

**P**

**p.** Abbreviation of page.

**P.** Roman numeral for 400.

**p.a.** Abbreviation of **per annum**.

**paage.** Same as **pedage**.

**pacare.** To pay.

**pacatio.** A payment.

**pacato solo.** See **in pacato solo**.

**pace.** A linear measure of two and one-half feet. A step.

**Paceatur.** Let him be released or discharged.

**pace et imprisonmento.** See **de pace et imprisonmento**.

**pace et legalitate tuenda.** See **de pace et legalitate tuenda**.

**pace et plagis.** See **de pace et plagis**.

**pace et roberia.** See **de pace et roberia**.

**pace infracta.** See **de pace infracta**.

**pacific blockade.** An interdiction of commerce with another nation, declared by way of retaliation or retorsion. 30 Am J Rev ed Internal L § 53.

**Pacific Railroad Act.** The federal statute of July 1, 1862, the purpose of which was to aid in the construction, maintenance, and operation of railroad and telegraph lines over routes specified, to promote the public interest and welfare, and to secure to the government the use of the same for postal, military, and other purposes. 52 Am J1st Teleg & T § 26.

**Pacific time.** One of the belts of standard time.

See **standard time**.

**pacifist.** One opposed to war or the use of force against another nation or another people.

The word is also used and understood to mean 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. United States v Schwimmer, 279 US 644, 73 L Ed 889, 49 S Ct 448.

**Paci sunt maxime contraria, vis et injuria.** Violence and injury are the greatest opponents of peace.

**pack.** Verb: To place together and prepare for transportation, as to make up a bundle or bale. *State v Parsons*, 124 Mo 436, 27 SW 1102. To put in a container. To admit more people into a place than it will hold comfortably. To fill a theater, auditorium, or other place of public exhibition or entertainment. Colloquially, in the Midwest, to carry a bundle, basket, or bag. Noun: A package; a bundle. The stores of an expedition carried in vehicles, on the backs of animals, or on the shoulders of men.

**package.** A bundle or parcel made up of several smaller parcels, combined or bound together in one bale, box, crate, etc. *Commonwealth v Schollenberger*, 156 Pa 201, 27 A 30. A bundle or bale made up for transportation, sometimes holding only a single article. *State v Parsons*, 124 Mo 436, 27 SW 1102. Something wrapped, boxed, or crated, rather than merely covered. Anno: 94 ALR2d 1419. Two things: (1) a receptacle of whatever form or character, and (2) the contents thereof. *Mexican Petroleum Corp. v South Portland*, 121 Me 128, 115 A 900, 26 ALR 965. In reference to misbranding or adulteration of food:—the immediate container of the article intended for consumption by the public. 35 Am J2d Food § 31. As the word appears in the statute respecting the labeling of drugs:—the immediate container of the drug, not the outside wrapping or box containing the parcels made up and intended for sale to the ultimate consumer. *Seven Cases v United States*, 239 US 510, 60 L Ed 411, 36 S Ct 190.

See **original package**.

**package sale.** A sale of liquor in a store in bottle or package, rather than by dispensed drinks.

**packer.** A person owning, operating, or managing a packinghouse. A corporation engaged in the marketing of meat food products and in the business of manufacturing meats or meat food products for sale or shipment in commerce. *United Corp. v Federal Trade Com.* (CA4) 110 F2d 473. One who processes and packs goods, particularly articles of food, for preservation and ultimate sale. One employed in placing merchandise or other articles in packages.

**Packers and Stockyards Act.** A federal statute, enacted in 1921, which imposes conditions upon the right to engage in business as commission men and livestock dealers in stockyards and provides for the regulation of such business in various respects. 7 USC §§ 181 et seq., 201 et seq.

**packet.** A small parcel. An old term of the postal laws for a written communication on four or more sheets of letter or correspondence-size paper. *Williamis v Wells, Fargo & Co. Express* (CA8 Ark) 177 F 352.

**packinghouse.** A place where animals are slaughtered and their carcasses prepared and preserved for ultimate sale as meat products or other products obtained from the carcass. A place where vegetables and fruits are processed and canned.

**packing jury.** The employment of any means in violation of law for seating upon the jury in a particular case persons whose presence upon the jury is desired in preference to other persons. *Strauder v West Virginia*, 100 US 303, 309, 25 L Ed 664, 660.

**packing price.** Raising the price in order to obtain an outrageous profit. *Plymouth Dealers Assn. v United States* (CA9 Cal) 279 F2d 128.

**pact.** A compact; a contract; an agreement; a stipulation.

**Pacta conventa quae neque contra leges, neque dolo malo inita sunt, omni modo observanda sunt.** Agreements which are neither contrary to the laws, nor fraudulently entered into, should be adhered to in every manner. See *Broom's Legal Maxims* 698

*Pacta dant legem contractui.* The stipulations furnish the law for the contract.

**Pacta privata juri publico derogare non possunt.** Private contracts cannot impair public law. *Anderson v Eggers*, 63 NJ Eq 264, 49 A 578.

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**Pacta privata non derogant juri communi.** Private agreements do not derogate from common right.

**Pacta quae contra leges constitutionesque vel contra bonos mores fiunt, nullam vim habere, indubitati juris est.** (Civil law.) It is unquestionably the law that agreements which are made contrary to the laws and the statutes or against good morals, are of no force in law.

**Pacta quae turpem causam continent non sunt observanda.** Contracts which contain an unlawful consideration will not be enforced.

**pact de non alienando.** A provision commonly contained in Louisiana mortgages whereby the mortgagee is relieved of making the holder of a subsequent mortgage a party to a suit to foreclose the prior mortgage.

The effect of such a provision in the mortgage is that the subsequent mortgagee must take notice of the proceedings at his peril. He may, however, apply to set aside the sale. 37 Am J1st Mtg § 552.

**pacti conventi.** See **exceptio pacti conventi.**

**pactio.** (Civil law.) A pact; a contract; an agreement; a bargain; a treaty; a covenant.

**paction.** A pact; a contract; a treaty.

**Pactis privatorum juri publico non derogatur.** Private contracts do not derogate from public law.

**pactitious.** Settled by a pact or contract.

**Pacto aliquid licitum est, quid sine pacto non admittitur.** By agreement a certain thing may be lawful which without the agreement would not be allowed.

**pactum.** (Civil law.) Same as **pactio.**

**pactum de quota litis.** (Civil law.) An agreement by which a person undertook to collect a debt in return for a specified share of the amount collected.

**pactum vestitum.** (Civil law.) A clothed or vested agreement,—an agreement or promise for which there was no consideration, but which was enforceable because of the formality of its execution. *Aller v Aller*, 40 NJL 446, 450.

**pad.** Verb: To fill out a hollow space. To make a cushion. To lengthen a speech or article by the inclusion of the nonessential. To increase an account fraudulently, particularly an expense account. Noun: A cushion. A foundation, as for launching a rocket. A tablet of sheets of paper for writing. A slang term for one's living quarters.

**padder.** A footpad; a highwayman on foot; a robber. Literally, one who pads.

See **pad.**

**padding payroll.** The act of a foreman or other employee in charge of a payroll in allowing unearned time to one or more employees. Anno: 41 ALR 235.

**paddy.** Rice; a rice field. An effigy of St. Patrick, used in certain parts of Pennsylvania to provoke a riot. Commonwealth v Haines (Pa) 4 Clark 17.

**paddy wagon.** A police vehicle used for taking arrested persons to jail or to court for arraignment.

**padlock laws.** Statutes which authorize the courts to order that premises constituting a liquor nuisance may not be occupied or used for any purpose for a specified period of time. 30 Am J Rev ed Intox L § 444.

**paga.** (Spanish.) Payment.

**paganism.** The religion of all those persons who have not the true God, but worship idols. Robbin's Religions of All Nations. Hale v Everett, 53 NH 9. In the modern sense, one who does not believe, as do Christians, Moslems, and Jews, in one God.

**page.** One side of a leaf in a book, magazine, or newspaper.

**page cost.** An allowance for printing the record on appeal, according to a stated sum per page. 5 Am J2d A & E § 1021.

**pagus.** A county.

**paid.** Recompensed by an actual receipt of money or an equivalent in value. Canadian Car & Foundry Co. v American Can Co. (CA2 NY) 258 F 363, 6 ALR 1182, 1191.

**paid and satisfied.** Paid in fact.

See **satisfaction of judgment.**

**paid reading matter.** That part of the content of a newspaper for which money was paid to obtain right of publication. Anno: 35 ALR 12, s. 110 ALR 332.

**paid-up addition.** The amount of paid-up life insurance purchased, and added to the amount of insurance provided by the policy, by the use of the dividend to which insured was entitled as a single premium. 29 Am J Rev ed Ins § 648.

**paid-up insurance.** Life insurance under a policy which shall continue in effect for the full period of the insured's life, the premiums having been fully paid so as to call for no further payment by the insured to keep the policy effective against lapse. Lenon v Mutual Life Ins. Co. 80 Ark 563, 98 SW 117; Hamilton v Mutual Ben. Ins. Co. 109 Ga 381, 382. The amount of insurance which the existing cash surrender value of a life insurance policy will purchase, the same to remain in effect during the full period of the insured's life without payment of additional premiums. 29 Am 1 Rev ed Ins § 619.

**paid-up stock.** Corporate stock issued upon subscription therefor and full payment of the subscription price. A share in a building and loan association for which the holder has paid in full. 13 Am J2d B & L Assoc § 23.

**pain.** The sensation one feels when hurt. A protopathic sensation located in the nervous system. 22 Am J2d Damg § 105. Distress of the body or the mind.

See **mental anguish; physical suffering; suffering.**

**paine forte et dure.** Same as **peine forte et dure.**

**Paine's Age of Reason.** A book written by Thomas Paine, an Englishman, published in 1794, containing statements denying the truth of the Scriptures and the story of Christ. Anno: 14 ALR 888.

**pains.** Plural of pain. Great effort to please or to accomplish in a most satisfactory manner.

**pains and penalties.** See **bill of pains and penalties.**

**painter.** An artisan. One who paints houses and other structures; a “laborer” for the purposes of an

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exemption from execution. 31 Am J2d Exemp § 20. An artist. A rope for tying a boat to a wharf.

**painters' colic.** Same as **lead poisoning.**

**painter's naphtha.** A product of successive distillation of crude oil. United States v Gulf Refining Co. 268 US 542, 547, 69 L Ed 1082, 1086, 45 S Ct 597.

**paint stone.** A mineral. Hartwell v Camman, 10 NJ Eq 128.

**pairing.** A practice followed in legislative bodies by members who will be absent from the body for necessity or convenience at a time when a measure is coming up for consideration and vote, whereby a member in favor of the measure and a member opposed to it each agree that in no event will he vote on the measure unless or until the agreement thus made has been terminated.

**pairt.** See **airt and pairt.**

**pais.** The country; the jury; outside of court.

See **estoppel in pais; in pais.**

**paix.** Peace.

**palabra.** See **de palabra.**

**palace car.** See **stock car.**

**palace court.** An English court of justice which had jurisdiction in all personal actions which arose within twelve miles of the palace of the king.

**palagium.** A duty which was imposed upon lords of manors for exporting and importing vessels of wine at any of their ports.

**palam.** (Civil law.) Openly; publicly; without concealment.

**Palatinate.** A district in West Germany, the name deriving from former rulers known as count palatines.

**palatine.** Pertaining to a royal palace; possessing royal privileges.

See **counties palatine; courts of the counties palatine.**

**palatium.** A palace.

**pallio cooperire.** The marriage of the parents of an illegitimate child or children followed by a formal adoption of the child or children.

**palm off.** To palm off means to impose by fraud; to put off by unfair means. *Hobart v Young*, 63 Vt 363, 21 A 612.

**palming off goods** The substitution by a dealer of his own or another's goods in the place of those called for by the purchaser, the substitution being made without the latter's consent. 52 Am J1st Tradem § 123.

**palmistry.** The practice of foretelling the fortune of a person by reading the lines which appear upon the palm of the hand. A crafty science whereby the simple minded are apt to be deceived. 36 Am J2d Fortunetelling § 2.

**palm print.** An impression left by the lines of the palm of the hand upon a smooth object. Proof of identity where authenticated and compared with other palm prints found at or near the scene of a crime. 29 Am J2d Ev § 770.

**palpable.** Easily perceptible; plain obvious; manifest; as palpable error in the valuation of property. *State ex rel. Pacific Power & L. Co. v Department of Public Works*, 143 Wash 67, 254 P 839, 845.

**palpable abuse of discretion.** A clear, plain, or manifest abuse of discretion. 5 Am J2d A & E § 774.

**Panama Canal Act.** A federal statute granting powers to the Interstate Commerce Commission with respect to connections between rail and water transportation, whether by the Panama Canal or otherwise. 49 USC § 6(11)(a); 44 Am J1st R R § 281.

**Panama Canal Zone.** See **Canal Zone.**

**Pandects.** The Digests or Pandects, a compilation of the Roman law under Justinian, which was published in the year 533 A. D.

See **Florentine Pandects.**

**pander.** A pimp; a procurer.

**pandering.** The exploitation of the prostitution of females. 42 Am J1st Prost § 3. The acceptance of the earnings of a prostitute. Anno: 74 ALR 314, 320 et seq.

**panel.** A division of an administrative commission, the membership being divided, but each division having all the jurisdiction and powers of the commission itself. 2 Am J2d Admin L § 196. A list of jurors, comprising the entire number called for jury duty, a particular number required for a particular court, or the number, normally 12, filling the jury box in a particular case. 31 Am J Rev ed Jury § 74.

The word includes the jurors returned upon a special venire to fill out the deficiency after the regular panel has been exhausted. *People v Coyodo*, 40 Cal 586, 592.

**panis.** A loaf; a loaf of bread.

**panellation.** The impaneling of a jury.

**paper.** See **accommodation paper; commercial paper; in paper; judgment paper; paper blockade; paperbook; paper days; paper money; paper office; paper title; ship's papers; valuable papers.**

**paper-back.** A book bound in paper rather than leather or cloth.

**paper blockade.** A blockade which has been duly proclaimed by the constituted authorities, but which has not been effectively enforced.

**paper-book.** A printed transcript of the record of a case in the trial court, prepared usually for the convenience of the appellate court.

See **paper-back.**

**paper days.** Those days during a term of court on which arguments were heard.

**paper levy.** The levy of a writ of attachment upon real estate without going on the land. *Moore v Walker*, 178 Tenn 218, 156 SW2d 439. The levy of an attachment without seizure or the taking of possession of the property intended to be bound by the levy. 6 Am J2d Attach § 296. The levy of an execution made by the mere indorsement thereof upon the writ. 30 Am J2d Exec § 239.

See **symbolic levy.**

**paper money.** Money created by public authority, that is, the government, in stamping paper as a medium of payment, indicating the value by denomination, and issuing it to circulate as money. 36 Am J1st Money § 17. Paper that circulates at par without discount. 11 Am J2d B & N § 975.

**paper office.** An office of the English government where state papers were kept.

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**paper patent.** A term familiar in the fraternity of patent lawyers. A term applied in scorn or derision in the arguments of patent attorneys to the invention or discovery of the adverse party, meaning that it has never been put into commercial use, never been recognized by the trade, and its possessor has received no royalty for its license. *Coltman v Colgate-Palmolive-Peet Co.* (CA7 Ind) 104 F2d 508.

**papers of ship.** See **ship's papers.**

**paper title.** A title to real estate supported by a chain of conveyances. A title sufficient in support of a plaintiff in ejectment where consisting of a regular chain of title from the government or from some grantor in possession, or a regular chain of title back to the common source from which both plaintiff and his adversary claim. 25 Am J2d eject § 24. A plausible rather than a sound title.

See **color of title.**

**Papist.** A somewhat derogatory term for a Roman Catholic. 33 Am J1st L & S § 58. par. Abbreviation of paragraph.

**par.** Adjective: In the normal or usual condition, especially in reference to a person's health. Average. Noun: A standing of equal status. A fixed value of the money of one country in terms of the value of the money of another country, the exchange rate shifting above or below such fixed value according to the demand in the one country for the currency of the other.

See **par value.**

**parade.** A demonstration on street or highway in the marching of persons, the riding of horses the driving of horses or of motor vehicles or vehicles loaded with instruments of war or peace.

**paraffin.** A hydrocarbon mixture obtained primarily from the distillation of petroleum. 24 Am J1st Gas & O § 123.

**paraffin wax.** Paraffin in the solid state.

**parage.** Equality of rank, birth, or station; a bride's marriage portion.

**paragium.** Same as **parage**.

**paragraph.** A subdivision, normally indicated by an indent, of a written article, dealing with a particular point of the discussion and preferably unified. A distinct part of a discourse or writing; any section or subdivision of a writing or chapter which relates to a particular point, whether consisting of one or many sentences. *Lehmann v Revell*, 354 Ill 262, 188 NE 531. In the code pleading of some jurisdictions, a count or integral statement of a cause of action. *Bailey v Mosher* (CA8 Neb) 63 F 488, 490.

**paragraph caption.** A heading, appearing at the beginning of a paragraph, more or less indicating the content of the paragraph. *Continental Casualty Co. v Trenner* (DC Pa) 35 F Supp 643.

**parallel.** Adjective: Extended in the same direction, and in all parts equidistant; having the same direction or tendency; like; similar. *Postal Tel. Cable Co. v Norfolk & Western Railroad Co.* 88 Va 920, 926. Noun: A line parallel to the equator. A base line of the government survey of public lands.

See **base line**.

**parallel parking.** The parking of a motor vehicle close to and parallel with the curb or side of the highway or street. 7 Am J2d Auto § 232; 8 Am J2d Auto § 813.

**parallel railroads.** A word of art in statutes concerning the consolidation of railroads. Railroad lines, not necessarily equidistant from each other, but having the same general direction in the same section of the country and therefore likely to come in competition with each other. 44 Am J1st R R § 323.

**paralysis.** Loss of movement, sometimes of sensation, in a portion or all of the body. *Klingbeil v Truesdell*, 256 Minn 360, 98 NW2d 134.

**paramount.** Above all. See 2 Bl Comm 59.

**paramount force.** See **government of paramount force**.

**paramount right.** A superior right.

See **eviction by title paramount**.

**paramount title.** A superior title.

See **eviction by title paramount**.

**paramour.** A mistress. A lover with whom a woman carries on an illicit relationship. One having an illicit relationship, particularly with a married person. The third party in the triangle presented by infidelity. A word imputing want of chastity. 33 Am J1st L & S § 39.

**paranoia.** A mental disorder characterized by delusions or hallucinations, 26 Am J1st Homi § 81, particularly delusions of grandeur or persecution. 29 Am J Rev ed Ins Per § 3.



A wife's paranoia which created an obsession that her husband was unfaithful to her is not a defense to an action for divorce based on her false accusations of adultery and continual nagging and arguments, where she was able to tell right from wrong. *Dochelli v Dochelli*, 125 Conn 468, 6 A2d 324.

See **insane delusion**.

**parapherna**. Same as **paraphernalia**.

**paraphernalia**. At common and civil law, the apparel and ornaments of the wife, suitable and appropriate to her station, which, although being the property of the husband during his life and subject to the claims of his creditors for the satisfaction of such claims and subject to disposal by the husband except by his will, became, on his death, the exclusive property of the widow as against all persons other than the husband's creditors. 26 Am J1st H & W § 53. In equity and under statute, a separate property of the wife. 26 Am J1st H & W § 54.

**paraphernal property**. A term, particularly of the law of Louisiana, for that part or portion of the property of a married woman which forms no part of the dotal property. *Hayes v Pratt*, 147 US 550, 37 L Ed 276, 13 S Ct 495.

**paraphrasing**. Changing the words but reproducing the meaning. *Eisenschiml v Fawcett Publications, Inc.* (CA7 Ill) 246 F2d 598, Cert den 355 US 907, 2 L Ed 2d 262, 78 S Ct 334.

**paratum habeo**. I have him ready.—Formal words used in a sheriff's return on a writ for the arrest of a defendant in a civil action.

**Paratus est verificare**. He is ready to verify; he is prepared to verify.

**paravail**. See **tenant paravail**.

**parcel**. A lot or tract of real estate. *Ramsey County v Robert P. Lewis Co.* 72 Minn 87, 75 NW 108. A package.

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See **baggage; bill of parcels**.

**parcella terrae**. A parcel of land.

**parcel post**. The fourth class of mail matter, established with intent to provide for the public a means of transmission at moderate rates of articles formerly carried only by express companies at high rates. 41 Am J1st P O § 61.

**parcel-post zone**. An area prescribed by regulation for the purpose of determining the rate to be charged for a parcel mailed to be carried as parcel post, there being a number of such areas, each progressively farther from the office in which a parcel is mailed and numbered accordingly. 41 Am J1st P O § 61.

**parcenary**. Same as **coparcenary**.

**parcener**. Same as **coparcener**.

**parchment**. The skin of an animal prepared as a surface for writing. A fine paper prepared in imitation of a parchment of skin. An instrument or document written on parchment.

**parco fracto**. Poundbreach; the breaking of a pound to permit impounded animals to escape.

**parcus.** A park; a cattle pound.

**par delictum.** Equal wrong; equal fault.

**pardon.** Forgiveness, release, or remission. An act of grace proceeding from the power entrusted with the execution of laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. 39 Am J1st Pard § 4. A declaration on record by the chief magistrate of a state or country that a person named is relieved from the legal consequences of a specific crime. *Biddle v Perovich*, 274 US 480, 71 L Ed 1161 47 S Ct 664, 52 ALR 832; *Lime v Blagg*, 345 Mo 1, 131 SW2d 583. A complete release from the control of the state imposed because of the offense. *Re Anderson*, 191 Or 49, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051, 1073.

**pardoning power.** The power to grant pardons; an executive power, as it usually exists, but a power within the control of the people and to be conferred by them upon such officer or officers as they see fit. 39 Am J1st Pard § 12.

**paree.** See **execution paree.**

**parens.** (Roman law.) A parent; any relative in the direct ascending line.

**Parens est nomen generale ad omne genus cognationis.** "Parens" is a general name for every kind of relationship.

**parens patriae.** The parent of the country.

**parens patriae doctrine.** The doctrine that all orphans, dependent children, and incompetent persons, are within the special protection, and under the control, of the state. 27 Am J1st Inf § 101.

**parent.** The father or mother. 39 Am J1st P & C § 2. In common parlance, the lawful father or mother by blood. *Foreman v Henry*, 87 Okla 272, 210 P 1026.

See **person in loco parentis.**

**parentage.** Parenthood, the state of being a parent.

Descent. Family origin. The state of being in a direct ascending line of relationship.

**parent corporation.** A corporation which owns all or the majority of the stock of another corporation so that the latter stands in the relation to it of a subsidiary. 18 Am J2d Corp § 17.

**parent country.** See **mother country.**

**parenthesis.** Additional words or clauses, marked off by commas, brackets, dashes, or curved lines, added to a sentence complete in grammatical construction by way of explanation or comment. In an earlier and narrower sense, a mark or sign used in punctuation, thus ( ), generally to indicate that the clause or words thus marked or included between such signs are not essential in the construction of the sentence. *Early v Wilkinson & Hunt*, 50 Va (9 Gratt) 68.

**parenthetical statement.** See **parenthesis.**

**parenticide.** Homicide in the killing of a parent. One who commits homicide in killing a parent. parent of the country. See **parens patriae.**

**parent state.** The state of incorporation of a corporation which has the status of a foreign corporation in another or other states.

See **mother state.**

**Parentum est liberos alere etiam nothos.** It is the duty of parents to support their children, even the illegitimate ones.

**pares.** Peers; equals; persons of equal rank, dignity or station.

**pares curiae.** Same as **pares curtis.** See 2 Bl Comm 54.

**pares curtis.** Peers of the court. Peers bound to attend court.

**Pares debent interesse investiturae feudi, et non alii.** The peers or vassals of the lord should be present at the investiture of a fee, and no others. See 2 Bl Comm 315.

**pareisis.** A general breaking down of the nervous system; a wasting away of the brain tissue from syphilis. *Lins v Lenhardt*, 127 Mo 271, 282.

**pares regni.** Peers of the realm, reaching the presence of the king. *Hurtado v California*, 110 US 516, 529, 28 L Ed 232, 236, 4 S Ct 111, 292.

**Paria copulantur paribus.** Like things unite with like things.

**Paribus sententiis reus absolvitur.** A defendant is acquitted by equal opinions; that is, where the same number of judges are for and against him.

**pari causa.** With equal right; on the same footing or basis.

**pari delicto.** In equal wrong; equally at fault.

See **in pari delicto.**

**parientes.** (Spanish.) Relatives.

**paries.** (Civil law.) The wall of a house.

**paries communis.** (Civil law.) A party-wall.

**parietes.** See **intra parietes.**

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**pari materia.** See **in pari materia.**

**pari-mutuel.** A method of wagering at race tracks, whereby those who bet on the winning horse share the total stakes less a percentage to the management. *People v Monroe*, 340 Ill 270, 182 NE 439, 85 ALR 605; *Utah State Fair Asso. v Green*, 68 Utah 251, 249 P 1016, 1028. Bookmaking by machine. 24 Am J1st Gaming § 25. A form of betting on horse races conducted by means of a machine which records the number of bets placed on a particular horse to win, place, or show, the owner of the machine receiving the wagers and giving the bettors tickets or certificates showing which horse they have chosen; the total amount received, less a commission to the owner of the machine, being divided among the winners. 24 Am J1st Gaming § 25.

The machine used in pari-mutuel betting for recording the bets as they are placed and determining the odds from the bets placed. *Commonwealth v Samuels*, 79 Ky 618, 619.

Statutes have been passed in some states legalizing the pari-mutuel method of betting on horse races, while in others, statutes expressly forbidding such method have been enacted. 24 Am J1st Gaming § 25.

**pari-mutuel betting.** See **pari-mutuel**.

**pari-mutuel machine.** See **pari-mutuel**.

**Par in parem imperium non habet.** An equal has no dominion over an equal.

**pari passu.** Of the same grade; by equal steps; in equal degree.

**pari ratione.** For like reason; by the same reasoning.

**Pari ratione eadem est lex.** For a like reason the law is the same. *State v Buchanan* (Md) 5 Harr & J 317.

**Paris Declaration.** An international declaration of important points of maritime law made at Paris in 1856.

**parish.** A political subdivision in Louisiana, corresponding to a county. *Re Supervisors of Election* (CC Ill) 28 F 840. A corporation established solely for the purpose of maintaining public worship. *Milford v Godfrey*, 18 Mass (1 Pick) 90, 97. An administrative district of a religious society, headed by a priest or pastor. The members of a church in a parish, considered collectively.

The term in its generic legal sense does not denote any specific religious faith or denomination. *Yanow v Seven Oaks Park, Inc.* 11 NJ 341, 94 A2d 482, 36 ALR2d 639.

**parish apprentices.** Children of poor persons apprenticed out by the overseers of the poor to such persons as were thought fitting. See 1 Bl Comm 426.

**parish child.** A pauper child who is dependent upon the parish for support.

**parish church.** A local spiritual association or religious society; the building in which the public worship of the inhabitants of a parish is celebrated. *Pawlet v Clark* (US) 9 Cranch 292, 326, 3 L Ed 735, 747. A consecrated place having attached to it the rites of burial and the administration of the sacraments. 45 Am J1st Reli Soc § 2.

**parish constable.** A constable whose jurisdiction is confined to a parish.

**parish court.** A probate court. *Simmons v Saul*, 138 US 439, 34 L Ed 1054, 11 S Ct 369 (referring to parish court of Louisiana). An inferior English court the jurisdiction of which did not extend outside the parish in which it was held.

**parish district.** An ecclesiastical division of an English parish.

**parish officers.** Officers of a parish as a political subdivision; officers of a parish in the sense of a religious district or body. Officers of an English ecclesiastical parish, consisting of constables, churchwardens, and overseers.

**paris-mutuel.** Same as **pari-mutuel**.

**parity.** A yardstick for measuring the prosperity of the farmer, the measurement taken being relative, the purpose being to have the prices of farm products at such levels that such products will have the same purchasing power in terms of goods and services that they had in the so-called base period from 1910 to 1914.3 Am J2d Agri § 28.

**Parium eadem est ratio idem jus.** In similar cases the reason is the same, the law is the same.

**parium iudicium.** The judgment of one's peers,—the verdict of a jury of one's peers.

**park.** A tract of land acquired by a city, town, or other public authority, for ornament, and as a place for the resort of the public for recreation and amusement. 39 Am J1st Pks & S § 2. A tract set apart by the federal government for the enjoyment, health, and comfort of the people, particularly lands of scenic value.

In England, the word, when applied to an inclosed tract of land in the country, signifies that the lands inclosed are the private grounds of the Proprietor. In London, however, as well as in any city in England, the term "park" signifies an open space intended for the recreation and enjoyment of the public, such signification being the same whether the word be used alone, or with some qualifying term, as "Hyde Park," or "Regent's Park." Archer v Salinas City, 93 Cal 43, 28 P 839.

See **parking**.

**park board.** See **park commission**.

**park commission.** A local, state, sometimes an interstate, administrative body exercising powers in reference to the opening and maintenance of public parks. New York Water Service Corp. v Palisades Interstate Park Com. 14 App Div 2d 794, 220 NYS2d 489; 39 Am J1st Pks & S § 16.

**park commissioner.** A member of a park commission or park board.

**park district.** A public corporation or authority established and operating in the acquisition, development, and maintenance of a park. 39 Am J1st Pks & S § 3.

**parked.** See **parking**.

**parking.** A park strip in the street, sometimes between the curb and the sidewalk, sometimes in the middle of the street. The assembling or leaving of things in a place, for example, artillery, vehicles of war, automobiles, or railroad cars, when they are not in use. New Orleans v Lenfant, 126 La 455, 52 So 575. The voluntary act of leaving a vehicle on the street unattended, also the stopping or standing of a vehicle on the street, even though occupied and attended, for a length of time inconsistent with a reasonable use of the street. 7 Am J2d Auto § 231.

The term "parked" is not susceptible of a mean-

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ing of momentary hesitation in changing direction of a vehicle. Hartsock v George, 59 Ohio App 249, 12 Ohio Ops 523, 27 Ohio L Abs 65, 17 NE2d 667.

**parking area.** A place set apart close to an industrial plant, place of business, hospital, stadium, etc. where customers, employees, and visitors may park their automobiles.

**parking facility.** See **parking area; parking lot**.

**parking lot.** A place for the parking of motor vehicles, usually for a charge. Ex parte Mobile Light & Railroad Co. 211 Ala 525, 101 So 177, 34 ALR 921, 923. A place off the streets where automobiles may be parked, that is, left under the care of

the proprietor of the place. A place where automobiles may be driven, left parked or standing, and removed by the owner at pleasure, normally operated for compensation in the form of a fee for the privilege of parking. 24 Am J1st Garag § 3.

**parking meter.** A meter placed along the curb of a street or in a public parking place wherein coins may be inserted for the purpose of paying for parking space for a time measured and demonstrated automatically by the instrumentality. 7 Am J2d Auto § 238.

**parking on the highway.** The voluntary act of leaving an automobile on the highway when not in use. A wrecked car, with passengers in it and the outside wheels in the ditch, is not so parked. *Kastler v Tures*, 191 Wis 120, 124, 210 NW 415, 417.

See **parking**.

**parking place.** See **parking area; parking lot**.

**parking station.** A parking lot operated for compensation in the form of payments in amounts scaled according to the time the parked car is left at the station.

See **parking lot**.

**park strip.** A portion of a street or other public way, either between the curb and the sidewalk or in the middle of the way, in which grass, flowers, bushes, even small trees may be grown, for the purpose of ornamentation. 25 Am J1st High § 72. A comparatively narrow strip of land, lying within the borders and part of a single street, withdrawn from travel and ordinary street uses and devoted to ornamental purposes and perhaps in a small degree to those of rest and recreation. *Kupelian v Andrews*, 233 NY 278, 135 NE 502.

**parkway.** A boulevard. A highway designed especially for travel for pleasure and recreation, although not limited to such use in the absence of express regulation to that effect. 25 Am J1st High § 6. A term sometimes used for park strip.

**Parle hill.** A hill where English courts were anciently held.

**parler le ment.** To speak the mind. See 1 Bl Comm 146.

**Parliament.** The legislative department of the English government, consisting of the House of Lords and the House of Commons.

**parliamentary.** Relating or pertaining to the English parliament; relating or pertaining to legislation or to a legislature.

**parliamentary agents.** Professional lobbyists, in the employ of private persons and corporations, who exert themselves among the members of parliament in the interest of legislation favorable to their constituents, but in a strictly lawful manner.

**parliamentary bill.** A draft or skeleton of a statute.

**parliamentary divorce.** A divorce granted by an act of the legislature. *Cooper v Telfair* (US) 4 Dall 14, 1 L Ed 721. A divorce granted by the British Parliament. *Closson v Closson*, 30 Wyo 1, 215 P 285, 29 ALR 1371.

**parliamentary law.** The body of law which governs the conduct of the meeting of a legislative body.

Such rules are quite different from constitutional provisions which the people have set up as defining and limiting the powers and duties of the legislature. The former are subject to revocation and modification at the pleasure of the body creating them, while the latter are the law of its being, and prescribe the terms upon which it has power to act at all. See *Landes v State*, 160 Ind 479, 489, 67 NE 189.

**parliamentary rules.** The rules adopted by an organization to control the conduct of its meetings, such as those applicable to the annual meeting of a religious body, to the conduct of the convention of a veterans' organization, or to a literary society.

See **parliamentary law**.

**parliamentary taxes.** Taxes which are imposed by a direct statutory act of the English parliament.

**parliamentary will.** The so-called will of one who has made no will at all, that is, the so-called intestate laws which provide for the passing of title to the property of one who died without leaving a will to such person or persons as the lawmakers, in their judgment and wisdom, have thought best entitled thereto. *Kohny v Dunbar*, 21 Idaho 258, 121 P 544.

**parliament of dunces.** A name which was given to the parliament of 1404, in the reign of Henry the Fourth, and from which all lawyers were excluded.

**parliamentum indoctum.** Same as **parliament of dunces**.

**parliamentum insanum.** Same as **mad parliament**.

**parlor car.** A car upon a train for the accommodation of first-class passengers, where beverages and like refreshments may be obtained.

**paroche.** A parish. Same as **parochia**.

**parochia.** A parish.

**Parochia est locus quo degit populus alicujus ecclesiae.** A parish is the place in which the people of a certain church reside.

**parochial.** Of or pertaining to a parish; confined or restricted to a parish, without reference to any specific religious faith or denomination. *Yanow v Seven Oaks Park, Inc.* 11 NJ 341, 94 A2d 482, 36 ALR2d 639. Provincial.

**parochial church.** Same as **parish church**.

**parochial school.** A school maintained by a church or religious body, coupling religious instruction with instruction as given in the public schools. *Yanow v Seven Oaks Park, Inc.* 11 NJ 341, 94 A2d 482, 36 ALR2d 639.

See **sectarian school**.

**parody.** A reproduction or representation of a literary or dramatic work in structure with changes in the names of characters, also in the situations represented, usually for the sake of comedy. 18 Am J2d

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Copyr § 105. The reproduction of a musical work with changes intended to create humor.

**par of exchange.** The value of the money of one country in that of another; the relative melting value of the gold coins of each of two nations. *Murphy v Kastner*, 50 NJ Eq 214, 220, 24 A 564.

**parol.** Oral; by word of mouth. Extrinsic to a writing.

See terms and expressions following which begin **parol**; also words and expressions beginning **oral**.

**parol agreement.** See **parol contract.**

**parol assignment.** An assignment of a claim, right, or chose in action made without a writing. 6 Am J2d Assign § 84.

**parol authority.** The authority of an agent conferred without a writing. 3 Am J2d Agency § 70.

**parol contract.** In the usual and more simple sense of the term, a contract not in writing; an oral contract. In a technical sense, a simple contract, that is, a contract which, although it may be in writing, is not under seal, is not a specialty. *Perrine v Cheeseman*, 11 NJL 174; *Ballard v Walker* (NY) 3 Johns Cas 60, 65.

**parol contract of insurance.** A contract which is complete in its terms and complies with all the requirements imposed by law in the making of a contract of insurance, except that it is not in writing as may be required by charter provision or statute. 29 Am J Rev ed Ins § 189.

**parol demur; See demurrer ore tenus; the parol demur.**

**parole.** The release of a prisoner of war upon condition, particularly that he will not, unless exchanged, engage in the armed forces against the country which had taken him prisoner, during the pendency of the war. The release of a convict from imprisonment upon certain conditions to be observed by him. *Crooks v Sanders*, 123 SC 28, 115 SE 760, 28 ALR 940.

Parole is not an act of clemency, but a penological measure for the disciplinary treatment of prisoners who seem capable of rehabilitation outside of prison walls. It does not set aside or affect the sentence; the convict remains in the legal custody of the state and under the control of its agents, subject at any time, for breach of condition, to be returned to the penal institution. *Re Anderson*, 191 Or 49, 229 P2d 633, 230 P2d 770, 29 ALR2d 1051, 1073.

**parole board.** An administrative board provided by statute for considering applications for parole and, according to the terms of the statute, granting or denying a parole or making recommendation to the Governor as to the disposition of the application. 39 Am J1st Pard § 86.

**parole system.** The system whereby the policy of paroling prisoners is administered, usually based in part upon statutory provisions for indeterminate sentences.

See **indeterminate sentence.**

**parol evidence.** The oral or verbal testimony of a witness. See 3 Bl Comm 369. Precisely, evidence of matters not contained in the writing, whether oral utterance or other writing, offered as proof of terms and conditions of a contract in writing. 30 Am J2d Ev § 1016.

**parol evidence rule.** The rule which excludes evidence of prior or contemporaneous oral agreements which would vary a written contract. *Garrett v Ellison*, 93 Utah 184, 72 P2d 449, 129 ALR 666. The rule that the intention of the parties as evidenced by the legal import of the language of a valid written contract cannot ordinarily be varied by parol proof of a different intention. The rule, correctly regarded as a matter of substantive law, that the purposeful act of embodying all the terms of an agreement in a writing produces the contract of the parties, a single and final memorial of the understanding of the parties which must stand in exclusion of prior or contemporaneous negotiations. 30 Am J2d Ev § 1016.

**parol gift.** A gift of personal property made without incorporation of terms in a written instrument, evidenced by the manual delivery of the property. 24 Am J1st Gifts § 24. A gift of land without deed or other conveyance. *Burris v Landers*, 114 Cal 310, 46 P 162. A gift of land rendered ineffective by the statute of frauds, except as the delivery of possession to, and the making of valuable and permanent improvements by, the donee render the gift enforceable notwithstanding its parol character. 24 Am J1st Gifts § 68.



**parol lease.** A lease not in writing signed by the lessor. 32 Am J1st L & T § 36.

**parol license.** An authority given to do some act or a series of acts on the land of another, without passing any interest in the land. Hicks Brothers v Swift Creek Mill Co. 133 Ala 411, 31 So 947.

**parol may demur.** See **the parol demur.**

**parol partition.** A division of lands by common consent by coparceners or tenants in common without any writing. Before the statute of frauds was enacted (1677) such a partition was valid and binding, and tenants in common might make partition by parol if it were accompanied with livery of seisin in severalty, and parceners might make partition by parol generally. The authorities are in conflict as to whether such a partition is valid under the statute of frauds. In some states statutes specifically require a writing. 40 Am J1st Partit § 18.

**parol representation.** A representation by words, acts and conduct, by arts or artifices. 23 Am J1st Fraud § 24.

**Parols font plea.** Words make the plea.

**parol will.** A nuncupative will. The informal will of a soldier or sailor. 57 Am J1st Wills § 220.

See **nuncupative will.**

**par oneri.** Equal to the burden.

**parricide.** The murder of one's parent; a person who is guilty of the murder of his parent.

**parricidium.** (Civil law.) The murder of a parent or any near relation.

**pars.** A part; a party; a party to an action; a function; a duty.

**Parsee.** One of a religious sect, the members of which are to be found for the most part in India, which constitutes a remnant of the followers of the ancient religion of Persia established by Zoroaster. Wadia v United States (CA2 NY) 101 F2d 7.

**pars ejusdem negotii.** A part of the same transaction or business.

**pars enitia.** The part or share of the eldest.

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**pars fundi.** A part of the soil.

**pars gravata.** The party aggrieved.

**Pars illa communis accrescit superstitibus, de persona in personam, usque ad ultimam superstitem.** That common part accumulates to the survivors from person to person, down to the last survivor. See 2 Bl Comm 184.

