § 3.

Quasi purchase. In the civil law, a purchase of property not founded on the actual agreement of the parties, but on conduct of the owner which is inconsistent with any other hypothesis than that he intended a sale.

Words of purchase. Words which denote the person who is to take the estate. Thus, if a person grants land to A. for twenty-one years, and after the determination of that term to A.'s heirs, the word "heirs" does not denote the duration of A.'s estate, but the person who is to take the remainder on the expiration of the term, and is therefore called a "word of purchase."

Purchase agreement. An agreement between a buyer and seller of property, setting forth, in general, the price and terms of the sale. A sales agreement or contract to sell. *See also* Buy and sell agreement.

Purchase method of accounting. A method of accounting for mergers in which the total value paid or exchanged for the acquired firm's assets is recorded on the acquiring firm's books. Any difference between the fair market value of the assets acquired and the purchase price is recorded as goodwill.

Purchase money. The actual money paid in cash or check initially for the property while the balance may be secured by a mortgage and note calling for periodic payments. *See also* Earnest money.

As used with reference to part performance under statute of frauds, comprehends consideration, whether it be money or property or services, for which lands are to be conveyed. *Hall v. Haer*, 160 Okl. 118, 16 P.2d 83, 84.

Purchase money mortgage. A mortgage or security device taken back to secure the performance of an obligation incurred in the purchase of the property. A "purchase money" security interest for personal property is controlled by Article 9 of the Uniform Commercial Code. *See also* Mortgage; Purchase money security interest.

Purchase money resulting trust. Such ordinarily arises when the purchase price of property is paid by one person and at his or her discretion the vendor transfers the property to another, who is deemed to hold the property in trust for the person furnishing the consideration. *Slocum v. Hammond*, Iowa, 346 N.W.2d 485, 492. When one person furnishes the money for the purchase of property title to which is to be taken in the name of another, the party furnishing the funds is the equitable owner under a purchase money resulting trust. It is not necessary that he furnish the entire purchase price, but he must intend to acquire an interest.

Purchase money security interest. One which is taken or retained by seller of item to secure its price or taken by person who advances funds to enable one to acquire rights in collateral. In *re Damron*, Bkrty.Ky., 5 B.R. 357, 358. A security interest is a "purchase money security interest" to the extent that it is: (a) taken or retained by the seller of the collateral to secure all or part of its price; or (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. U.C.C. § 9-107.

Purchase order. Document authorizing a seller to deliver goods with payment to be made later. A written authorization calling on a vendor or supplier to furnish goods to the person ordering such. It constitutes an offer which is accepted when the vendor supplies the quantity and quality ordered.

Purchase price. Price agreed upon as a consideration for which property or goods are sold and purchased.

Purchaser. One who acquires real property in any other mode than by descent. One who acquires either real or personal property by buying it for a price in money; a buyer; vendee. One who has contracted to purchase property or goods. Also, a successful bidder at judicial sale. In *re Spokane Sav. Bank*, 198 Wash. 665, 89 P.2d 802, 806. A person who orders and pays for goods when the sale is for cash or who is legally obligated to pay for them if the sale is on credit. *L. M. Berry & Co. v. Blackmon*, 129 Ga.App. 347, 199 S.E.2d 610, 612. Term may be employed in broad sense to include anyone who obtains title otherwise than by descent and distribution but is more commonly used to refer to a vendee or buyer who has purchased property for valuable consideration. *Smith v. Enochs*, D.C.Miss., 233 F.Supp. 925, 927.

One who takes by purchase which includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift, or any other voluntary transaction creating an interest in property. U.C.C. § 1-201(32)(33).

The term "purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest (other than a lien or security interest) in property which is valid under local law against subsequent purchasers without actual notice. I.R.C. § 6323(h).

Transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee. Bankruptcy Code § 101.

Bona fide purchaser. *See* Bona fide.

First purchaser. In the law of descent, this term signifies the ancestor who first acquired (in any other manner than by inheritance) the estate which still remains in his family or descendants.

Innocent purchaser. One who acquires title to property without knowledge of any defect in the title. *See also* Innocent purchaser.

Purchaser of a note or bill. The person who buys a promissory note or bill of exchange from the holder without his indorsement.

Purchaser for value. One who pays consideration for property or goods bought.

Pure. Absolute; complete; simple; unmixed; unqualified. Free from conditions or restrictions, as in the phrases pure charity, pure debt, pure obligation, pure plea, pure villenage, as to which see the nouns. *See also* Purity.

Pure accident. Implies that accident was caused by some unforeseen and unavoidable event over which neither party to the action had control, and excludes the idea that it was caused by carelessness or negligence of defendant. *Maletis v. Portland Traction Co.*, 160 Or. 30, 83 P.2d 141, 142. Unavoidable accident has been held to be synonymous. *Brewer v. Berner*, 15 Wash.2d 644, 131 P.2d 940, 942. *See* Accident; Act of God.