**pars judicis.** The part, function, or duty of a judge.

**parson.** A pastor; a minister of the gospel or clergyman in charge of a church or parish. A man who, under the English ecclesiastical system had full possession of all the rights of a parochial church.

He was called parson, persona, because by his person the church, an invisible body, was represented; and he is in himself a body corporate, in order to protect and defend the rights of the church, which he personates, by a perpetual succession. He is sometimes called the rector, or governor, of the church. See 1 Bl Comm 384.

**parsonage.** A dwelling house occupied by the pastor of a church, ordinarily owned by the church. 45 Am J1st Relig Soc § 30.

When a church has acquired all the ecclesiastical rights it becomes, in the language of law, a rectory or parsonage, which consists of a glebe, tithes, and oblations established for the maintenance of the parson or rector to have cure of souls within the parish. Pawlet v Clark (US) 9 Cranch 292, 326, 3 L Ed 735, 747.

**parsonage tithes.** Tithes belonging to the rector of a parish.

**parson imparsonee.** Same as **persona impersonata**.

**pars pro toto.** A part for the whole. Jennings v Insurance Co. of Pennsylvania (Pa) 4 Binn 244.

**pars rationabilis.** A reasonable part or share. See 2 Bl Comm 491.

**pars rea.** A party defendant.

**pars viscerum matris.** Part of the insides of the mother,—that is, not yet born.

**part.** A portion; a share; a side; a faction. A division of a court established for cases of a distinct character, as equity part.

**part and pertinent.** Appurtenant; belonging to.

**parte.** One side; one party.

**parte inaudita.** One party not having been heard; ex parte.

**Partem aliquam recte intelligere nemo potest antequam totum iterum atque iterum perlegerit.** No one can properly understand a part of anything until he has read over the whole again and again.

**parte materna.** See **ex parte materna**.

**parte non comparente.** A party not appearing,—that is, a party in default.

**parte paterna.** See **ex parte paterna**.

**Parte quacumque integrante sublata tollitur totum.** An integral part having been taken away, the whole disappears.

**partes.** Parties.

**Partes finis nihil habuerunt.** The parties to the fine had no interest; a plea used to defeat a fine levied by a stranger. See 2 Bl Comm 357.

**partial.** Biased; prejudiced. Affecting or relating to a part.

See **pro tanto**.

**partial acceptance.** An acceptance of a bill of exchange by which the drawee accepts for part only of the amount for which the bill is drawn; a qualified acceptance. 11 Am J2d B & N § 517. An acceptance of a part of the property offered for dedication, the remainder being rejected. 23 Am J2d Ded § 46.

**partial ademption.** See **pro tanto ademption.**

**partial appointment.** The exercise of a power of appointment in reference to a fund without exercising the whole power at one time, applying the power to a portion of the fund or property. 41 Am J1st Pow § 73.

**partial assignment.** An assignment by a debtor of a part of his property for the benefit of creditors. 6 Am J2d Assign § 39. The splitting of an entire claim or debt arising out of a single transaction and making a part of the claim or debt the subject of an assignment, such being valid at common law only with the consent of the debtor, since he has a right to pay his debt in one lump sum and to refuse to be subjected to suits by more than one claimant. 3 Williston, Contracts 3d ed § 442; 6 Am J2d Assign § 76.

The reasons obtaining at common law for refusing to enforce a partial assignment do not apply in equity, or in jurisdictions with modern practice acts or rules, where the procedure contemplates that all interested persons be made parties and their rights determined by a single decree. 6 Am J2d Assign § 77.

**partial breach.** The result of a party's failure to perform fully or substantially. 17 Am J2d Contr § 446.

**partial condemnation.** The taking of a part of a tract or lot of land under the power of eminent domain. 27 Am J2d Em D § 269.

**partial custody.** Part-time custody of a child awarded in an action for divorce.

**partial delivery.** A delivery or tender by the seller of only a part of the goods or commodities constituting the subject matter of sale. 46 Am J1st Sales § 218.

**partial dependency.** The status of a person who depends upon another for part of his support and maintenance. The status of a person who has some means but not sufficient for his support. *Utah Fuel Co. v Industrial Com.* 80 Utah 301, 86 ALR 858, 15 P2d 297.

**partial disability.** A disability resulting in only a partial loss of earning power, the claimant still being capable of performing remunerative employment. 58 Am J1st Workm Comp § 283. Physical power in part only or physical inability in part of injured member. *Fidelity Union Casualty Co. v Munday* (Tex Civ App) 26 SW2d 676. A physical disability less than total; in contradistinction to total disability. 29A Am J Rev ed Ins § 1515.

**partial disclosure.** A fraud where accompanied with the wilful concealment of material and qualifying facts. 23 Am J1st Fraud § 86.

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**partial dismissal of appeal.** A dismissal of appeal as to some of the parties or some of the issues. 5 Am J2d A & E § 923.

**partial distribution.** An interim distribution by an executor or administrator, that is, a distribution made of funds available for distribution without waiting until the entire estate is available and ready for distribution. 31 Am J2d Ex & Ad § 555.

**partial emancipation.** The act of a parent in authorizing his minor child to make its own contract of service, and to collect and spend its wages, but retaining custody and control of the child. *Lufkin v Harvey*, 131 Minn 238, 154 NW 1097. The release of

a minor child by the parent as to a part of the period of minority or a part of the rights of the parent in reference to care, custody, and control of the minor. *Porter v Powell*, 79 Iowa 151, 44 NW 295.

**partial embargo.** See **embargo**.

**partial eviction.** An eviction of a tenant from a part of the premises. 32 Am J1st L & T § 480.

To constitute a partial eviction which will operate as a suspension of rent, there must be either an actual expulsion of the tenant, or some act of a permanent character, done by the landlord with the intention and effect of depriving the tenant of the enjoyment of some part of the demised premises, to which he yields, abandoning possession within a reasonable time. *Bartlett v Farrington*, 120 Mass 284.

**partial failure of consideration.** The failure of a party to a contract to receive all that was due him under the terms of the contract. A defense pro tanto; an excuse for nonperformance by the other party where there is no substantial consideration left in support of the promise of the other party. 17 Am J2d Contr § 100. Recognizable only as the part is determinable. 11 Am J2d B & N § 658.

See **partial want of consideration**.

**partial illegality.** See **partial invalidity**.

**partial incapacity.** See **partial disability; partial insanity**.

**partial insanity.** A condition of mind characterized by some derangement. A condition wherein the mind is haunted or weakened, but is not entirely incapable of remembering, reasoning or judging. *State v Jones*, 50 NH 369. Another term for insane delusion. 21 Am J2d Crim L § 41. A concept without basis from the standpoint of the right and wrong test of criminal responsibility. 21 Am J2d Crim L § 40.

The doctrine has been advanced by some text writers that partial insanity may be a mitigating element in determining the degree of homicide of which the accused may be convicted. The general rule, however, appears to be that insanity, when interposed as a defense in a criminal prosecution is either a complete defense or none at all. 26 Am J1st Homi § 105.

**partial integration rule.** The rule that where the entire agreement has not been reduced to writing, parol evidence to prove the part not reduced is admissible although not admissible as to the part reduced to writing. 12 Am J2d B & N § 1243; 30 Am J2d Ev § 1043. The merger or extinguishment of the provisions of a land contract in the deed executed in the performance of the contract by the vendor, subject to covenants and stipulations not intended to be incorporated in the deed or not necessarily performed and satisfied by the execution and delivery of the conveyance. 55 Am J1st V & P § 328.

**partial intestacy.** The condition of the estate of a testate decedent in reference to property owned by him but not disposed of by the will.

**partial invalidity.** The invalidity of a part of a municipal ordinance, such being sufficient to invalidate the entire ordinance where it has a general influence over the rest of the ordinance. 37 Am J1st Mon Corp § 167. The characteristic quality of a statute which is constitutional in part and unconstitutional in another part. 50 Am J1st Stat § 474. The unconstitutionality of a statute in part, the effect of which upon the remainder of the statute depends upon the severability of the invalid part from the remainder. 16 Am J2d Const L § 181. The characteristic quality of a contract which contains an illegal provision among legal provisions. 17 Am J2d Contr § 230.

See **divisible contract; severability of statute**.

**partiality.** Bias; prejudice.

**partial law.** A law which embraces within its provisions only a portion of those persons who exist in the same state and are surrounded by like circumstances. *Hatcher v State*, 80 Tenn (12 Lea) 368.

**partial liquidation.** Literally, a liquidation which does not dispose of all the property or wind up all the affairs of a corporation or an insolvent. Technically, a proceeding involving the surrender by a corporation of a portion of its capital. *Smith v Dana*, 77 Conn 543, 60 A 117.

**partial loss.** A loss of the use of a member of the body for some purposes. Partial disability in health, mind, or person. 22 Am J2d Damg § 117. The destruction of a part of insured property. The loss at sea of a part of the cargo.

See **general average; particular average.**

**partially disclosed principal.** The principal, for whom an agent acts, whose identity is not known to the person who deals with the agent, such person knowing or having reason to know that the person with whom he deals is or may be acting for a principal. *Dodge v Blood*, 299 Mich 364, 300 NW 121, 138 ALR 822; *Williston*, Contracts 3d ed § 283; *Restatement*, Agency 2d ed § 4.

**partial manufacture.** A term pertaining to the imposition of customs duties. A mere stage in the development of material toward an ultimate and predestined product. *Tide Water Oil Co. v United States*, 171 US 210, 43 L Ed 139, 18 S Ct 837.

**partial negotiation.** An attempt to transfer, by endorsement of a bill or note, a part only of the amount payable, or an attempt to transfer the instrument to two or more indorsees severally. 11 Am J2d B & N § 320.

**partial pardon.** A pardon which remits only a portion of the punishment or absolves the convicted person from only a portion of the legal consequences of the crime. *Warren v State*, 127 Tex Crim 71, 74 SW2d 1006.

**partial payment.** A payment of a part of the obligation owing. An instalment payment.

A payment of interest is a "partial payment" within the provisions of a statute barring partial payments from tolling or extending the limitation period for mortgage foreclosure. *Weekes v Rumbaugh*, 144 Neb 103, 12 NW2d 636, 150 ALR 129.

**partial performance.** See **part performance.**

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**partial probate.** The probate of only the valid portions of a will which contains invalid clauses. 57 Am J1st Wills § 782.

**partial release.** A release of the condition upon which an estate was granted, superficially a partial release, but having effect under the rule in *Dumpor's Case*, to eliminate the condition entirely. 28 Am J2d Est § 169.

**partial restraint of trade.** See **restraint of trade.**

**partial restraint on alienation.** A restraint on alienation other than an unqualified restraint, such as a restriction upon alienation to a particular person or persons or within a certain period of time. 41 Am J1st Perp § 75.

**partial reversal.** A reversal on appeal as to less than all the parties or as to less than all the issues. 5 Am J2d A & E §§ 949, 950, 953.

**partial unconstitutionality.** See **partial invalidity.**

**partial verdict.** A verdict in a criminal case prosecuted under an indictment containing several counts, wherein the accused is found guilty on some of the counts, without mention of the remaining counts. *Jolly v United States*, 170 US 402, 42 L Ed 1085, 18 S Ct 624.

**partial waiver.** A waiver of the condition upon which an estate was granted, superficially a partial waiver, but having the effect under the rule in *Dumpor's Case*, to eliminate the condition entirely. 28 Am J2d Est § 168.

**partial want of consideration.** The situation where an instrument is given in part for a valuable consideration and in part as a gift. Anno: 161 ALR 1372, 1378; 11 Am J2d B & N § 244.

See **partial failure of consideration.**

**partial zoning.** Zoning ordinances applicable to only a part of the entire area within the limits of the municipality. 58 Am J1st Zon § 34.

**partible.** Capable of being separated, divided, partitioned, or portioned out.

**particeps criminis.** A party to the crime. One who participated in some manner in the commission of a crime.

The term, which, in common acceptance, means an act that may be visited by an indictment, or other criminal prosecution, applies also to other transactions contrary to good morals, whether they be immoral per se, or prohibited by statute under a penalty, or by a simple prohibition, or as militating against the policy of a statute, or fraud, or other corrupt contract. *Johnson v Cooper*, 10 Tenn (2 Yerg) 524.

**particeps doli.** A party to the fraud.

**Particeps plures sunt quasi unum corpus in eo quod unum jus habent et oportet quod corpus sit integrum, et quod in nulla parte sit defectus.** Many parceners are, as it were, one body, in this respect; that they have one right and it is necessary that the body be perfect, and that there be no defect in any part.

**participate.** To receive or have a part or share of; to partake of; to 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; to take part in; as to participate in joys and sorrows. *Bew v Travelers' Ins. Co.* 95 NJL 533, 112 A 859, 14 ALR 983, 984.

Participating and assenting both imply affirmative action of some sort, as distinguished from mere silence and inaction. See *Mason v Moore*, 73 Ohio St 275, 76 NE 932.

**participating in aeronautics.** Managing and controlling an airplane in flight or making the decisions regarding the flight and directing another or others directly in control of the plane. 29A Am J Rev ed Ins § 1265.

While the earlier cases held that a passenger "participates in aeronautics" within the meaning of an aviation exclusion clause in a life or accident insurance policy, the modern trend of authority is distinctly to the contrary. Anno: 45 ALR2d 462; 29A Am J Rev ed Ins § 1265.

**participating in crime.** See **participation in crime.**

**participating policy.** A policy of insurance which entitles the holder to share in the profits of the insurer by way of dividends.

**participating share.** A share in a security or securities constituting a single investment of funds of several individual trusts. 54 Am J1st Trusts § 396.

**participation.** The act or fact of partaking, having or forming part of; the fact or condition of sharing in common with others; associating or sharing with others in some act or matter. *Smith v Mutual Ben. Health & Acci. Asso.* 175 Kan 68, 258 P2d 993, 45 ALR2d 456.

**participation agreement.** An agreement in the trust instrument or bylaw of a business trust organized for the purpose of producing oil, entitling the holder to a certain share of the oil produced. 13 Am J2d Bus Tr § 23.

**participation in aeronautics.** See **participating in aeronautics.**

**participation in crime.** Engaging in the commission of a criminal offense as a principal or as an accessory, alder, or abettor. 21 Am J2d Crim L §§ 115 et seq.

**participation in labor dispute.** As disqualification for unemployment compensation, an active involvement, such as picketing. *Tube Reducing Corp. v Unemployment Compensation Com.* 136 NJL 410, 56 A2d 596, affd 1 NJ 177, 62 A2d 473, 5 ALR2d 855.

**participation rights.** See **rights.**

**particula.** A small parcel of land.

**particular agent.** An agent authorized by his principal to do one or two particular things. *Ruby v Talbott*, 5 NM 251, 21 P 72.  
See **special agent.**

**particular average.** A term used in contradistinction to general average, denoting a loss on vessel, cargo, or freight, to be borne by the owner of the particular subject or interest upon which it happens. 48 Am J1st Ship § 621. A term generally regarded as synonymous with "partial loss" when used in a limitation of liability in a marine insurance policy. 29A Am J Rev ed Ins § 1585.

See **free from average unless general; free from particular average.**

**particular averment.** An allegation or pleading of a particular fact.

**particular custom.** A custom confined to a county, city, town, parish, or other locality, its existence to

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be determined as a matter of fact upon proof. *Bodfish v Fox*, 23 Me 90.

**particular estate.** A term of art in the law of estates for a life estate or estate for years which precedes a future estate or interest, especially where the future estate is a remainder. 28 Am J1st Est § 208.

**particular lien.** A charge upon a particular piece of property, by which it is held for the payment or discharge of a particular debt or duty. 33 Am J1st Liens § 5.

**particular malice.** Ill will; grudge; a desire to be revenged on a particular person. *State v Long*, 117 NC 791, 799, 23 SE 431.

**particular pardon.** Same as **special pardon.**

**particular power.** See **particular agent; special power of appointment.**

**particular preceding estate.** See **particular estate.**

**particulars.** The items of an account.

See **bill of particulars.**

**particular services.** Services rendered by a person in his particular or peculiar profession, art, trade or calling. *Buchman v State*, 59 Ind 1, 13.

**particular strike.** A strike against a particular employer rather than against all employers in an industry or territory. 31 Am J Rev ed Lab § 369.

**particular tenant.** The holder of a particular estate.

See **particular estate.**

**partido agreement.** An agreement of bailment of cattle containing a condition respecting the right to the increase of the cattle during the period of the bailment. *Allen v Whiting*, 58 Ariz 273, 119 P2d 240; *Bowers v Western Livestock Co.* (ND) 103 NW2d 109.

**parties.** See **party.**

**parties' books.** Books of original entry, also called "shopkeepers' books," or "shopbooks." 30 Am J2d Ev § 918.

**parties to contract.** See **party; third parties.**

**parties to a judgment.** Strictly speaking, only persons named as parties in the record who are properly served with process or enter their appearance. 30A Am J Rev ed Judgm § 396. For the purposes of the application of the principle of res judicata:—all persons having a direct interest in the subject matter of the suit and having a right to control the proceedings, defend, examine the witnesses, and take an appeal if the case is appealable. *Vane v C. Hoffberger Co.* 196 Md 450, 77 A2d 152, 22 ALR2d 1450.

**partisan feeling.** See **partisanship.**

**partisanship.** Favoritism toward a party to an action. Prejudice disqualifying a judge. 30A Am J Rev ed Judges § 104.

See **bias; political activity; prejudice.**

**partition.** The division made between two or more persons of lands, tenements, hereditaments, or goods and chattels belonging to them as co-owners. Technically, the division of real estate made between coparceners tenants in common, or joint tenants. 40 Am J1st Partit § 2. The action or proceeding through which co-owners of property cause it to be divided into as many shares as there are owners, according to their interests therein, or, if that cannot be done equitably, to be sold for the best obtainable price and the proceeds distributed. *Michael v Sphier*, 129 Or 413, 272 P 902, 73 ALR 1.

**partition commissioners.** Commissioners appointed by the court in partition proceedings, whose duty it is to examine the premises, make a preliminary or advisory partition and report back to the court. 40 Am J1st Partit § 76.

**partition deed.** A deed executed and delivered in effecting a partition of real estate.

See **partition.**



**partitione facienda.** See **de partitione facienda.**

**partition fence.** A fence erected on the boundary line between the lands of adjoining owners, where there is no road, alley, or the like between the lands. 35 Am J2d Fenc § 6. A common fence, that is, one of which each of the adjoining owners may make use in connection with the use made by him of his premises.

The term does not apply to such fences as may be erected by each proprietor on his own land, though near and parallel to the boundary line. *Jeffries v Burgin*, 57 Mo 327, 329.

**partition sale.** A sale of a vessel ordered by an admiralty court. 2 Am J2d Adm § 101. A sale ordered and made in an action for the partition of real estate, where a division of the land into shares according to the several interests of the parties cannot be done equitably, such sale to be made for the best possible price and the proceeds divided in accord with the several interests. *Michael v Sphier*, 129 Or 413, 272 P 902, 73 ALR 1.

**partition wall.** A wall which is merely a fence.

"Partition wall" is not a phrase which in legal technology is used to designate a wall used by owners as a party wall. A party wall is such by agreement. *Western Granite & Marble Co. v Knickerbocker*, 103 Cal 111, 116, 37 P 192.

**partner in commendam.** A term of the Louisiana law for limited partner. *Tatum v Acadian Production Corp.* (DC La) 35 F 40.

See **limited partnership.**

**partners.** The members of a partnership. Persons who contribute either property or money to carry on a joint business for their common benefit, and who own and share the profits thereof in certain proportions. 40 Am J1st Partn § 2.

**partner's equity.** See **equity of partner.**

**partnership.** An association of two or more persons to carry on as co-owners a business for profit. Uniform Partnership Act § 6. A combination, effected by two or more persons, of capital or personal services for the purpose of conducting a business for their common benefit. The contract of two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, and to divide the profit and bear the loss in certain proportions. 40 Am J1st Partn § 2. But, strictly speaking, a relation or status rather than a contract. *Spaulding v Stubbings*, 86 Wis 255, 56 NW 469. A distinct legal entity according to some authority; a legal entity for some purposes only, according to other authority. 40 Am J1st Partn § 18. For federal income tax purposes, inclusive of a syndicate, group, pool, joint venture, through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation, an association taxable as a

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corporation, or a trust or estate. Internal Revenue Code § 761.

See **general partnership; limited partnership; ostensible partner; quasi partner; silent partner.**

**Partnership Act.** One of the uniform laws.

**partnership assets.** All assets of a partnership applicable to the payment of the partnership debts, under the well-defined principles for the administration of the affairs of insolvent partnerships under the direction of a court of equity. *Thayer v Humphrey*, 91 Wis 276.

**partnership association.** A business organization exclusively a creature of statute; a type of artificial person standing halfway between a limited partnership and a corporation. 40 Am J1st Partn § 518. An association in the form of a kind of partnership but departing from a general partnership characterized by unlimited liability of partners, all partners being special partners. 40

Am J1st Partn § 504. An association organized under laws making the capital subscribed alone responsible for the debts of the association; a corporation for the purposes of an adjudication in bankruptcy. 11 USC § 1(8); Bankruptcy Act § 1(8).

**partnership goodwill.** The advantage which the partnership business has from its establishment or from the patronage of its customers, over and above the mere value of its property and capital.

It rests in the probability that the old customers of the partnership will continue their custom and commend it to others, and it may include the advantages which may be derived from the partners holding themselves out as carrying on the business identified with the name of a particular firm. 40 Am J1st Partn § 109.

**partnership inter sese.** A real partnership, a partnership characterized by a community of losses, as well as of profits. See *Germer v Donaldson* (CA3 Pa) 18 F2d 697.

**partnership name.** The designation or name of a partnership under which it transacts its business.

Such a name may be the name of one or all the members of the firm, or it may be a fictitious name, but the statutes of many jurisdictions required the filing of a certificate setting forth the fact if the names of all the partners are not disclosed in the firm name. 40 Am J1st Partn § 10.

**partnership property.** That jointly owned property in whatever form which represents the contributions of the several partners toward the capital employed by the firm in its business, plus the earnings, and less the losses, of the firm in its operations. *Whitcomb v Converse*, 119 Mass 38.

**partner's lien.** The lien which each member of a partnership may assert upon property belonging to the partnership for the amount of his interest in the partnership, and for advances made by him for the use of the firm. *Allen v Hawley*, 6 Fla 142. Another term for the equity of a partner. 40 Am J1st Partn § 404.

See **equity of partner.**

**partner's share.** The balance to which a partner is entitled after the payment of all the partnership debts and the adjustment of the partnership account between himself and his co-partners. *Taft v Schwamb*, 80 Ill 289, 300.

See **equity of partner.**

**part owner.** One of two or more persons who own property as co-owners. *Sexton v Lauman*, 244 Iowa 570, 57 NW2d 200, 37 ALR2d 353.

The term is not properly applied to partners, but is in common use in the law to denote a class of persons distinct from partners. *Breck v Blair*, 129 Mass 127, 128.

See **cotenancy; joint tenancy; tenancy in common.**

**part performance.** Performance by a party to a contract which is less in extent than full or substantial performance as measured by the conditions of the agreement. 17 Am J2d Contr §§ 379 et seq. The doctrine that part performance of an oral contract for the sale of real estate has the effect, subject to certain conditions concerning the nature and extent of the act constituting performance and the right to equitable relief generally, of taking such contract from the operation of the statute of frauds, so that equity may decree it specific performance or grant other equitable relief. 49 Am J1st Stat of F § 419. Within the meaning of the equitable doctrine that part performance takes an oral contract out of the operation of the statute of frauds:—such acts as change the plaintiff's position and would result in a fraud, injustice, or hardship upon him, if the contract were not executed or enforced. 49 Am J1st Stat of F § 427.

**parts in a set.** See **bills in a set.**

**part-time worker.** See **casual employee.**

**parturition.** Giving birth to a child.

**partus.** Issue; a child; offspring.

**Partus ex legitimo thoro non certius noscit matrem quam genitorem suam.** The child or offspring of a legitimate marriage does not know his mother any more certainly than his father.

**partus sequitur ventrem.** The offspring follows the mother. 4 Am J2d Am § 10.

**party.** A person who has engaged in a transaction or made an agreement. UCC § 1-201(29). One of the opposing litigants in a judicial proceeding—a person seeking to establish a right or one upon whom it is sought to impose a corresponding duty or liability, including any person by whom or against whom a suit, either at law or in equity, is brought. 39 Am J1st Parties § 4. For the purposes of a right to appeal, persons named as parties in the original pleadings and persons who subsequently come or are brought into the action for the purpose of seeking relief or of being subjected to relief. 4 Am J2d A & E §§ 174, 175. For some purposes, a person interested in the litigation, as well as a party of record, for example, the disqualification of a judge. Anno: 10 ALR2d 1312, or incompetency to testify to a transaction had with a person since deceased. 58 Am J1st Witn § 283. For the purpose of the rule of res judicata, any person who has a direct interest in the subject matter of the suit and has a right to control the proceedings, defend, examine the witnesses, and appeal if an appeal lies. Vane v C. Hoffberger Co. 196 Md 450, 77 A2d 152, 22 ALR2d 1450.

As to who is a party for the purposes of the application of a statute or rule of practice authorizing a physical or mental examination of a party. 23 Am J2d Dep § 226.

See **indispensable party; necessary party; political party; proper party.**

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**party affiliation.** Adherence to a political party and support of its candidates for election. 25 Am J2d Elect § 159.

**party aggrieved.** See **aggrieved party.**

**party candidate.** A candidate for election nominated by a political party and running as the candidate of such party. Putnam v Kozer, 119 Or 535, 250 P 625.

**party convention.** See **convention.**

**party defendant.** See **defendant.**

**party in default.** See **default.**

**party injured.** See **injured party.**

**party in interest.** A party to an action who has an actual interest in the controversy, as distinguished from a nominal party.  
See **interested person.**

**party interested.** See **interested person; party in interest.**

**party jury.** Same as jury de medietate linguae.

**party litigant.** A person named as a party to an action or suit. For some purposes, a party who will really litigate the controversy, as distinguished from one defaulting in the action or consenting to judgment. *National Bank v McCrillis*, 15 Wash 2d 345, 130 P2d 901, 144 ALR 1197.

**party of record.** A person formally designated as a party to an action or an appeal, as distinguished from a person who has an interest in the subject matter involved.

**party plaintiff.** See **plaintiff**.

**party rate.** A reduced fare charged by a carrier for persons in a prescribed number traveling as a party, that is, as a group at the same time.

**party square.** A square on an election ballot which permits the voting of a straight party ticket by one mark only, that is, a mark in the square. 26 Am J2d Elect § 210.

**party to a judgment.** See **parties to a judgment**.

**party to be charged.** A familiar expression in the statute of frauds, meaning the party against whom the contract is sought to be enforced. 49 Am J1st Stat of F § 384.

**party wall.** A dividing wall for the common benefit and convenience of the tenements which it separates. *Lederer v Colonial Invest. Co.* 130 Iowa 157, 106 NW 357; *Coumas v Transcontinental Garage, Inc.* 62 Wyo 99, 230 P2d 748, 41 ALR2d 539. A wall located upon or at the division line between adjoining premises and used, intended to be used or available to be used by both owners of such premises in the construction or maintenance of improvements on their respective tracts. 40 Am J1st Part W § 2.

In order to constitute such a wall, the structure need not stand partly on the land of each adjoining landowner; it may rest entirely on the land of one owner and still have the legal characteristics of a party wall. 40 Am J1st Part W § 2.

**Parum cavet natura.** Nature takes but little precaution.

**Parum cavisse videtur.** (Roman law.) He seems to have taken but little care or precaution.

**Parum differunt quae re concordant.** Those things differ but little which accord in substance.

**Parum est latam esse sententiam nisi mandetur executions.** A sentence is not sufficiently comprehensive unless it is committed to execution.

**Parum proficit scire quid fieri debet, si non cognoscas quomodo sit facturum.** It profits but little to understand what ought to be done if you do not know in what manner it should be done.

**par value.** The value of an instrument for the payment of money as determined by the face of the instrument. The face value of a bond. An amount fixed as the nominal value of a share of corporate stock, such amount indicating the sum of money or value of property or services which a subscriber is represented as having contributed to the corporation in exchange for such share. *Randle v Winona Coal Co.* 206 Ala 254, 89 So 790, 19 ALR 118; *Fort Edward v Fish*, 156 NY 363, 370, 371, 50 NE 973.

A sale of bonds at par is a sale at the rate of one dollar in money for one dollar in bonds. This is the accepted meaning in the mercantile world. *Ft. Edwards v Fish*, 156 NY 363, 50 NE 973.

Par value and the actual value of issued stock are not synonymous; there is often a wide disparity between them. 18 Am J2d Corp § 222.

See **nonpar value stock**.

**parva proditio**. Petit treason, the killing of a master by a servant; of a husband by a wife; of a superior by an ecclesiastic.

**parva serjeantia**. Same as **petit sergeanty**.

**parvum cape**. A judicial writ to recover possession of land in a real action in which the tenant had appeared but had made default.

**parvum servitium regis**. Small service of the king; petit sergeanty.

**pas**. Precedence; the right to precede.

**Pascha**. Easter.

**pascua silva**. (Civil law.) A wooded pasture.

**pass**. Noun: A short leave of absence for a person in military service. A license to enter a government office, industrial plant, military establishment, or reservation. Permission or license to ride on the conveyance of a carrier without payment of fare. 14 Am J2d Car § 843. A slang expression for attempting familiarity with a female. Verb: To vest in heir or devisee upon death of owner. Estate of Kennedy, 157 Cal 517, 108 P 280.

**passage for logs**. A passageway over or around a dam whereby logs may be floated and transported. Crookston Waterworks, P. & L. Co. v Sprague, 91 Minn 461, 98 NW 347, 99 NW 420.

**passage money**. Compensation for the carriage of a passenger on a ship. The Main v Williams, 152 US 122, 129, 38 L Ed 381, 384, 14 S Ct 486.

**passage of act**. See **passage of statute**.

**passage of statute**. The date the act secures the approval of the two houses of the legislature. State v Mounts, 36 W Va 179, 14 SE 407. The date of the approval of the act by the chief executive, or in the absence of his approval, the date of final passage over the veto. 50 Am J1st Stat § 504. Sometimes construed as the effective date of the statute. Consolidated Motors v Skusen, 56 Ariz 481, 109 P2d

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41, 132 ALR 1040 (relative to exception of delinquent taxes from interest).

See **final passage**.

**passageway**. A way for entrance or exit. A hallway. A way used for public passage. 25 Am J1st High §3.

**passagio**. A writ to compel the officers of a port to allow a person who held the permission of the king to depart across the sea.

**passagium**. A passage; a voyage.

**passator**. A person having the control of passage on a river.

**passbook.** A book carried by the customer of a bank in which the teller enters the amount and date of a deposit made. 10 Am J2d Bks § 347. A small account book carried by a shareholder in a building and loan association, showing the state of his account, at least the deposits made by him. Broadly, a book of buyer, customer, or borrower in which the seller, banker, or creditor enters their mutual transactions.

**passed dividend.** An omitted dividend; a dividend not declared at the time for the declaration of the dividend under former practice of the corporation, especially where the dividend is one payable regularly on preferred stock.

**passenger.** One riding in a conveyance, as distinguished from one in control of the operation of the vehicle. One who travels in a public conveyance by virtue of contract, express or implied, with the carrier as to payment of fare or that which is accepted as the equivalent of a cash fare. 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. 14 Am J2d Car § 740. One transported for hire or under a contract with the carrier as distinguished from one riding a train or other conveyance for the purpose of rendering service in connection with the journey. 29A Am J Rev ed Ins § 1253. A person being carried in an elevator or riding on an escalator. 26 Am J2d Elev §§ 23-32, 79.

See **guest in aircraft; guest in motor vehicle.**

**passenger agent.** An agent of a railroad company in charge of the passenger business generally or in a particular city or locality. Anno: 113 ALR 87.

**passenger car.** A railroad car used for the transportation of passengers.

An old passenger car which has been converted into a pay car and is used on the railroad as such is in no sense a passenger car any more than a baggage or mail car could be so considered. *Travelers' Ins. Co. v Austin*, 116 Ga 264, 42 SE 522.

See **passenger motor vehicle.**

**passenger depot.** See **depot.**

**passenger elevator.** An elevator for carrying passengers as distinguished from a freight elevator. 26 Am J2d Elev § 2. An elevator so constructed as to be usable only for the carriage of passengers. 29A Am J Rev ed Ins § 1236. An elevator commonly used for the carriage of passengers, whatever the nature of the construction may be and irrespective of whether or not the conveyance is used for both freight and passenger service. Anno: 96 ALR 1411.

**passenger motor vehicle.** A motor vehicle which, in manner of construction, as well as use, is a vehicle for carrying passengers rather than goods or merchandise. *Poncino v Sierra Nevada Life & Casualty Co.* 105 Cal App 671, 286 P 729.

See **private passenger automobile.**

**passenger train.** A railroad train which carries passengers, their baggage, mail, and express only. *Arizona Eastern Railroad Co. v State*, 29 Ariz 446, 242 P 870.

**pass for cause.** To let a juror go unchallenged for cause, leaving open the opportunity for peremptory challenge.

**passim.** Here and there; indiscriminately.

**passing indictment to files.** Holding the charge in abeyance; postponement of trial. 27 Am J1st Indict § 23.

**passing of act.** See **passage of statute.**

**passing of property.** See **succession; transfer.**

**passing of title.** A transfer of title, voluntary or involuntary.

**passing on the right.** An offense committed in the operation of a motor vehicle under some statutes and ordinances. 7 Am J2d Auto § 224.

**passing vehicle.** To go by a vehicle.

As used in a statute requiring motor vehicles to come to a stop before "passing" any school bus which has stopped for the purpose of taking on or discharging school children, the term means to go by, regardless of whether the school bus and the motor vehicle are traveling in the same direction or in the opposite direction at the time when the school bus comes to a stop. Thus a statute contemplates the stopping of motor vehicles approaching from an opposite direction as well as those traveling in the same direction. *Fisher v J. H. Sheridan Co.* 182 SC 316, 189 SE 356, 108 ALR 981.

See **overtaking and passing.**

**passing vessel.** See **overtaking and passing.**

**passion.** An intensity of emotion. Hate or love. Sexual desire. Moved by feelings, emotions, or sympathy, without conscious violation of duty. *Alabama Gas Co. v Jones*, 244 Ala 413, 13 So 2d 873. As an element characterizing the degree of the offense of homicide, rage, anger, resentment, fear, excitement, or nervousness, but of sudden development. 26 Am J2d Homi § 44.

See **sudden passion.**

**passive.** Inactive; quiescent; not active; permissive.

**passive bond.** A noninterest-bearing bond the holder of which is by its terms to have some future advantage or profit from it.

**passive concealment.** Silence without active suppression of a fact. 37 Am J2d Fraud § 145.

**passive connivance.** Conduct of the complaining spouse which smoothed the path of the other to the adulterous bed. *Vinton v Vinton*, 264 Mass 71, 161 NE 817.

**passive debt.** A debt which bears no interest.

**passive indulgence.** Failure to proceed against a debtor at a time when the means of collecting against collateral security exists. 50 Am J1st Suret § 115.

**passive negligence.** Negligence which lies in the failure to act, that is, to do something which one is under a legal obligation to do. 38 Am J1st Negl § 3.

**passive participation.** Something more than a merely passive attitude toward a conspiracy; a passive consent to the object of the conspiracy and concurring

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with the purposes of the other conspirators, although actually standing by while the others put the conspiracy into effect. *O'Neil v State*, 237 Wis 391, 296 NW 96, 135 ALR 719.

**passive receivership.** A receivership in which the receiver merely preserves the property, collects the assets, and reports to the court. *State Bank v Domestic Sewing Machine Co.* 99 Va 411, 39 SE 141.

**passive trust.** A trust whereof the trustee has no active duties to perform; a trust in which the beneficiary has the entire management of the estate and the retention of legal title is not essential to the performance of any duty imposed upon the trustee. 54 Am J1st Trusts § 13.

See **dry trust**.

**passive use.** Same as **permissive use**.

**passive waste.** Same as **permissive waste**.

**passport.** A formal document issued by a competent officer of a sovereign state or nation to a citizen or subject of the state or nation, certifying his citizenship or allegiance, addressed to foreign powers, and requesting that the bearer of it pass freely and safely. 40 Am J1st Pass § 1. As issued by the United States Secretary of State, a political document by which the bearer is recognized in foreign countries as an American citizen, and which by usage and the law of nations is received as evidence of the fact. *Urtetiqui v D'Arbel (US)* 9 Pet 692, 699, 9 L Ed 276, 278. A document issued in time of war, under the authority of the government of one of the belligerents, entitling the person to whom it is issued to pass through the country of that belligerent. A document issued in time of war, under the authority of a government which is neutral, entitling a vessel to sail on a proposed voyage to the country of one of the belligerents. *The Amiable Isabella (US)* 6 Wheat 1, 5 L Ed 191.

**past consideration.** A consideration given before the making of a promise and without reference to it.

As to sufficiency of a past consideration in support of a promise, see 17 Am J2d Contr §§ 125 et seq.

**past due.** Overdue. Having run beyond maturity.

See **overdue paper**.

**paster.** A small, gummed piece of paper carrying a name, for use in an election in voting for the person named on the paper by inserting the paper in a blank space on the ballot or, as sometimes authorized by statute, by placing the paper over a printed name appearing on the ballot. 26 Am J2d Elect § 269.

**pasteurization.** The exposure of milk or beer to high temperature for the purpose of destroying noxious bacteria. *Pfeffer v Milwaukee*, 171 Wis 514, 177 NW 850, 10 ALR 128. A heating of raw milk to the boiling point for the purpose of purification. *People ex rel. Empire v Sohmer*, 218 NY 199, 112 NE 755.

**Pasteur treatment.** A method of preventing disease, especially rabies, by inoculation, the name deriving from Louis Pasteur, a French bacteriologist, who first employed it. *Buck v Brady*, 110 Md 568, 73 A 277.

**pastor.** A clergyman; a minister of the gospel in charge of a church. An ordained minister of the gospel who has been installed according to the usage of a Christian denomination in charge of a specific church or body of churches. *First Presbyterian Church v Myers*, 5 Okla 809, 50 P 70.

**pasturage.** See **agistment**.

**pasture.** Verb: To take the cattle or other grazing animals of another on one's land for grazing. Noun: Grass land devoted to the grazing of cattle and other grazing animals.

See **admeasurement of pasture; ancient pasture; common of pasture**.



**pasture bred.** Sire unknown.

**pastus.** Customary provision which was made by feudal tenants for the lord of the manor upon the occasion of his visit to the land.

**Pateat universis per praesentes.** Know all men by these presents.

**patens.** See **ambiguitas patens.**

**patent.** Adjective: Obvious, evident. Open to view on ordinary inspection. *Miller v Moore*, 83 Ga 684, 10 SE 360. Noun: A commission evidencing a right, such as a commission entitling one to a public office. A conveyance or grant of public lands, particularly to one who has made a homestead entry and complied with the statutory conditions respecting settlement, residence, cultivation, and payment. 42 Am J1st Pub L § 31. A grant of mineral rights in public lands. 36 Am J1st Min & M § 25. The right of monopoly secured by statute to those who invent or discover new and useful devices and processes. The exclusive right of manufacture, sale, or use secured by statute to one who invents or discovers a new and useful device or process. 40 Am J1st Pat § 2. Verb: To obtain a patent upon an invention.

See **patent right.**

**patentable.** Possessing the requisites of utility, novelty, and invention which entitle one to a patent. 40 Am J1st Pat § 21. Referring to a result, together with ingenuity in bringing it about. *National Cash Register Co. v Boston Cash Indicator & Recorder Co.* 156 US 502, 39 L Ed 511, 15 S Ct 434.

The machine, process or product is but its material reflex and embodiment. It must be new and shown to be of practical utility in order to be patentable. *Smith v Nichols (US)* 21 Wall 112, 22 L Ed 566.

**patentable invention.** See **patentability.**

**patentable novelty.** A new device produced by the exercise of inventive power and skill. *General Electric Co. v DeForest Radio Co.* (DC Del) 7 F2d 90.

**patentable process.** A new and useful method of treatment of certain materials to produce a particular result or product. *Holland Furniture Co. v Perkins Glue Co.* 277 US 245, 72 L Ed 868, 48 S Ct 474.

**patent ambiguity.** An uncertainty appearing on the face of an instrument, such that the court, reading the language in the light of all the facts and circumstances referred to in the instrument, is unable to derive therefrom the intention of the parties. 23 Am J2d Deeds § 251. In will:—an ambiguity appearing upon the face of the instrument, for example, a bequest to "some" of the six children of the testator's brother. 57 Am J1st Wills § 1042.

**Patent Compensation Board.** A board established by the Atomic Energy Act of 1954 to advise the Atomic Energy Commission in reference to the determination of royalty fees, compensation, or

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awards for the owner of a patent dealing with atomic energy. 42 USC § 2187(a).

**patent danger.** An obvious peril. 38 Am J1st Negl § 91.

**patent defects.** Defects in a subject matter of sale so obvious that a purchaser dealing in person necessarily must see them.

**patented claim.** A claim to a homestead upon government land upon which a patent has been issued and delivered. A claim to mineral rights in public lands upon which a patent has been issued and delivered. 36 Am J1st Min & M § 25.

See **placer claim patent**.

**patentee.** The person to whom letters patent are issued by the government.

**patent inside.** Content of the inside pages of a newspaper, usually a weekly newspaper, not pertaining to local events or gathered by reporters on the paper, but obtained from an external editorial source. 39 Am J1st Newsp § 8.

**patent matter.** Same as **patent inside**.

**patent medicine.** A medicine compounded by a manufacturer according to his own formula. 25 Am J2d Drugs § 3.

The term does not convey the idea that the medicine is a "patented" medicine. *Jacobs v Beecham*, 221 US 263, 55 L Ed 729, 31 S CI 555.

**Patent Office.** A federal bureau located in Washington D. C., headed by the Commissioner of Patents, wherein the merits of an application for a patent are considered and where all records, drawings, models, specifications, and other papers and things pertaining to patents are required by law to be kept and preserved. 40 Am J1st Pat § 10.

**patent of precedence.** Letters patent granted to certain English barristers as a mark of distinction, and entitling them to certain prerogatives.

**patent right.** A right under a patent obtained for an invention, held by the patentee or an assignee.

In its usual signification, the term means, a privilege granted by the government to the first inventor of a new and useful discovery or mode of manufacture that he also shall be entitled, during a limited period, to the exclusive use and benefit thereof. In the granting of patents, the Federal Government has never sought to do more, and in fact has never exercised greater authority, than to extend protection to the privilege, such as that granted by a patent for an invention, against the infringement of those who seek to invade it. *Crown Cork & Seal Co. v Maryland*, 87 Md 687, 40 A 1074.

**patent right note.** A note given for a patent right. 11 Am J2d B & N § 189.

**patent rolls.** English records of letters patent.

**patent writ.** An open or unsealed writ.

**pater.** A father.

**Pater aut mater defuncti, filio non filiae haereditatem reſinquent . . . . Qui defunctus non filios ſed filias relinquerit, ad eas omnis haereditas pertineat.** A father or mother having died leave their inheritance to their ſon, not to their daughter . . . . Whoever dying ſhall leave no ſons, but daughters, to them the whole inheritance ſhall belong. See 2 Bl Comm 213.

**Pater eſt quem nuptiae demonſtrant.** He is the father whom the marriage indicates. 10 Am J2d Baſt § 11.

**paterfamilias.** The father of a family.

**paternal.** Belonging to, or proceeding from, the father.

**paternal fee.** See **feudum paternum**.

**paternal inheritance.** An inheritance from or through the father.

**paternal power.** That parental authority which a father has over his children.

**paternal property.** That property which has descended from one's father, or from the stock of the father.

**paterna paternis.** Paternal property descends to paternal descendants.

**paternity.** The state or condition of being a father; fatherhood.

See **presumption of paternity.**

**paternity proceeding.** A proceeding, otherwise known as a bastardy or filiation proceeding, to establish the paternity of a child born out of wedlock and to compel the father to contribute to its support. 10 Am J2d Bast § 74.

**paternity test.** A scientific test in determining the paternity of a child. A blood-grouping test. 23 Am J2d Dep § 211.

**Pater Noster.** The Lord's Prayer.

**paternum.** See **feudum paternum.**

**pater patriae.** Same as **parens patriae.**

**path.** A trail. A way worn by many footsteps. A course taken in traveling. A course of conduct.

See **bicycle paths.**

**pat hand.** A hand of draw poker obtained upon the original deal and retained by the player without discard or replacement. An advantage in a prospective controversy.

**pathological condition.** A diseased condition of the body. *Stedmen v United States Mut. Acci. Asso.* 123 NY 304, 25 NE 399.

**pathological fracture.** A bone fracture resulting primarily from a diseased condition.

**pathology.** The branch of medicine concerned with the nature of disease and the changes in body, bones, and tissues produced by a particular disease. Anno: 135 ALR 885.

**pathometer.** An instrument for measuring electrical impulses of the human body, employed as a lie detector.

**patibulated.** Hanged on a gallows or gibbet.

**patibulum.** A gallows; a gibbet.

**patiens.** A patient; a person who suffers something to be done.

**patient.** Noun: One being cared for as sick, disabled, or diseased, by physician or nurse. One receiving dental care or undergoing dental work. A person may be a patient without his consent, when the facts tend to show that through bodily suffering his

mind has partially lost its hold, for under such circumstances it may still be the professional duty of the physician to treat him. Meyer v Supreme Lodge Knights of Pythias, 178 NY 63, 70 NE 111. Adjective: Forbearing. Tolerating delay or inefficiency.

**patient forbearance rule.** The rule that cohabitation with one's spouse is not condonation of a marital offense consisting of acts of cruelty or indignities, where the injured spouse hopes that the other will mend his or her ways and the marriage be saved by patient forbearance. Anne: 32 ALR2d 13.

**patria.** The country; a country; a neighborhood; a jury.

See **bona patria.**

**Patria laboribus et expensis non debet fatigari.** A jury ought not to be troubled with labors and expenses.

**patriam.** See **ad patriam.**

**patria potestas.** (Roman law.) Paternal power.

**Patria potestas in pietate debet, non in atrocitate, consistere.** Paternal power should consist of kindness, not of cruelty. See 1 Bl Comm 452.

**patricide.** A person who kills his father; the crime of murdering one's own father.

**patricius.** (Civil law.) A title of the highest honor, conferred on those who enjoyed the chief place in the emperor's esteem. Wharton's Law Dictionary.

**patrimonial.** Paternal; parental; pertaining to partimony; pertaining to property inherited from a father or from a paternal ancestor.

**patrimonium.** (Civil law.) Property inherited from or through a father; patrimony.

**patrimony.** An inherited estate; property inherited from a father or from an ancestor on the father's side.

**patrinus.** A godfather.

**patriotic association.** A voluntary association, sometimes a corporation, organized for the promotion of patriotic purposes, the teaching of love of country, and giving the respect to her leaders past and present which they deserve.

**patrocinium.** (Roman law.) Patronage; protection; a defense in a court of justice.

**patron.** A customer. One who supports an enterprise or activity such as an art gallery or museum. In a technical sense, a person who possesses the right of presentation to a benefice.

**patronage.** Resorting to a store, shop, office, or service establishment for obtaining goods, merchandise, services, etc. The right of nominating the minister of a church. See 2 Bl Comm 21. Support and favor.

To state that a certain prostitute is under the "patronage" of a man is held equivalent to stating that she is his kept mistress. Moore v Bennett, 48 NY 472, 475.

**patronage dividend.** A dividend distributed by a cooperative association, not because of any interest in the cooperative owned by the distributee, but because of his patronage of the business conducted by the association. Internal Revenue Code § 116 (b) (2) (A). A dividend, otherwise known as a patronage refund, paid to members out of the profits of a cooperative association in an amount determined by the use made of the facilities of the association by the patron. 18 Am J2d Coop Asso § 14.

**patronage refund.** See **patronage dividend.**

**patronatus.** Same as **patronage.**

**patronize.** To give or bestow patronage. To act in a condescending manner.

See **patronage.**

**Patronum faciunt dos, aedificatio, fundus.** An endowment, a building, and a parcel of land, make a patron.

**patronymic.** A person's surname. The family name derived from one's father.

**patroon.** The lord of a manor in Dutch colonial New York.

**patruelis.** (Civil law.) A cousin on the father's side; a paternal first cousin.

**patruus.** A paternal uncle; an uncle on the father's side.

**pattern bargaining.** Bargaining by a labor union for a number of labor contracts based on the example of one contract considered desirable. Anno: 9 L Ed 2d 1051.

**patting down.** Same as frisking. See **frisk.**

**Paul VI.** His Holiness, the Pope, Bishop of Rome, Sovereign of the State of Vatican City, and spiritual leader of the Roman Catholic Church, since 1963.

**pauper.** A poor person; an indigent person. One receiving public aid, eating the public bread. 41 Am J1st Poor L § 4.

**pauperis.** See **in forma pauperis.**

**pauper settlement.** See **settlement of pauper.**

**pave.** To cover the ground, especially in street or highway, with a hard substance.

See **pavement.**

**pavement.** A hard substance applied to the surface of the ground, especially the substance, usually cement or asphalt, applied to street or highway so as to make a convenient surface for travel. Cedar Rapids v Cedar Rapids & Marion City Railway Co. 108 Iowa 406, 409 (holding that the word does not include the flooring of a bridge).

A pavement is not limited to uniformly arranged masses of solid material, as blocks of wood, brick, or stone; but it may be as well formed of pebbles or gravel, or other hard substance, which makes a compact, even, hard way or floor. Belcher's Sugar Refining Co. v St. Louis Grain Elevator Co. 101 Mo 192, 13 SW 822.

**paviage.** A paving or highway tax.

**pavilion.** A building used for public entertainments and exhibitions, often in a park or public ground, sometimes open on the sides. Phelps v Winch, 309 Ill 158, 140 NE 847. An ornamental structure, often found on the grounds whereon a mansion or large dwelling house is located. A structure on hospital or sanitarium grounds wherein patients may relax and be benefited.

**paving.** See **pavement.**

**pawn.** Verb: To pledge personal property as security for payment of a debt. Noun: A bailment of personal property as security for a debt or obligation, redeemable upon certain terms and with the implied power of sale on default. 40 Am J1st Pawnb § 2.

**pawnbroker.** A person whose business or occupation it is to take or receive, by way of pledge or pawn, any goods, wares, merchandise, or other kind of personal property, as security for the repayment of money lent thereon. 40 Am J1st Pawnb § 2. A person who keeps a shop for the purchase or sale of goods, and takes goods by way of security for money advanced thereon. *Levinson v Boas*, 150 Cal 185, 88 P 825.

**pawnbroker's license.** A license required of one permitted to carry on the business of a pawnbroker. 40 Am J1st Pawnb § 7.

**pawnee.** A person to whom goods are pawned or pledged.

**pawnor.** A person who makes a bailment of personal property by way of pledge or pawn.

**pawnshop.** A place at which the business of a pawnbroker is carried on. *Asakura v Seattle*, 265 US 332, 342, 68 L Ed 1041, 1045, 44 S Ct 515.

**pax.** Peace.

**pax ecclesiae.** The peace of the church.

**pax regis.** The peace of the king.

**pax Roma.** The peace of Rome.

**pax vobiscum.** Peace be with you.

**pay.** Verb: To recompense another in satisfaction of a debt, by way of a reward, or for goods, other property, or services received from or rendered by him. To discharge a debt; to deliver a creditor the value of a debt, either in money or goods, to his acceptance, by which the debt is discharged. *Beals v Home Ins. Co.* 36 NY 522, 527. Constituting an order to pay, as it appears in a bill of exchange. 11 Am J2d B & N § 139. Noun: That which is received by way of recompense, particularly for work and services.

See **salary; wages.**

**payable.** Due or to be paid. *Eckel v Jones*, 8 Pa 801. To be paid, rather than "may be paid." 40 Am J1st Paym § 58. A word which in itself leaves no option or privilege as to time or manner of payment. *Johnson v Dooley*, 65 Ark 71, 44 SW 1032; *Farmers Bank v Johnson*, 134 Ga 486, 68 SE 85. Likely or able to yield a profit; profitable; as, payable wash dirt; a payable commercial undertaking. *Guaranty Trust Co. v Henwood* (CA8 Mo) 98 F2d 160.

**payable as convenient.** Some indulgence in extension of credit but nevertheless an acknowledgment of a debt to be paid. *Black v Bachelder*, 120 Mass 171, 173.

**payable at.** Designation of bank upon instrument for payment of money, the authorities being in conflict upon the question whether the designation is the equivalent of an order to the bank to pay from any funds of the maker or drawer available for payment. 11 Am J2d B & N § 111.

**payable in advance.** Due in advance. 30 Am J Rev edInt§12.

**payable in kind.** See **in kind.**

**payable in trade.** Payable in such articles as are dealt in by the party who is thus to make payment. *Dudley v Vose*, 114 Mass 34, 36.

**payable on demand.** See **demand paper.**

**payable only to himself.** Words negating negotiability. 11 Am J2d B & N § 108.

**payable through.** A form of designation for collection. UCC, Comment to § 3-120; 11 Am J2d B & N § 11.

**payable to bearer.** A bearer instrument. 11 Am J2d B & N §§ 106, 124.

**payable to bills payable.** Designation of an impersonal payee in creating a bearer instrument. 11 Am J2d B & N § 124.

**payable to cash.** A designation creating a bearer instrument. 11 Am J2d B & N § 106.  
See **pay cash or order.**

**payable to holder.** Words of negotiability. 11 Am J2d B & N § 105.

**payable to order.** Words of negotiability. 11 Am J2d B & N § 105.

**payable upon return of this instrument properly endorsed.** A phrase insufficient in itself to create an order instrument. 11 Am J2d B & N § 107.

**pay and divide rule.** Same as **divide and pay over rule.**

**pay any bank.** An indorsement upon a check or similar item delivered for collection. 10 Am J2d Bks § 694. A form of restrictive indorsement. 11 Am J2d B & N § 362.

Under the provisions of the Uniform Commercial Code, 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 until (a) the item has been returned to the customer initiating collection; or (b) the item has been specially endorsed by a bank to a person who is not a bank. UCC § 4-201(2).

**pay cash or order.** Not the equivalent of an order to pay to a specified person or to bearer so as to constitute the instrument a bill of exchange. *Orbit Mining & Trading Co. v Westminster Bank, Ltd.* [1962] 3 All Eng 565 (CA).

A promissory note, payable to "cash or order," and indorsed in blank by the maker thereof, is in effect "payable to bearer." *Hale v State*, 120 Ga 138, 47 SE 547.

**pay check.** A check given in payment of wages. 31 Am J Rev ed Lab §§ 822-826.

**payee.** A person to whom a payment is made or who is designated in a bill or note as the person to whom payment is to be made.

The Commercial Code purports to settle the long-continued conflict over the status of the payee as a holder in due course by declaring that a payee may be a holder in due course. UCC § 3-302(2), and Comment 2; 11 Am J2d B & N §§ 415-419.



**payer.** One who pays or is obligated to make a payment. An essential of a negotiable instrument, the person obligated thereby.

**pay in full.** To discharge an obligation completely. A direction respecting a legacy sufficient to exonerate it from the burden of taxes. *Re Caswell's Estate*, 239 App Div 694, 268 NYS 691.

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**paying.** Making a payment. Profitable, such as a "paying" business. paying quantities.

See **in paying quantities**.

**paying teller.** See **teller**.

**payment.** The discharge of an obligation by the delivery and acceptance of money, or of something equivalent to money, which is regarded as such at the time by the person to whom the payment is due. *State v Tyler County State Bank* (Tex Com App) 277 SW 625, 282 SW 211, 42 ALR 1347. The performance of the consideration clause of a contract, or the satisfaction of a liability imposed by law, the term implying a debt from him who pays to him who is to receive, and further that when the payment is complete the debt will be discharged. *United States Fidelity & Guaranty Co. v State*, 169 Okla 59, 36 P2d 47.

**payment by mistake.** See **payment under mistake of fact; payment under mistake of law**.

**payment for honor.** A former practice of the commercial world, sometimes known as payment supra protest, now obsolete because of existing facilities for quick communication, whereunder, a bill of exchange or promissory note having been protested for nonpayment, a third party would pay in order to protect the credit of the drawer or maker which otherwise would suffer during the period of delay ensuing before the latter could be notified of the protest and take steps of his own to protect his credit. 11 Am J2d B & N § 506.

**payment for transportation.** The fare paid by a passenger on train, bus, plane, or taxicab.

The "payment" for transportation which will take one out of the category of "guest," the motorist's liability to whom is restricted to cases of wilful or wanton misconduct, must be made under such facts and circumstances as will raise an inference of the acquiescence of the motorist in the assumption of liability for mere negligence. *Hasbrook v Wingate*, 152 Ohio St 50, 87 NE2d 87, 10 ALR2d 1342.

**payment in cash or its equivalent.** See **cash or its equivalent**.

**payment in due course.** Payment at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. 11 Am J2d B & N § 964.

For effect of the Commercial Code upon the requirement of a payment in due course for the discharge of a negotiable instrument, see Comment 3 to UCC § 3-603.

**payment in good faith.** See **payment in due course**.

**payment into court.** A deposit in court, of money or property capable of delivery, made through the clerk of the court, pursuant to an order of the court rendered upon an application therefor, to be disposed of ultimately as the rights of the interested parties may appear. 23 Am J2d Funds & D § 2. A requirement imposed upon the plaintiff in interpleader. 30 Am J Rev ed Interpl § 26. A deposit made with the clerk of court of an amount of money which the depositor admits to be due his adversary in an action pending in the court. *Dirks v Juel*, 59 Neb 353, 80 NW 1045.

**payment of check.** The act of the drawee bank in handing over money, in the amount in which the check is drawn, to the payee or indorsee, or in giving the payee or indorsee something in lieu of cash, often a credit in his account at the bank in the amount of the check, accepted unconditionally by the payee or indorsee. 10 Am J2d Bks § 543.

While the phrase "to pay" in ordinary parlance may seem to connote only payment to a third party, as a matter of law a bank does "pay" a check drawn on it in its own favor; that is to say, it charges the same against the account of the depositor and causes that check to augment the bank's own funds. *Colby v Riggs National Bank*, 67 App DC 259, 92 F2d 183, 114 ALR 1065.

**payment supra protest.** Same as **payment for honor**.

**payment under mistake of fact.** A payment made by one person to another on the mistaken supposition of the existence of a specific fact which would entitle the other to the money, where the money would not have been paid if it had been known to the payer that the fact was otherwise. 40 Am J1st Paym § 187.

**payment under mistake of law.** A payment made by a person who having full knowledge of the facts comes to an erroneous conclusion as to their legal effect. 40 Am J1st Paym § 207.

**payment under protest.** See **protest**.

**pay no money to agents.** A statement made in rendering a bill.

As the expression appears on a bill rendered by a corporation for goods sold, it is the equivalent of a notice not to pay to an unauthorized agent; it is not a notice of limitation on the ostensible authority of the agent who made the sale to receive payment. *American Sales Book Co. v Cowdrey*, 100 Ark 325, 140 SW 134.

**pay only through clearing house.** The usual form of indorsement of a check made by a collecting bank in sending the check to a clearing house, such being sufficient to transfer the instrument from the endorsing bank to the redeeming bank. 10 Am J2d Banks § 840.

**pay off.** To eliminate an obligation by paying the obligee. To pay a confederate for his assistance in committing a fraud or crime. To recompense one for his keeping silent respecting the commission of a crime or the perpetration of a fraud.

**payoff.** A slang expression for time of reckoning or settlement, also for an unexpected occurrence of importance.

**payor.** Same as **payer**.

**pay over.** See **divide and pay over; pay off**.

**payroll.** A list of employees, sometimes inclusive even of corporate officers and executives, entitled to wages or salary for a period of working time, normally a week, and of the respective amounts due such persons for the period. The amount of money required to fund the list.

**payroll check.** A check representing the wages of an employee upon a payroll. 10 Am J2d Banks § 512.

**pays.** Same as **pais**.

See **pay**.

**P. C.** Abbreviation of **Privy Council**.

**p.c.** An abbreviation of **pleas of the crown**. Also, an abbreviation of **privy council**.

**pd.** Abbreviation of **paid**.

**peace.** The tranquility enjoyed by members of a community where good order reigns. 12 Am J2d Breach P § 4. That invisible sense of security which every person feels so necessary to his comfort, and for

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which all governments are instituted. Miles v State, 30 Okla Crim 302, 236 P 57, 44 ALR 129. The termination of a war, of hostilities between nations. 56 Am J1st War § 13.

See **time of peace**.

**peaceable entry.** An entry upon real estate without the use of force to obtain entry.

**peaceable possession.** An uncontested and unresisted possession. Such possession of land as is continuous and not interrupted by adverse suit to recover the estate. Stanley v Schwalbe, 147 US 508, 37 L Ed 259, 13 S Ct 418.

**peace bill.** See **bill of peace**.

**peace bond.** See **bond to keep the peace**.

**peace foundation.** See **World Peace Foundation**.

**peaceful assembly.** See **right of assembly**.

**peaceful persuasion.** Persuasion without threat or intimidation.

**peaceful picketing.** Picketing without violence, intimidation, physical obstruction, or misrepresentation of facts. Anno: 120 ALR 347, s. 124 ALR 773, 127 ALR 887. Absence, not only of violence, but of any unlawful act. Senn v Tile Layers Protective Union, 301 US 468, 81 L Ed 1229, 57 S Ct 857.

**peace justice.** See **justice of the peace**.

**peace officer.** A public officer, such as a sheriff, deputy sheriff, marshal, policeman, or constable.

**peace of the king.** The protection of the king, as extending over the locality where an offense was committed. State v Jones, 1 Miss (Walk) 83, 85, or to the victim of an alleged offense. State v Dunkley, 25 NC (3 Ired L) 116.

**peat.** A material consisting of decayed plants which grew in swamp or bog in the geological past. Valuable for covering ground, even used as fuel in certain parts of the world. 27 Am J2d Em D § 279.

**peat moss.** The form in which peat is sold and used as a ground cover.

**pecans.** Nuts grown on trees in several of the southern states, edible and nutritious, and constituting an important agricultural crop. Superior Oil Co. v Griffin (Okla) 357 P2d 987, 87 ALR2d 224.

**Peccata contra naturam sunt gravissima.** Crimes against nature are the lowest.

**peccatum.** A sin; a crime; an offense; a fault.

**Peccatum peccato addit qui culpa quam facit patrocinium defensionis adjungit.** A person adds a crime to a crime who connects a wrong which he has committed with his defense.

**peck.** A unit of dry measure, consisting of eight quarts, one fourth of a bushel.

**pecora.** Plural of **pecus**.

**pectore judicis.** See **in pectore judicis**.

**pecudes.** Plural of **pecus**.

**pecudum.** See **fructus pecudum**.

**peculation.** The betrayal of an official trust by embezzlement or other fraud committed by a public officer in misapplying public property. *Bork v People*, 91 NY 5, 16.

**peculator.** A defaulter; an embezzler.

**peculatus.** (Civil law.) Peculation; the embezzlement of public moneys.

**peculiar.** Adjective: Eccentric; strange. Noun: An English parish which is independent of the ordinary.

**peculiar benefits.** An expression of the law of eminent domain for benefits from an improvement to property of the condemnee by reason of the direct relationship of the property to the improvement. 27 Am J2d Em D § 368.

**Peculiar People.** A religious sect whose belief in prayer as a cure for disease resembles that of the Christian Scientists. *Regina v Senior* (Eng) 19 Cox, CC 219.

**peculiars court.** See **court of peculiars**.

**peculium.** (Roman law.) The private property belonging to a son or a slave, independently of the father or the master.

**peculium castrense.** (Roman law.) The private property of a son which he acquired while he was a soldier or in a military camp.

**pecunia.** Money. Property, especially property in cattle.

**Pecunia dicitur a pecus, omnes enim veterum divitiae in animalibus consistebant.** "Pecunia" is so called from the word "pecus" (an animal of the bovine species), because all the wealth of our forefather, consisted of animals.

**pecunial.** Pertaining to money; pecuniary.

**pecuniae non numeratae.** See **exceptio pecuniae non numeratae**.

**pecunia non numerata.** (Civil law.) Money not paid.

**pecunia numerata.** Money counted out or paid.

**pecuniary.** Involving money or money's worth. Financial; pertaining or relating to money; capable of being estimated, computed, or measured by money value.

**pecuniary ability.** The ability to pay one's debts.

**pecuniary benefit.** A benefit which can be valued in money. *Dallas R. & Terminal Co. v Moore* (Tex Civ App) 52 SW2d 104.

**pecuniary causes.** Certain causes which were cognizable in the ecclesiastical courts; those causes which arose either from the withholding of ecclesiastical dues, or the commission or omission of some act relating to the church, whereby some damage accrued to the plaintiff. See 3 Bl Comm 88.

**pecuniary condition.** The wealth of a person and his income whether from property or his earnings.  
See **financial condition.**

**pecuniary damages.** See **pecuniary injury; pecuniary loss.**

**pecuniary injury.** An injury, the damages from which are measurable in money. Such an injury as can be, and usually is, without difficulty, estimated by a money standard. *Broughel v Southern New England Tel. Co.* 73 Conn 614, 621.

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**pecuniary interest in action.** A direct interest in the result of a particular case. *Robinson v State*, 86 Ga App 375, 71 SE2d 677. As necessary to sustain a right to appeal:—a substantial and immediate interest, a future, contingent, or merely speculative interest ordinarily being insufficient. 4 Am J2d A & E § 180.

**pecuniary interest of judge.** Such an interest in the event or subject matter of the suit that the judge will be directly affected by realizing a pecuniary gain or suffering a pecuniary loss. Anno: 10 ALR2d 1320.

**pecuniary legacy.** A legacy which is to be paid out of the general assets of the testator's estate when they shall be converted into money. *Humphrey v Robinson*, 52 Hun 200, 203, 5 NYS 164.

**pecuniary loss.** A loss of money or of something by which money or something of money value may be acquired. *Dow v Legg*, 120 Neb 271, 231 NW 747, 74 ALR 5; *Green v Hudson River Railroad Co.* (NY) 32 Barb 25, 33.

As this term is used in death statutes allowing the "pecuniary damages" resulting to the beneficiaries to be recovered in an action, the words are not used in a sense of the immediate loss of money or property, but they look to the prospective advantages of a pecuniary nature which have been cut off by the premature death of the person from whom they have proceeded. 22 Am J2d Dth § 123.

**pecuniary profit.** Financial gain.

A corporation which is operated for "pecuniary profit" is one which is operated for the pecuniary profit of its stockholders or members. *Santa Clara Female Academy v Sullivan*, 116 Ill 375, 387.

**pecuniary resources.** See **pecuniary condition.**

**pecunia sepulchralis.** Money which was paid to a priest for prayers at the opening of a grave.

**pecunia trajectitia.** (Civil law.) Money which was carried across (the sea); a loan in money or in wares which the debtor purchased with the money to be sent by sea, and whereby the creditor assumed the risk of loss from the day of the departure of the vessel until her arrival at the port of destination. See Mackeldey's Roman Law § 433.

**pecus.** (Roman law.) An animal of the bovine species; a beast; a domestic animal; a herd; a flock.

**pecus vagans, quod nullus petit, sequitur, vel advocat.** Wandering cattle, which no one seeks, follows, or calls. See 1 Bl Comm 298.

**ped.** A bag.

**pedage.** A toll paid by pedestrians for the use of certain roads.

**pedagium.** Same as **pedage**.

**pedaneus.** (Roman law.) At the foot; inferior; of lower rank or status.

**pedaulus.** A Roman judge of lower rank who tried trivial causes.

**peddler.** One who goes from house to house carrying in a bag goods exposed by him for sale and delivery to whomever may be prevailed on to buy. *Crawley v State*, 57 Ga App 376, 195 SE 453. In a more modern sense, one who goes from place to place and from house to house carrying for sale and exposing to sale goods, wares, and merchandise which he carries. An itinerant, solicitant vendor of goods who sells and delivers to purchasers the identical goods which he carries with him. 40 Am J1st Ped §3.

**peddler's license.** A license required of a peddler, primarily as a means of regulation and avoidance of sharp practices and impositions upon the public. 40 Am J1st Ped § 30.

**peddler's note.** A promissory note which recites the consideration for which given. 11 Am J2d B & N § 189.

**pedem ponere.** To place the foot upon; to enter upon and take possession of land.

**pede pulverosus.** Dusty-foot; a huckster or peddler who attended fairs.

**pederasty.** Unnatural intercourse between males; more particularly between a man and a boy.

**pedestrian.** Noun: A person walking on sidewalk street, or highway.

As to who is a "pedestrian" with respect to rights given, and duties imposed by traffic rules and regulations, see Anno: 30 ALR2d 866.

**pedestrian use.** The use of a public way by pedestrians. *Home Laundry Co. v Louisville*, 168 Ky 499, 182 SW 645. In a distinct sense, a use lacking interest, of little appeal to the imagination.

**pedigree.** Ancestry. A record of ancestry; family tree. The descent of a pure-bred animal as it appears in a registry.

See **tradition**.

**pedigree evidence.** Proof of ancestry, descent, birth, age, race, relationship, and cognate matters, by general reputation, oral and written declarations, admissible under an exception to the hearsay rule, as well as by direct evidence. 29 Am J2d Ev § 508.

See **tradition**.

**pedigree exception.** See **pedigree evidence**.

**pedis abscissio.** An ancient punishment for crime by cutting off a foot.

**pedis positio.** The placing of the foot,—the physical act of stepping on the land to effect an entry and an assumption of possession.

**pedis possessio.** Possession by a foothold; a momentary personal presence on land. *Monroe v Rawlings*, 331 Mich 49, 49 NW2d 55. In one sense, an actual possession by occupancy of the whole of the entire tract under consideration, as distinguished from virtual possession. *Wheeler v Clark*, 114 Tenn 117, 85 SW 258.

**pedlar.** An old form of the word peddler.

**Peeping Tom.** The lout who looked at Lady Godiva as she rode unclad. One who derives a sexual satisfaction from observing others in the nude or dishabille.

**peer.** An equal.

A man's equals in rank are his peers. At common law a nobleman was entitled to be tried in a criminal case by a jury composed of his peers or equals. Bishops, however, although lords of parliament, held their baronies by right of the church, and were not of noble blood, and hence, were not so entitled. Peeresses did not have this right at common law, but statute 20 Henry VI, c. 9, gave it to them. See 1 Bl Comm 401.

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**peerage.** The right or dignity of a member of the English nobility.

The right was originally territorial, annexed to lands, cattles, manors, and the like, but later it became personal, and was confined to the lineage of the party ennobled. In Blackstone's time peers were created by writ or by letters patent. See 1 Bl Comm 400.

**peeress.** A lady of the nobility. 1 Bl Comm 401.

**peers.** See **peer**.

**pee-wee golf.** See **miniature golf course**.

**peine.** Punishment.

**peine forte et dure.** A cruel and relentless punishment,—the torturing punishment which was anciently inflicted on a defendant accused of felony who refused to plead, as a penalty for his obstinacy. *State v Woodward*, 68 W Va. 66, 69 SE 385; 4 Bl Comm 325.

**pejorative.** Disparaging.

**pejorem partem.** See **in pejorem partem**.

**pelex.** (Roman law.) The mistress of a married man; a concubine.

**pellex.** Same as **pelex.**

**pellagra.** A disease caused by dietary deficiency, characterized by stomach and intestinal pains and nervous disorders. Anno: 68 ALR2d 171-176.

**pen.** Noun: An instrument for writing with ink. A slang term for penitentiary or state prison. Verb: To write. To confine.

**penal.** An elastic term but strictly and primarily denoting punishment, whether corporal or pecuniary, imposed and enforced by the state for a crime or offense against its laws. 36 Am J2d Forf & P § 2.

**penal action.** An action founded entirely upon a statute which subjects a wrongdoer to a liability in favor of a person wronged as a punishment for the wrongful act, without limiting such liability to the actual damages suffered. 1 Am J2d Actions § 42. In a very broad sense, inclusive of a criminal prosecution.

**penal bill.** Same as **penal bond.**

**penal bond.** A bond conditioned upon the performance of duties of office, or other obligations undertaken by the principal obligor in the bond or collateral things to be done by him. 12 Am J2d Bonds § 1. A bond conditioned upon the forfeiture of a penalty for its breach, as distinguished from a bond providing for liquidated damages. *Carey v Mackey*, 82 Me 516, 20 A 84.

**penal code.** A division of the statutory law of a jurisdiction comprehensive of crimes and criminal proceedings. A model code proposed by the American Law Institute.

**penal farm.** A correctional institution to which persons convicted of misdemeanors are sent, instead of to the county jail. *Summers v State*, 198 Ind 241, 243, 151 NE 615, 616. A farm maintained as a part of the correctional system of a state to which prisoners may be sent for rehabilitation by work, whether at agricultural pursuits or industrial plants maintained on the land.

**penal law.** See **penal code; penal statute.**

**penal statute.** A statute which defines and prescribes the punishment for a criminal offense. A statute which provides a penalty enforceable in a civil action. A statute, such as a wrongful death statute, providing for an assessment of damages with reference to the degree of culpability of the defendant. 22 Am J2d Dth § 5. A statute which imposes a penalty for transgressing its provisions. A statute that imposes a penalty or creates a forfeiture as the punishment for the neglect of some duty, or the commission of some wrong, that concerns the good of the public, and is commanded or prohibited by law. 50 Am J1st Stat § 16.

**penal sum.** The amount of the penalty specified in a bond or undertaking for its breach or non-fulfilment.

**penalty.** In the broad sense of the term, the consequences visited by law upon the heads of those who violate the law, particularly provisions of the criminal law and police regulations. A punishment for the nonperformance of an act or for the performance of an unlawful act, the character of the imposition not being changed by the manner in which it is inflicted, whether by civil action or criminal prosecution. 36 Am J2d Forf & P § 2. In a narrower sense, an extraordinary liability to which the law subjects a wrongdoer in favor of the person wronged, such liability not being limited to the damages suffered. 36 Am J2d Forf & P § 2. A statutory penalty which an individual is allowed to recover against a wrongdoer as a satisfaction for the wrong or injury suffered, without reference to the actual damage sustained. *Nordling v Johnston*, 205 Or 315, 283 P2d 420, 48 ALR2d 1369. An agreement to pay a stipulated sum on a breach of contract, irrespective of the damage sustained. A sum inserted in a contract, not as the measure of compensation for a breach, but rather as a punishment for default, or by way of security for



actual damages which may be sustained by reason of nonperformance, and involving the idea of punishment. *Management, Inc. v Schassberger*, 39 Wash 2d 321, 235 P2d 293. An additional payment for a privilege such as that of payment of principal prior to due date. Anno: 70 ALR2d 1334.

**penalty adjudged to be paid.** A pecuniary penalty, not a penalty by imprisonment. 36 Am J2d Forf & P § 2.  
See **fine**.

**penalty for nonpayment of taxes.** A penalty, often in the form of imposition of interest charges, on the amount in which a taxpayer is delinquent in payment. 51 Am J1st Tax § 970.

**penance.** Punishment for an ecclesiastical offense.

**pen and ink levy.** Same as **paper levy**.

**pence.** In British usage, the plural of penny.  
See **Peter's pence**.

**pencil.** Noun: A slender rod of wood with a core of material which will make marks on a smooth surface, used for writing. Verb: To affix a signature by pencil. 23 Am J2d Deeds § 25.  
See **writing**.

**pendant.** See **auter action pendant**.

**pendency.** The state or condition of being undecided or pending.

**pendency of action.** The status of an action or suit from the time it is commenced until its final determination by judgment or order. *McDowell v Blythe Bros. Co.* 236 NC 396, 72 SE2d 860. The period of life of an action from the time of its commence-

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ment to its final determination. 1 Am J2d Actions § 91.

See **commencement of action; lis pendens; notice of pendency; pending action**.

**pendency of another action.** See **plea of another action pending**.

**pendency of criminal prosecution.** The status of a criminal prosecution from the time it is commenced by (1) the filing of a formal complaint or affidavit, (2) the return of an indictment or the filing of an information, (3) the issuance of a warrant to an officer for service, or (4) the arrest and commitment of the accused, until the final determination made by judgment. 21 Am J2d Crim L § 3.

**pendens.** Same as **pending**.  
See **lis pendens**.

**pendente.** Pending. Suspended.

**pendente absentia.** See **administrator of absentee**.

**pendente lite.** During the pendency of the suit, action, or litigation; while the suit, action, or litigation is pending. .

**pendente lite administrator.** A special or temporary administrator appointed where the appointment of a general representative is delayed for any reason, particularly the existence of a will contest. 31 Am J2d Ex & Ad § 650.

**pendente lite alimony.** Same as **temporary alimony**.

**pendente lite allowance.** Allowance to a wife of temporary alimony, maintenance, suit money, and attorneys' fees ordered for her maintenance pending litigation and to enable her to prepare her case in a suit for divorce or for alimony, support, separate maintenance, independent of any proceeding for divorce. 27 Am J1st H & W § 414.

See **temporary alimony**.

**pendente lite injunction.** See **preliminary injunction; temporary injunction; temporary restraining order**.

**pendente lite nihil innovetur.** Nothing should be changed during the pendency of an action. 34 Am J1st Lis P § 2.

**pendente lite purchaser.** A purchaser of property involved in litigation concerning its ownership or liens claimed against it, who buys while the litigation is pending. Ward v Lockwood, 234 Ky 160, 27 SW2d 692; Newman v Chapman, 23 Va (2 Rand) 93.

**pendente lite receivership.** A receivership in which a receiver is appointed by the court to hold certain property during the pendency of an action in which the property is involved. 45 Am J1st Rec § 3.

**pendente minoritate executoris.** See **administrator pendente minoritate executoris**.

**pendente placito.** See **estrepement pendente placito**.

**pendentes.** (Civil law.) Things that are suspended or hanging; unplucked crops.

**pending.** Undecided. In suspense.

**pending action.** An action which has been commenced and has not been terminated by a final judgment or order.

Under statutes providing for removal of causes, it may be said in general that whatever the form of proceeding to bring the defendant into court, the suit is pending when he is subject to judicial orders. 32 Am J2d Fed Proc § 464.

See **commencement of action; pendency of action**.

**pending litigation.** See **pending action**.

**pending prosecution.** See **pendency of criminal prosecution**.

**penes me.** In my possession.

**penetration.** The entry of the private part of the male, at least to some extent, in the private part of the female. 44 Am J1st Rape § 3.

**penetration per anum.** Penetration through the external terminus of the alimentary canal. 48 Am J1st Sod § 2.

**penetration per os.** Penetration in the mouth,—words used in describing certain unnatural practices which according to the weight of modern authority are held to amount to the crime of sodomy, although it was formerly held otherwise in England. 48 Am J1st Sod § 2.

**penicillin.** A drug used in the prevention of infection, but to which some people are susceptible so as to endure painful disorders upon treatment with it. Johnson v National Life & Acci. Ins. Co. 92 Ga App 818, 90 SE2d 36.

**penis.** The male organ. Mutual Ben. Health & Acci. Asso. v Blaylock 163 Miss 567, 143 So 406, 87 ALR 679.

**penitentiary.** A place of imprisonment in which convicts sentenced to hard labor are confined by authority of law. 41 Am J1st Pris & P § 2. In some jurisdictions, a county or other local prison, as distinguished from a state prison; a prison for confinement under relatively short sentences or under civil process.

**penny.** A cent in United States or Canadian money, the coin of lowest denomination. A British coin equaling one twelfth of a shilling.

See **averpenny; bord-halfpenny; testing penny; God's penny; hundred-penny; inpeny; outpenny; pence.**

**pensa.** A weight.

**pensata.** Weighed.

**pensio.** (Civil law.) A payment; a payment for the rent or hire of a thing.

**pension.** A gratuity paid by the government in recognition of past services in the Army or Navy. Dismukes v United States, 297 US 167, 80 L Ed 561, 56 S Ct 400, reh den 297 US 728, 80 L Ed 1011, 56 S Ct 594. A bounty or gratuity bestowed as a token of the government's benevolence. Anderson v United States (CA9 Wash) 205 F2d 326, 40 ALR2d 639. A regular allowance paid to an individual by government in consideration of services rendered, or in recognition of merit, civil or military. 40 Am J1st Pens § 3. A payment made to a widow, the children, or the dependents of a deceased serviceman. 40 Am J1st Pens § 12. A gratuitous payment made to an aged person. 40 Am J1st Pens § 7. A stated allowance or stipend made in consideration of past services or of the surrender of rights or emoluments, to one retired from service. Kneeland v Administrator, Unemployment Compensation Act, 138 Conn 630, 88 A2d 376, 32 ALR2d 896. A periodical payment of a fixed amount made to retired public and private employees by way of retirement pay, often from a fund

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accumulated by joint contributions of employer and employees.