Pure race statute. In some states, the first purchaser of real estate to record regardless of notice has the best claim to title and hence it is described as a race to the registry of deeds or other office for the recording of deeds and instruments of conveyance of real property. *See also* Recording acts.

Pur faire proclamer /pər fər prɔːklɛmər/pür fər prɔːklémé/. An ancient writ addressed to the mayor or bailiff of a city or town, requiring him to make proclamation concerning nuisances, etc.

Purgation /pərgéyshən/. The act of cleansing or exonerating one's self of a crime, accusation, or suspicion of guilt, by denying the charge on oath or by ordeal.

Canonical purgation was made by the party's taking his own oath that he was innocent of the charge, which was supported by the oath of twelve compurgators, who swore they believed he spoke the truth. To this succeeded the mode of purgation by the single oath of the party himself, called the "oath *ex officio*," of which the modern defendant's oath in chancery is a modification. 3 Bl.Comm. 447; 4 Bl.Comm. 368.

Vulgar purgation consisted in ordeals or trials by hot and cold water, by fire, by hot irons, by battel, by corsned, etc.

Purge. To cleanse; to clear. To clear or exonerate from some charge or imputation of guilt, or from a contempt.

Purge des hypothèques /pərz hɛy ɪpɔwték/. Fr. In French law, an expression used to describe the act of freeing an estate from the mortgages and privileges with which it is charged, observing the formalities prescribed by law.

Purity. Within food adulteration statute is freedom from extraneous matter or anything debasing or contaminating. *People v. Enders*, 38 Misc.2d 746, 237 N.Y.S.2d 879, 889. *See also* Pure.

Purpart /pərpɑrt/. A share; a part in a division; that part of an estate, formerly held in common, which is by partition allotted to any one of the parties. The word was anciently applied to the shares falling separately to

co-parceners upon a division or partition of the estate, and was generally spelled "purparty;" but it is now used in relation to any kind of partition proceedings.

Purparty /pərpɑrti/. That part of an estate which, having been held in common by parceners, is by partition allotted to any of them. To make purparty is to divide and sever the lands which fall to parceners. Formerly *pourparty*. The word *purpart* is commonly used to indicate a part of an estate in any connection.

Purport, n. Meaning; import; substantial meaning; substance; legal effect. The "purport" of an instrument means the substance of it as it appears on the face of the instrument, and is distinguished from "tenor," which means an exact copy.

Purport, v. To convey, imply, or profess outwardly; to have the appearance of being, intending, claiming, etc. *United States v. 306 Cases Containing Sandford Tomato Catsup with Preservative*, D.C.N.Y., 55 F.Supp. 725, 727.

Purpose. That which one sets before him to accomplish or attain; an end, intention, or aim, object, plan, project. Term is synonymous with ends sought, an object to be attained, an intention, etc. *Andresen v. Board of Sup'rs of Santa Cruz County*, 235 C.A.2d 436, 45 Cal.Rptr. 306, 309.

Purposely. Intentionally; designedly; consciously; knowingly. Act is done "purposely" if it is willed, is product of conscious design, intent or plan that it be done, and is done with awareness of probable consequences. *Horne v. State, Ind.*, 445 N.E.2d 976, 979. A person acts purposely with respect to a material element of an offense when: (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and (ii) if the element involves the attendant circumstances, he is aware of the existence of such circumstances or he believes or hopes that they exist. Model Penal Code, § 2.02.

Purpresture /pəprɛstʃər/. An encroachment upon public rights and easements by appropriation to private use of that which belongs to public. *Hill Farm, Inc. v. Hill County, Tex.*, 436 S.W.2d 320, 321. An inclosure by a private party of a part of that which belongs to and ought to be open and free to the enjoyment of the public at large. It is not necessarily a public nuisance. A public nuisance must be something which subjects the public to some degree of inconvenience or annoyance; but a purpresture may exist without putting the public to any inconvenience whatever.

Purprise /pəpráyz/. L. Fr. A close or inclosure; as also the whole compass of a manor.

Purple, /pərp(y)ər/ or **porprin** /pɔrpɹɛn/. A term used in heraldry; the color commonly called "purple," expressed in engravings by lines in bend sinister. In the arms of princes it was formerly called "mercury," and in those of peers "amethyst."

Purse. Some valuable thing, offered by a person for the doing of something by others; prize; premium. Sum of money available to winner(s) of contest or event.

Pursuer /pársær/. The person on a ship or vessel in charge of financial accounts and transactions with passengers.

Pursuant. A following after or following out. To execute or carry out in accordance with or by reason of something. To do in consequence or in prosecution of anything. "Pursuant to" means "in the course of carrying out: in conformance to or agreement with: according to" and, when used in a statute, is a restrictive term. Knowles v. Holly, 82 Wash.2d 694, 513 P.2d 18, 23.