As to what constitutes a "pension" within meaning of federal statutes excluding actions on claims for pensions from jurisdiction of federal courts, see An no: 40 ALR2d 646.

See **mother's pension; teachers' pensions.**

**Pension Bureau.** A former federal agency the duties of which are within the functions of the present Veteran's Administration.

**pensioner.** The recipient of a pension; a person who is supported by the bounty of another.

**pension fund.** A fund provided and accumulated for the payment of pensions to retired employees. Clarke v Ireland, 122 Mont 191, 199 P2d 965.

**pension money.** Money due, or to become due, to pensioners. 31 Am J2d Exemp § 98.

**Pentecost.** The seventh Sunday after Easter.

**pent road.** A highway which is closed at the terminal points. *Public Utilities Com. v Jones*, 54 Utah 111, 179 P 745. *Wolcott v Whitcomb*, 40 Vt 40, 41. A road which, having gates and bars at certain points, is not an open highway. *Bridgman v Hardwick*, 67 Vt 132, 134, 31 A 33.

**pentway.** A road which furnishes access to lands not reached by a highway, but open for use by anyone who desires to use it. *Latah County v Peterson*, 3 Idaho 398, 29 P 1089.

**peon.** A debtor who is compelled to work for his creditor until his debt is paid. *Bailey v Alabama*, 219 US 219, 242, 55 L Ed 191, 201, 31 S Ct 145.

**peonage.** The status or condition of compulsory service based upon the indebtedness of the peon to the master. 48 Am J1st Slav § 5. The criminal offense of holding a person to service or labor in liquidation of a debt or obligation. 18 USC § 444. A violation of the acts of Congress which were passed pursuant to the enforcement clause of the Thirteenth Amendment to the United States Constitution. *United States v Reynolds*, 235 US 133, 59 L Ed 162, 35 S Ct 86.

**peonía.** (Spanish.) The portion granted to a foot soldier of spoils taken, or lands conquered in a war. *Strother v Lucas* (US) 12 Pet 410, 442, footnote, 9 L Ed 1137, 1151, footnote.

**people.** The state; the nation; any consolidated political body. *United States v Three Friends*, 166 US 1, 41 L Ed 897, 17 S Ct 495. The subjects or inhabitants of a nation. *The Pizarro* (US) 2 Wheat 227, 246, 4 L Ed 226, 231.

"The popular leaders, who in all ages have called themselves the people," etc. See 4 Bl Comm 438.

**people of the state.** The representatives of the state itself; the state itself, as where a criminal prosecution is entitled as by "The People of the State."

As the expression is used in some connections, such as with reference to enjoyment of the public waters within the state, it includes all people lawfully within the state, whether of the state, in the sense of being residents thereof or otherwise. *Rossmiller v State*, 114 Wis 169, 89 NW 839.

**people of the United States.** The sovereign people. Citizens. *Boyd v Nebraska*, 143 US 135, 36 L Ed 103, 12 S Ct 375.

**peppercorn.** A pepper berry. A term often used in the past in expressing the consideration of a contract in which no more than a nominal consideration was intended.

**per.** By; through; in; by means of; on; with; under. A word used to indicate agency. Indicating signature affixed in the execution of an agency. 11 Am J2d B & N § 558.

A signing by which the name of the principal appears "per" the agent is uniformly regarded as a proper method of executing the agency so as to impose liability upon the principal and, conversely, no personal liability upon the agent. Restatement, Agency 2d § 156, Comment a.

In proceeding under a writ of entry, if the intruder or disseisor has conveyed to a third person, or the land has descended to his heir, the writ must allege the fact, because the action must be against the tenant the defect of whose title must be set forth, whether it arose from his own wrong or that of his predecessor in possession. One such alienation or descent makes the first degree, which is called the "per," because in such case the form of the writ is that the tenant had no right but "by" the original wrongdoer who aliened to him or from whom it descended to him. A second alienation or descent makes another degree called the "per and cut," because in such case the form of the writ is that the tenant had no title to enter but "by" or "under" a prior alienee, "to whom" the intruder demised it. See 3 Bl Comm 181.

**per accidens nuisance.** An act, occupation, or structure not a nuisance per se, but one which may become a nuisance by reason of circumstances, location, or surroundings. 39 Am J1st Nuis § 11.

**per accident clause.** A clause in a liability insurance policy limiting the liability of the insurer to a specified amount for each accident or occurrence. Anno: 55 ALR2d 1301.

**per aes et libram.** (Roman law.) By the brass or copper money and the scales,—a form which was used in certain sales.

**per alluvionem.** (Civil law.) By alluvion,—by the solid material which is gradually washed up on a person's land by action of the water.

**Per alluvionem id videtur adjici, quod ita paulatim adjucitur, ut intelligere non possumus quantum quoque memento temporis adjiciatur.** That material is deemed to be added by alluvion which is so accumulated little by little that we are unable to perceive how much is added at any certain moment of time.

**per ambages.** By evasions; by circumlocution.

**perambulation.** Visitation for making an inspection.

See **visitation.**

**perambulatione facienda.** See **de perambulatione facienda.**

**per and cui.** By and to whom.

**per annulum et baculum.** By the ring and staff.

Prior to the time of Pope Gregory VII, in the eleventh century, all bishops were appointed by the king, the usual method of investiture being a delivery by the king to the bishop of a ring and pastoral

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staff or crosier. This was known as investiture per annulum et baculum. See 1 Bl Comm 378.

**per annum.** By or for a year.

In a contract providing for the payment of interest at a certain rate per annum, the words are held by the authorities to mean that interest is to be computed and paid at the rate specified for the duration of the contract period, and not to mean that interest is payable annually. 30 Am J Rev ed Int § 11.

**per anus.** Characterizing an examination or treatment of a human body through the opening at the lower end of the alimentary canal.

See **penetration per anum.**

**per autre vie.** For the lifetime of another person.

**per aversionem.** See **sale per aversionem.**

**per bouche.** With the mouth; orally; verbally.

**per breve de privato sigillo.** By writ of privy seal.

"The sign manual is the warrant to the privy seal, and the privy seal is the warrant to the great seal; and in this last case the patent is subscribed, `per breve de privato sigillo.' " See 2 Bl Comm 347.

**per capita.** By the head or individual. *Wagner v Wagner*, 303 Ky 140, 197 SW2d 86. Sharing by heads, that is, share and share alike. Anno: 126 ALR 159; 23 Am J2d Deeds § 200; 57 Am J1st Wills § 1291. Sharing by the heads throughout an entire class, for example the ten grandchildren of A taking share and share alike, albeit the ten grandchildren are children of three sons of A, one son having two children, one son three, and one son five. The characterization of a vote in a stockholders' meeting where each stockholder has one vote irrespective of the number of shares owned by him. 19 Am J2d Corp § 635.

Anno: Taking per stirpes or per capita under will. 13 ALR2d 1023.

**percennarius.** A parcener.

**percentage.** A part or portion. Precisely, a portion stated in terms of a part of one hundred, as six per cent is six out of one hundred or three out of fifty.

**percentage commission.** The commission of a broker calculated upon a certain percentage of the price obtained for the customer in a transaction negotiated by the broker. 12 Am J2d Brok § 161.

**percentage compensation.** An allowance to the trustee of a business trust by way of compensation of a certain percentage of the profits of the business. Anno: 156 ALR 141.

**percentage depletion.** A specified percentage of a taxpayer's gross income from oil and gas wells, other natural deposits, or timberlands. *W. D. Haden Co. v Commissioner* (CA5) 321 F2d 169.

**percentage of alcohol.** A criterion for determining the character of a beverage as intoxicating liquor. 30 Am J Rev ed Intox L § 6.

**percentage of safety.** A margin, to be observed by a trustee in investing trust funds, between the value of the security and the amount of the investment. 54 Am J1st Trusts § 426.

**percentage of vote.** The size of the vote cast for the candidates of a political party, or for any one candidate, calculated according to the percentage of total vote cast at the election. 29 Am J2d Elect § 162.

**percentage payments.** See **progress payments**.

**per centum.** By the hundred.

**perception.** The faculty of comprehension. Acquisition of knowledge. As derived from the Latin "perceptio," a receiving or taking of possession.

**perceptual insanity.** A mental derangement characterized by illusion or hallucination. 26 Am J1st Homi § 78.

**perception-reaction distance.** The distance in which an automobile traveling at a stated speed may be stopped.

For chart of driver stopping distances, see Am J2d Desk Book, Document 176.

**perch.** A unit of lineal measure, the same as a rod. A unit of cubic measure for stone, equalling in most jurisdictions twenty-four and three fourths cubic feet. *Baldin Quarry Co. v Clements*, 38 Ohio St 587. A roost for a bird. A kind of fish.

**per clerum et populum.** By the clergy and the people.

**percolating waters.** Waters which ooze, seep, filter, or percolate through the ground under the surface without a definite channel, or in a course that is uncertain or unknown and not discoverable from the surface without excavation for that purpose. 56 Am J1st Wat § 111. Waters which filter through the ground and collect in underground cavities, forming springs, or in what are commonly known as wells. Erickson v Crookston Waterworks, Power & Light Co. 105 Minn 182, 117 NW 435.

**percolation.** The movement of a liquid through a porous substance, as water below the surface of the ground.

See **percolating waters.**

**per consequens.** In consequence.

**per considerationem curiae.** By the consideration of the court.

**per contra.** To the contrary. On the other hand. .

**per corpus.** By the body; that is, by trial by battle or by ordeal.

**per cur.** An abbreviation of **per curiam.**

**per curiam.** By the court; by the court as a whole.

**per curiam opinion.** An opinion of the court in which the judges or justices are all of one mind and the question involved is so clear that the opinion is not elaborated by an extended discussion of the supporting reasons. 20 Am J2d Cts § 72.

"It is true this (decision) is criticized as only a per curiam opinion, but why it should have less weight for that reason is not clear." Western Union Tel. Co. v Houghton, 146 Pa 561, 23 A 248.

**per day.** By the day.

See **per diem.**

**per defaultam.** By default.

**per descent.** By descent.

See **assets per descent.**

**per diem.** The compensation of a public officer in the form of an allowance for days actually spent in the performance of official duty. 43 Am J1st Pub Of § 358. Not a fee, but an emolument for a clerk of court, being payable for attendance at court irrespective of whether or not court business

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is transacted. 15 Am J2d Clk Ct § 13. A fee paid a witness for each day's attendance in a case. 20 Am J1st Costs §§ 53-56.

The term, signifying "per day," is sometimes and by some courts held to be included in the term "fees," and sometimes otherwise. The two terms are not always synonymous. See Anderson v Beadle County, 51 SD 6, 211 NW 968, 969.

**per diem fee or compensation.** See **per diem.**

**perdonatio utlagariae.** A pardon for a person who had been outlawed for contempt of court.

**perduellio.** (Civil law.) Treason; a hostile attempt against the state.

**perdurable.** Everlasting; enduring forever.

**peregrine.** A stranger; a foreigner; an alien; a resident without civil rights. A falcon.

**peregrini.** (Civil law.) A stranger; a foreigner; an alien; an alien enemy; a slave.

**peremptoria.** See **exceptio peremptoria.**

**peremptorius.** (Civil law.) That which permanently destroys.

**peremptory.** Final; positive; conclusive.

**peremptory challenge.** A challenge to a juror to be exercised by a party to a civil action or criminal prosecution without assignment of reason or cause. *Bufford v State*, 148 Neb 38, 26 NW2d 383. A challenge to a judge without assignment of reason or cause. *Austin v Lambert*, 10 Cal 2d 73, 77 P2d 849, 115 ALR 849.

**peremptory defense.** A defense which denies the right of the plaintiff to sue.

**peremptory exception.** An answer which merely raises an issue of law, the legal effect of which is the same as that of a demurrer. *Lambeth v Turner*, 1 Tex 364, 367.

**peremptory instruction.** The direction of a verdict.

**peremptory mandamus.** Same as **peremptory writ of mandamus.**

**peremptory mandate.** Same as **peremptory writ of mandamus.**

**peremptory nonsuit.** A judgment for the defendant rendered upon the failure of the plaintiff to establish a prima facie case. *Jacques v Fourthman*, 137 Pa 428, 429, 20 A 802.

**peremptory plea.** A plea which sets up the defense that the plaintiff has no right to sue.

**peremptory rule.** Same as **rule absolute.**

**peremptory writ of mandamus.** A writ of mandamus requiring the party to do the thing absolutely, as distinguished from an alternative writ which requires him to do the thing, or show cause why he should not in his answer. 35 Am J1st Mand § 380.

**perennial.** Lasting throughout the entire year or for a long time.

**perennial crop.** A crop grown from perennial plants, grasses, bushes, or vines, albeit labor and fertilizer may be required. *Twin Falls Bank & Trust Co. v Weinberg*, 44 Idaho 332, 257 P 31, 54 ALR 1527; *Superior Oil Co. v Griffin (Okla)* 357 P2d 987, 87 ALR2d 224.

**perennial grasses.** See **perennial crop.**

**per equipollens.** By an equivalent.



**peresewar.** Same as **pursuer**.

**per eundem.** By the same:

**per expressum.** By expression; expressly.

**per extensum.** At length; fully.

**Per extraneam personam nihil nobis acquiri potest.** Through a stranger we can acquire no rights.

Although this maxim of the Roman law is not in form found in our law, yet its principle is at the foundation of all our rules as to the privity of contract and estate, and as to matters inter alios acta. *Kyle v Wells*, 17 Pa 286.

**per fas et nefas.** By right of wrong.

**perfect.** Free from error or mistake; complete.

**perfected.** Completed; fully performed; executed.

**perfect fool.** The man who is his own lawyer.

**perfecting bail.** Same as **justifying bail**.

**perfecting lien.** The filing or service of notice of a mechanic's lien. 36 Am J1st Mech L § 167. The completion of the creation of alien so that it will be effective against the creditors of the lienee in his bankruptcy.

**perfecting transfer.** A familiar term in the law of bankruptcy, referring to the completion of a transfer of assets so that it will be good against the creditors of the transferor in his bankruptcy.

**perfection of appeal.** The completion of compliance with all of the steps outlined by statute for obtaining a review of a judgment or decree. 4 Am J2d A & E § 295.

**perfection of entry.** The performance by an entryman upon public lands of the conditions requisite to perfect his entry and obtain the right to a patent. 42 Am J1st Pub L § 23.

**perfection of reason.** An encomium given the common law. 1 Bl Comm 70.

**perfect obligation.** An obligation the performance of which is not dependent upon the will or conscience of the obligor but is a matter of legal right. *Edwards v Kearzey*, 96 US 595, 24 L Ed 793.

**perfect ownership.** A perpetual ownership, unencumbered by any real rights in a person other than the owner. *Maestri v Board of Assessors*, 10 La 517, 34 So 658.

**perfect right.** A right under the law, not merely a moral right or one dependent upon the conscience of the obligor. *Edwards v Kearzey*, 96 US 595, 24 L Ed 793.

**perfect title.** A title that is clear, there being no reasonable doubt as to any fact or point of law upon which validity depends. 55 Am J1st V & P § 149. A title free from litigation, palpable defects, or grave doubts, consisting of both legal and equitable

title fairly deducible of record. *Pearce v Freeman*, 122 Okla 285, 254 P 719. A title uniting in one and the same person the possession, the right of possession, and the right of property. *Donovan v Pitcher*, 53 Ala 411. As a feature of the implied obligation of the vendor under a contract for the sale of real estate, synonymous with marketable title. 55 Am J1st V & P § 149.

A perfect title must be one that is good and valid beyond all reasonable doubt. To be good, it should

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be free from litigation, palpable defects and grave doubts; should consist of both legal and equitable titles, and should be fairly deducible of record. *Turner v McDonald*, 76 Cal 177, 180, 18 P 262.

**perfect trust.** An executed trust.

**Perfectum est cui nihil deest secundum suae perfectionis vel naturae modum.** That is perfect which lacks nothing according to the measure of its perfection or nature.

**perfect war.** A war formally declared. A war formally declared in which one whole nation is at war with another whole nation. 56 Am J1st War § 4.

**perfidy.** A breach of faith, trust or confidence.

**perform.** To act for the purpose of accomplishment. In the usual and ordinary legal sense, to act in complete accomplishment of one's obligation. *Wooldridge v Stern* (CC Mo) 42 F 311.

**per formam doni.** By the form of the gift.

Tail-general is so called, because however often the donee in tail shall marry, his issue in general by all and every such marriage is, in successive order, capable of inheriting the estate-tail, per formam doni. See 2 Bl Comm 113.

**performance.** Such a thorough fulfillment of a duty as puts an end to obligations by leaving nothing more to be done. *Reid v Field*, 83 Va 26, 32. The doing of the acts required by a contract at the time and place therefor and in the manner stipulated. 17 Am J2d Contr § 355. Nothing less than complete performance for the purposes of the exception from the requirements of the statute of frauds of a contract not to be performed within a year. 49 Am J1st Stat of F § 35. The giving of a show; the rendition of a musical or dramatic work in public.

See **part performance; specific performance.**

**performance bond.** A type of contractors' bond; a bond which guarantees that the contractor will perform the contract, and usually provides that if the contractor defaults and fails to complete the contract, the surety can itself complete the contract or pay damages up to the limit of the bond. 17 Am J2d Cont Bond § 1.

**performance for profit.** The exclusive right of the proprietor of a copyright of a musical composition or his assignee. 18 Am J2d Copyr § 24.

A performance for profit may exist, even though no admission fee is charged or no profit actually made. The performance of a copyrighted musical composition in a restaurant or hotel, without charge for admission to hear it, infringes the exclusive right of the owner of the copyright to perform the work publicly for profit. The performance is a part of a total for which the public pays, and the fact that the price of the whole is attributed to a particular item is not important. 18 Am J2d Copyr § 120.

**performance on contract.** See **performance.**

**performance test.** A test of the subject matter of a contract in the manner provided by a provision of the contract by way of determining whether or not there has been such performance of the contract as to entitle the party to the payment of money or other consideration called for by the contract. 17 Am J2d Contr § 372.

**performed within a year.** See **agreement** not to be performed within a year.

**perform the duties required of him by law.** A term apt in stating the condition of the bond of an executor or administrator, extending to all duties in reference to the due administration of the estate, including the payment of debts and the distribution of the net assets among those entitled by law to receive them. 31 Am J2d Ex & Ad § 127.

**per fraudem.** By means of fraud; by fraud; by deceit.

**pericarditis.** An inflammation of the membranous sac which encloses the heart.

**periculi imminentis evitandi causa.** For the purpose of avoiding imminent danger. Barnard v Adams (US) 10 How 270, 304, 13 L Ed 417, 431.

**periculo petentis.** At the risk of the petitioner.

**Periculosum est res novas et inusitatas inducere.** It is dangerous to introduce new and untried things.

**Periculosum existimo quod bonorum virorum non comprobatur exemplo.** I believe that that which is not approved by the example of worthy men is dangerous.

**periculosus.** Perilous; fraught with peril or danger; dangerous.

**periculum.** Peril; danger; risk.

**Periculum rei venditae, nondum traditae, est emptoris.** The risk of a thing sold, but not yet delivered, is that of the buyer.

**peril.** Exposure to injury, loss, or destruction; imminent or impending danger, risk, hazard, or jeopardy. Terre Haute & Indianapolis Railroad Co. v Brunner, 128 Ind 542, 552, 26 NE 178.

**perils of inland waters.** See **perils of river, lake, or canal.**

**perils of river, lake, or canal.** A term analogous to and of like import with perils of the sea; risks arising from natural accidents peculiar to river, canal or lake which do not happen by the intervention of man and are not avoidable by human prudence. 48 Am J1st Ship § 455.

**perils of the sea.** Natural and inevitable accidents occurring upon the sea. 48 Am J1st Ship § 454. Accidents peculiar to the sea which do not happen by the intervention of man and are not preventable or avoidable by human prudence. 48 Am J1st Ship § 454. Extraordinary occurrences of the elements at sea; lightning, tempests, rocks, and violent stress of weather, winds, and waves. 29A Am J Rev ed Ins § 1310. Sometimes inclusive of capture by pirates. 48 Am J1st Ship § 454.

A clause of a motor carrier liability policy insuring against perils of the seas, lakes, rivers, or inland waters, while on ferries contemplates a loss arising during the course of transportation by water. Long Motor Lines v Home Fire & Marine Ins. Co. 220 SC 335, 67 SE2d 512.

**perils of the street.** See **street perils.**

**per incuriam.** Through carelessness; through inadvertence; through lack of care.

**perinde valere.** To be equally valid,—a dispensation whereby a clerk or clergy

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man who was not qualified was nevertheless admitted to a benefice.

**per industriam.** By industry.

**per industriam hominis.** By the industry of man. See 2 Bl Comm 391.

**per infortunium.** By misfortune; by misadventure; accidentally.

**per interim charge d'affairs.** See **charge d'affairs.**

**period.** A stage in history or, as in geology, in natural processes. An interval of time.

The word has its etymological meaning, but it also has a distinctive signification according to the subject in connection with which it may be used. It may mean any portion of complete time, from a thousand years, or less, to the period of a day; and when used to designate an act to be done, or to be begun, though its completion may take an uncertain time, as, for instance, the act of exportation, it must mean the day on which the exportation commences, or it would be an unmeaning and useless word in its connection. *Sampson v Peaslee*, (US) 20 How 571, 579, 15 L Ed 1022, 1027.

**periodical.** Adjective: Occurring at regular intervals. Noun: A magazine or other publication appearing at regular intervals of time, usually weekly or monthly. *Houghton v Payne*, 194 US 88, 97, 48 L Ed 888, 890, 24 S Ct 590.

**periodical appropriation.** An annual appropriation of public funds.

See **appropriation.**

**periodical rests.** See **rest.**

**periodic apportionment.** The apportionment of legislative districts from time to time as provided by constitution or statute, usually following the taking of the federal census, for the purpose of making the apportionment conform to changes in population. 25 Am J2d Elect § 15.

**periodic employee.** See **casual employee.**

**periodic insanity.** Intermittent insanity; insanity interrupted by lucid intervals.

**periodic payments.** See **instalment payments.**

**period of gestation.** The period of time elapsing between a child's conception and its birth, which is, normally, nine months. 23 Am J2d Desc & D § 88.

**period of nurture.** See **nurture period.**

**period of prescription.** See **prescriptive period.**

**period of woman.** See **menses.**

**periphrasis.** Circumlocution; verbosity.

**per ipsum regem et totum consilium in parlamento.** By the king himself and the whole council in parliament.

**Perishable Agricultural Commodities Act.** A federal statute passed under the Commerce Clause of the United States Constitution to facilitate the flow of perishable agricultural commodities in commerce by licensing dealers, commission merchants, and brokers and by prohibiting unfair practices. *Rothenberg v Rothstein & Sons* (CA3 Pa) 183 F2d 524, 21 ALR2d 832.

**perishable cargo.** A ship's cargo subject to deterioration from inherent causes. *Perry v Cobb*, 88 Me 435, 34 A 278.

**perishable goods.** See **perishable property.**

**perishable property.** Property subject to decay, deterioration, or depreciation. Anno: 3 ALR3d 595 § 1. Precisely, property which by its inherent nature is subject to immediate decay, Anno: 3 ALR3d 597-604, to decay in a short time. *Illinois Cent. Railroad Co. v McClellan*, 54 Ill 58. Broadly, any property which will materially depreciate in value, whether by natural decay or from other causes. Anno: 3 ALR3d 608. For some purposes, as for a sale in bankruptcy, property likely to deteriorate in value, even though physical deterioration is not reasonably to be expected. *Re Pedlow* (CA2 NY) 209 F 841.

**peritonitis.** A disease characterized by inflammation of the lining of the abdomen.

**Perjurii poena divine, exitium; humane dedecus.** The divine punishment of perjury is death; the human punishment, disgrace. See 4 Bl Comm 139.

**Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt.** They are perjured who, by preserving the words of the oath, deceive the ears of those who receive it.

**perjury.** Wilful and corrupt false swearing or affirming, after an oath lawfully administered, in the course of a judicial or quasi judicial proceeding as to some matter material to the issue or point in question. 41 Am J1st Perj § 2. In a broader sense, wilful false swearing in regard to any matter or thing respecting which an oath is required or even authorized by law. *State v Miller*, 26 RI 282, 58 A 882.

False statements of a witness, made in open court are not the subject of perjury, where they have been corrected before the case was submitted. *State v Ledford*, 195 Wash 581, 81 P2d 830.

**per laudamentum parium suorum.** By the declaration of his peers.

**per laudamentum sive iudicium parium.** By the verdict or judgment of his peers.

**per legatē iudicium parium.** By the lawful judgment or verdict of his peers.

**per legem Angliae.** By the law of England.

**per legem terrae.** According to the law of the land. 16 Am J2d Const L § 542.

**per legem term et per communem legem terrae.** By the law of the land and by the common law of the land. *Hurtado v California*, 110 US 516, 525, 28 L Ed 232, 235, 4 S Ct 111, 292.

**per le gree ou sans le gree.** With consent or without it.

**permanent.** To continue indefinitely; to continue until a change shall be made.

Not, however, to continue forever, nor perpetually, nor for life, nor for any fixed or certain period. *Lord v Goldberg*, 81 Cal 596, 601, 22 P 1126, 1128; *Newton v Commissioners of Mahoning County (US)* 10 Otto 548, 25 L Ed 710, 712.

**permanent abode.** A domicil or home. *Anderson v Pifer*, 315 Ill 164, 146 NE 171, 37 ALR 134.

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A home, which a party may leave as interest or whim may dictate, but which he has no present intention to abandon. *Sullivan v Detroit, Ypsilanti & Ann Arbor Railway Co.* 135 Mich 661, 98 NW 756.

**permanent alimony.** Alimony awarded by final judgment in an action for the annulment of a marriage. 4 Am J2d Annul § 102. An allowance which a court compels the husband to pay to his wife for her support and maintenance where there exists between them a legal separation or divorce. 24 Am J2d Div & S § 600. Permanent in the sense that it is a final provision for the maintenance of the wife, contained in a judgment either decreeing that she is entitled to separate maintenance or granting her a divorce limited or absolute. *Huffman v Huffman*, 47 Or 610, 86 P 593.

Alimony is never permanent in the absolute sense, usually terminating upon the death of either one of the parties to the divorce. 24 Am J2d Div & S § 515. In some jurisdictions, a woman entitled to alimony may lose the right to receive it by misconduct. 24 Am J2d Div & S § 685.

**permanent building and loan association.** A building and loan association which issues its stock, not all at once, nor in series, but at any time when application is made therefor. *Cook v Equitable Bldg. & Loan Asso.* 104 Ga 814, 821.

**Permanent Court of International Justice.** The judicial branch of the League of Nations, established in 1920 under the auspices of the league, succeeded by the International Court of Justice established as the judicial branch of the United Nations. 30 Am J Rev ed Internat L § 54.

**permanent damages.** Literally, lasting injury to person or property. Technically, injury to real estate which is permanent in character, so that all the damages, whether present, past, or prospective must be recovered in a single action. 22 Am J2d Damg § 28.

**permanent disability.** Narrowly defined, a disability remaining to the end or during the lifetime of the person involved. 29A Am J Rev ed Ins § 1529. More broadly defined, a disability which, with reasonable probability, will continue for some indefinite period of time, there being no present indication of recovery. *Stuhlberg v Metropolitan Life Ins. Co.* 73 Ohio App 355, 29 Ohio Ops 72, 39 Ohio L Abs 525, 53 NE2d 828, affd 143 Ohio St 390, 28 Ohio Ops 343, 55 NE2d 640.

Under a policy of war risk insurance a person's disability is permanent when it is based upon conditions which render it reasonably certain at the time that it will continue throughout the life of the insured. *Adams v United States (CA7 Ill)* 116 F2d 199.

**permanent employment.** Steady employment, a steady job, a position of some permanence, as contrasted with a temporary job or temporary employment. *Arentz v Morse Dry Dock & Repair Co.* 249 NY 439, 164 NE 342, 62 ALR 231. Employment for an indefinite period, which, in the absence of some special consideration, may be terminated at any time by either party. *Dicks v Clarence L. Boyd Co.* 205 Okla 383, 238 P2d 315, 28 ALR2d 870.

Under special circumstances the term has been construed to mean continuous or indefinite employment, not terminable at the will of either party. *Sullivan v Detroit, Ypsilanti & Ann Arbor Railway Co.* 135 Mich 661, 98 NW 756.

**permanent franchise.** See **perpetual franchise.**

**permanent government.** An expression connoting substitution for a former temporary or provisional government. *Eckloff v District of Columbia*, 135 US 240, 34 L Ed 120, 10 S Ct 752.

**permanent improvement.** Something done to or put on land which cannot be removed or carried away, either because it has become physically impossible to separate it from the land or because, in contemplation of law, it has been annexed to the soil and is therefore to be considered a part of the freehold. 27 Am J1st Improv § 19.

**permanent injunction.** An injunction granted after final hearing on the merits, as distinguished from a temporary injunction granted by way of provisional relief. *Riggins v Thompson*, 96 Tex 154, 157, 71 SW 14.

**permanent injury.** An injury, the future effect of which as a complete or partial disability appears with reasonable certainty. 22 Am J2d Damg § 117. Within the meaning of the risk assumed by an insurer, a lasting or continuous injury. *Rom v Republic Coal Co.* 94 Mont 250, 22 P2d 157.

An injury by pollution of well waters may be permanent in a legal sense, though not perpetual, unending, or unchangeable. *Haveman v Beulow*, 36 Wash 185, 217 P2d 313, 19 ALR2d 763.

See **permanent disability.**

**permanent insurance.** A policy of insurance under which the insurer agrees to be and remain forever liable to the insured, his heirs and assigns. *Marshall v Franklin Fire Ins. Co.* 176 Pa 628, 35 A 204. The policy issued after consideration of an application for insurance, as distinguished from a binder or temporary insurance.

**permanent insurance fund.** A fund established pursuant to federal statute for insuring deposits in banks insured by the Federal Deposit Insurance Corporation. 12 USC § 1821; 10 Am J2d Bks § 427.

See **state insurance fund.**

**permanent leasehold.** See **perpetual leasehold.**

**permanent location.** For purposes of taxation of tangible personal property, a more or less permanent location, as distinguished from a transient or temporary location. Not a location in the sense that real estate has a location, or a location fixed beyond any present intention of ever removing the property. 51 Am J1st Tax § 454.

The expression does not mean that to be so located the goods must remain in the place indefinitely, or until they are worn out. *Hopkins v Baker Bros. & Co.* 78 Md 363, 28 A 284.

**permanent monument.** A marker of a boundary line of more or less permanency, at least one not of a perishable nature.

Stakes and posts referred to in the recorded location of a mining claim, may or may not be permanent monuments and their permanency presents a question for the determination of a jury under the evidence produced. *J. E. Riley Invest. Co. v Sakow* (CA9 Alaska) 98 F2d 8.

**permanent nuisance.** A nuisance of such a character and existing under such circumstances that it will be presumed to continue indefinitely, being at once necessarily productive of all the damage which can ever result from it. 39 Am J1st Nuis § 131.

**permanent receivership.** A receivership established by the court after judgment, *Decker v Gardner*, 124

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NY 334, 26 NE 814, as distinguished from a receivership had by way of provisional relief.

**permanent repairs.** For practical purposes, improvements. 33 Am J1st Life Est § 454.

**permanent residence.** Domicile. Re Gape, [1952] Ch 743, [1952] 2 All Eng 579, 35 ALR2d 380.

See **domicil; residence.**

**permanent road.** A road surfaced with crushed rock, gravel, macadam, brick, concrete, asphalt-macadam, or any other hard surfacing material. Pine v Baker, 76 Okla 62, 184 P 445 (statutory definition).

**permanent scholarship.** The tuition of one pupil in perpetuo, that is, the right to send any fit person within the option of the holder to college, as a pupil, to be educated, subject to the usual regulations of the institution, free of tuition. Howard College v Turner, 71 Ala 429.

**permanent statute.** See **perpetual statute.**

**permanent support order.** An order for the permanent support of wife or of a child. 23 Am J2d Desert §§ 49, 112, 118.

**permanent trespass.** A trespass of a permanent nature, where the injury is continually renewed; as where a man's cattle are habitually permitted to trespass and spoil and consume the herbage. See 3 Bl Comm 212.

**per medietatem linguae.** See **jury de medietate linguae.**

**per metas et bundas.** By metes and bounds.

**per minas.** By threats.

See **duress per minas.**

**per minas duress.** Same as **duress per minas.**

**per mis.** In two parts; in half.

**per misadventure.** By misfortune; by accident; accidentally.

**per mis et per tout.** By the half, and by all.

**permissible levy.** The maximum levy of taxes permitted by law. 38 Am J1st Mun Corp § 427.

**permission.** Leave; license; sufferance.

**permission of court.** See **leave of court.**

**permission of insured.** The consent of the owner of an automobile covered by an insurance policy to the use of the car by another. Anno: 5 ALR2d 608.

See **consent of insured.**

**permissive.** Permitted; allowed; suffered to continue.



**permissive constitutional provision.** A provision of a constitution in such permissive terms that reasonably, it is not to be construed as mandatory. 16 Am J2d Const L § 91.

**permissive counterclaim.** A counterclaim constituting an essentially independent action, having no relation to the subject matter of the plaintiff's cause of action. *Big Cola Corp. v World Bottling Co.* (CA6 Tenn) 134 F2d 718. Any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim. Rule 13 (b), Federal Rules of Civil Procedure.

**permissive franchise.** A franchise to be exploited only as the grantee thereof sees fit to exploit it, except as he is influenced toward exploitation by the right of the municipality which granted the franchise to forfeit it for nonuser. *Murray v Roberts* (CA2 NY) 103 F2d 889.

**permissive party.** See **proper party.**

**permissive possession.** A term loosely applied to the occupation of real property by one person with the consent of the owner or the person entitled to possession, for example, occupation of premises by a licensee. *Jeffers v Edge* (Okla) 295 P2d 787.

A tenancy at will may arise as a result of the taking possession of land by permission, "permissive possession," as it is called, without any understanding as to the duration of the possession; and this tenancy may, by reason of the reservation or payment of rent, be changed into a periodic tenancy. *Smith v Royal Ins. Co.* (CA9 Cal) 111 F2d 667.

**permissive use.** A use of premises which is not hostile or adverse to the owner. The use of premises by express or implied permission or license granted by the owner. 25 Am J2d Eas § 54. The use of the premises of another with his consent or sufferance. The use of premises by the public under, and in connection with, its use by the owner in any manner desired by him. Anno: 58 ALR 240; 23 Am J2d Ded § 29. An interest in real property, recognized only in equity prior to the statute of uses, arising where the legal title was conveyed to one person for the use or benefit of another.

**permissive use of highway.** The use of street or highway for purposes other than that of travel and transportation. 25 Am J High § 168.

**permissive waste.** Waste by a tenant, otherwise known as negligent waste or passive waste, in failing to exercise the ordinary care of a prudent man for the preservation and protection of the estate, such as permitting a house to remain uncovered, whereby the timbers become rotten. 56 Am J1st Waste § 4.

**permit.** Verb: To give permission; to license. To grant leave or liberty; to allow to be done by giving consent or by not prohibiting. *Wilson v State*, 19 Ind App 389, 46 NE 1050. To tolerate. *Cowley v People*, 83 NY 464. Noun: A permission granted in writing, such as a building permit. A license.

**permit system.** A system or practice of employers of labor, adopted to enforce the "open shop" plan, the object of which was to limit sales of certain specified kinds of materials to builders who supported the plan.

To render this restriction effective, the person concerned was required to obtain a permit from the builders' exchange, specifying the kind and quantities of materials to be furnished and the particular job on which they were to be used. *Industrial Asso. of San Francisco v United States*, 268 US 64, 75, 69 L Ed 849, 852, 45 S Ct 403.

**permittere.** (Latin.) To permit.

**per miter le droit.** By the release of the right,—one of the modes in which releases operated at common law, as where a person who has been disseised releases to the disseisor, his heir or feoffee.

By the release, the right which was in the releaser is added to the possession of the releasee, and the two combined perfect the estate. *Miller v Emans*, 19 NY 384, 387.

**per muter l'estate.** By the release of the estate,—one of the modes in which releases operated at common law.

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As where 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 enure by way of mitter l'estate. *Miller v Emans*, 19 NY 384, 388.

**permitting gambling.** Knowingly acquiescing in the use of one's property or premises, or of property or premises under one's control as a place to gamble. 24 Am J1st Gaming § 42. Licensing gambling. 24 Am J1st Gaming § 10.

**permit to run at large.** Intentionally or negligently permitting one's animals to run at large. *Pongetti v Spraggins*, 215 Miss 397, 61 So 2d 158, 34 ALR2d 1277.

**permutatio.** (Civil law.) Same as **permutation**.

**permutation.** An exchange or barter of goods.

**per my et per tout.** By the half or moiety, and by all.

The phrase describes the seisin of joint tenants, in whom there must be unity of possession. They each of them have the entire possession (not merely half), as well of every parcel as of the whole. See 2 Bl Comm 182.

**pernancy.** The taking, perception, or receipt of the rents, profits, or other advantages arising from an estate in real property. See 2 Bl Comm 163.

**pernor.** A receiver; a taker; a recipient.

**pernor of profits.** A person who enjoys the profits or advantages arising out of an estate in real property; a cestui que use.

**pernour.** Same as **pernor**.

**per omnes.** By all persons.

**per pais.** By the country.

See **trial by the county**.

**per patriam.** By the country, by means of a jury of the vicinage.

**perpetration of felony.** The commission of a felony.

Under the usual statutory provision that homicide committed in the perpetration of a felony is murder in the first degree, where the homicide is committed within the *res gestae* of the felony charged, it is committed in the perpetration of, or attempt to perpetrate, the felony. *Conrad v State*, 75 Ohio St 52, 78 NE 957.

See **attempt**.

**perpetrator.** One who perpetrates. A principal in the first degree; that is the person who actually commits the criminal act, as distinguished from one who aids or abets in its commission. *Myers v State*, 19 Okla Crim 129, 197 P 884, 18 ALR 1057.

**perpetual.** Everlasting or eternal. Continuous; without interruption.

Which of the above variant meanings is to apply in the particular case is to be determined according to the subject to which the adjective is applied. *Scanlan v Crawshaw*, 5 Mo App 337, 339.

**perpetual annuity.** An annuity granted in fee. Anno: 54 ALR2d 373 § 6. An annuity to continue for an unlimited time without interruption; one to be enjoyed longer than the lifetime of the first taker or beneficiary. 4 Am J2d Annui § 7.

**perpetual care.** The obligation of the proprietor of a cemetery, imposed by statute or by contract with a purchaser of lots, for the upkeep of the lots and graves thereon in sodding, cutting grass, planting shrubbery, etc. 14 Am J2d Cem § 20.

**perpetual contract.** A contract without limit as to duration. 17 Am J2d Contr § 486.

**perpetual curacy.** A curacy where all the tithes are appropriated, and no vicarage is endowed, but instead thereof, the perpetual curate is appointed by the appropriator. See 1 B1 Comm 393.

**perpetual easement.** An easement to continue in operation and be enforceable forever. 25 Am J2d Ease § 99.

**Perpetua lex est, nullam legem humanam ac positivam perpetuam esse; et clausula quae abrogationem excludit ab initio non valet.** The law is perpetual that no human and positive law is to be perpetual; and a clause which excludes or precludes abrogation or repeal is void from the beginning.

**perpetual existence of corporation.** The immortality of a corporation as spoken of in the Dartmouth College Case. *Dartmouth College v Woodward* (US) 4 Wheat 518, 4 L Ed 629.

See **perpetual succession.**

**perpetual franchise.** A franchise to endure forever, at least so long as the state refrains from interfering to terminate it. Anno: 2 ALR 1109; 35 Am J2d Ferr § 44; 36 Am J2d Franch § 44; 56 Am J1st Watwk § 5.

**perpetual injunction.** Same as **permanent injunction.**

**perpetual lease.** A lease for a yearly rental to one for as long as he shall comply with the contract and pay the rent. The equivalent of a conveyance in fee reserving the rent, 32 Am J1st L & T § 1039; creating a qualified, base, or determinable fee. *Smith v Improvement District*, 108 Ark 141, 156 SW 455; *Piper v Meredith*, 83 NH 107, 139 A 294, 55 ALR 148.

**perpetually.** See **perpetual; in perpetuum.**

**perpetual non-participating royalty.** A right to royalties on oil and gas produced which is reserved or granted before any oil and gas lease is executed, granting or reserving no right to participate in the making of future leases. *Denver Joint Stock Land Bank v Dixon*, 57 Wyo 523, 122 P2d 842, 140 ALR 1270.

**perpetual rate.** A rate for public utility service fixed as for all time, displacing the power of the municipality to fix reasonable rates. *Mobile Electric Co. v Mobile*, 201 Ala 607, 79 So 39.

**perpetual restriction.** A restriction by covenant unlimited in respect of time. 20 Am J2d Cov § 180.

**perpetual statute.** A statute which, not being by its terms limited in its operation to a particular period of time, will continue in force until duly altered or repealed by competent authority. 50 Am J1st Stat § 513.

**perpetual succession.** Continuous and uninterrupted succession of a corporation so long as it shall continue to exist as a corporation. 18 Am J2d Corp § 65. In the case of a life insurance company, an existence which may run beyond the period for which the corporation may legally exist, so far as existence is necessary to give effect to the obligations assumed under policies issued by the company. State ex rel. Major v German Mut. L. Ins. Co. 224 Mo 84, 123 SW 19.

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**perpetual tax lien.** An expression loosely applied to the lien of an assessment which, as provided by statute, shall stand with priority as against future and recurring liens for ad valorem taxes. Altman v Kilburn, 45 NM 453, 116 P2d 812, 136 ALR 554.

**perpetuum rei memoriam.** See **in perpetuum rei memoriam.**

**perpetuation of testimony.** Preserving testimony for possible use in future litigation by taking the deposition of the witness, thus guarding against the possible loss of his testimony by death or incompetency. 23 Am J2d Dep § 8.

**perpetuity.** Literally, something that lasts forever. In an artificial sense of the term, as used in the law of property, a limitation of a contingent future interest in violation of the rule against perpetuities. A limitation, whether executory or by way of remainder, of either real or personal property, which is not to vest until after expiration of, or will not necessarily vest within, the period fixed and prescribed by law for the creation of future estates and interests, and which is not destructible by persons for the time being entitled to the property subject to the future limitation, except with the concurrence of the individual interested under that limitation. 41 Am J1st Perp § 7.

See **rule against perpetuities.**

**perpetuity of the king.** The attribute of absolute immortality which the law of England ascribes to the king, in his political capacity.

Henry, Edward, or George may die, but the king survives them all. For, immediately upon the decease of the reigning prince, in his natural capacity, his kingship or imperial dignity, by act of law, without any interregnum or interval, is vested eo instanti in his heir. See 1 Bl Comm 249.

**perpetuum rei testimonium.** See **in perpetuum rei testimonium.**

**per power of attorney.** By power of attorney.

See **power of attorney.**

**per pro.** An abbreviation of **per procuracy.** Giles v Newton (DC NY) 21 F2d 484.

**per proc.** An abbreviation of **per procuracy.**

**per procuracy.** By proxy. An expression used by an agent in executing a note or other contract on behalf of his principal, which indicates that the authority of the agent is special and limited.

**per quae servitia.** By which services,—a writ by which the cognizee in a fine of lands could have the tenant attorn to him.

**perquirere.** To acquire; to purchase.

**perquisites.** Emoluments or profits accruing to a public officer beyond the salary payable to him. 43 Am J1st Pub Of § 359. Fees, allowances, privileges or compensation beyond those of his ordinary salary or wages, which an officer or employee may receive with propriety. Cantling v Hannibal & St. Joseph Railroad Co. 54 Mo 385.

**perquisitio.** An acquisition; a purchase.

**perquisitor.** Same as **purchaser.**

**perquisitum.** A purchase; an acquisition.

**per quod.** By which; by means of which.

**per quod actio accrevit.** By means of which an action accrued.

**per quod consortium amisit.** Through or by means of which, he has lost the consortium. 27 Am J1st H & W § 501.

**per quod defamatory.** See **libelous per quod; slanderous per quod.**

**per quod matrimonium amisit.** Through or by which he has lost his marriage. Harrison v Cage (Eng) 5 Mod 411.

**per quod servitium amisit.** By or through which he lost his services.

**Per rationes pervenitur ad legitimam rationem.** By reasoning one arrives at the legal or proper reason.

**Per rerum naturam, factum negantis nulla probatio est.** In the nature of things, a person who denies a fact is held to no proof.

**per saltum.** By a leap or bound, that is, quickly; speedily.

**per sceptrum.** By the sceptre; by the sword.

**per se.** By itself. By or through itself; simply; as such; in its own relations. Burr v Winnett Times Publishing Co. 80 Mont 70, 258 P 242.

**persecutio.** (Civil law.) The act of prosecuting or proceeding against a person in either a civil or a criminal action.

**per se defamatory.** See **libelous per se; slanderous per se.**

**per se negligence.** See **negligence per se.**

**per se nuisance.** See **nuisance per se.**

**per se slander.** See **slander per se.**

**persistent refusal of sexual intercourse.** A ground of divorce in some jurisdictions; constant and continuous refusal. Goucher v Goucher, 82 Cal App 449, 255 P 892.

**persistent violator.** An habitual criminal. 25 Am J1st Habit Cr § 11.

In some jurisdictions, the term is used to signify that a person charged with a given criminal offense has previously been convicted of a similar offense, and in such states the persistent violator is guilty of an aggravated offense. State v Bruno, 69 Utah 444, 256 P 109.

**person.** An individual or an organization. UCC § 1201(30). An individual man, woman, or child or, as a general rule, a corporation. 18 Am J2d Corp § 20. Inclusive of bodies politic and corporate. *Waterbury v Board of Com.* 10 Mont 515, 26 P 1002. As used in the Bankruptcy Act, inclusive of corporations, officers, partnerships, and women, except where otherwise specified. Bankruptcy Act § 1(23); 11 USC § 1(23). Under the negotiable Instruments Law, an individual or a body of persons whether incorporated or not. Uniform Negotiable Instruments Law § 191. As used in the anti-trust laws, inclusive of corporations and associations. 36 Am J1st Monop etc § 186. Inclusive of corporations where used in a statute imposing a license tax. 33 Am J1st Lic § 49. Usually inclusive of corporations in a tax statute, 51 Am J1st Tax § 318. Inclusive of corporations where used in a statute relating to the sale of commodities by weight or measure. 56 Am J1st W & L § 5. Inclusive of corporations in a pure food law. *State v Belle Springs Creamery Co.*

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83 Kan 389, 111 P 474. For the purposes of the due process clause, either a citizen or an alien. 3 Am J2d Aliens § 8. For the purposes of extradition, either a citizen or an alien. 31 Am J2d Extrad § 17.

A corporation is deemed a "person" within the meaning of the statute of limitations, and consequently, the statute ordinarily runs against corporations and domestic corporations are generally included within the class of persons who may plead the statute, and they may, as a general rule, acquire title by adverse possession for the statutory period in the same manner and to the same extent as an individual. 34 Am J1st Lim Ac § 372. A municipal corporation is a "person" within the meaning of the statute of limitations. 34 Am J1st Lim Ac § 397.

Liquor license laws may either expressly permit, or be held susceptible of a construction which authorizes corporations to be licensed thereunder, and the word "person," as used in such legislation, is usually held to embrace a corporation, irrespective of whether there is an express provision to that effect in the license law or in general law. 30 Am J Rev ed Intox L § 126.

The word "person," where used in statutes defining crimes, is usually construed to include a corporation, so as to bring corporations within the prohibition of the statute. 19 Am J2d Corp § 1436.

Dependent upon the entire context of the instrument, the word "person," as used in a will, may or may not include a corporation. 57 Am J1st Wills § 1326.

**persona.** (Civil law.) A person.

**personable.** Having a good appearance. In an unusual sense, competent to incur obligations enforceable at law.

**Persona conjuncta aequiparatur interesse proprio.** The fact of a person's being connected by ties of blood is equivalent to his having a personal interest.

**persona ecclesiae.** (Eccles.) Person of the church; a parson.

**Persona est homo, cum statu quodam consideratus.** A person is a man when considered with reference to a certain status.

**Personae vice fungitur municipium et decuria.** A town or a borough acts as a person. *Warner v Beers* (NY) 23 Wend 103, 144.

**person aggrieved.** See **aggrieved; aggrieved party.**

**persona impersonata.** A parson who has been inducted into and put into possession of a benefice. See 1 Bl Comm 391.

**personal.** Pertaining to the person. *Terre Haute Electric Railway Co. v Lauer*, 21 Ind App 466, 475. Springing from or belonging to one's self; affecting or relating to one individually. *Genung v Best*, 100 NJ Eq 250, 253, 135 A 514, 516.

**personal actions.** Action brought for the specific recovery of goods and chattels, or for damages or other redress for breach of contract or other injuries, of whatever description, the specific recovery of lands, tenements, and hereditaments only excepted. 1 Am J2d Actions § 38. As to form, either ex contractu or ex delicto; as to place of trial, local or transitory; as to object, in personam or in rem. 1 Am J2d Actions § 38.

**personal ailment.** A sickness, but not inclusive of confinement in childbirth. 29 Am J Rev ed Ins § 758.

**personal assets.** The personal property of a person. Personal property of a decedent vesting in his executor or administrator as assets available for the payment of the decedent's debts, consisting of goods, chattels, money, credits, unpaid legacies, and corporate stock. 31 Am J2d Ex & Ad § 197.

**personal benefit.** For the benefit of a person individually.

As the term is used in a testamentary gift, the words do not limit the beneficiary to so much as is necessary for his support. The word benefit is much broader than the word support. But it is not so broad as to include any purpose to which the absolute owner of property can devote it. *Re Robinson*, 101 Vt 464, 75 ALR 59.

**personal bias.** See **bias**.

As a cause for the disqualification of a judge to sit in the trial of a case, "personal bias" must amount to personal prejudice against the party. Such bias cannot be shown by a judicial opinion formed on legal evidence offered in open court in the hearing of a case, however adverse or severe it may be upon the party concerned. *Parker v New England Oil Corp.* (DC Mass) 13 F2d 497.

**personal chattel.** Any article of tangible personal property.

An account receivable is not a personal chattel. *Plunkett-Jarrell Grocery Co. v Terry*, 222 Ark 784, 263 SW2d 229, 44 ALR2d 917.

See **personal effects**; **personal things**.

**personal contract.** See **personal service contract**.

**personal covenant.** A covenant which does not run with the land so as to bind the heirs, personal representative, or transferee of the covenantor, but binds only the covenantor personally. 20 Am J2d Cov § 29.

**personal earnings.** Earnings by physical or mental labor, unaided by capital, except in so far as such may be necessary to supply the means of performing such labor as a necessary incident of the same, such, for instance, as the ax of a wood cutter, or the pen, ink, and paper of a writer. *Kerr v Tyler Guaranty State Bank* (Tex Civ App) 283 SW 601, 603.

**personal easement.** Same as **easement in gross**.

**personal effects.** Clothing, jewelry, ornaments, and other articles carried or worn upon the person.

See **effects**.

**personal estate.** Every species of property not of a freehold nature, including not only goods and chattels, but rights and credits. *Bullowa v Gladding*, 40 RI 147, 100 A 249.

As to what passes under term "personal estate" in will, see *Anne*: 53 ALR2d 1059.

See **my personal estate**.

**personal execution.** See **execution against the person**.

**personal exemption.** See **exemption; tax exemption.**

**personal holding company.** A corporation subjected to a special federal income tax in order to avoid the use of the organization by an individual in a high tax bracket for tax avoidance purposes. IRC § 451.

A corporation at least 80 per cent of the income of which in one year was derived from interest, and at least fifty per cent of the outstanding stock of which was owned by not more than five persons,

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was a personal holding company as defined in Section 351(b) (1) of the Revenue Act of 1934. O'Sullivan Rubber Co. v Commissioner (CA2) 120 F2d 845.

**Personalia personam sequuntur.** Personal property follows the person. *Flanders v Cross*, 64 Mass (10 Cush) 514, 516.

**personal immunity.** See **immunity; privacy.**

**personal indignity.** A ground for divorce, consisting of an act insulting or humiliating to the victim, evidencing hate or estrangement of the offender from the innocent spouse, as a result of which the victim finds further cohabitation intolerable. 24 Am J2d Div & S § 156. Conduct that renders life burdensome and intolerable without being so violent as to endanger life. *Sharp v Sharp*, 106 Pa Super 33, 161 A 453.

**personal injury.** An injury to the body of a person. *Smith v Buck*, 119 Ohio St 101, 162 NE 382, 61 ALR 1343; *Rheudasil v Clower* (Tenn) 270 SW2d 345, 46 ALR2d 1083. A personal wrong; an invasion of a personal right; an injury which pertains to the person, the individual. *People v Quanstrom*, 93 Mich 254, 53 NW 165. As the subject of an action:—an injury to the person, whether the action is based upon contract or tort. 34 Am J Rev ed Lim Ac § 103. Any actionable injury to the individual himself, whether or not it involves physical contact. *Bennett v Bennett*, 116 NY 584, 23 NE 17. Any injury causing actual physical pain, discomfort, or disability to any person, which occasions loss or damage either to such person or to any other person entitled to the benefit of the services of the injured person. *White v Safe Deposit & Trust Co.* 140 Md 593, 118 A 77, 24 ALR 482, 485 (alienation of spouse's affections); sometimes inclusive of an injury affecting the reputation, character, conduct, manner, and habits of a person. *Tisdale v Eubanks*, 180 NC 153, 104 SE 339, 11 ALR 374. As the term is used in venue statutes:—a physical or bodily injury. 56 Am J1st Ven § 15. As the term is used in workmen's compensation acts:—any lesion or change in the structure of the body, causing harm thereto and a lessened facility of its natural and normal use. 58 Am J1st Workm Comp § 194.

There are two classes of personal injuries: those that are fatal, and those that are not fatal. The term naturally includes injuries of both classes because no one of either class is not an injury. The obvious and ordinary meaning of the term is all injuries, whether fatal or not. *Hendel v State Farm Mut. Auto. Ins. Co.* (CA7 Ind) 97 F2d 777.

A right of action exists in favor of a child permanently injured through the negligence of another prior to its birth but after it had become a viable child, under a constitutional provision affording a remedy to every "person" for injury done him in his person. *Williams v Marion Rapid Transit*, 152 Ohio St 114, 87 NE2d 334, 10 ALR2d 1051.

**personalis actio.** (Civil law.) A personal action; an action against a person.

**personaliter.** Personally.

**personality.** The law which appertains or relates to, or deals with, persons. Identity; individuality.

**personality conflicts.** See **incompatibility.**

**personal judgment.** A matter of personal taste or feeling. 17 Am J2d Contr § 367.



See **judgment in personam**.

**personal jurisdiction**. See **jurisdiction in personam**.

**personal knowledge**. One's own knowledge. With more accuracy, knowledge derived from the exercise of one's own senses. *Little v Massachusetts N. E. St. R. Co.* 223 Mass 501, 112 NE 77. A person's direct knowledge of anything, as distinguished from that which he learns by hearsay.

**personal law**. The law which follows the person, as distinguished from the law of the place where the person may be.

**personal liability**. An obligation attaching to the person, as distinguished from an obligation enforceable against property. A liability of an agent or fiduciary imposed on a personal basis for something done by him in the course of the agency or administration of the trust.

See **stockholder's liability**.

**personal liberty**. That liberty of the individual which consists in the power of locomotion, of changing situation, or removing his person to whatsoever place his own inclination may direct, without imprisonment or restraint, unless by due course of law.

Next to personal security, the law of England regards, asserts, and preserves the personal liberty of individuals. See 1 Bl Comm 134.

See **life, liberty, and property**.

**personal luggage**. Whatever the passenger takes with him for his personal use and convenience, according to the habits or wants of the particular class to which he belongs, either with reference to the immediate necessities or to the ultimate purposes of the journey. This would include not only articles of apparel, whether for use or ornament, but also the gun-case or fishing apparatus of the sportsman, the easel of the artist on a sketching tour, or the books of the student, and other articles of analogous character, the use of which is personal to the traveler, and the taking of which has arisen from the fact of his journeying. *Oakes v Northern Pacific Railroad Co.* 20 Or 392, 26 P 230.

**personally acquainted with**. A statement of knowledge of identity, common to certificates of acknowledgment. 1 Am J2d Ack § 70.

**personally appeared**. A phrase common in certificates of acknowledgment, sometimes accepted as the equivalent of "personally known." 1 Am J2d Ack § 69.

**personally known to me**. A statement of knowledge of identity common to certificates of acknowledgment. 1 Am J2d Ack § 68.

As the words are used in a notary's certificate of acknowledgment stating that the party acknowledging the instrument is "personally known to me" to be the person whose name is subscribed thereto, such knowledge involves such an acquaintance, derived from association with the person in relation to other people, as establishes his identity with at least reasonable certainty. Such an acquaintance cannot depend upon the word of one or two or three individuals, but must be based upon a chain of circumstances surrounding the person, all of which tend to show that he is what he purports to be. Something affirmative in the nature of evidence of identity must appear during the course of the acquaintanceship. *Anderson v Aronsohn*, 181 Cal 294, 184 P 12, 10 ALR 866, 869.

**personal notice**. Actual notice. *Travelers' Ins. Co. v Farmers' Mut. Fire Ins. Assn.* 211 Iowa 1051, 233

NW 153. Notice given individually to the person concerned. Notice communicated directly to a person, not through another. 39 Am J1st Notice § 11.

**personal property.** Money, goods, and movable chattels. *Ralston Steel Car Co. v Ralston*, 112 Ohio St 306, 147 NE 513, 39 ALR 334. Goods, chattels, things in action, evidences of debt, and money. All objects and rights which are capable of ownership except freehold estates in land, and incorporeal hereditaments issuing there out, or exercisable within the same. 42 Am J1st Prop § 23.

The ultimate test in determining what particular items pass under a testamentary gift of "personal property" is the intention of the testator. While it is clear that the term is sufficiently broad in its accepted technical significance to include all forms of property other than land or interests in land, if the testator intended that it should embrace so much, in a majority of cases the courts have, in view of the actual intention of the testator as disclosed by the language of the will and the circumstances surrounding its execution, construed the term as carrying a restricted rather than a broad signification. In some instances, it has been held that the term passed only personal or household effects. In other instances, the term has been construed as including only intangibles or as excluding certain kinds of tangible property, such as growing crops. 57 Am J1st Wills § 1339.

**personal-property loan broker.** One who makes a business of making small loans on the security of chattel mortgages on personal property. 40 Am J1st Pawnb § 9.

**personal property tax lien.** A lien for unpaid taxes on personal property, usually extending to the real as well as the personal property of the taxpayer, and sometimes a lien only upon the real estate. 51 Am J1st Tax §§ 1011, 1018.

**personal release.** A release of one co-obligor with the consent of the other co-obligors. Any release of one co-obligor given under circumstances which operate to prevent it from effecting a release of all the co-obligors. 45 Am J1st Rel § 34.

**Personal replevin.** Ill-chosen terminology for the writ of habeas corpus.

**personal representative.** Ordinarily, the executor or administrator of a decedent's estate. 31 Am J2d Ex & Ad § 1. For some purposes, an heir, next of kin, assignee, trustee, receiver, etc. 12 Am J2d Bonds § 24; 29A Am J Rev ed Ins § 1656; 36 Am J2d Frat O § 154. For the purpose of protection against testimony by party or interested person:—the executor or administrator of a deceased person, or a person or party who has succeeded to the right of the deceased, whether by purchase, descent, or operation of law. 58 Am J1st Witn § 237. As a proper party plaintiff to recover for the death of an employee under the Federal Employers' Liability Act:—an executor or administrator only. 35 Am J1st M & S § 474.

**personal rights.** A classification of the rights which a person has in relation strictly to the duties owed to him by others and the wrongs consequent to the breach or violation of such duties. *Duffies v Duffies*, 76 Wis 374, 45 NW 522.

See **rights of person.**

**personal security.** The security of the debtor's personal promise to pay the debt, as distinguished from property pledged, mortgaged, or held in trust. *Merrill v National Bank of Jacksonville*, 173 US 131, 43 L Ed 640, 19 S Ct 360. Security in the promise or undertaking of a guarantor or surety, as distinguished from property pledged, mortgaged, or held in trust. A person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. See 1 Bl Comm 129.

See **life, liberty, and property.**

**personal service contract.** A contract for the furnishing of services by the promisor only, that is, services to be performed by no person other than the promisor.

Illustrations of such contracts ordinarily given are: a master's contract to instruct his apprentice; an author's contract to compose a particular work; a contract of a physician or an attorney at law to render professional services. *Janin v Browne*, 59 Cal 37, 44.

**personal service corporation.** A corporation whose earnings are primarily from the services rendered by its principal stockholders. *Thomas E. Basham Co. v Lucas* (DC Ky) 21 F2d 550.

**personal service of process.** The actual or direct delivery of the summons or notice, or a copy thereof, to the person to whom it is directed or to someone who is authorized to receive it in his behalf. 42 Am J1st Proc §48.

**personal services.** The work and labor of a certain person. For some purposes, inclusive of the services of an instrumentality, such as a team of horses. 34 Am J1st Logs § 107. Work performed in reference to the person, such as by the valet of a man or the personal maid of a woman.

See **personal service contract**.

**personal servitude.** See **servitude in gross; slavery**.

**personal statute.** A statute affecting the status and condition of a person, such as one which determines the age of majority. *Saul v His Creditors* (La) 5 Mart 569.

**personal tax.** Broadly, the burden imposed by government on its own citizens for the benefits which that government affords by its protection and its laws. *United States v Erie Railroad Co.* (US) 16 Otto 327, 333, 27 L Ed 151, 155, 1 S Ct 223. In a narrower sense, a poll or head tax.

**personal things.** Personal effects. Not inclusive of securities, money, or real property. *Re Klewer's Estate*. 124 Cal App 2d 219, 268 P2d 544, 41 ALR2d 941.

As to what passes under a bequest of "personal things," see Anno: 41 ALR2d 941.

**personal tithes.** Tithes which were paid in the products of manual labor or manufacture.

**personal tort.** A wrong against the person. A wrong to the person, such as an assault; also a wrong affecting the feelings and reputation, such as libel, slander, and malicious prosecution. *Slauson v Schwabacher*, 4 Wash 783, 31 P 329.

A tort which is not an injury to property is a personal tort. *Gray v Blight* (CA 10 Colo) 112 F2d 696.

**personal trademarks and tradenames.** Trademarks and tradenames which indicate to the public that the personal care and skill of a certain individual have been exercised in the selection or production of the goods in connection with which the mark or name is used. 52 Am J1st Tradem § 33.

**personalty.** Same as **personal property**.

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**personal use trust.** A trust which is for a specific personal use, the consequence being that the interest of the beneficiary is inalienable and not liable for his debts. 54 Am J1st Trusts § 161.

**personam.** See **in personam; in personam action**.

**persona non grate.** A person who is not acceptable.

**persona praedilecta.** A highly favored person.

**persona standi in judicio.** Capacity of standing in judgment; capacity to sue or to be sued.

**personation.** Assuming the identity of another.

See **impersonation.**

**person beyond the seas.** See **beyond the seas.**

**persone.** A parson; a rector.

**personero.** (Spanish.) An attorney.

**person in authority.** Sheriff, constable, police or peace officer making an arrest and having the prisoner in custody, jailer, prosecuting attorney or district attorney, authorized investigator, a prosecuting witness, an examining magistrate, an interpreter, or the agent of any of the foregoing. 29 Am J2d Ev § 564 (discussing confession made under promise of immunity by "person in authority").

**person indemnified.** The person with whom an indemnity agreement is executed. 42 USC § 2014(r) (statutory definition of Atomic Energy Act of 1954).

See **indemnity.**

**person in loco parentis.** One who has taken a position in reference to a child of that of a lawful father, assuming the office of a father and the obligation of supporting the child, assuming a parental character and discharging parental duties, although not the parent. *Brinkerhoff v Merselis' Executors*, 24 NJL 680, 683. One who takes a child into his home and treats it as a member of his own family, educating and supporting it as if it were his own child. 39 Am J1st P & C § 61.

**person non compos.** See **non compos mentis.**

**person of color.** See **colored person.**

**person or party interested.** See **interested person; party in interest.**

**person primarily liable.** A person whose name appears on the face of a negotiable instrument, as a maker or one obligated by the instrument. 11 Am J2d B & N § 120.

**persons meeting.** See **meeting; meeting each other.**

**Perspiciua vera non sunt probanda.** Evident facts need not be proved. *Pollard's Estate*, 18 Pa Dist 636, 638.

**per stirpem.** By representation.

See **per stirpes.**

**per stirpes.** Per class, particularly distribution by the class. 23 Am J2d Deeds § 200. Taking together the share that a parent would have taken. Anno: 126 ALR 159; 57 Am J1st Wills § 1291. By representation; taking a share which a deceased ancestor would have taken had he survived the intestate. 23 Am J2d Desc & D § 65.

Sometimes a per stirpes distribution has been defined in such a manner as to include, in the definition, the proposition that the number of stocks or roots, into which an estate is originally to be divided is to be determined by reference to the oldest generation which is represented by a living member. Thus, it has been said that in a stirpital distribution the number of stocks in the distribution is determined by the number of the nearest class of blood relatives who survived the decedent and the number of such class who have died leaving issue surviving the decedent. *Re McKeon's Estate*, 25 Misc 2d 850, 199 NYS2d 158.

Taking per stirpes or per capita under will. Anno: 13 ALR2d 1023.

**persuade.** To induce. To incline the will, to prevail upon by argument, advice, expostulations, or reasons. *Wilson v State*, 38 Ala 411, 413.

**persuasive authority.** See **judicial dicta; precedent.**

**per subsequens matrimonium.** By a subsequent marriage.

**pertaining to more hazardous occupation.** Accident insurance policy provisions for diminution of indemnity where insured engages in, or does act pertaining to, a more hazardous occupation. Anno: 8 ALR2d 481.

**pertenencia.** A land measure used in Spanish-American land grants, being a square of two hundred varas, or five hundred and fifty feet. *Castillero v United States (US)* 2 Black 1, 17 L Ed 360.

**per testes.** By witnesses. *Nobles v Georgia*, 168 US 398, 406, 42 L Ed 515, 518, 18 S Ct 87.

**pertinens.** Appurtenant; belonging to.

**pertinent.** Having a bearing upon a matter at hand, particularly evidence bearing upon the issues made by the pleadings.

**pertinent hypothesis.** An hypothesis which, if sustained, would logically influence the issue. *Graham v State*, 125 Tex Crim Rep 210, 67 SW2d 296.

**pertinentiae.** Appurtenances; things which are appurtenant, or belong to, or are incident to.

**per totem curiam.** By the whole court,—by all the judges of the court.

**per tot, cur.** An abbreviated form of **per totem curiam.**

**per totum tempus praedictum.** During the whole of the time aforesaid.

**per tout.** By all.

**per tout et non per my.** By all and not by the half.

If an estate in fee be given to a man and his wife, they are neither properly joint tenants, nor tenants in common, because the two being considered as one person in law, they cannot take the estate by moieties, but both are seined of the entirety, per tout et non per my; the consequence of which is, that neither of them can dispose of any part without the assent of the other, but the whole must remain to the survivor. See 2 Bl Comm 182, note.

**perturbation.** A disturbance; a breach of the peace.

**perturbator.** A person who broke the peace.

**perturbatrix.** A female who broke the peace.

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**per universitatem.** (Civil law.) As a whole; as an entirety.

**per usucaptionem.** By continuous use.

**per vadium.** By pledge; by way of pledge.

**per vadium et salvos plegios.** By gage and safe pledges.

**Per varios actus, legem experientia facit.** By various acts, experience makes the law.

**per verba de futuro.** In words of the future tense. See 1 Bl Comm 439.

**per verba de futuro cum copula.** See **marriage per verba de futuro cum copula.**

**per verba de praesenti.** In words of the present tense. See 1 Bl Comm 439.

See **marriage per verba de praesenti.**

**per verba de praesenti tempore.** By words of the present tense.

**perversion of legal remedy.** Abuse of process; malicious prosecution; false arrest; false imprisonment.

**Per vinum delapsis capitalis poena remittitur.** The punishment for a capital offense committed while intoxicated is remitted. A rule of the Roman law which the common law never adopted. See 4 Bl Comm 26.

**per visum ecclesiae.** By or under the supervision of the church.

**per visum juratorum.** By the viewing of the jury.

**per vivam vocem.** By the living voice.

**Pervolvat quo planeta suum circulum annus mora motus est.** A year is the duration of the movement in which a planet revolves through its orbit.

**per year.** Annually. *Curtiss v Howell*, 39 NY 211, 213.

**pesage.** A toll charged for weighing commodities.

**peseta.** The monetary unit of Spain.

**peso.** The monetary unit of the Philippines and some Latin-American countries. A silver coin current and legal tender in the island of Puerto Rico until September, 1900, in which year an act of Congress provided for the redemption of all the coins then in circulation in the island, at the rate of sixty cents in American coins for each peso. *Serralles v Esbri*, 200 US 103, 111, 50L Ed 391, 395, 26 S Ct 176.

**pessimi exempli.** Of the worst example.

**pest.** An animal or insect which preys upon crops.

**pest house.** A building for the detention and care of persons inflicted with communicable disease.

**pestilence.** A contagious disease, often fatal; a raging of such a disease in epidemic proportions. *Sings v Joliet* 237 Ill 300, 86 NE 663; *Prichard v Morganton*, 126 NC 908, 36 SE 353.

**petens.** A suitor; a plaintiff; a demandant.

**petere.** (Civil law.) To seek; to sue; to petition; to demand; to claim; to sue for; to bring an action.

**Peter's pence.** An ancient tax which was levied upon every dwelling house in England, and upon most of the religious houses as well, and which was paid over to the pope.

**petit.** Small; petty; little.

**petit auxilium.** See **et petit auxilium.**

**petit cape.** Same as **parvum cape.**

**petite assize.** A jury which was empaneled to try the fact of possession.

**petitio.** A petition; a demand; a claim. In the civil law, a plaintiff's statement of his cause of action in an action in rein.

**petition.** A formal request in writing addressed to one in a position of authority or to a body, such as a municipal council, usually signed by a number of persons. An application. The name given in some jurisdictions to the pleading by which the plaintiff in a civil action, whether in law or equity, sets forth his cause of action and invokes the jurisdiction of the court. 41 Am J1st Pl § 73. In some jurisdictions, the pleading by the plaintiff in a special proceeding. The pleading which seeks condemnation of property in a proceeding in eminent domain. 27 Am J2d Em D § 395.

**petition de droit.** A petition of right, by which property in the possession of the crown is recovered in the English court of chancery.

**petitioner.** One seeking relief by a petition.

See **petition.**

**petition for certiorari.** An application for a writ of certiorari, a pleading in effect, the purpose of which is to set the proceeding in motion. *Hall v Hood*, 121 Misc 572, 201 NYS 498.

**petition for highway.** An application by property owners for the opening of a highway. 25 Am J1st High § 22.

**petition for improvement.** A property owner's petition for the formation of a local improvement district, the ultimate purpose being the construction of a public improvement the cost to be defrayed by a special assessment. 48 Am J1st Spec A § 129.

**petition for redress of grievances.** See **redress of grievances.**

**petition for referendum.** See **referendum petition.**

**petition for rehearing.** A request for a rehearing.

See **rehearing.**

**petition in bankruptcy.** A document filed in a court of bankruptcy or with a clerk thereof initiating a proceeding under the Bankruptcy Act. Bankr Act § 1(24); 11 USC § 1(24). A pleading in effect. *Royal Indem. Co. v American Bond & Mortgage Co.* 289 US 165, 77 L Ed 1100, 53 S Ct 551.

**petitioning creditor.** A creditor who institutes proceedings against his debtor in a court of bankruptcy.

**petition in insolvency.** A petition, voluntary or involuntary, for the adjudication of a person as an insolvent, to the purpose that insolvency proceedings may ensue, wherein such assets as the insolvent has may be distributed according to law. 29 Am J Rev ed Insolv § 14.

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**petition in intervention.** See **intervention.**

**petition of rights.** A declaration of the liberties of the people by the English parliament in the reign of Charles the First, in the year 1629.

**petitio principii.** Begging the question. *Leache v State*, 22 Tex Crim 279.

**petit judicium.** He prays or demands judgment.

**petit juror.** A trial juror.

See **juror.**

**petit jury.** A trial jury; otherwise known as a traverse jury or a common jury. 31 Am J Rev ed Jur § 2.

See **jury.**

**petit larceny.** Larceny in the taking of property of small value, a misdemeanor, rather than a felony under modern statutes. 32 Am J1st Larc § 3.

Under the common law, larceny where the value of the property stolen was twelve pence or under. If the value exceeded twelve pence, the crime was grand larceny. Both offenses were felonies and were distinguished by the punishments inflicted, that of grand larceny being death, and of pent larceny whipping or some other corporal punishment. 32 Am J1st Larc § 3.

**petit mal.** A mild form of epilepsy.

**petitor.** A petitioner; a plaintiff; a claimant; a demandant.

**petitory action.** A proceeding at law for the recovery of real property, corresponding to the common-law action of ejectment, and which can only be maintained where the plaintiff shows a legal title to the property in himself, as distinguished from an equitable title. *Gilmer v Poindexter* (US) 10 How 257, 267, 13 L Ed 411, 415.

**petitory suit.** A suit in admiralty brought to try title.

**petit sergeanty.** Holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like, with no personal service. See 2 Bl Comm 82.

**petit treason.** The killing of a husband by a wife; of a lord or master by a servant; of his lord or ordinary by an ecclesiastic.



These were called petit "treason" because they were breaches of the lower allegiance of private and domestic faith. See 4 Bl Comm 75.

**peto.** I seek; I pray; I demand; I claim.

**petrol.** The term used in England for gasoline. *Minerals Separation v Butte & Superior Mining Co.* 250 US 336, 343, 63 L Ed 1019, 1023, 39 S Ct 496.

**petroleum.** An oil of natural origin formed beneath the surface of the earth. *Kelley v Ohio Oil Co.* 57 Ohio St 317, 49 NE 399. A solution of hydrocarbons; the product of an oil well in the form in which it comes to the surface or is extracted.

See **crude oil.**

**petroleum products.** Oils having a preferential affinity for metalliferous matter. *Minerals Separation v Butte & Superior Mining Co.* 250 US 336, 343, 63 L Ed 1019, 1023, 39 S Ct 496.

See **gasoline; kerosene; naphtha.**

**pettifogger.** A lawyer whose practice is of a small or, petty character; a lawyer of little importance.

**pettifogging shyster.** An unscrupulous practitioner of the law who disgraces his profession by doing mean work, and resorts to sharp practice to do it. *Bailey v Kalamazoo Publishing Co.* 40 Mich 251, 256.

**petty average.** The necessary expenses laid out by the master of a ship, such as towage, wharfage, etc.

**petty bag office.** An office in the English court of chancery where original writs were issued which related to the interests of the crown.

Those writs that related to a subject were originally kept in a hamper and those which related to the interests of the crown were kept in a little bag. Hence arose the distinction between the "hanaper office" and the "petty bag office." These offices were at all times open to the subject, who might, at any time have on demand any writ for which he might call. *Yates v People (NY)* 6 Johns 337, 363.

See **clerk of the petty bag.**

**petty chapmen.** Persons traveling from town to town with goods and merchandise. *Emmou v Lewiston*, 132 Ill 380, 24 NE 58.

**petty constable.** Inferior officers in every town and parish, subordinate to the high constable of the hundred.

The office combined the ancient office of head borough, tithingman, or borsholder and the modern office of constable merely. See I Bl Comm 356.

**petty jury.** Same as **petit jury.**

**petty larceny.** Same as **petit larceny.**

**petty offense.** A minor criminal offense, triable by a magistrate without a jury. *People v Grogeran*, 260 NY 138, 183 NE 273, 86 ALR 1266. In some jurisdictions, inclusive of misdemeanors, at least a misdemeanor not amounting to an indictable offense. 21 Am J2d Crim L § 22.

**petty officer.** A noncommissioned officer of the Navy, either petty officer first class, petty officer second class, or petty officer third class, the latter ranking immediately above seaman and petty officer first class immediately below chief petty officer.

See **chief petty officer; senior chief petty officer.**

**petty sessions.** A justice's court of summary jurisdiction.

**petty treason.** Same as **petit treason.**

**pew.** A seat in a church. A property right; the right to a particular seat in a church. 45 Am J1st Reli Soc §§ 85, 86.

**pew holder.** One having the right to a particular pew or seat in a church. *Massachusetts Baptist Missionary Soc. v Bowduin Square Baptist Soc.* 212 Mass 198, 98 NE 1045.

**pew right.** See **pew.**

**peyote.** A drug obtained from a cactus plant, having toxic, deleterious, intoxicating, and hallucinating effects. *People v Woody* (Cal App) 35 Cal Rptr 708.

**Pfc.** Abbreviation of **Private First Class.**

**pfd.** Abbreviation of **preferred.**

**P.G.** Abbreviation of **postgraduate.**

**PHA.** Abbreviation of **Public Housing Administration.**

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**pharmacist.** One qualified to practice pharmacy. An apothecary. 25 Am J2d Drugs § 4.  
See **pharmacy.**

**pharmacopoeia.** See **United States Pharmacopoeia.**

**pharmacy.** The profession of compounding, preparing, and dispensing drugs, medicines, and poisons. *State v Wood*, 51 SD 485, 215 NW 487, 54 ALR 719. A drug store.

**Pharm. D.** Abbreviation of doctor of pharmacy.

**phase.** A stage in the development of something of a progressive nature. A stage of a movement in cycles, particularly an alternating current of electricity.

**phenobarbital.** A sedative drug; not a poison. *Equitable Life Assur. Soc. v Heminover*, 100 Colo 231, 67 P2d 80, 110 ALR 1270.

**philanthropic.** Benevolent. Anno: 115 ALR 1133. Pertaining to philanthropy. Charitable. *Rotch v Emerson*, 105 Mass 431, 434.

**philanthropic purpose.** See **philanthropy.**

**philanthropy.** Acts or gifts prompted by good will or kind feeling. Not necessarily the equivalent of charity. 15 Am J2d Char § 61.

**Philippines.** A nation of the far east, occupying territory, formerly known as Philippine Islands, ceded to the United States by Spain under the Treaty of Paris, December 10, 1898, independence having been proclaimed on July 4, 1946, in accordance with the Tydings-McDuffie Act passed by Congress in 1934.

**photograph.** An image produced by photography.

**photographer.** One whose occupation is photography; an artist, as distinguished from an artisan or mechanic. *New Orleans v Robira*, 42 La Ann 1098, 8 So 402.

**Photographic Copies of Business and Public Records as Evidence Act.** One of the uniform laws. 30 Am J2d Ev § 1012.

**photographic copy.** A copy of a written instrument made by the process of photographing the original, the copy produced sometimes being reduced in size. *Enelow v New York Life Ins. Co.* (CA3 Pa) 83 F2d 550, 105 ALR 493, cert den 298 US 680, 80 L Ed 1401, 56 S Ct 948.

A photograph of a document is but a copy of that document, and its admission in evidence as a document is governed by the rules pertaining to copies. *Maclean v Scripps*, 52 Mich 214, 218.

**photography.** The art and process of producing images upon a sensitive surface by employing the chemical action produced by light or radiation.

**photostat.** See **photostatic copy**.

**photostatic copy.** A copy of a written instrument made by a photostat, an instrument or device for rapid and inexpensive reproduction by photograph. *Enelow v New York Life Ins. Co.* (CA3 Pa) 83 F2d 550, 105 ALR 493, cert den 298 US 680, 80 L Ed 1041, 56 S Ct 948.

**photo-traffic camera.** A camera which provides the basis for a mathematical computation of the rate of speed of a motor vehicle by taking two photos at a set-time interval apart. *People v Hildebrandt*, 308 NY 397, 126 NE2d 377, 49 ALR2d 449.

**PHS.** Abbreviation of **Public Health Service**.

**p. h. v.** An abbreviation of **pro hac vice**.

**physical abuse.** See **abuse**.

**physical and incurable incapacity for marriage.** Incapacity to consummate the marriage; impotency. 35 Am J1st Mar § 121.

**physical coercion.** See **coercion**.

**physical condition.** See **health; physical defect**.

**physical cruelty.** As ground for divorce:—actual personal violence, or such a course of physical treatment as endangers life, limb or health, and renders cohabitation unsafe. *Brown v Brown*, 215 SC 502, 56 SE2d 330, 15 ALR2d 163.

**physical defect.** A condition of the body, resulting from accident or sickness, which impairs bodily function, particularly in movement. Something that materially impairs, weakens, or undermines the constitution, tends to reduce powers of resistance, and thereby enhances the risk of death. 29A Am J Rev ed Ins § 1211.