Pursue. To follow, prosecute, or enforce a matter judicially, as a complaining party. To pursue the practice of any profession or business, contemplates a course of business or professional practice, and not single isolated acts arising from unusual circumstances. Dane v. Brown, C.C.A.Mass., 70 F.2d 164, 165.

Pursuer. One who pursues; one who follows in order to overtake.

Pursuit. That which one engages in as an occupation, trade, or profession; that which is followed as a continued or at least extended and prolonged employment. Dorrell v. Norida Land & Timber Co., 53 Idaho 793, 27 P.2d 960. Activity that one pursues or engages in seriously and continually or frequently as vocation or profession or as an avocation. Holman v. Oriental Refinery, 75 N.M. 52, 400 P.2d 471, 475. To follow or chase in order to apprehend or overtake. *See also* Fresh pursuit.

Pursuit of happiness. As used in constitutional law, this right includes personal freedom, freedom of contract, exemption from oppression or invidious discrimination, the right to follow one's individual preference in the choice of an occupation and the application of his energies, liberty of conscience, and the right to enjoy the domestic relations and the privileges of the family and the home. Butchers' Union, etc., Co. v. Crescent City Live Stock, etc., Co., 4 S.Ct. 652, 111 U.S. 746, 28 L.Ed. 585. The right to follow or pursue any occupation or profession without restriction and without having any burden imposed upon one that is not imposed upon others in a similar situation. Myers v. City of Defiance, 67 Ohio App. 159, 36 N.E.2d 162, 21 O.L.A. 165. While included as one of the inalienable rights in the Declaration of Independence, such right is not included in the U.S. Constitution.

Pur tant que /pàr tánt kyúw/pùr tón kə/. Forasmuch as; because; to the intent that.

Purus idiota /pyúras idiyówtə/. Lat. A congenital idiot.

Purview. Enacting part of a statute, in contradistinction to the preamble. That part of a statute commencing with the words "Be it enacted," and continuing as far as the repealing clause; and hence, the design, contemplation, purpose, or scope of the act.

Pusher. Person who sells illicit drugs. Johnson v. U.S., C.A.Neb., 484 F.2d 309, 310. *See e.g.* 21 U.S.C.A. § 841.

Put. An option permitting its holder to sell a certain stock or commodity at a fixed price for a stated quantity

and within a stated period. Such a right is purchased for a fee paid the one who agrees to accept the stock or goods if they are offered. The buyer of this right to sell expects the price of the stock or commodity to fall so that he can deliver the stock or commodity (the put) at a profit. If the price rises, the option need not be exercised. The reverse transaction is a *call*. *See* Put option; Puts and calls.

Putagium hæreditatem non adimit /pyuwtéyijəm hæredátéytəm nòn ædamət/. Incontinence does not take away an inheritance.

Putative. Reputed; supposed; commonly esteemed.

Putative father. The alleged or reputed father of a child born out of wedlock.

Putative marriage. A marriage contracted in good faith and in ignorance (on one or both sides) that impediments exist which render it unlawful. Davis v. Davis, Tex.Civ.App., 507 S.W.2d 841, 844.

Putative spouse. One who believes in good faith that he or she is party to a valid marriage, even though marriage is invalid. Neureither v. Workmen's Compensation Appeals Bd., 15 C.A.3d 429, 93 Cal.Rptr. 162, 165.

Put bond. Right of bondholder to redeem bond before maturity. *See also* Bond.

Put in. To place in due form before a court; to place among the records of a court.

Put off. To postpone. In a bargain for the sale of goods, it may mean to postpone its completion or to procure a resale of the goods to a third person.

Put option. One under which buyer of the option may demand payment by the writer of a fixed price (the "striking" price) upon delivery by the buyer of a specified number of shares of stock. Gordon & Co. v. Board of Governors of Federal Reserve System, D.C.Mass., 317 F.Supp. 1045, 1046.

Puts and calls. A "put" in the language of the commodity or stock market is a privilege of delivering or not delivering the subject-matter of the sale; and a "call" is a privilege of calling or not calling for it. *See* Put; Put option.

Putting in fear. These words are used in the common-law definition of a robbery from the person; *i.e.* the offense must have been committed by *putting in fear* the person robbed. 4 Bl.Comm. 243. No matter how slight the cause creating the fear may be, if transaction is attended with such circumstances of terror, such threatening by word or gesture, as in common experience is likely to create an apprehension of danger and induce a man to part with his property for sake of his person, victim is put in fear. State v. Sawyer, 224 N.C. 61, 29 S.E.2d 34, 37.

Pyramiding. In the stock market, a device for increasing holdings of a stock by financing new holdings out of the increased margin of those already owned. In corporate finance, the use of small equity and capital to finance controlling interest in more corporations. *See also* Leverage; Margin.

Pyramid sales scheme. A device, illegal in many states, in which a buyer of goods is promised a payment for each additional buyer procured by him.