**physical delivery.** Manual delivery; a delivery from hand to hand. 23 Am J2d Deeds § 91.

**physical depreciation.** Deterioration due to age and wear, a constant factor, resulting from use, decay, and the action of the elements. *Central Railroad of New Jersey v Martin* (DC NJ) 30 F Supp 41.

**physical disability.** See **physical defect; total physical disability.**

**physical examination.** An examination of a person by a physician for the purpose of determining his physical condition, sometimes required of a litigant, involving, not only observation of the body, but also an inquiry by questions and answers as to the cause and character of a disability. 23 Am J2d Dep §§ 210 et seq.

See **medical examination.**

**physical fact.** A fact which is perceived by the senses.

**physical fact rule.** The principle that the testimony of a witness which is physically impossible and unbelievable, being irreconcilable with, or contrary to, physical facts and common observation and experience, is to be stricken or disregarded as being without evidentiary value, even though uncontradicted by other evidence. 30 Am J2d Ev § 1085; 53 Am J1st Tr § 149. The principle that a reviewing court need not accept findings of fact which are inconsistent with well-known physical laws or with other facts or circumstances so well settled as to be the proper subject of judicial notice. 5 Am J2d A & E § 827.

**physical force.** The power of the body, or of a source of power, applied by man.

The term, as used in relation to assaults, is synonymous with the term "violence," and the two terms are used interchangeably. *State v Wells*, 31 Conn 210.

See **force.**

**physical impossibility.** Impossibility of accomplishment under the state of science and mechanics of the day. A concept which varies from age to age, even from decade to decade, illustrated by the inaptness of the stock example given not so many years ago of traveling from New York to London in one day. *Le Roy v Jacobosky*, 136 NC 443, 48 SE 796.

**physical impossibility doctrine.** See **physical fact rule.**

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**physical impotency.** See **impotency.**

**physical inability to work.** As the clause appears in the regulations of a railway relief department:—inability to perform such labor as the injured member was engaged in at the time of his injury, or similar labor which will enable him to earn wages equally remunerative. *Keith v Chicago, Burlington & Q. R. Co.* 82 Neb 12, 116 NW 597.

**physical infirmity.** A condition of the body, resulting from accident or sickness, which impairs bodily function, particularly in movement. Something that materially impairs, weakens, or undermines the constitution, tends to reduce powers of resistance, and thereby enhances the risk of death. 29A Am J Rev ed Ins § 1211.

**physical injury.** A personal injury. In reference to property, an injury which interferes with an owner's right of dominion, use, enjoyment, and disposition, such as a blocking of ingress or egress, or an injury which directly harms the physical property, such as the destruction of a building. *Rigney v Chicago*, 102 Ill 64.

**physical interference.** Broadly, any physical obstruction of movement. In a technical sense, an injury to or a disturbance of land from a physical aspect, as distinguished from a disturbance constituting annoyance or other discomfort of a mental nature and personal to the owner. Annoyances from smoke and noise are of a mental nature. An obstruction to an owner's access to his property is physical. *Austin v Augusta Terminal Railway Co.* 108 Ga 671, 34 SE 852.

**physically incapacitated for marriage.** The condition of a person who is unable, by reason of incurable physical imperfection or malformation, to accomplish copulation or coition, the consummation of marriage. *Anonymous*, 89 Ala 291, 7 So 100.

**physical medicine.** See **physiotherapy**.

**physical occupancy.** See **occupancy**.

**physical ouster.** See **ouster**.

**physical possession.** The taking hold of property, exercising dominion over it. *Galbraith v Buffalo Vegetable Marketing Co.* 128 Misc 77, 79, 217 NYS 764.

See **occupancy**.

**physical shock.** See **shock**.

**physical suffering.** Pain, particularly prolonged pain indicating a physical derangement or unhealthy condition of the body. 22 Am J2d Damg § 105.

**physical therapy.** Same as **physiotherapy**.

**physical violence.** Force violently applied.

As a ground for divorce, "physical violence" may consist in many acts, each slight in its character, and none producing marks of violence upon the person, and yet, considered as a whole, they may be ground for divorce; certainly so when from them the court is able to say the life of the wife is endangered. *Thompson v Thompson*, 186 Iowa 1066, 173 NW 55, 5 ALR 710, 711.

See **physical force; violence**.

**physical welfare.** See **health**.

**physician.** Broadly, one who practices the art of healing disease and preserving health. 41 Am J1st Phys & S § 2. A person skilled in the art of healing. *State v Borah*, 51 Ariz 318, 76 P2d 757, 115 ALR 254. One who is proficient in the art of healing by means of the application of physics or medicine to the patient. 41 Am J1st Phys & S § 2. One who prescribes remedies for sickness and disease. *Travelers Ins. Co. v Bergeron (CA8 Iowa)* 25 F2d 680, 58 ALR 1127, cert den 278 US 638, 73 L Ed 553, 49 S Ct 33. Technically, one legally qualified for, and engaged in, the practice of medicine. *Joyner v State*, 181 Miss 245, 179 So 573, 115 ALR 954. For the purposes of privilege in communications between "physician" and patient:—only one lawfully engaged in the practice of medicine under authority duly granted to pursue that profession. 58 Am J1st Witn § 411.

The word is derived from the Greek word "phusis," meaning nature, and in a restricted sense means one who administers medicine to cure diseases, but, in its proper sense, it has a broader signification, and means one who by a knowledge of the nature and structure of the human system, and of the nature and properties of substances, cures the injuries

and diseases to which it is subject. The word includes not only doctors, who administer medicine and physic, but surgeons who, by a knowledge of the human system, are able to amputate an injured and diseased limb, or to extract a bullet with skill and as much safety to life and as little pain as the case admits of. *Re Hunter*, 60 NC 372.

The word "physician," as used in a statute authorizing the registration of any person who was a reputable resident physician of good moral character and who, on a date designated by the statute, was engaged in the actual practice of medicine within the state, and who submitted a diploma or other credential or evidence of his qualification, was construed as including any person of whatever school, and whether belonging to any known school, engaged in good faith in treating human ills by any remedy or remedies, however simple, so as to be known among the people as a physician, and not limited to such persons as possess that technical knowledge of the human system and the knowledge of the drugs and other remedies, and how to administer them, commonly supposed to be possessed by members in good standing of the great schools of medicine. Anno: 4 ALR2d 684.

**physician and patient.** The relation whereunder a physician administers professionally to another, essentially consensual. 41 Am J1st Phys & S § 71.

The relation between a surgeon performing an autopsy and the body of the dead person is not the relation of physician and patient. *Carmody v Capital Traction Co.* 43 App DC 245. But the relation may exist between a hospital patient and an intern who is a graduate of a medical school, with a doctor's degree, though, it may be, not licensed to practice his profession in the ordinary way by so holding himself out to the public. *Eureka-Maryland Assur. Co. v Gray*, 74 App DC 191, 121 F2d 104.

**physician's certificate.** A death certificate. 29A Am J Rev ed Ins § 1937.

**physician's liability insurance.** A form of liability insurance, now in common use, which insures a physician against liability from acts or omissions while practicing his profession. Insurance against malpractice, error, or mistake. 29A Am J Rev ed Ins § 1358.

**physician's license.** A license to practice the healing art. 41 Am J1st Phys & S § 15.

**physiognomy.** The practice of purporting or trying to ascertain the character and

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aptitudes of a person by examining features of the cranium and face. Anno: 43 LRA NS 203, 204. The facial features of a person.

**physiotherapist.** One who practices physiotherapy.

**physiotherapy.** The treatment of disease or physical disability by massage, heat, exercise, or other physical means, rather than by drugs. Anno: 86 ALR 631, 632.

**pia fraus.** Pious fraud:—the name was given to the practices of the church in its defeat of the statutes of mortmain by circumvention.

**piazza.** A public square. A porch. 13 Am J2d Burgl § 11.

**picaroon.** A robber.

**picage.** A charge which was made for a booth concession at a fair.

**pickery.** Petty larcency; small thievery.

**picket.** A sentry. One engaged in picketing.

See **picketing**.

**picketing.** A method of promoting a strike or boycott. The establishment and maintenance of an organized espionage upon the works of an employer and upon persons going to and from them. *Thomas v Indianapolis*, 195 Ind 440, 145 NE 440, 35 ALR 1194. The stationing of men for observation, or for the purpose of attempting to influence workers to quit their employment or intending workers not to seek employment, or for the purpose of apprising the public of the dispute with the employer and influencing them to withhold their patronage. The acts of the men so stationed in fulfillment of such a purpose, sometimes, although not necessarily, accompanied by acts of coercion or intimidation. 31 Am 1 Rev ed Lab § 432.

See **peaceful picketing**.

**pickpocket.** A thief who secretly steals from the pockets of his victims.

See **pocket picking**.

**pick-up service.** The service of the carrier involved in calling for and collecting freight, and receipting therefor, from a dock, platform, or doorway directly accessible to highway vehicles, at the consignor's warehouse, factory, store, or similar place of business; and including transportation therefrom to the premises of the carrier's freight depot. *Southern Ry. Co. v Acme Fast Freight, Inc.* 74 App DC 390, 124 F2d 229. A service undertaken under special contract by a motor carrier, whereby the carrier becomes a delivering carrier under the Interstate Commerce Act. *Keystone Motor Freight Lines v Drannon-Signaigo Cigar Co.* (CA5 Tex) 115 F2d 736.

**pick-up truck.** A motor vehicle with small truck body, handy for the transportation of packages and other light articles, being also available for use as an ordinary one-seated automobile. Anno: 38 ALR2d 877.

**pie.** A pastry. Jumbled printing type. As derived from the Latin "pes," a foot.

**piece.** A weapon, particularly a firearm.

See **bail piece; committitur piece; satisfaction piece**.

**piece basis.** See **piecework**.

**piecemeal appeals.** Successive appeals taken from the same decision. 4 Am J2d A & E § 49.

**piecemeal construction.** The construction of a municipal building or other improvement a part at a time, particularly for the purpose of avoiding violation of debt-limit provisions. 38 Am J1st Mun Corp § 428.

**piecemeal zoning.** Same as **partial zoning**.

**piecework.** Work performed for compensation according to the number of articles produced, sometimes at home. A basis of compensation of census takers. 14 Am J2d Census § 3.

**piepoudre court.** See **pie-powder court**.

**pie-powder court.** An ancient court of England.

The curia pedis pulverizati or court of dusty feet which was said to have been so called from the dusty feet of its suitors, or as Coke thought, because justice was as swift there as dust falling from the feet, or possibly from the French "pied

puldreaux," a peddler. It was the lowest and the most expeditious court in England and was a court of record presided over by the steward of each fair or market. See 3 Bl Comm 32.

In the often quoted language of Chief Justice Shaw of Massachusetts: "If a pie-powder court could be called on the instant and on the spot, the true rule of justice for the public would be to pay the compensation with one hand, while they apply the ax with the other." *Old Dominion Land Co. v United States*, 269 US 55, 65, 70 L Ed 162, 165, 46 S Ct 39.

**pier.** A structure built out over the water of a harbor at which a vessel may be tied, for use in loading and unloading cargo and for the convenience of passengers boarding the vessel or going ashore therefrom. 56 Am J1st Whar § 2. A projection of the land, and for purposes of jurisdiction to be so treated. *The Haxby* (DC Pa) 94 F 1016.

**pierage.** A toll charged for the use of a pier.

**piercing the veil of corporate entity.** See **disregarding corporate entity**.

**pig.** A casting of iron; pig iron. An animal otherwise known as a hog, especially a young hog.

See **hog; pig iron**.

**pigeon shooting.** Shooting pigeons after they are liberated from a trap, with the purpose of demonstrating or improving one's marksmanship. Anno: 82 ALR2d 818 et seq; § 6.

**piggery.** A pigpen; a place where pigs are raised.

**pightel.** A small inclosed parcel of land.

**pig iron.** Crude iron, the original basis for the manufacture of steel and forms of iron, produced in a blast furnace. *Carnegie Steel Co. v Cambria Iron Co.* 185 US 403, 410, 46 L Ed 968, 975, 22 S Ct 698.

**pignoratio.** (Civil law.) A contract of pledge.

**pignoratitia actio.** (Civil law.) An action founded upon a contract of pledge.

**pignorative contract.** A contract of pledge.

**pignori acceptum.** Delivered and taken in pledge or pawn.

**pignoris captio.** (Civil law.) The taking of a pledge to secure the payment of a demand.

**pignus.** (Civil law.) A pledge of goods in which they were delivered by the pledgor to the

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**pledgee.** A contract of pledge or pawn. 41 Am J1st Pldg & Col § 2.

See **hypothecation; pledge**.

**pigsty.** A pigpen.

See **piggery**.

**pigtel.** Same as **pightel**.



**piissima regina conjunx divi imperatoris.** The most pious queen consort of the sacred emperor. See 1 Bl Comm 218.

**pilfer.** To steal. *Becket v Sterrett* (Ind) 4 Blackf 499, 500. To ruin by depredation. Anno: 38 ALR 1125.

**pilferage.** Larceny or stealing, particularly stealing something of small value. Anno: 48 ALR2d 20. Filching or taking a small part only, rather than the whole. 32 Am J1st Larc § 2. Ruin by depredation. Anno: 38 ALR 1125.

**pillage.** The plundering, ravaging, or carrying off of goods, commodities, or merchandise, by open force or violence. *American Iris Co. v Bryan & Maitland* (NY) 26 Wend 563, 573.

**pillory.** A contrivance which was used as a means of punishment for crime, consisting of a wooden board, affixed to a post, through which the head and arms of the culprit protruded.

**pilot.** A person taken on board a ship at a particular place for the purpose of conducting the ship through a river, road, or channel, or from or into a port. *Hobart v Drogan* (US) 10 Pet 108, 9 1\_ Ed 363. The steersman, a person entrusted with the helm and direction of the vessel on her voyage. *Atlee v Northwestern Union. Packet Co.* (US) 21 Wall 389, 22 L Ed 619. In aviation:—one who flies or is qualified to fly, an airplane, airship, or balloon. 8 Am J2d Avi § 33.

**pilotage.** The services of a pilot. That branch of maritime law dealing with the protection and regulation of pilots. 48 Am J1st Ship § 197. The fees, compensation, and charges of a pilot for his services rendered or tendered a vessel entering port or departing therefrom. 48 Ann J1st Ship §§ 195, 210.

**pilotage lien.** See **pilot's lien.**

**pilot laws.** Statutes providing for and regulating pilotage, and the appointment, qualifications, duties, conduct, compensation, and employment of pilots.

Pilot laws are regulations of navigation and are therefore regulations of commerce, but they are within the class of regulations which may be prescribed by the states until Congress sees fit to act, and are their superseded only to the extent that they are in actual conflict with Federal regulations. 48 Am J1st Ship §§ 197 et seq.

**pilot light.** A small burner on gas stove or furnace, kept lighted for the purpose of igniting a larger burner. *Baldrige v Wright Gas Co.* 154 Ohio St. 452, 43 Ohio Ops 369, 96 NF2d 300. An electric light kept burning at night to indicate the location of a particular thing, such as stairway, bathroom, or electric switch.

**pilot plant.** An industrial, but more often a utility plant, built and operated on an experimental basis, primarily for the purpose of determining costs of production and the charges which must be made for goods or services in order to show a profit in operation.

**pilots' association.** A local association, usually unincorporated, formed for their common benefit by pilots, who ordinarily deposit their fees in a common fund, which, after deducting expenses therefrom, is distributed to the several members according to the number of days they were respectively on the active list. 48 Am J1st Ship § 196.

**pilot's license.** A license authorizing the licensee to operate and fly an aircraft. A license authorizing the licensee to act as a pilot of vessels. 48 Am J1st Ship § 200.

**pilot's lien.** A pilot's maritime lien for his services, as performed or tendered, in conducting a vessel into or from port. 48 Am J1st Ship § 195.

**pimp.** A term of opprobrium, a pimp being the lowest of men, one who obtains customers for a whore. *Butte v Yeasley*, 18 Mont 303. 45 P 210.

**pimping.** Obtaining customers for a prostitute. Sharing in the earnings of a prostitute.

To constitute the statutory offense of pimping, the defendant must be a male person; he must have knowledge that a certain person is a prostitute; there must be earnings from the prostitution; the defendant must derive his support in whole or in part from such earnings, knowing them to have been the proceeds from prostitution. *People v Fuski*, 49 Cal App 4, 192 P 552.

See **pandering**.

**pimp tenure.** An ancient land tenure in which the tenant rendered services as a procurer.

**pin money.** An allowance, particularly by husband to wife, for small needs. An allowance made by a husband to his wife, payable during cohabitation, in money or in granting her the use of his property for profit, in appreciation of her services as a housekeeper. 26 Am J1st H & W § 52. A doctrine peculiar to English equity jurisdiction, under which a husband was allowed to give his wife the privilege of working for herself, acting as a free trader, and of acquiring profits by her earnings and savings which neither he nor his creditors could reach. 26 Am J1st H & W § 52.

**pin-money doctrine.** See **pin money**.

**pioneer patent.** Same as **basis patent**.

**pious uses.** An ancient term. Religious uses. Religious uses under the control of the king, as where a vehicle or other article which had caused the death of a person was forfeited to pious uses. *Fields v Metropolitan Life Ins. Co.* 147 Tenn 464, 249 SW 798, 36 AL.R 1250, 1251.

See **deodand**.

**pipe.** A tube of metal, wood, plastic, concrete, or other material through which a liquid is conveyed. A tube for nicking sounds of a musical character.

**pipe line.** A line of pipe, usually of steel, sometimes of lead or even of plastic, running over or beneath the surface of the earth for the transportation of water, oil, or other liquid. 24 Am J1st Gas & O § 131. An instrumentality of commerce within the meaning of the commerce clause of the United States Constitution. 15 Am J2d Com § 48.

The term evidently means something different from "pipes," and conveys the idea of a line of pipe running upon or in the earth, carrying with it the right to the use of the soil in which it is placed. *Dietz v Mission Transfer Co.* 95 Cal 92. 100, 30 P 380.

**pipe-line system.** The main transmission line and a network of gathering lines leading to various oil

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wells being served. *Alexander v Cosden Pipe Line Co.* 290 US 484, 78 L Ed 452, 54 S Ct 292.

**pipe-roll.** A treasury account which was kept in the English exchequer.

**pipowder court.** Same as **piepowder court**.

**piracy.** A term for the infringement of a copyright or a taking of literary property without permission. The crime of being a pirate, an offense against humanity and all mankind. 41 Am J1st Pir § 1. Robbery on the high seas. 41 Am J1st Pir § 3. The committing of depredations against ships on the high seas out of a spirit of malevolence, with or without the taking of plunder.

United States v The Brig Malek Adhel (US) 2 How 210, 11 L Ed 239. Robbery, murder, or other acts of hostility against the United States or citizens thereof on the high seas under color of commission from a foreign state, or under pretence of such authority. 18 USC § 495.

Congress has also declared a seaman who raises violent hands upon his commander, thereby hindering and preventing his fighting in defense of his vessel or goods entrusted to him, and those who, while engaged in a piratical cruise or enterprise, or being members of any such crew or enterprise, land from the vessel and commit robbery on the shore, to be pirates and subject to punishment as such. 18 USC §§ 484, 493; 41 Am J1st Pir § 3.

**Pirata est hostis humani generis.** A pirate is the enemy of the human race.

**pirate.** An enemy of the human race. One who roves the sea in an armed vessel without commission or passport from any government, solely on his own authority, and for the purpose of seizing by force, and appropriating to himself without discrimination whatever ships or vessels he may choose to plunder. 41 Am J1st Pir § I. One guilty of piracy.

See **piracy**.

**piratical.** Acting in aggression unauthorized by the law of nations, hostile in character, wanton and criminal in commission, and utterly without sanction from any public authority or sovereign power. United States v The Brig Malek Adhel (US) 2 How 210, 232, 11 L Ed 239, 248. In short, acting as a pirate.

See **piracy; pirate**.

**piscaria.** Fisheries of all kinds. Moulton v Libbey, 37 Me 472, 490.

**piscary.** Same as **piscaria**.

**pistareen.** A Spanish silver coin which in 1835 passed current in the United States for twenty cents, or one fifth of a dollar, although purporting to be a quarter of a dollar or twenty-five cents; so that its real value, as well as its current value, was uncertain.

Upon a charge of counterfeiting such a coin, it was held that it was not a coin made current by the laws of the United States. United States v Gardner (US) 10 Pet 618, 9 L Ed 556.

**pistol.** A firearm with short barrel, to be held with one hand in firing; a deadly weapon. 56 Am J1st Weap § 3.

**Pistol Act.** One of the uniform statutes. 56 Am J1st Weap § 5.

**pistol range.** A place for training in or testing of marksmanship by pistol or revolver. A place of public amusement. Anno: 140 ALR 415.

**pit.** A hole or cavity in the ground. A mine, particularly a coal mine. A cavity dug in mining by way of reaching the ore. 36 Am J1st Min & M § 182. A hole dug in the ground and filled with water in which female thieves were drowned, instead of hanging them.

**pitfall.** A dangerous condition on premises. 38 Am J1st Negl § 105. A trap to ensnare the unwary. Hall v Manson, 99 Iowa 698, 68 NW 922.

**pix.** Same as **pyx**.

**pix-jury.** Same as **pyx-jury**.

**P. J.** An abbreviation of **presiding judge**.

**pk.** Abbreviation of **park or peck**.

**placard.** A printed or written notice for display in a public place.

**placarding.** Publicizing by exhibition of placards, an activity often engaged in by strikers. 31 Am J Rev ed Lab §§ 427-429.

**place.** Verb: To come in second in a race, particularly a horse race. To give position to something. *Holicer Gas Co. v Wilson*, 45 So 2d 96. Noun: A location. A public square. *Indian Rocks Beach South Shore, Inc. v Ewell (Fla)* 59 So 2d 647, 32 ALR2d 940. A highway. *Carlin v Chicago*, 262 Ill 564, 104 NE 905. A street. 25 Am J1st High § 7. A structure devoted to a particular use, such as an arsenal or dockyard. *United States v Bevans (US)* 3 Wheat 336, 390, 4 L Ed 404, 417. A building, even a vessel moored at a wharf. 30 Am J Rev ed Intox L § 460. A region. *Wilder v State*, 34 Okla Crim 291, 246 P 660. A locality, situation or site. *Indian Rocks Beach South Shore, Inc. v Ewell (Fla)* 59 So 2d 647, 32 ALR2d 940. An occupied estate. *Indian Rocks Beach South Shore, Inc. v Ewell (Fla)* 59 So 2d 647, 32 ALR2d 940.

See **situs**.

**place for repentance.** The opportunity which a man engaged in the commission of a crime may have to withdraw before its consummation, without incurring criminality. *Hyde v United States*, 225 US 347, 56 L Ed 1114, 32 S Ct 793.

**placeman.** A person who, for the time, is serving the state in the performance of a duty required of him as a citizen such as a juror or election inspector, although not in the capacity of a public officer. *Worthy v Barrett*, 63 NC 199, 202.

See **place of trust or profit**.

**placement.** The act, particularly that of an employment agency, in obtaining employment for a person. The act of a carrier by rail in putting a car in location on a sidetrack for loading of goods by a consignor or unloading by a consignee.

See **constructive placement of cars**.

**place name.** The name of a place incorporated in a trademark or tradename. 52 Am J1st Tradem § 66.

**place of abode.** A place where one lives permanently, rather than temporarily. A domicile; a home; a place of residence. *Sanders v Greenstreet*, 23 Kan 425, 431.

See **domicil; home; residence; usual place of abode**.

**place of amusement.** A place to which people resort for diversion or pleasure, some being exhibitiv and others participative, the former being represented by theaters, stadiums, and so forth and the latter by skating rinks, bowling alleys, and so forth. 4 Am J2d Amuse § 1.

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**place of burial.** A cemetery; a burial plot; sometimes the open sea. *Brambir v Cunard White Star Ltd. (DC NY)* 37 F Supp 906, affd (CA2) 119 F2d 419.

**place of business.** A place actually occupied, either continually or at regular periods, by a person or his clerks, in the pursuit of a lawful employment which occupies his time, attention and labor. *Stephenson v Primrose (Ala)* 8 Port 155.

See **place of doing business; principal place of business; usual place of business**.

**place of contract.** The place in which a contract is made, completed, or executed. 16 Am J2d Confl L § 36. The place in which a contract is performed or, according to a most modern view, the place where the contract is of the most significance. 16 Am J2d Confl L §§ 38, 40.

The place where a contract is made is the place where, by acquiescence or final agreement of the minds of the parties, the contract is concluded. *Mutual Life Asso. v Harris*, 94 Tex 25, 57 SW 635.

If the parties to a prospective contract are in different jurisdictions, the place where the last act is done which is necessary to complete the contract and give it validity is regarded as the place in which the contract is made. 16 Am J2d Contr § 36.

**place of delivery.** The place where the goods were sold unless the nature of the article, the usage of trade, a condition of the contract, or the previous course of dealing between buyer and seller requires delivery to be made elsewhere. *Hatch v Standard Oil Co. (US)* 10 Otto 124, 134, 25 L Ed 554, 557. The place specified in a contract for the sale of personal property at which the seller is to make delivery to the purchaser. The place of final delivery of a shipment by the carrier to the consignee. 14 Am J2d Car § 587.

**place of destination.** See **destination**.

**place of doing business.** Any place at which the particulars of a corporate enterprise are conducted. 18 Am J2d Corp § 160.

See **principal place of business**.

**place of election.** See **polls**.

**place of holding court.** An essential to the conception of a "court;" an appropriate place for the administration of justice. 20 Am J2d Cts § 1.

See **venue**.

**place of meeting.** The place fixed for the meeting of the board of directors of a corporation. 19 Am J2d Corp § 1124. The place fixed by statute, charter, bylaw, or determination of the board of directors for a stockholders' meeting. 19 Am J2d Corp § 601.

**place of most significant contracts.** The place which has the most significant contracts with a dispute concerning a contract the law of which should govern the resolving of the controversy, according to a newly-formulated principle of conflict of laws. 16 Am J2d Confl L § 42.

**place of payment.** The place fixed by a contract for the payment of money, or by the parties in a subsequent agreement as the place where the payment is to be made. The place, often a bank, designated in a promissory note, as the place where the maker is to pay the obligation. 11 Am J2d B & N § 187. A house, bank, counting room, store, or place of business, where the holder can present the note, where the maker can deposit or provide funds to meet it, and where a legal offer to pay can be made. 11 Am J2d B & N § 972. In the absence of a designation of place in the note, the place of residence of the maker. 11 Am J2d B & N § 89. In the absence of a designation in the contract or an agreement of the parties to the contrary, the residence of the debtor, where the payment is one to be made in property. 11 Am J2d B & N § 972.

**place of performance.** The place fixed by the terms of the contract in express terms. The place which as determined by fair inference in construction of the contract, is to be the place of performance in accordance with the intention of the parties. In instances where there is neither express nor implied agreement as to the place of performance, the place where the contract was made. 17 Am J2d Contr § 331.

See **place of contract; place of payment**.

**place of resort.** Literally, a place to which people resort for pleasure and recreation. In the usual legal sense, a place to which people resort for gambling and other illegal activities. *Lynn v State*, 247 Tex Civ App 590, 11 SW 640.

**place of trial.** Venue.

See **change of venue; venue**.

**place of trust or profit.** A term comprehensive in the broad sense of public officers, fiduciaries, even corporate officers, but having a particular application in reference to ineligibility for a public office. A position which, although not a public office, occupies the same general level in dignity and importance.

As an office has some relations to the public, so must places of trust and profit involve the exercise of functions affecting the public, in order to constitute a disqualification for other similar places. *Doyle v Aldermen of Raleigh*, 89 NC 133.

See **placemen**.

**place of work.** See **working place**.

**place of worship.** A church. A place set apart for rites or services of any kind which express reverence for a deity. *People v Stanley*, 81 Colo 276, 255 P 610.

The use of the Bible in a public school does not make the school a place of worship. *Hackett v Brooksville School Dist.* 120 Ky 608, 87 SW 792.

**placer claim.** A mining claim covering property wherein the valuable mineral is found, not in veins, lodes, or ledges within the rock, but in a loose condition in the softer materials making up the surface of the earth. 36 Am J1st Min & M § 71.

**placer claim patent.** A patent issued by the federal government covering the surface and minerals to be found in placer form thereunder, also known veins sought to be covered by the patent, and all unknown veins thereafter discovered by the patentee. 36 Am J1st Min & M § 124.

**placer location.** The marking of the boundaries of a placer claim.

See **placer claim**.

**placer mines.** Mines in which the mineral is generally found in the softer material which covers the earth's surface, and not among the rocks beneath. *Reynolds v Iron Silver Mining Co.* 116 US 687, 695, 29 L Ed 774, 777, 6 S Ct 601.

**placer mining.** Taking the soft earthy matter in which the particles of mineral are loosely mingled, and, by filtration, separating the one from the other. *Reynolds v Iron Silver Mining Co.* 116 US 687, 695, 29 L Ed 774, 777, 6 S Ct 601.

**place to work.** See **working place**.

**placita.** Marginal titles. The convening order of the court.

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It was a vital requirement of the common law that the record should contain a "placita." Fifty-three cases were reversed at one term of the Supreme Court of Illinois because the record in each of them failed to contain a "placita." *Planing Mill Lumber Co. v Chicago*, 56 Ill 304, 305.

**placitabile.** Pleadable; capable of being pleaded.

**placita communia.** Common pleas; that is, pleas or suits including all civil actions between subject and subject. See 3 Bl Comm 40.

**placita coronae.** Pleas of the crown; English criminal actions.

**placita juris.** Pleas or rules of law.

**placitamentum.** Pleading.

**Placita negativa duo exitum non faciunt.** Two negative pleas do not make an issue.

**placitare.** To plead.

**placitator.** A pleader.

**placitum.** Singular of **placita**.

**plaga.** A wound; a stroke.

**plagiarii.** (Civil law.) Persons who committed the crime of plagium, which corresponded to the common-law offense of kidnapping. See 4 Bl Comm 219.

**plagiarism.** Copying or adopting the literary, musical, or artistic composition or work of another and publishing or producing it as one's own original composition or work. 18 Am J2d Copyr §§ 98 et seq.

**plagiarius.** Singular of **plagiaru**.

**plagis et mahemio.** See **de plagis et mahemio**.

**plagium.** (Civil law.) The offense of spiriting away and stealing men and children. See 4 Bl Comm 219.

**plaidetur.** A pleader.

**plain error.** Palpable error, as in a valuation of property. *State v Department of Public Works*, 143 Wash 67, 254 P 839.

**plain homage.** In feudal tenure, the service of fidelity alone.

**plaint.** The original or first process, setting forth the cause of action at large, by which an action was begun in an inferior court at common law. *Shaw v Dutcher & Harris* (NY) 19 Wend 216, 219. A private memorial tendered in open court to the judge, wherein the party injured set forth his cause of action.

In small actions, involving less than forty shillings, which were brought in the court-baron or in the county court, no royal writ was necessary and the suit was not begun by original writ, but by *plaint*. See 3 Bl Comm 273.

**plaintiff.** The party complaining in an action or proceeding. A person who brings a suit, action, bill, or complaint. See 3 Bl Comm 25. Any natural or artificial person who institutes an action in his own name or who is joined of record with another or with others who are maintaining an action or proceeding. 39 Am J1st Parties § 4.

**plaintiff in error.** The unsuccessful party to the action who prosecutes a writ of error in a higher court.

**plan.** A project, program, design, or scheme. A proposed arrangement, readjustment, or reorganization of a debtor's affairs in a proceeding in the bankruptcy court. A draft, outline, or drawing of a building or other structure. A product of architectural services. 5 Am J2d Arch § 3.

See **plans and specifications**.

**plank in a shipwreck.** A graphic expression used to characterize the saving of a junior equity by acquiring the legal title. 27 Am J2d Eq § 151.

**plank road.** A road of a kind no longer in use but familiar in the early days of the country, characterized by the use of planks or slabs of timber as a surface of the traveled portion of the way in marshy sections otherwise impassable.

**planned development.** See **land development**.

**plano.** See **de plano**.

**plan of doing business.** A formulated scheme for the accomplishment of the purpose or purposes for which a business is conducted. *N. R. Bagley Co. v Cameron*, 4 Pa D & C 81.

**plans and specifications.** The outline or drawing representing a building or other structure to be erected, together with the particulars or details of construction. 13 Am J2d Bldg Contr § 12. A product of architectural services. 5 Am J2d Arch § 3.

**plant.** A factory or place where an industry is conducted, inclusive of the machines and instrumentalities therein contained. 35 Am J1st M & S § 424. An establishment where machinery or mechanical power is utilized in connection with the employment of the individual. 58 Am J1st Workm Comp § 117. The place of generation of electricity, plus the wires, poles, and other appliances necessary for the transmission of the current to users. *Brown v Gerald*, 100 Me 351, 61 A 785.

In its ordinary sense, the word includes whatever apparatus is used by a business man in carrying on his business, -not his stock in trade, which he buys or makes for sale, but goods or chattels, fixed or movable, alive or dead, which he keeps for permanent employment in his business. *Gulf States Steel Co. v Jones*, 203 Ala 450, 83 So 356, 23 ALR 702, 704.

The plant of an employer is that part of his fixed property over which he has exclusive control. But the term does not include a place over which the employer has no oversight or method of protecting the employee from the negligent or wrongful acts of third persons. *Carlson v Mock*, 102 Wash 557, 173 P 637.

**plantation.** A place brought under cultivation and planted with crops or trees. A large farm. *Atty. Gen. v S. B. Judges*, 38 Cal 291, 295. A large area of land, cultivated by workers who live upon the land, usually devoted to the raising in quantity of one or two crops, such as cotton, sugar cane, or rice, often given special character by the owner's mansion upon the premises.

For discussion of the construction of a devise of a "plantation," see 57 Am J1st Wills § 1342.

**plantation crossing.** Same as **farm crossing**.

**plant checker.** An employee whose duties consist primarily in compiling reports of production, determining standards of production in reference to the time consumed, and calling attention of his superiors to deviations from job descriptions or stand-

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ards. *NLRB v Armour & Co.* (CA) 0) 154 F2d 570, 169 ALR 421, cert den 329 US 732, 91 L Ed 633, 67 S Ct 92.

**plant guard.** A person privately employed, acting as a guard at a factory or industrial plant.



**plant protection personnel.** See **plant guard.**

**plaque.** A thin piece of metal, wood, or plaster with a face suitable for carrying an inscription, so as to be usable as a memorial. 15 Am J2d Char § 60.

**plaster cast.** A cast made of plaster, but especially a cast placed upon a member to keep a fractured bone in place after it has been set. *United States v Telles* (DC Cal) 226 F Supp 670.

**plasterer.** One who follows the mechanical pursuit of coating walls and ceilings of rooms with plaster. 33 Am J1st Lic § 39. An artisan; a mechanic. *Merrigan v English*, 9 Mont 113, 22 P 454.

**plastic surgery.** A surgical operation for the repair or restoration of an injured or destroyed part of the body, especially a part of the face or head, for the purpose of correcting a disfigurement. 22 Am J2d Damg § 103.

**plat.** A representation on a fiat surface of a tract of land, depicting the boundaries by indicating monuments, markers, and lines, natural or artificial. A showing of the subdivisions and lots of a city, town, or village. A map or diagram upon which an owner of land lays it off into blocks and streets and sells lots with reference thereto. 23 Am J2d Ded §§ 23 et seq.

Land is said to be "platted" when it is laid out in lots, blocks, and streets, which are so designated on a map or plat thereof. "The mere fact of platting, taken by itself, is rather a circumstance looking to annexation. It is an attempt to impress upon the territory an urban character." *Forsyth v Hammond*, 142 Ind 505, 40 NE 267, 41 NE 950.

See **original plat.**

**plate.** A sheet of metal of uniform thickness and even surface. *Sonken-Galamba Corp. v Atchison, T. & S. F. Ry. Co.* (DC Mo) 33 F Supp 814. A dish constituting a part of a table service. Metal dishes or ware coated with silver. A holder of false teeth fitted to the mouth and gum.

**plate glass insurance.** Insurance covering particularly the windows of a building against loss or breakage by perils stated. *Vorse v Jersey Plate Glass Ins. Co.* 119 Iowa 555, 93 NW 569.

**platform scales.** A weighing scales so constructed that vehicles, loaded or unloaded, may be weighed thereon. A weighing scales with a platform upon which the barrel, bag, or other receptacle to be weighed may be conveniently placed. 35 Am J2d Fixt § 97.

**platted.** See **plat.**

**play.** A dramatic work of either a humorous or a serious nature to be performed or presented to the public on stage, by television, or by motion picture. A form of literary property; a subject of copyright. 18 Am J2d Copyr § 10. Recreation; sport; fun. play around. To be unfaithful to one's spouse.

**playground.** A place for recreation, especially a place for children to play. A region for recreation.

**playhouse.** A theater. A small structure for children to play in.

See **theater.**

**playing cards.** Sometimes a diversion, sometimes gambling, dependent upon whether or not wagers are made upon the outcome of the game. Cards used in a game.

**playing policy.** See **numbers game.**

**playright.** A term suggested for the right to represent or produce a literary or musical composition. 18 Am J2d Copyr § 1.

See **playwright**.

**play street.** A street which, for the benefit and the protection of children playing therein, is completely closed to traffic, except such as is within the requirements of the abutting owners. *Tamburrino v Sterrick Delivery Corp.* 241 App Div 221, 271 NYS 765.

**playwright.** A writer of plays.

See **playright**.

**plea.** The answer required by law of one formally accused of crime. 21 Am J2d Crim L § 458. The pleading by way of answer to a petition, declaration, or complaint. 41 Am J1st Pl § 115. In equity, a special answer to all or some part of the bill, but on a single issue, setting up, in lieu of a detailed reply to all the allegations of the bill, as in an answer, some particular fact or facts as a cause for dismissing, delaying, or barring the suit as a whole. 27 Am J2d Eq § 204.

**plead.** To draft and serve or file a pleading, particularly a pleading by defendant. To raise a defense. *Farm Bureau Auto. Ins. Co. v Martin*, 97 NH 196, 84 A2d 823, 29 ALR2d 811.

**pleader.** A person who prepares a pleading or pleadings; a party who files or serves a pleading.

**pleading.** A formal statement by a party to an action or proceeding of the operative facts, as distinguished from evidentiary facts, which constitute the respective claim or defense. *McMillan v Plymouth Electric Light & Power Co.* 70 Ind App 336, 123 NE 446. The allegation made by a party to an action or proceeding for the purpose of presenting or joining the issue to be tried and determined, whether such issue is of law or of fact. 41 Am J1st Pl § 2. The science and course of allegation whereby a party in court presents his demand or defense against the demand of the other party to be made a matter of record. *Kansas City v O'Connor*, 36 Mo App 594, 599.

**pleading a counterclaim.** See **counterclaim**.

**pleading a setoff.** See **setoff**.

**pleading a statute.** Formally setting forth the terms of the statute. Stating the facts which bring the case within the statute, even without taking formal notice or even a mention of the statute itself. *Hart V Baltimore & Ohio Railroad Co.* 6 W Va 336, 348.

**pleading in haec verba.** Pleading a written instrument in the same words as the instrument.

**pleading over.** Serving or filing an amended pleading after an attack by one's adversary upon one's pleading. Pleading to the facts after demurrer overruled. 41 Am J1st Pl § 250. A pleading by the defendant in a criminal case after the overruling of a plea by him not going to the merits of the case, such as a plea in abatement. 21 Am J2d Crim L § 466.

**pleading to the jurisdiction.** See **plea to the jurisdiction**.

**pleading to the merits.** Raising and developing the issues between the parties or bringing forward

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whatever defenses the defendant may have which he wishes to interpose in bar of the plaintiff's claim. 41 Am J1st Pl § 131.

**plea in abatement.** A dilatory plea in a criminal case, challenging irregularities in procedure occurring before arraignment, but setting up no facts going to the real merits of the case. 21 Am J2d Crim L § 468. A plea in a civil action bringing to the attention of the court some fact or circumstance, not disclosed on the face of the record, which will defeat the particular action without absolutely and forever precluding or excluding right of recovery in the plaintiff. 41 Am J1st Pl § 124.

**plea in bar.** A pleading interposed by the defendant in an action as a complete defense, designed to defeat the action for all time. 41 Am J1st Pl § 115. A plea by an accused in a criminal case, asserting any matter in confession and avoidance not admissible under the plea of not guilty. 21 Am J2d Crim L § 464.

**plea in confession and avoidance.** A plea which admits the cause of action alleged by the plaintiff, to the extent at least of giving color to the matter, and sets up other matter in avoidance of the same. 41 Am J1st Pl § 158.

**plea in discharge.** A form of plea in confession and avoidance in which the defendant admits the existence at one time of a cause of action but alleges that, before the action, the defendant satisfied and discharged plaintiff's claim by payment. *Nichols v Cecil*, 106 Tenn 455, 61 SW 768.

**plea of another action pending.** A form of plea in abatement interposing the objection that a former action between the same parties for the same cause is still pending. 1 Am J2d Abat & R § 38.

**plea of former jeopardy.** See **plea of prior jeopardy.**

**plea of guilty.** A voluntary plea by an accused admitting the commission of the act charged as a criminal offense, generally permitted except in capital cases. 21 Am J2d Crim L § 484. In a criminal case, an admission or confession of guilt, a submission without contest, a waiver of defense, as conclusive as a verdict of a jury, admitting all material averments of fact in the accusation, leaving no issue for the jury, except in those instances where the extent of a punishment is to be imposed or found by the jury. 21 Am J2d Crim L § 495.

**plea of liberum tenementum.** A plea of freehold; a plea which in some jurisdictions is allowed to be interposed by the defendant in an action of trespass. *Fort Dearborn Lodge v Klein*, 115 Ill 177, 3 NE 272.

**plea of limitations.** A pleading which invokes the protection of the statute of limitations in a civil case. 34 Am J1st Lim Ac § 428. A special plea of the statute of limitations in a criminal case. 21 Am J2d Crim L § 160.

**plea of ne unques administrator.** See **ne unques administrator.**

**plea of nil debit.** See **nil debit.**

**plea of nolo contendere.** See **nolo contendere.**

**plea of non assumpsit.** See **non assumpsit.**

**plea of non cepit.** See **non cepit.**

**plea of non damnificatus.** Literally, a plea of not injured. A proper pleading by the defendant in an action on a covenant to indemnify and save harmless. 27 Am J1st Indem § 33. A plea interposed in an action of debt on a bond, which is equivalent to a plea setting up the defendant's fulfillment of his obligation. *State Bank v Chetwood*, 8 NJL 1, 25.

**plea of non detinet.** See **non detinet.**

**plea of non possumus.** A plea of want of capacity.

**plea of non vult contendere.** A plea similar to nolo contendere. The defendant will not contest. *Re 17 Club, Inc.* 26 NJ Super 43, 97 A2d 171.

This is not a confession of guilt, because an accused person might find himself without witnesses to establish his innocence, from their death, absence, or other cause, and hence waive a fruitless contest. *Commonwealth v Shrope*, 264 Pa 246, 107 A 729, 6 ALR 690, 692.

**plea of not guilty.** A plea in a criminal case which denies and controverts the existence of every fact essential to constitute the crime charged or to establish the accused's guilt, placing in issue every essential element of the offense charged. 21 Am J2d Crim L § 467. The plea of the general issue in an action for conversion of personal property. 18 Am J2d Conversion § 149. A plea of the general issue in tort actions and ejectment. 25 Am J2d Eject § 85; 41 Am J1st Pl § 141. A plea of the general issue in an action of trespass. 41 Am J1st Pl § 141. A plea of the general issue in an action of trespass on the case. 1 Am J2d Actions § 42.

**plea of pregnancy.** A plea interposed in a criminal prosecution whereby the execution of a pregnant woman is sought to be stayed by reason of her pregnancy.

**plea of prior jeopardy.** A special plea in bar, required in some jurisdictions although not in others, to present the defense of former jeopardy. 21 Am J2d Crim L § 473.

See **prior jeopardy**.

**plea of reconvention.** A pleading interposing a counterclaim in the answer. *McLeod v Bertschy*, 33 Wis 176.

**plea of sanctuary.** A plea anciently allowed in criminal cases under which the defendant, accused of any crime except treason or sacrilege, might set up the privilege of sanctuary.

That is, he might flee to a church or churchyard, and within forty days thereafter go into sackcloth, confess himself guilty before a coroner, state the circumstances of the offense, take oath that he abjured the realm and would quit the kingdom and never return without the king's leave. This privilege of sanctuary was much abridged in 1535, and in 1623 was altogether abolished. See 4 Bl Comm 332.

**plea puis darrein continuance.** A plea alleging matters of defense arising after the commencement of the action and after issue joined. 41 Am J1st Pl § 168. A plea which impugns the right of further prosecution, not the right of an action altogether. *Heim v Carron*, 19 Miss 11 (*Smedes & M*) 361.

**please pay.** In form a courteous request; in legal effect an order to pay. 11 Am J2d B & N § 139.

**plea side.** The civil side or department of a court as distinguished from the criminal department.

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**pleas of the crown.** Criminal cases, so called in England, because the majesty of the whole community centers in the king, who by law is supposed to be the person injured by every infraction of the public rights. See 4 Bl Comm 2.

**pleas roll.** The record of a case which contains the pleadings which were filed in the action.

**pleasure and business purposes.** A familiar term in automobile insurance policies; a term usually defined by the terms of the policy.

Whether a particular activity is within the policy definition is to be determined from the particular facts in each case. 7 Am J2d Auto Ins § 31.

See **business use; commercial use.**

pleasure drive. See **boulevard; parkway.**

**pleasure resort.** See **resort.**

**pleasure use.** See **pleasure and business purposes.**

**plea to the jurisdiction.** A plea in a criminal case strictly limited to the question of jurisdiction, of necessity preceding a plea of not guilty. 21 Am J2d Crim L § 463. A plea in a civil case where the want of jurisdiction is to be shown by evidence. 41 Am J1st PI § 129.

**plea to the merits.** See **pleading to the merits.**

**plebeian.** One of the common people, as distinguished from a member of the patrician class.

**plebiscita.** The decrees of the Roman people which went into effect without the concurrence of the senate, and which were simply laws established by popular vote.

**plebiscite.** A popular vote on a proposed law or on any question submitted to the people.

**plebiscitum.** Singular of plebiscita.

**plebity.** (Roman law.) The plebes; the plebeians; the common people.

**plebs.** (Roman law.) A plebeian; one of the common people.

**pledge.** A bailment of personal property as security for a debt or obligation, redeemable upon terms and with the implied power of sale on default. 41 Am J1st Pldg & Col § 2.

The Roman name applicable to a contract of pledge or pawn was pignus or vadium. The difference between a pignus and a hypothecation consisted in this: in the former, the possession of the thing pledged passed to the pledgee; in the latter, it did not. 41 Am J1st Pldg & Col § 2.

**pledgee.** A person to whom personal property is pledged by a pledgor.

**pledgee's lien.** The lien which a pledgee acquires in the thing pledged to the extent of the indebtedness secured, and which is usually held to continue as long as he retains the possession thereof either actual or symbolic and the debt which it was pledged to secure remains unpaid. 41 Am J1st Pldg & Col § 28.

**pledgeholder.** A third person to whose custody pledged property is entrusted instead of to that of the pledgee.

**pledgery.** Suretyship. An undertaking to answer for the obligation of another. *Gloucester Bank v Worcester*, 27 Mass 528, 531.

**pledge of affiliation.** A pledge of adherence to a particular political party and of support of its nominees, sometimes required as a condition of voting in a primary election. 25 Am J2d Elect § 159.

**pledge of rents and profits.** Broadening the security of a mortgage by including rents and profits of the mortgaged real estate. 36 Am J1st Mtg § 36.

**pledges.** Persons who became sureties to answer for the obligation of another. Plural of **pledge**.

**pledges to restore.** The sureties on a defendant's redelivery bond in an action of replevin.

**pledgor.** A person who makes a pledge of personal property to a pledgee.

**plee.** A plea; an action.

**plegiabilis.** Personal property which may be lawfully pledged.

**plegii de prosequendo.** Pledges to prosecute.

Under the ancient action of replevin to recover cattle or goods alleged to have been wrongfully taken in distress, the plaintiff was required to find pledges which should be security to try the right of distress. See 3 Bl Comm 146.

**plegii de prosequendum.** Same as **plegii de prosequendo**.

**plegii de retorno habendo.** Pledges to have the return.

Under the ancient action of replevin to recover cattle or goods alleged to have been wrongfully taken in distress, the plaintiff was bound to find such pledges as security for his return of the thing distrained to the distrainor, if the right should be determined against the plaintiff. See 3 Bl Comm 147.

**plein age.** See **de plein age; plena aetas**.

**plein vie.** See **en plein vie**.

**plena aetas.** Full age; majority.

**Plena et celeris justitia fiat partibus.** Let full and speedy justice be done to the parties.

**plena fides.** Full faith; full confidence.

**plena forisfactura.** A full or complete forfeiture; a forfeiture of all one's property.

**plena probatio.** (Civil law.) Full proof,—proof by two witnesses or by a public document. See 3 Bl Comm 370.

**plena propiedad.** See **propiedad**.

**plenarie.** Fully.

**plenarty.** The condition of a church as being full, after a clergyman had once been instituted in it, whether his induction had been rightful or not. See 3 Bl Comm 243.

**plenary.** Full and complete. Commonwealth v Breakwater Co. 214 Mass 10, 100 NE 1034. Unabridged.

**plenary action.** A suit or action, independent of any other proceeding, in which the merits of the cause are fully inquired into and determined, as distinguished from a summary proceeding in which formalities are less strict and which are usually merely ancillary to some other action or proceeding. *May v Henderson*, 268 US 111, 115, 69 L Ed 870, 873, 45 S Ct 456.

**plenary power.** Power as broad as equity and justice

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require. *London v Joslovitz*, 279 App Div 280, 110 NYS2d 58.

**plenary suit.** Same as **plenary action**.

**plena vita.** See **in plena vita**.

**plene administravit.** A plea of an executor or administrator, in an action against him on a debt of his decedent, setting forth the fact that he has fully administered the estate. *Wilkins v Gibson*, 113 Ga 31, 38 SE 374.

**plene administravit praeter.** A plea of an executor or administrator in an action against him on a debt of his decedent, alleging that he has fully administered the estate, excepting as to assets which are insufficient to meet the plaintiff's claim.

**plene computavit.** He has fully accounted,—a plea in an action of account alleging that the defendant has already rendered a full account.

**plenipotentiary.** A person who is fully empowered or commissioned to act for his constituent. An ambassador.

**pleno comitatu.** See **in pleno comitatu**.

**pleno jure.** With full right.

**pleno lumine.** See **in pleno lumine**.

**plenum dominium.** (Civil law.) Full ownership, the right of property in a thing coupled with the right to its use and enjoyment.

**plenum rectum.** Full, complete, or absolute right.

**pleurocentesis.** Draining the chest cavity. *Breaux v All State Ins. Co.* (La App) 86 So 2d 132.

**plevina.** Security; the liability or undertaking of a surety.

**Plimsoll line.** A line marked on the side of a merchant ship as a gauge to prevent overloading, the line marking the limit of safe submergence.

**Plimsoll mark.** Same as **Plimsoll line**.

**pl'it'm.** An abbreviation of **placitum**.

**plot.** The scheme of a dramatic or literary work. An area of ground marked off. A diagram.

**plottage.** The added value that accrues to two or more lots in one ownership, where the entire plot can be improved to better advantage than the individual lots. Re New York, 127 Misc 710, 729, 217 NYS 544.

**plough-land.** As large a tract of land as could be ploughed by one plough in a year. Arable land.

**plough silver.** Money paid by a feudal tenant to the lord of the manor in lieu of service by ploughing.

**plow.** A farm implement used to cut and turn over the soil in preparation of a seed bed.

**plowbote.** A tenant's common-law right of estovers consisting of a sufficient amount of the timber necessary in making or repairing all instruments, tools, and implements used in husbandry. Anderson v Cowan, 125 Iowa 259, 101 NW 92.

**plow horse.** A work horse, particularly one used in farm work.

**plow-land.** Same as **plough-land.**

**plowman's fee.** An ancient customary descent in equal shares to the sons of the decedent, varied by larger shares to the oldest or the youngest son.

**plow silver.** Same as **plough silver.**

**plugging well.** A conservation measure required by statute in some jurisdictions upon the abandonment of an oil well. 24 Am J1st Gas & O § 148.

Water, if not plugged off when a well is abandoned, may migrate through the oil sand to adjacent producing wells and eventually ruin them. Gas sands may also be flooded and gas wasted if gas is allowed to escape into the air. All wells should be plugged if they are abandoned. Forbes v United States (CA9 Mont) 125 F2d 404.

**plumber.** An artisan who works in fitting and repairing waterpipes, bathroom installations, and the like. 41 Am J1st Plumb § 2.

**plumbing.** Work connected with the system of pipes, traps, sinks, bowls, etc. whereby water is conducted into, through, and out of a building. Blegman v Winkler, 120 Misc 483, 198 NYS 758. The system itself.

**plumbism.** Lead poisoning. 58 Am J1st Workm Comp §§ 252, 253. A disease common among painters, usually caused by inhaling lead fumes from the paint. Anno: 29 ALR 694.

**plumbum.** Lead.

**plunder.** Verb: To take the property of others by force. To take the property of others by any means, whether force or fraud. To pilfer, to swindle. Carter v Andrews, 33 Mass (16 Pick) 1, 9. Noun: Property acquired by criminal or fraudulent act. The fruits of a crime.

**plunderage.** Embezzlement committed aboard a ship.

**plural.** Consisting of more than one.

**Pluralis numerus est duobus contentus.** The plural number is contented or satisfied with two.

**pluraliter.** Plurally; in the plural number.



**plurality.** A plural condition or state, being in excess of one. The excess of one number over another.

**plurality estate.** See **estate in plurality.**

**plurality of subject matter.** A characterization of the content of a statute embracing more than one subject. 50 Am J1st Stat § 192.

**plurality of trust.** The situation where separate and several trusts, to be administered by the same trustee, are created by the same instrument. 54 Am J1st Trusts § 16.

**plurality vote.** The largest vote received as between candidates for an office at an election; the winning vote, except where a majority of votes cast is required by constitutional provision or statute. 26 Am J2d Elect § 309.

**plural marriage.** A marriage of a person who already has one or more living spouses. A bigamous or polygamous marriage.

**plural patents.** A patent for an entire combination or process and another patent or patents for such part or parts of the combination or process as are new and useful. 40 Am J1st Pat § 83.

**Plures cohaeredes sunt quasi unum corpus, propter unitatem juris quod habent.**

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Several coheirs are one body, as it were, because they have unity of right.

**Plures participes sunt quasi unum corpus, in eo quod unum jus habent.** Several parceners are one body, as it were, in this, that they have one right.

**pluribus unum.** See **E Pluribus Unum.**

**pluries writs.** Multiple or successive writs of attachment or execution issued in the same action or upon the same judgment. 6 Am J2d Attach § 278; 30 Am J2d Exec § 84.

At common law, a writ of execution issued after the second or alias writ was a pluries writ. *Bigelow v Renker*, 25 Ohio St 542. So was a writ of attachment issued after an alias writ had been returned "nothing found." See 3 Bl Comm 283.

**pluris petitio.** A demand for too much, that is, for more than is owing.

**plus.** Added to. In Latin, more.

**Plus exempla quam peccata nocent.** Examples do more harm than offenses.

**Plus peccat auctor quam actor.** The instigator sins more than the actual perpetrator.

**plus petitio.** (Roman law.) A demand of too much, that is, of more than is due or owing.

**Plus valet consuetudo quam concessio.** Custom is more powerful than grant.

**Plus valet unus oculatus testis, quam auriti decem.** One eye-witness is worth more than ten ear-witnesses.

**Plus vident oculi quam oculus.** Eyes see more than an eye sees, several see more than one.

**ply.** To perform in repetition acts of the same kind.

A reference to plying a business at a certain place ordinarily imports that such place is a seat of the business. *New York, New Haven & Hartford Rail road Co. v Scovill*, 71 Conn 136, 41 A 246.

**P.M.** Abbreviation of postmaster, also of Principal Meridian.

**p.m.** Abbreviation of post meridiem, after noon.

**pneumatic tire.** A rubber tire for a motor vehicle, inflated with compressed air. 7 Am J2d Auto § 70.

**pneumoconiosis.** A diseased condition of the lungs caused by the inhalation of dust particles such as a stonemason may be subjected to. *Sullivan's Case*, 265 Mass 497, 164 NE 457, 62 ALR 1458; *Schmidt v Merchants Despatch Transp. Co.* 270 NY 287, 200 NE 824, 104 ALR 450, reh den 271 NY 531, 2 NE2d 680, 104 ALR 462.

**pneumonia.** A disease of the lungs characterized by a severe inflammation of the tissues. *Nashville v Reese*, 138 Tenn 471, 197 SW 492. A serious disease of the lungs in which the tissues become inflamed and hardened, rendering breathing difficult and painful. *Young v New York Life Ins. Co.* 360 Mo 460, 228 SW2d 670. A common disease but sometimes classified as an accidental injury for the purposes of workmen's compensation. 58 Am J1st Workm Comp § 244.

**P. O.** An abbreviation of "postoffice."

**poaching.** Trespassing upon land for the purpose of killing and taking game there.

**poblador.** A term used in certain Spanish-American grants and signifying a person who undertook to bring together a certain number of families or settlers, and build a town. *Hart v Burnett*, 15 Cal 530, 538.

**pocket judgment.** A bond given to secure an obligation; a statute merchant.

See **statute merchant**.

**pocket picking.** Taking from another's pocket. A form of larceny. 32 Am J1st Larc § 44.

Picking another's pocket, exercising only such force as is necessary to lift and remove the property from the pocket, is not robbery. However, if the thief jostles his victim for the purpose of diverting attention in order to pick his pocket, the force is sufficient to constitute robbery. *Duluth St. R. Co. v Fidelity & D. Co.* 136 Minn 299, 161 NW 595.

**pocket-sheriff.** A sheriff appointed by the king without the customary nomination of the judges. See 1 Bl Comm 342.

**pocket veto.** A veto of a legislative bill effected by the retention of the bill by the executive, his return of the measure as approved or rejected within the time fixed by law being prevented by the adjournment of the law-making body. 50 Am J1st Stat § 121.

**pod net.** See **Dutch net**.

**poena.** A punishment; a penalty; a compensation.

**Poena ad paucos, metus ad omnes perveniat.** Punishment for the few means that fear comes to all.

poena corporalis. Corporal punishment.

**Poenae potius molliendae quam exasperandae sunt.** Punishments should rather be softened than aggravated.

**Poenae sint restringendae.** Punishments should be restrained.

**Poena ex delicto defuncti, haeres teneri non debet.** The heir ought not to be bound by a penalty imposed for the wrong done by the deceased.

**poenalis.** (Civil law). Penal; carrying or imposing a penalty.

**poenam.** See **in poenam.**

**Poena non potest, culpa perennis erit.** Punishment cannot be everlasting, but error or sin will be.

**poena pilloralis.** Punishment in the pillory.

See **pillory.**

**Poena suos tenere debet actores et non alios.** The punishment ought to belong to the actual perpetrators and not to others.

**Poena tollit potest, culpa perennis erit.** The punishment can be removed, but the sin or error will be perpetual.

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**poenitentia.** Repentance; altered intent.

**poetic justice.** Rewards for virtue; punishment for sin. A satirical expression for idealistic, rather than practical attempts to regulate the conduct of men and women.

**poin.** See **en poin.**

**poinding.** A distress; an attachment of goods.

**point of destination.** See **destination.**

**point of impact.** A term of conflicts of laws, meaning the point at which the tortious acts of the defendant impinged upon the rights of the complaining party. *Ettore v Philco Television Broadcasting Corp.* (CA3 Pa) 229 F2d 481, 58 ALR2d 626.

See **place of most significant contacts.**

**point of law.** A matter of law, as distinguished from a matter of fact, involved in a case or controversy.

See **precedent.**

**point of production.** Within the meaning of a statute exempting from a vehicle tax motor vehicles used exclusively in delivering dairy or other farm products:—the farm where the livestock was prepared for disposal and where milk was produced and agricultural products raised, or where dairy farm products were made. *State ex rel. Wisconsin Allied Truck Owners Assn. v Public Service Com.* 207 Wis 664, 242 NW 668.

**point reserved.** See **reserved point.**

**points.** The propositions to be presented in a brief. *Afflerbach v Yorktown Independent School Dist.* (Tex Com App) 289 SW 1003, 1005. Facts, *Kent v State*, 64 Ark 247, 251, especially circumstances which give the character of excellence, as the "points" of a prize winning animal at a fair.

See terms and expressions beginning **point**.

**point system.** A system provided by statute or regulation in some jurisdictions for the purpose of singling out habitual or persistent motor-vehicle-law violators, whereby points are charged against a driver's record for violation, and his license suspended or revoked upon his accumulating a specified number of such points. 7 Am J2d Auto § 112.

**poison.** A substance which when taken will destroy life or be seriously injurious to health. Anno: 110 ALR 1277, s. 131 ALR 1061; 29A Am J Rev ed Ins § 1226. Any substance which, where introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes, or which destroys living tissue with which it comes in contact. *Watkins v National Electrical Products Corp.* (CA3 Pa) 165 F2d 980. Any substance which, when applied to the body or introduced into the system, without acting mechanically but by its own inherent qualities, is capable of destroying life. *People v Van Deleer*, 53 Cal 147. A substance of such properties as to be capable of destroying life when taken in small doses. 29A Am J Rev ed Ins § 1226. Any substance which ordinarily has such a harmful or deadly effect on the body that it ought not to be taken internally without technical familiarity or medical direction. 25 Am J2d Drugs § 6.

**poisoning.** A specific felony under the statutes of some jurisdictions, usually committed by mixing a lethal potion with food or drink served the victim. 26 Am J1st Homi § 604.

poker. A game of chance played with cards, almost invariably for money so as to constitute gambling. 24 Am J1st Gaming § 20.

See **draw poker; stud poker**.

**polar star rule.** The principle that a written document which is ambiguous is to be construed according to the intent of the maker, grantor, or devisor as gathered from the four corners of the instrument. *Hanks v McDanell*, 307 Ky 243, 210 SW2d 784, 17 ALR2d 1.

**pole.** A slender piece of wood or metal of such strength and length as to serve to support a line, a tent, even a roof of a barn. A linear measure, the equivalent of a rod, sixteen and one half feet.

**pole-raising.** An indictable offense in the early days of the country, where symbolizing dissatisfaction with the government, because of the tendency to incite violence. *Pennsylvania v Morrison* (Pa) 1 Addison 274, 275.

**pole tax.** A license fee imposed on a telegraph or telephone company according to the number of poles erected and maintained in the municipality. 52 Am J1st Teleg & T § 51.

See **poll tax**.

**police.** Verb: To keep order. To keep clean, particularly the ground around buildings of the military. Noun: The law-enforcing department of a state or local government having the duty of maintaining order, detecting crimes, and making arrests. Peace officers. In the broadest sense, inclusive of both administrators and magistrates. *State ex rel. Walsh v Hine*, 59 Conn 50, 21 A 1024.

**police court.** A local court. 20 Am J2d Cts § 30. A municipal court for the summary trial of petty offenders and violators of city ordinances.

**police department.** The department of a municipal government, consisting of a head, usually known as the chief of police, captains, lieutenants, inspectors, sergeants, detectives, patrolmen, traffic officers, and other officers within the broad category of policemen, which has the duty of maintaining order, detecting crime, and making arrests.

**police force.** See **police department.**

**police judge.** A magistrate. The judge of a police court.

**police justice.** A magistrate whose jurisdiction extends only to criminal cases and is the same in such cases as that of a justice of the peace. *Wenzler v People* (NY) 2 Cow Crim 72, 74.

**police magistrate.** See **police judge; police justice.** *State v Evans*, 161 Mo 95, 61 SW 590.

**policeman.** A peace officer. 47 Am J1st Sher § 5. An officer of the police department, having such powers as are conferred upon him by statute or municipal ordinance.

**police power.** A term impossible of abstract, and incapable of complete, definition. *Berman v Parker*, 348 US 26, 99 L Ed 27, 75 S Ct 98. In one sense, the whole power of government to which all other powers are only incidental and ancillary; nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. *A.F.L. v American Sash & Door Co.* 67 Ariz 20, 189 P2d 912, affd 335 US 538, 93 L Ed 2d 222, 69 S Ct 258, 6 ALR2d 481. An attribute of sovereignty, comprehending the power to make and enforce all wholesome and reasonable laws and regulations necessary to the maintenance, upbuild-

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ing, and advancement of public weal and protection of public interests. *State ex rel. Whetsel v Wood*, 207 Okla 193, 248 P2d 612, 34 ALR2d 1321. That power in government which restrains individuals from transgressing the rights of others, and restrains them in their conduct so far as is necessary to protect the rights of all. *State v Dolan*, 13 Idaho 693, 92 P 995. The domestic order of the state, whereby the individuals thereof, like members of a well-governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their daily lives. *Hunter v Green*, 142 Fla 104, 194 So 379. The vast residual power of the state, comprising that portion of the sovereignty of the state not surrendered by the terms of the United States Constitution to the Federal Government. 16 Am J2d Const L § 262.

**police precinct.** A subdivision of the area of a municipality to which a part of the force of the city-officers and men are assigned for duty, normally having a station house.

**police problem.** A pressing element of emergency arising from impending danger to the community and demanding urgent attention to abate or avoid it. *Greenberg v Lee*, 196 Or 157, 248 P2d 612, 35 ALR2d 567. One who is a persistent violator of laws.

**police record.** A court record of the conviction or convictions of a person. Any record kept by police as to persons apprehended by them and the charges against such persons. *People v Yates*, 339 Ill 421, 171 NE 557.

**police regulations.** Statutes and ordinances dealing with the health, safety, and morals of the people. *Mitchell v Cumberland Tel. & Tel. Co.* 188 Ky 263, 221 SW 547, 10 ALR 946, 949.

See **police power.**

**police sergeant.** See **police department.**

**policy.** Expedience. A course of action. Principle. On a much lower scale, the numbers game.

See **numbers game; policy of insurance; public policy.**

**policy game.** Same as **numbers game.**

**policy loan.** See **loan on life insurance policy.**

**polycymaking.** A superior discretionary power or duty. Commonwealth ex rel. Meredith v Frost, 295 Ky 137, 172 SW2d 905.

**policy racket.** See **numbers game.**

**policy of insurance.** The parlance of the insurance business, the contract between the insured and the insurer. State ex rel. Sheets v Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. 68 Ohio St 9, 67 NE 93.

The formal document in which a contract of insurance appears. London Assur. Corp. v Paterson, 106 Ga 538, 32 SE 650.

See **annual dividend policy; assessment policy; blanket policy; deferred dividend policy; fire policy; life policy; old line policy; paid-up policy; running policy; term policy; tontine policy; valued policy; voyage policy; wager policy.**

**policy of the law.** The reason for and the principle of the law.

The expression is synonymous with the term "public policy." See Billingsley v Clelland, 41 W Va 234, 245, 23 SE 812.

See **public policy.**

**polio.** A colloquial term for poliomyelitis.

**poliomyelitis.** A disease which attacks the gray matter of the spinal cord, often causing paralysis. Cunningham v State, 18 Misc 2d 367, 186 NYS2d 146, rev'd on other grounds 10 App Div 2d 751, 197 NYS2d 542, aff'd 11 NY2d 808, 227 NYS2d 253, 181 NE2d 852. An infectious disease, especially of children, now well under control by virtue of medical and scientific research supported by funds obtained from well-founded charity.

**political activity.** Serving on a political committee, holding office in a party organization, making partisan speeches or campaigning for candidates. 30A Am J Rev ed Judges § 56.

**Politiae legibus, non leges politiis adaptandae.** Politics should be adapted to the laws, not the laws to politics.

**politic.** Expedient, especially in reference to the effect of a course of action upon others.

See **body politic; body politic and corporate.**

**political.** Pertaining to the government. Re Kemp, 16 Wis 359, 396. Pertaining to the establishment of a form of government. Commonwealth v McCarthy, 281 Mass 253, 183 NE 495, 85 ALR 1141. Pertaining to the activity of, or work for, a political party; pertaining to anything connected with candidacy for office or the support of a candidate for office.

**political body.** A body of government, such as a legislature or municipal commission. A body established as a source or administrator of governmental power, such as a state, a county, a municipality. Not the same as a political party. Brown v Finnegan, 369 Pa 609, 133 A2d 809.

**political compact.** A treaty between two or more nations. 52 Am J1st Treat § 3. A compact establishing a government.

See **Mayflower Compact**.

**political committee.** Any committee or combination of three or more persons co-operating to aid or promote the success or defeat of a political party. Anno: 125 ALR 1031. The organized force of a political party in the nation as the national committee, in the state as the state committee, and locally as a county or town committee, consisting of committeemen, elected in a primary election and leaders known as chairmen or executive committeemen, maintaining an office and staff of workers, particularly in the six months preceding an election.

**political convention.** See **convention**.

**political corporation.** Same as **public corporation**.

**political crime.** An offense against the government. Activity in a political uprising without reference to guilt of any specific offense. Anno: 94 ALR 1493; 31 Am J2d Extrad § 23.

**political division.** See **political subdivision**.

**political economy.** A word displaced by the modern term economics.

**political equity.** Those principles to be followed by states or nations in adjusting matters or controversies between them, such to be distinguished from the equity administered by a court of equity. Rhode

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Island v Massachusetts (US) 12 Pet 657, 738, 9 L Ed 1233, 1266.

**political liberty.** See **civil liberties**.

**political newspaper.** A newspaper published by a political party; a newspaper which adheres to and supports one political party over others.

**political offender.** See **political crime**.

**political office.** Any office of the civil government not connected with the administration of justice. United States v Fitzpatrick (US) 13 Wall 568, 20 L Ed 707, 708. Any office filled by a popular election. Any public office not within the civil service system, that is, one whose occupant is not protected in his tenure by civil service laws.

**political party.** A number of persons united in opinion and organized in the manner usual to the then existing political parties. State ex rel. Howells v Metcalf, 18 SD 393, 100 NW 923. An unincorporated association of persons sponsoring certain ideas of government or maintaining certain political principles or beliefs respecting governmental policy, formed for the purpose of urging the adoption and execution of such principles in governmental affairs through officers of like beliefs. 25 Am Rd Elect § 116. An organization which has polled a sufficiently large number of votes at the preceding general or municipal election to entitle it to nominate all its candidates for office and to elect all its party officers at primaries, under the provisions of the election law. Brown v Finnegan, 389 Pa 609, 133 A2d 809.

**political power.** That power which a sovereign or state exerts by his or its own authority. Rhode Island v Massachusetts (US) 12 Pet 657, 738, 9 L Ed 1233, 1266. The power of a political party, a group of persons, or even an individual to influence an election.

**political propaganda.** See **propaganda.**

**political purpose.** A purpose to influence the exercise of political rights. *Commonwealth v McCarthy*, 281 Mass 253, 183 NE 495, 85 ALR 1141.

**political question.** A question, the determination of which is a prerogative of the legislative or executive branch of the government, so as not to be appropriate for judicial inquiry or adjudication. 20 Am J2d Cts § 80.

It would be difficult to draw a clear line of demarcation between political and non-political questions, but among the questions which have been recognized as political rather than judicial in nature, none comes more clearly within the former classification than those which involve the propriety of acts done in the conduct of the foreign nations with our government. *Z. & F. Assets Realization Corp. v Hull*, 72 App DC 234, 114 F2d 464.

**political revolt.** The existence of war in a material sense rather than in a legal sense. *Three Friends*, 166 US 1, 41 L Ed 897, 17 S Ct 495. A turning away from the leaders of a political party theretofore recognized.

See **Young Turks.**

**political rights.** The power to participate directly or indirectly in the establishment or management of government. *People v Washington*, 36 Cal 658, 662. Constitutional rights, particularly the right of assembly, suffrage, and the right to be a candidate for and to hold public office.

**political subdivision.** A subordinate political body. A county, township, or municipal corporation. A territorial division to the electors of which there is committed to some extent the power of local government. *State v Corker*, 67 NJL 596, 52 A 362.

**politics.** The science of government. In a practical sense, political activity.

See **political activity.**

**polity.** A society with an organized government. An established government.

**poll.** Verb: To cut off, for example, the horns of a steer. To vote. To receive votes in an election. To canvass the electorate for the purpose of forecasting the result of an election. Noun: A head. An individual among several persons. A list of persons, particularly, a list of jurors or of voters. More precisely, a list of persons who voted at an election. *Citizens & Taxpayers of De Soto Parish v Williams*, 49 La Ann 422, 21 So 647.

See **catchpoll; challenge to the poll; deed poll; polls.**

**pollicitation.** A sort of contract recognized in the civil law which arises from a promise made by one party only, without any consent or acceptance by the other.

This peculiar kind of obligation exists only from an individual towards a body politic or government. *McCulloch v Eagle Ins. Co.* 18 Mass (1 Pick) 278, 283.

**polling jury.** Examining the jurors individually to ascertain whether they are unanimous in support of the verdict. 53 Am J1st Trial § 1015. A procedure whereby each juror is asked individually the finding at which he has arrived, creating individual responsibility by requiring each juror to answer for himself, and affording the court an opportunity to ascertain with certainty that a unanimous verdict has in fact been reached and that no juror has been coerced or induced to agree to a verdict to which he has not fully assented. 21 Am J2d Crim L § 371.

**polling place.** See **polls.**



**polls.** One of the places where the votes are cast at an election. The place of holding an election within a district, precinct, or other territorial unit. 26 Am J2d Elect § 228.

See **poll.**

**poll tax.** A tax of a fixed amount imposed upon all the persons, or upon all the persons of a certain class, resident within a specified territory, without regard to their property or the occupations in which they may be engaged. 51 Am J1st Tax § 38. A tax imposed upon each man of a certain age for road purposes, payable in cash or in services rendered in work upon the roads. 25 Am J1st High § 84. Abolished absolutely as a prerequisite to voting in federal elections by the Twenty-Fourth Amendment to the United States Constitution. 25 Am J2d Elect § 81.

**pollution.** See **air pollution; water pollution.**

**polo.** A game played by teams of four men each, mounted on horses, the object of which is to score by driving a small wooden ball with an instrument known as a mallet, through the goal of the opponents. Douglas v Converse, 248 Pa 232, 93 A 955.

**po. lo. suo.** An abbreviation of **ponit loco suo.**

**polyandry.** The state or condition of a woman who has more than one living husband.

**polycythemia.** A chronic condition of slow, insidious development, in which the red blood cells increase to exceed the maximum

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normal count of 5 million per cubic millimeter and the hemoglobin content of the blood increases to exceed the maximum normal of 85 per cent. Miller v Lykes Bros.-Ripley S. S. Co. (CA5 La) 98 F2d 185.

**Polygamia est plurium simul virorum uxorumve connubium.** Polygamy is the marriage with several husbands or wives at the same time.

**polygamy.** The offense or practice of marrying again by one who has a spouse living. Reynolds v United States (US) 8 Otto 145, 25 L Ed 244, 250. Popularly known as the practice of having several wives.

**polygarchy.** A government by several rulers.

**polygraph.** A machine for making copies of written instruments. An instrument which records the pulse of the heart in tracings.

**polymania.** The form of insanity which amounts to general mental alienation. Re Russell (NY) 1 Barb Ch 38, 41.

**polyphase.** See **multiphase.**

**polytechnic.** Pertaining to applied science and engineering.

**pomoeria.** The bounds. See 1 Bl Comm 30.

**pond.** A small body of water substantially at rest in its natural state, that is, without a substantial current. 56 Am J1st Wat § 50. A small body of water artificially created by impounding a stream or draining surface water to a depression. A confined or stagnant body of fresh water. Rockland Water Co. v Camden & Rockland Water Co. 80 Me 544, 15 A 785.

See **great ponds.**

**Ponderantur testes, non numerantur.** Witnesses are weighed, not counted. *Bakeman v Rose* (NY) 14 Wend 105, 109.

**pondus.** Same as **poundage**.

**pondus regis.** The king's weight, a standard weight established by parliament. See 1 Bl Comm 276.

**pone.** See **de pone**; **writ of pone**.

**ponendo sigillum ad exceptionem.** See **de ponendo sigillum ad exceptionem**; **ponendum sigillum ad exceptionem**.

**ponendum in ballium.** A writ which lay to admit a person to bail.

**ponendum sigillum ad exceptionem.** A writ which lay to compel the judges to place the seal of the court upon exceptions to rulings made at the trial of a case.

**pone per vadium et salvos plegios.** Put by gage and safe pledges.

A writ which was issued after the return of the original writ and the nonappearance of the defendant, ordering the sheriff to attach the defendant by taking gage, that is, certain of his goods, to be forfeited if he did not appear, or by making him find safe pledges or sureties to be amerced in the event of his nonappearance. See 3 Bl Comm 280.

**ponere.** (Latin.) To place. To put.

**poniard.** A dagger. *People v Ruiz*, 88 Cal App 502, 263 P 836.

**Ponit loco suo.** He put him in his place or stead.

**Ponit se super patriam.** He puts himself upon the country,—he leaves the matter for the jury to decide, that is, he pleads not guilty. See 4 Bl Comm 341.

**pontage.** A tax levied for the maintenance of a bridge; a toll charged for the use of a bridge.

**pontibus reparandis.** A writ directing the repair of a bridge.

**pontium reparatio.** The reparation of bridges.

This was a part of the *trinoda necessitas* which was an obligation falling on all freemen or at least on all free householders and to which their estates were subject, whatever other immunities they might enjoy. No rank or dignity could exempt a man from the service of rendering aid in the construction and repair of bridges and highways. *Butler v Perry*, 240 US 328, 60 L Ed 672, 36 S Ct 258.

**pontoon.** A float supporting a bridge or other structure. A vessel for the purposes of admiralty jurisdiction. *The Mackinaw* (DC Or) 165 F 351.

**pony-truck.** The truck of a locomotive resting on the small wheels which are in front of the driving wheels. *Eker v Pettibone* (CA7 Ind) 110 F2d 451.

**pool.** An association of persons engaged in buying or selling a certain commodity or commodities. *Kilbourn v Thompson*, 103 US 168, 26 L Ed 377. A contract or combination between competing producers or dealers in commodities, particularly those

of prime necessity, whereby the parties effect an illegal restraint of trade by agreement to refrain from competition and to divide profits from their respective businesses in fixed proportions. 36 Am J1st Monop etc. § 18. An arrangement between carriers for division of traffic. 44 Am J1st R R § 360. An agreement between carriers for a division of earnings. United States v Trans-Missouri Freight Asso. (CA8 Kan) 58 F 58. A cumulation of the products of members of a co-operative association for sale of the entire amount. Texas Farm Bureau Cotton Asso. v Stovall, 113 Tex 273, 253 SW 1101. An agreement to unite resources for the accomplishment of a particular purpose, as where the banks of a locality joined in a plan for aiding another bank in financial difficulty. 10 Am J2d Bks § 334. One of several related games of billiards, played by two or more persons on a table with pockets, with numbered balls, a tapered stick known as a cue ball, the object being to drive the balls into the pockets in the order of the numbers, Recreation Club Inc. v Miller, 192 Miss 259, 5 So 2d 678; a game sometimes played as a gambling game. 24 Am J1st Gaming § 21. A combination of persons, each staking a sum of money on the success of a horse in a race, or a contestant in a game, the money to be divided among the successful bettors according to the amount put in by each. 24 Am J1st Gaming § 23. In the most simple sense, a small body of water, such as a swimming pool.

See **car pool**.

**pooling.** Commingling the funds of several trusts for investment in one or more securities. 54 Am J1st Trust § 396. Forming a pool. Texas Farm Bureau Cotton Asso. v Stovall, 113 Tex 273, 253 SW 1101.

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See **pool**.

**pooling agreement.** See **pooling contract**.

**pooling commissions.** An objectionable practice by brokers severally representing the parties to a transaction in dividing the commissions on an even basis. 12 Am J2d Brok § 174.

**pooling contract.** A contract made in effecting a pool, an illegal contract where the pool is illegal. United States v Trans-Missouri Freight Asso. (CA8 Kan) 58 F 58.

See **pool**; **voting agreement**; **voting trust**.

**pooling royalties.** An arrangement whereby the owners of separate tracts of land share proportionately in the sum obtained by the payment of royalties on production of all oil wells within the entire area comprehended. 24 Am J1st Gas & O § 66.

**poolroom.** A room open to the public and equipped with tables, cues, etc. for the playing of pool or billiards, a charge being made the players by the keeper. 4 Am J2d Amuse § 24. A turf exchange; that is, a room or place where money is received, won, and lost on horse races, and where tickets for pools on horse races run, or to be run, at divers race courses, are bought, sold, and cashed. State v Vaughan, 81 Ark 117, 98 SW 685.

**pool selling.** A form of gambling; the receiving from several persons of wagers on the same event, especially a horse race, the total sum of which is to be divided among the winners, subject to the commission or charge exacted by the seller of the pool. 24 Am J1st Gaming § 24. A kind of gambling, but not a lottery. Commonwealth v Kentucky Jockey Club, 238 Ky 739, 38 SW2d 987.

**pool table.** "Apparatus" for the purposes of an exemption from execution. Anno: 2 ALR 821.

See **pool**.

**pool ticket.** A ticket issued by the person conducting a pool by way of gambling.

See **pool selling**.

**poor.** Destitute and helpless, lacking in ability to support oneself and without means of support. *Busser v Snyder*, 282 Pa 440, 128 A 80, 37 ALR 1515.

See **poor person**.

**poor debtors' acts.** Statutes whereunder a person arrested under body execution may obtain his discharge from custody by showing inability to satisfy the judgment.

**poor debtor's oath.** See **poor man's oath**.

**poor farm.** A farm lacking in productivity. A farm operated in connection with a poorhouse. 41 Am J1st Poor L § 33.

**poorhouse.** A place for the care of destitute persons who are unable to support themselves.

See **alms house; county farm**.

**poor laws.** See **welfare laws**.

**poor man's oath.** An oath taken by a person arrested under a body execution, whereby he may be discharged. 30 Am J2d Exec § 875. An affidavit, made by a plaintiff who, having a just cause of action against the defendant, is, by reason of his poverty, unable to give security for costs, stating that such is the fact. *Cole v Hoeburg*, 36 Kan 263, 13 P 275.

**poor man's will.** A name applied, preferably with tongue in cheek, to a joint bank account. 10 Am J2d Bks § 369.

**poor officers.** Overseers of the poor. Public officers whose duties pertain to the administration of public relief for poor and destitute persons. 41 Am J1st Poor L § 15.

**poor or poorest.** An ineffectual designation of the objects of one's bounty.

Whenever the term "poor" or the term "poorest" has been used to describe a beneficiary in a bequest or devise, it has been held to be insufficient for uncertainty. *McDonough's Executors v Murdoch* (US) 15 How 367, 398, 14 L Ed 732, 746.

**poor person.** A pauper; an indigent or destitute person. 41 Am J2d Poor L § 4. Any person in immediate need of means for obtaining food, clothing, shelter, or medical care, without reference to whether or not he has relatives liable for his support. *Goodale v Lawrence*, 88 NY 513.

**poor rate.** A tax levied to raise money for the relief and care of the paupers living in the district.

**poor relations.** As a designation of beneficiaries of a will, those persons entitled to take under the statute of distribution, without reference to the adjective "poor." Anno: 57 ALR 1185.

**poor relief.** Support provided the poor and destitute by a public body, better known in the present as welfare.

See **welfare; welfare laws**.

**poor risk.** A risk which an insurer does not want to cover.

**Pope.** The head of the Roman Catholic Church.

**Pope Clement.** See **Clementines**.

**Pope Gregory.** See **Gregorian calendar**.

**Pope John.** See **John XXIII.**

**Pope Paul.** See **Paul VI.**

**populaire.** See **action populaire.**

**popular action.** An action to recover a penalty, the cause being given by law to the people in general. 23 Am J2d Forf & P § 61. An action to recover a penalty, prescribed by statute and given to any informer, that is, to any such person as will bring suit for the penalty. *Miami Copper Co. v State*, 17 Ariz 179, 149 P 758.

**popular courts.** Old courts in England such as the hundred courts and the borough courts.

**popular government.** A government wherein the body of the nation keeps in its own hands the empire, or the right of command. Representative democracy, as in the United States. *McGowen v Stark*, 10 SCL (1 Nott & M'c) 387.

**popularity contest.** A contest conducted at a gathering of people, such as the audience in a theater, wherein votes are taken to determine the person to be acclaimed as the most popular. A facetious term applied to an election campaign wherein the candidates do not discuss principles.

**popular sense.** The meaning of a word or phrase according to contemporary usage. *Franklin Light and Power Co. v Southern Cities Power Co.* 164 Tenn 171, 47 SW2d 86.

**popular use.** Public use, inclusive not only of a use to which the public is entitled by law, but of occasional and precarious enjoyment of property by members of society in their individual capacities, had without the power to enforce such enjoyment at law.

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**populated area.** An area along a street or highway wherein so many people reside that a motorist must not drive at a high, excessive, or unwarranted rate of speed. 7 Am J2d Auto § 445.

**population.** The inhabitants of a place, a state, or a country. *Ludwig v Board of County Comrs.* 170 Neb 600, 103 NW2d 839.

**populiscitum.** (Roman law.) Same as **plebiscitum.**

**populus.** (Roman law.) The people, including all citizens of every class and rank.

**porch.** An extension of a building beyond the main wall, sometimes enclosed, sometimes open, providing a place of recreation and enjoyment, often, where situated on a level with the second floor, a place for sleeping. 20 Am J2d Cov § 251.

**porpoise.** A cetacean. A mammal of the ocean; a whale rather than a fish, although called a fish royal.  
See **fish royal.**

**port.** A place urban in character, contiguous to navigable waters, with facilities, for the loading, unloading, surfacing, outfitting, and provisioning of vessels. 38 Am J1st Ship § 223. Any place from which merchandise can be shipped for importation or at which merchandise can be imported. 19 USC § 232. In loose usage, a harbor; a safe station for ships. *Wharf Case (Md)* 3

Bland 361, 369. In a distinct sense, that side of a ship on one's left hand when facing the bow. In a more appealing sense, a dark red wine.

See **cinque ports; close port; foreign port; home port; public port.**

**portable steps.** Steps carried by a porter and put in place for use by passengers in boarding or departing a car. 14 Am J2d Car § 1010.

**Portal-to-Portal Pay Act.** A federal statute covering the matter of compensation of an employee for time spent on the employer's premises in reaching the place where his services are to be rendered in preparing to start actual work, and other nonproductive activities. 31 Am J Rev ed Lab § 633.

**portatica.** Port duties.

**port authority.** A state or local administrative authority vested with powers respecting the establishment and maintenance of a port, sometimes of an airport. Estrada v Parking Associates Corp. 37 Misc 2d 1033, 236 NYS2d 403.

**port charges.** Charges imposed against a vessel for services received at a port, such as charges for fumigation required under quarantine regulations. Dampskibs Aktieselskabet Jeanette Skinner v Munson S.S. Line (CA2 NY) 20 F2d 345.

See **port toll.**

**port district.** The area contiguous to a port. A port authority.

See **port authority.**

**porter.** An alcoholic beverage made from browned malt from which it derives color. 30 Am J Rev ed Intox L § 10. One who carries luggage of passengers at an airport, railroad station, etc. One in attendance upon the passengers in a sleeping car on a train. An officer of an English court who carried a white rod before the justices.

**portgreve.** The chief magistrate of an English seaport town.

**portion.** A part or share. In a narrow sense, the part of a parent's estate, or of the estate of one standing in the place of a parent, which is given to a child. Dickison v Dickison, 138 Ill 541, 544.

**portman.** An inhabitant of one of the so-called cinque ports of England.

See **cinque ports.**

**portmote.** An ancient court which was held in certain English seaports and in certain towns inland as well.

**port of arrival.** See **port of entry.**

**port of call.** A seaport at which ships usually stop on a given voyage or route.

**port of departure.** The port from which a vessel clears upon the commencement of a voyage.

The port of departure of a ship sailing from the port of a foreign country to a port of the United States, is the foreign port from which she clears and departs. If the vessel puts in at another foreign port after so clearing and before her departure for the United States, the port at which she thus stops is not her port of departure. United States v The Dago (CA4 Md) 61 F 986, 989.

**port of destination.** Taking into account, the whole of the outward voyage contemplated at the time a vessel clears, the port at which such voyage is to terminate. *Cole v Union Mot. Ins. Co.* 78 Mass (12 Gray) 501, 503.

**port of deportation.** The port from which an alien is deported. 3 Am J2d Aliens § 95.

**port of discharge.** Any place at which it is usual for ships to discharge cargo and to which a ship is destined for the purpose of discharging cargo. *Bramhall v Sun Ins. Co.* 104 Mass 510, 513.

See **safe port of discharge.**

**port of entry.** A port designated as one of entry for purposes of collecting custom duties. 21 Am J2d Customs § 6. Any place designated by executive order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws. 19 CFR § 1.1(d). The port at which immigrants arrive. 8 USC § 1221.

**port of unlivery.** The port in which a vessel is to discharge its cargo. *The Two Catherines* (CC RS) F Cas No 14288.

**portoria.** Plural of **portorium.**

**Porto Rico.** See **Puerto Rico.**

**portorium.** (Civil law.) Customs duty; a tax levied on exported and imported goods.

**portrait painting.** The profession or occupation of painting the portraits of persons.

**port risk.** The risk carried by an insurer upon a vessel while it is in port. *Nelson v Sun Mot. Ins. Co.* 71 NY 453, 459.

**portsale.** A public auction.

**port toll.** A toll charged for landing goods from a ship at a port.

See **port charges.**

**port to port.** The status of merchandise arriving at the port of entry for immediate transportation to another port of entry. 21 Am J2d Cust D §§ 72, 76.

See **voyage policy.**

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**port watch.** See **watch.**

**position in life.** See **social position; standard of living.**

**positive.** Absolute; certain. *Coleman v Roberts*, 1 Mo 97, 100.

**positive fraud.** Actual, as distinguished from constructive, fraud. 37 Am J2d Fraud § 4.

**positive community.** The community of interest existing where several persons own a thing, each having a particular and definite portion of the whole. *Geer v Connecticut*, 161 US 519, 525, 40 L Ed 793, 795, 16 S Ct 600, quoting Pothier.

**positive condition.** A condition which must happen to bring into existence a right or to bring about a defeasance.

**positive evidence.** The testimony of an eyewitness. *Commonwealth v Webster*, 59 Mass (5 Cush) 295. Testimony to the affirmative of a proposition, that is, that a certain event did occur in the sight or hearing of the witness, as distinguished from testimony in the negative, that is, that the witness did not see or hear any such happening. 30 Am J2d Ev § 1092.

**positive fraud.** Actual, as distinguished from constructive fraud. Intentional deception. 37 Am J2d Fraud § 4.

**positive law.** The rules of conduct established by tacit acquiescence or by the legislature, and which derive their force and authority from such acquiescence or enactment, and not because they are the dictates of natural justice, and as such, of universal obligation. *Commonwealth v Aves*, 35 Mass (18 Pick) 193, 212.

**positive prescription.** (Civil law.) The Roman *usucapio*, which is the acquisition of property, real or personal, immovable or movable, by the continued possession of the acquirer for such a time as is described by the law to be sufficient. *Townsend v Jemison* (US) 9 How 407, 417, 13 L Ed 194, 198.

**positive representation.** A statement made without qualification express or implied. 37 Am J2d Fraud § 203.

**positive right.** An unqualified right-one which is not dependent upon, and which in fact does not admit of any exercise of, discretion. *Chapman v Dorsey*, 230 Minn 279, 41 NW2d 438, 16 ALR2d 1015.

**positive testimony.** See **positive evidence**.

**positivi juris.** Of positive law.

**Posito uno oppositorum negatur alterum.** By the establishment of one of two opposing propositions, the other one is denied.

**positus.** (Latin.) Placed.

**posse.** Noun: A body of men, even a single man, summoned by a sheriff or other peace officer to assist him in making an arrest. The power or force of the county. Verb: (Latin.) To be able; to be possible.

**posse comitatus.** The body of men summoned by a sheriff or other peace officer to assist him in making an arrest. Better known in modern usage as a posse.

See **posse**.

**possess.** To have possession.

**possessed.** Mad; under the control of evil spirits. Having possession. Seized. *Flowers v Flowers*, 89 Ga 632, 635.

The term is a variable one in the law, and has different meanings as it is used in different circumstances. It sometimes means a temporary interest in lands; as we say a man is possessed, in contradistinction to being seized. It sometimes implies the corporal having; as we say a man is seized and possessed. But it sometimes implies no more than that one has a property in a thing; that he has it as owner; that it is his. In this sense it may be used even though an intruder may have excluded the owner for the time being. And there is never any impropriety in making use of the term when the only possession the intruder has is apparently subordinate to that of the general owner. *Mayor of Detroit v Park Com.* 44 Mich 602, 603.

**possessio.** (Civil law.) That condition in which a person exercises his power over a corporal thing at his pleasure, to the exclusion of all others. The physical relation between a person and a thing which forms the basis of every notion of possession. See Mackeldey's Roman Law § 238.



**possessio bonae fidei.** (Civil law.) Possession in good faith,—the possession of one who believes that no other person has a better right to the possession than himself. See Mackeldey's Roman Law § 243.

**possessio bona fide.** Possession in good faith.

**possessio bonorum.** (Civil law.) The possession of goods. An official installation into the estate of a decedent in consequence of a petition therefor which the praetor granted. See Mackeldey's Roman Law § 657.

**possessio civilis.** (Roman law.) Civil possession,—a possession under a claim of ownership; a possession which anticipated the acquisition of ownership by prescription. See Mackeldey's Roman Law §§ 241, 285.

**Possessio est quasi pedis positio.** Possession is, as it were, the position or placing of the foot.

**possessio fratris.** The possession or seisin of the brother.

**Possessio fratris de feodo simplici tacit sororem esse haeredem.** The possession or seisin of the brother in fee simple, makes the sister the heir. See 2 BI Comm 227.

**Possessio fratris facit sororem esse haeredem.** The possession of the brother makes the sister the heir. See 2 BI Comm 227.

**possessio malae fidei.** Possession in bad faith,—the possession of a person who knows that he is not entitled to the possession. See Mackeldey's Roman Law § 243.

**possession.** Occupancy and exercise of dominion over property. 42 Am J2d Prop § 42. The exercise of dominion over land, even without a residence thereon. *Morrison v Kelly*, 22 Ill 610. A holding of land legally by one's self or through another, such as a lessee, under title, estate, or interest of any kind. *Whithed v St. Anthony & Dakota Elevator Co.* 9 ND 224, 83 NW 238.

Respecting real property, possession involves exclusive dominion and control such as owners of like property usually exercise over it. The existence of such possession is largely a question of fact depend-

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ent on the nature of the property and the surrounding circumstances. 35 Am J2d Forc E & D § 20.

To constitute possession, within the meaning of a reconveyance act requiring a tax title holder, in order to preserve his interest against redemption, to take possession or institute a proceeding to secure possession within the time provided, the land must be appropriated to the individual use in such a manner as to apprise the community that it is in the exclusive use and enjoyment of the person so appropriating it. *Pickens v Adams*, 7 Ill 2d 283, 131 NE2d 38, 56 ALR2d 605.

What amounts to possession and what to mere custody in the law of larceny cannot be determined according to any settled formula, but the question in any particular case must depend largely upon the capacity in which the accused was given access to or dominion over the property taken, and upon the powers or duties which the owner gave or imposed upon him with respect thereto. For example, one to whom property is delivered by the owner for some limited, special, or temporary purpose may be regarded as having its custody only, and as capable of committing larceny thereof. Hence, if the owner gives property to another to take to the owner's house, and such other person wrongfully sells it, he is guilty of larceny, although he conceived the intent and purpose so to dispose of it after he had received it. 32 Am J1st Larc § 56.

**possessio naturalis.** (Roman law.) Natural possession.

Every other kind of possession not qualified for usucapion, whether mere detention or juridical possession, in contradistinction to *civilis possessio*, was termed *naturalis possessio*. See Mackeldey's Roman Law § 241.

**possession by inclosure.** An actual adverse possession by inclosing or fencing premises, accompanied by other acts evidencing claim of ownership. *Faulks v Schrider*, 72 App DC 308, 114 F2d 587.

**possession in deed.** Same as **possession in fact**.

**possession in fact.** Actual possession, sometimes called possession in deed,—an actual and continuous occupancy or exercise of full dominion.

This may be either, first, an occupancy in fact of the whole that is in possession, which is ordinarily called *pedis possessio*, and may be called substantial possession, or, second, an occupancy of part thereof in the name of the whole, where there is sufficient evidence of the bounds of the whole that is claimed as one entirety, and the circumstances are such that the law extends the possession of the part that is occupied to these bounds. 42 Am J1st Prop § 42.

**possession in law.** A constructive possession as distinguished from possession in deed, or in fact, by way of actual occupancy; that possession which the law annexes to title. 42 Am J1st Prop § 42.

**possession of burglars' tools.** A criminal offense, especially where the possession is with intent to use the tools for the purpose of effecting a burglary. 13 Am J2d Burgl § 74.

**possession of game.** As a criminal offense, the possession of game taken during the closed season. 35 Am J1st Fish § 50.

**possession of land.** See **possession**.

**possession of liquor.** Having personal charge of or exercising the right of ownership, management, or control over liquor. 30 Am J Rev ed Intox L § 59.

**possession of liquor-making materials.** As a criminal offense, an actual possession with control of the goods and an intent to violate the law. 30 Am J Rev ed Intox L § 59.

**possession or enjoyment provision.** A statutory provision taxing transfers intended to take effect in possession or enjoyment at or after death. 28 Am J Rev ed Inher T § 159.

**possessions.** Technically referring to personalty, but subject to construction, where it appears in a will, as including real estate. 57 Am J1st Wills § 1338.

**Possessio pacifica pour anns 60 facit jus.** Peaceable possession for sixty years establishes a right.

**possessio pedis.** See **pedis possessio**.

**possessio vaut titre.** Possession is as valuable as title.

**possessor.** One who possesses. The person in possession.

**possessor bona fide.** See **bona fide possessor**.

**possessor in bad faith.** A person who possesses as owner, but who well knows that he has no title to the thing, or that his title is vicious and defective. *Gaines v Hennen* (US) 24 How 553, 16 L Ed 770, 775.

**possessor malae fidei.** (Civil law.) A possessor who knows that he is not entitled to the possession.

**possessory action.** An action brought to recover possession of property. An action to recover possession of real estate, such as ejectment. An action to recover possession of personal property, such as **replevin**.

In Louisiana, an action to recover the possession of personal property is called a possessory action. *Preston v Zabrisky*, 2 La 226, 227.

**possessory interest.** A temporary, qualified property in the things of which the mere possession is delivered to a person. 8 Am J2d Bailm § 71.

**possessory judgment.** A judgment which establishes the right to possession. In Scottish law, a judgment giving a party the right to possession until the question of possession be decided in due course of law.

**possessory lien.** A lien which continues only during the possession of the lienor.

**possessory proceeding.** See **possessory action; summary possessory proceeding**.

**possessory warrant.** A process resembling a search warrant used in criminal proceedings, but differing in that it is a civil process under which the property is to be delivered to the person from whom it was violently or fraudulently taken or enticed away or in whose peaceable and lawful possession it last was. *Claton v Ganey*, 63 Ga 331, 332.

**possibilitas.** A possibility.

**possibility.** That which is not contrary to the nature of things and can be accomplished; that which is capable of being conceived or thought of. *Topeka City Railway Co. v Higgs*, 38 Kan 375, 16 P 667. A mere or bare possibility, such as an expectancy. A real possibility in the sense of a potentiality.

See **expectancy**.

**possibility of death.** The possibility of the occurrence of death in an unexpected manner. The possibility of death before termination of the normal span of

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life. The expectation of death which must come ultimately to all men.

**possibility of issue.** See **possibility of issue extinct**.

**possibility of issue extinct.** A contingency affecting the character of an estate as vested or contingent, as continuing or as terminated. 28 Am J2d Est § 319. A concept to be denied, both American and English authorities being in accord upon the proposition that, for the purpose of determining whether there is a violation of the rule against perpetuities, the possibility of issue is never considered extinct as long as a person lives. 41 Am J1st Perp § 26.

The courts have declined to fix a period in a woman's life beyond which she cannot have children, or to assert that there is an age limit beyond which they will feel justified in declaring that a woman cannot give birth. *United States Fidelity & Guarantee Co. v Douglas*, 134 Ky 374, 120 SW 328.

The law does not assume that there is an impossibility of issue at any age, however great, so that a remainder to the children of a woman who has an estate for life is not extinguished until her death, although she may be very old and childless. 28 Am J2d Est § 319.

Although it is a recognized legal presumption that the possibility of issue is never extinct as long as a person lives, the courts nevertheless have on occasion sanctioned distribution of a testamentary gift prior to the death of the woman on whose

failure of issue or further issue it was conditioned, upon the theory that, because of her age or physical condition, the improbability of her having children or more children has been established to such a degree that distribution should be permitted. Anno: 67 ALR 542, 543.

As to the doctrine of possibility of issue, see Anno: 98 ALR2d 1285.

**possibility of performance.** See **impossibility of performance.**

**possibility of reverter.** A type of future interest, if it may be properly designated as an interest, which remains in a grantor by deed or his successor in interest or in a testator's heirs or devisees where, by grant or devise, there has been created an estate in fee simple determinable or an estate in fee simple conditional, the fee automatically reverting upon the occurrence of the event by which the estate is limited. Anno: 16 ALR2d 1247; 28 Am J2d Est § 182.

There is a difference between a true possibility of reverter and a power of termination which consists of a right of entry for condition broken retained by the grantor of a fee upon a condition subsequent. *Donehue v Nilges* (Mo) 266 SW2d 553, 45 ALR2d 1150. Some authorities, however, designate the right of reentry for condition broken or the power of termination which remains in the grantor or his successors in interest or in the heirs or devisees of a testator, where an estate on condition subsequent has been created, as a "possibility of reverter." 28 Am J2d Est § 182.

**possibility on possibility.** A fatal defect at common law in limitations of future interests. 41 Am J1st Perp § 5. Illustration: a limitation for the life of an unborn person with a limitation after his death to his unborn children. *Greenleaf v Greenleaf*, 332 Mo 402, 58 SW2d 448.

**possible.** Liable to happen or come to pass; capable of existing or of being conceived or thought of; capable of being done; not contrary to the nature of things. *Topeka City Railway Co. v Higgs*, 38 Kan 375, 383, 16 P 667, 674.

See **possibility.**

**post.** Noun: A military establishment where a body of troops is permanently on duty. *United States v Caldwell* (US) 19 Wall 264, 268, 22 L Ed 114, 116. The area assigned to a sentry for the performance of his duty. An upright support, such as in a fence or porch. Verb: To make entries in a ledger from entries previously made in day book or journal. *Arnold v Barrier*, 100 Kan 36, 163 P 805. To put a letter in the mail. To keep another informed. To keep one's self informed. To attach a written notice or bulletin to a wall, post, or board, so that the contents will be displayed to the public for the information of the public. *Iowa-Missouri Grain Co. v Powers*, 198 Iowa 208, 196 NW 979, 33 ALR 1268, 1270. Adverb: After; afterward.

See **posting.**

**post act.** A subsequent act; an act done afterwards.

**postage.** The charge imposed by the mail service for carrying matter by mail.

See **postage stamp.**

**postage stamp.** An adhesive stamp in various convenient denominations, purchased at a post office or through some other instrumentality of the post office department, and affixed to matter placed in the mail by way of prepayment of the postage upon such matter. *United States v One Zurnstein Briefmarken Katalog* (DC Pa) 24 F 516.

**postal card.** A card for mailing, produced by the post office department and sold through its instrumentalities, used for brief messages, and sent as first class mail.

See **post card.**

**postal certificates.** Instruments issued to postal savings depositors which could be surrendered in exchange for United States bonds. *Pimpel v Pimpel* (Ky) 253 SW2d 613, 35 ALR2d 1092.

**post card.** A card for mailing, privately produced and sold, usually containing a picture or words of greeting or congratulation on one side. Sent as first class mail.

See **postal card**.

**postal clerk.** See **mail clerk**.

**postal inspector.** A position in the United States postal service involving inspection and investigation in all phases of the postal service. 39 USC § 3523(a).

**postal laws.** The laws pertaining to the United States mail.

See **mail**.

**postal money order.** See **post-office money order**.

**postal note.** A post-office money order not exceeding ten dollars in amount. 39 USC § 5105.

See **post-office money order**.

**postal officers.** Federal officers whose duties pertain to the mails and post offices.

**postal savings.** A system once provided by the United States Postal Service whereby persons might open and maintain savings accounts with the Service, discontinued by Act of March 28, 1966; 80 Statutes at Large 92.

**postal service.** The handling of the mails.

See **mail**.

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**postal zones.** See **parcel-post zone**.

**post conquestum.** After the Conquest.

See **Norman Conquest**.

**post conspicuously.** To post a notice prepared in such a manner and posted in such a place that it is easily observed and easily read. R.S. Oglesby Co. v Lindsey, 112 Va 767, 72 & E 672.

**Post-conviction Procedure Act.** A uniform law which provides that a person convicted of a crime and incarcerated under sentence of death or imprisonment who claims that his sentence was imposed in violation of the United States Constitution or the Constitution or laws of the state, or that the sentencing court had no jurisdiction, or that the sentence exceeds the authorized maximum, or that the sentence is otherwise subject to collateral attack upon any ground of error previously available under a writ of habeas corpus or of coram nobis or other common-law or statutory remedy, may institute a proceeding under the act to set aside or correct the sentence, which proceeding comprehends and takes the place of all other common-law and statutory remedies previously available and is to be used exclusively in lieu thereof. 18 Am J2d Coram Nobis § 30.

**postdate.** To place a future date, as the date of its execution, upon an instrument which is presently executed.

**postdated check.** A check carrying a date later than the date of actual execution, such being held to be payable at sight, or upon presentment thereof at the bank, at any time on or after the day of its date as such appears on the instrument. 11 Am J2d B & N § 287.

**postdated instrument.** An instrument for the payment of money dated as of a day after the execution and delivery of the instrument. 11 Am J2d B & N § 208.

See **postdated check**.

**post diem.** After the day.

**post disseisin.** After the disseisin, a disseisin following a recovery of seisin, committed by the same disseisor.

**post disseisinam.** Same as **post disseisin**.

**postea.** An indorsement on the record, made in the trial court, reciting all the proceedings had in the trial court after the cause was ready for trial. 27 Am J2d Eq. § 243.

**posted notice.** See **post**; **posting**.

**post entry.** An entry added to an account or list previously completed, such as the manifest of a ship. 19 USC § 1440.

**Posteriora derogant prioribus.** Later things derogate from earlier ones.

**posteriores.** (Roman law.) Descendants who follow in a direct line beyond the sixth degree.

**posteriority.** The state or condition of anything which follows in point of time.

**posterity.** Descendants, inclusive of children, grandchildren, even of the remotest of generations in the descending line. In modern usage, the generations to follow the one which comprises the present social order, God help them. *Breckinridge v Denny & Faulkner*, 71 Ky (8 Bush) 523, 527.

**post exchange.** A mercantile establishment conducted on a military reservation or military camp for patronage by members of the armed forces and their families.

**post facto.** After the fact; after the commission of the crime.

See **ex post facto**.

**post-factum.** An after act; an act which is done afterward.

**post fine.** See **king's silver**.

**postgraduate institution.** An educational institution, usually styled a university, having courses of instruction for college graduates leading to doctorate, master-of-arts, or professional degrees. 15 Am J2d Colleges § 1.

**post hoc.** After this. Indicating in reference to an accident or other distinct event, that which happened after the event. *Reynolds v Texas & P. Railroad Co.* 37 La Ann 694.

**posthumous.** Literally, after burial. In common usage, after death, particularly the death of the father.

**posthumous child.** A child born after the death of the parent. A child in being from the time of conception, for the purpose of the rule of descent, provided he or she is born alive with reasonable assurance of continuing to live. 23 Am J2d Desc & D § 88. A child living within the meaning of a bequest to "children living." Hall v Hancock, 32 Mass (15 Pick) 255.

**posthumous work.** The product of an author whose death occurred before publication. Shapiro, Bernstein & Co. v Bryan (CA2 NY) 123 F2d 697.

**Posthumus pro nato habetur.** A posthumous child is regarded as born before the death of the father.

Where a gift is to "children born," it is doubtful whether this maxim of the civil law would be followed. Nevertheless, a child en ventre sa mere is to be considered a child living, so as to take under a bequest to "children living." Hall v Hancock, 32 Mass (15 Pick) 255.

**posting.** A method of publication, for example, the posting of an ordinance in one or more places within the municipality. Simpson v Highwood, 372 Ill 212, 23 NE2d 62, 124 ALR 1459. The giving of notice by posting a written or printed copy in one or more places as the statute may require. 39 Am J1st Notice § 31. A method of service of process. 42 Am J1st Proc § 102. Mailing. Making entries in a ledger from entries previously made in day book or journal.

See **post.**

**post letter.** A letter put into the mail.

While there are English cases holding the other way, the general rule of decision in this country is that a letter may be a post letter even though it is directed to a fictitious address, and that whether it can be delivered or not is of no consequence. Goode v United States, 159 US 663, 40 L Ed 297, 16 S Ct 136.

**postliminary.** The antonym of preliminary. McComb v C. A. Swanson & Sons (DC Neb) 77 F Supp 716.

**postliminary activities.** An expression of the Portalto-Portal Pay Act, referring to necessary activities

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of an employee following the work shift. 31 Am J Rev ed Lab § 637.

**postliminium.** Same as **postliminy.**

**Postliminium fingit eum qui captus est in civitate semper fuisse.** (Civil law.) Postliminy conceives him who was captured always to have been within the state.

**postliminy.** The law under which property, if taken by an enemy in time of war, is restored to its former state, upon coming again under the power of the nation to which it formerly belonged. Herbert v Moore (Tex) 1 Dall 592, 593. The resumption by a prisoner of war of his civil rights after his release; the restoration of property captured in war to its owner, after recapture. Leitensdorfer v Webb, 1 NM 34, 44.

**post litem motam.** After the commencement of the action, suit, or litigation.

**postman.** A mailman making deliveries on a route, particularly a city route. In the court of exchequer, two of the most experienced barristers, called the postman and the tub-man (from the places in which they sit), have a precedence in motions. See 3 Bl Comm 28, note.

**postmaster.** One holding a public office established for the benefit of the public in the operation of a post office, the receipt and distribution of the mails from such office, and such other matters as are prescribed by statute for performance by the incumbent. 41 Am J1st P O § 12.

**Postmaster General.** The head of the Post Office Department of the United States Government and a member of the Cabinet of the President. 41 Am J1st P O § 9.

**post meridian.** After noon.

**post-mortem.** After death.

**post-mortem examination.** See **autopsy.**

**post mortem inquisitio.** An inquisition after death,—an inquest, held before a jury of the county, which was instituted to inquire (at the death of any man of fortune) the value of his estate, the tenure by which it was held, and who, and of what age his heir was; thereby to ascertain the relief and value of the primer seisin, or the wardship and livery which should thereupon accrue to the king. See 2 Bl Comm 68.

See **inquest.**

**postnati.** Plural of **postnatus.**

**postnatus.** A person born in the country subsequently to a great political event occurring in that country. Dawson's Lessee v Godfrey (US) 4 Cranch 321, 2 L Ed 634.

**post-note.** A note issued by a bank, but distinct from a bank note, which formerly passed as currency, since payable at a future time.

**postnuptial.** After marriage.

**postnuptial agreement.** See **marriage settlement; property settlement; separation agreement.**

**postnuptial settlement.** See **marriage settlement; property settlement.**

**post obit bond.** See **bond post obit.**

**post obit note.** A promissory note payable a specified time after the death of the maker. 11 Am J2d B & N § 172.

**post office.** A particular building or place for the receipt, handling, and delivery of mail matter, or the transaction of other business in connection with the postal service. 41 Am J1st P O § 2.

See **branch post office; mail.**

**post-office clerk.** A federal employee in the mail service, his duties, performed in a post office, consisting in handling, distributing, and delivering mail, and in transacting with patrons of his office such business as they may have in reference to the mails and the office.

**Post Office Department.** A department of the federal government charged with the establishment and maintenance of post offices and post roads, the transmission, distribution, and delivery of the mail. 54 Am J1st US § 53.



**post office inspector.** See **postal inspector.**

**post-office money order.** An order for the payment of money issued by a postmaster in accord with a money order system of the United States Postal Service established for convenience and safety in the remission of funds. 39 USC § 5101. An order for the payment of money to the payee named therein, drawn by one post office upon another under authority of an act of Congress and departmental regulations. 11 Am J2d B & N § 32; 41 Am J1st P O § 44.

**postoperative treatment.** Treatment of a patient after surgery. 41 Am J1st Phys & S § 98.

**postpone.** To defer. "To delay." *Boies v Henney*, 130 Ill 130, 146. To delay one creditor by granting a preference to another.

**postponement.** Deferment. Delay. Often used as synonymous with continuance, but preferably in the sense only of a delay in trial by putting the trial over to another day of the term or to a later hour of the same day. 17 Am J2d Contin § 1.

**postponement of enjoyment.** See **rule against postponement of enjoyment.**

**postponement of lien.** The subordination of alien to another lien on the same property entitled to priority. 9 Am J2d Bankr § 562.

**postponement of limitations.** The suspension or interruption of the running of a statute of limitations. 34 Am J1st Lim Ac §§ 186 et seq.

**postponement of trial.** See **postponement.**

**post prolem suscitata.** After issue born.

**post rem.** After the transaction; after the closing of the transaction; after the occurrence of the act.

**postremo-geniture.** Another name for borough-English, which was a custom attached to burgage tenure whereby the youngest, and not the eldest, son succeeded to the tenement on the death of his father. See 2 Bl Comm 83.

**post rem statement.** A statement or declaration made after the act or the completion of the transaction. 29 Am J2d Ev § 605.

**post road.** A road over which the mail is carried.

See **post routes.**

**post routes.** All public roads and highways while kept up and maintained. 39 USC § 482. All the waters of the United States during the time the mail is carried thereon, all the railroads or parts of railroads and all air routes which are now, or hereafter

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may be, in operation; all canals and plank roads during the time the mail is carried thereon; the road on which mail is carried to supply any court house which may be without a mail; the road on which mail is carried under contract made by the Postmaster General for extending the line of post to supply mails to post offices not on any established route, during the time such mail is carried thereon; and all letter-carrier routes established in any city or town for the collection and delivery of mail matter. 39 USC § 481.

**postscript.** An addition to a letter appearing after the signature. Something added by the author at the end of a book or article.

**post-terminal sittings.** Sessions of the court which are held after the expiration of the term.

**post terminum.** After the term. post-town. Any town containing a post office.

**postulatio.** (Roman law.) An application or petition which was presented to the praetor for leave to accuse a person of having committed a crime.

**postulatio actionis.** (Roman law.) An application or petition which was presented to the praetor for leave to institute an action.

**post-verdict proceedings.** Literally, any proceeding in a case after verdict returned. Specifically, proceedings after verdict rendered in the jury trial of an equity suit. 27 Am J2d Eq § 243.

**pot.** A cooking vessel of metal, earthenware, or glass. Slang for the abdomen of a person, also for marijuana.

**potable.** Capable of being used as a drink.

See **drinkable.**

**potability.** Capability for use as a beverage. Anno: 91 ALR 518.

**potentate.** A very powerful ruler or sovereign.

**potentia.** Power; ability; authority; supremacy; a possibility.

**Potentia debet sequi justitiam, non antecedere.** Power ought to follow justice, it ought not to precede it.

**Potentia est duplex, remota et propinqua; et potentia remotissima et vana est quae nunquam venit in actum.**

Possibility is double, remote and near; that which never comes into action is a power the most remote and vain.

**Potentia inutilis frustra est.** Useless power is vain.

**potential.** Latent. Endowed with energy. Unrealized. Undeveloped, as in the case of the possibility of disability from a hernia. Ashworth v Calcasieu Paper Co. (La App) 85 So 2d 681, 684.

**potential existence.** An existence which, while not in actuality, is to come as a natural product of something which is in actual existence. Dickey v Waldo, 97 Mich 255, 56 NW 608. As characterizing the subject matter of a sale:—the natural product or the expected increase of something already belonging to the seller. O'Hare v Peacock Dairies, 26 Cal App 2d 345, 79 P2d 433.

**potentially.** In possibility not in act, not positively; in efficacy, not in actuality. Long v Hines, 40 Kan 220, 19 P 796.

**potential possession.** A characterization of the principle whereunder the owner of land is able to sell future crops to be grown thereon, the owner of cows to dispose of their future offspring, and a lessee under an oil and gas lease to transfer effectively a percentage interest in his production. 24 Am J1st Gas & O § 94.

**Potentia non est nisi ad bonum.** Power does not exist, except for good.

**potentia propinqua.** A near or common possibility, such as death without issue. See 2 Bl Comm 169.

**potentia remotissima.** A possibility the least likely to come to fruition in occurrence.

**potestas.** (Civil law.) Power; authority; official authority; magistracy.

**Potestas delegata non potest delegari.** Delegated power or authority cannot be delegated. Warner v Martin (US) 11 How 209, 223, 13 L Ed 667, 672.

**Potestas regis est facere justitiam.** The power of the king is to execute justice.

**Potestas regis juris sit, non injuriae.** The power of the king is of right, not of injury.

**Potestas stricte interpretatur.** Power is to be strictly interpreted.

**Potestas suprema seipsum dissolvere potest, ligare non potest.** Supreme power can dissolve itself; it cannot bind itself.

**potestate parentis.** See **in potestate parentis.**

**Potest quis renunciare pro se, et suis, jus quod pro se introductum est.** Anyone can renounce for himself and his (successors) a right which has been created in his behalf.

**pot hunting.** Killing game indiscriminately. More precisely, hunting for the purpose of marketing game. 35 Am J2d Fish § 34.

**Potior conditio defendentis.** The position of the defendant is the stronger.

Where there is turpitude, the law will help neither party. The maxim applies in such a case. Burke v Child (US) 21 Wall 441, 22 L Ed 623.

**Potior est conditio defendentis.** The position of the defendant is the stronger.

**Potior est conditio possidentis.** The situation of the party in possession is the stronger. Magoun v Lapham, 38 Mass (21 Pick) 135, 140.

**pot shot.** An easy shot by a hunter; a shot at a sitting bird or reclining game animal without arousing it so as to give it a chance for its life.

**Pott's fracture.** A fracture consisting of the breaking of one bone of the lower leg between the knee and ankle joints, and a severance of the malleolus process of the other one so as to effect

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a complete solution of the continuity of both bones. Peterson v Modern Brotherhood, 125 Iowa 562, 101 NW 289.

**potwallopers.** The voters of certain English boroughs who were qualified by reason of the fact that they cooked their own food.

**Poultry Counter.** A name which was given to one of the ancient prisons in London.

**pound.** A place for confinement of strays and other animals found running at large illegally, maintained by public authority or maintained by a private agency through contract or arrangement with public authority. Massachusetts Society for Prevention of Cruelty to Animals v Commissioner of Public Health, 339 Mass 216, 158 NE2d 487; Harriman v Fifield, 36 Vt 341, 345. A unit of weight, sixteen ounces avoirdupois, twelve ounces troy. The monetary unit of Great Britain, equalling twenty shillings.

**poundage.** Fees to which a sheriff is entitled for official services. Commissions or fees to which a trustee or officer of the court is entitled for making a judicial sale. 30A Am J1st Jud S § 46.

**poundage fees.** See **poundage.**

**pound-breach.** The forcible taking of animals from a pound, after they have been actually impounded there. See 3 Bl Comm 146.

**poundmaster.** A municipal officer in charge of an animal pound. 4 Am J2d Am § 48.

**pound net.** See **Dutch net.**

**pour autrui stipulation.** Same as **stipulation pour autrui.**

**pour compte de qui il appartient.** For account of whom it may concern.

**pourparler.** (French.) Negotiations leading up to an agreement, contract, or treaty.

**pourparty.** Same as **partition.**

**pourpresture.** Same as **purpresture.**

**pourprise.** See **purpresture.**

**pour seisir terres.** A writ which lay for the seizure by the crown of lands held in dower by the widow of a tenant in capite, if she re-married without the consent of the king.

**poursuivant.** A messenger of the king.

**pourveyor.** Same as **purveyor.**

**poustie.** Power.

**poverty.** Absence of assets. Bowersox's Appeal, 100 Pa 434. The condition of being poor, that is, lacking means sufficient for comfortable living.

See **poor; poor person.**

**poverty affidavit.** See **poor man's oath.**

**poverty and immorality.** By no means synonymous. Edwards v California, 314 US 160, 86 L Ed 119, 62 S Ct 164.

**powder mark.** A mark on the skin of a person or object hit by a bullet from a gun fired at close range. Aetna Life Ins. Co. v Milward, 118 Ky 716, 82 SW 364.

**power.** The ability to act, regarded as latent or inherent; the faculty- of doing or performing something; capacity for action or performance. Bradley v State ex rel. Hill, 111 Ga 168, 36 SE 630. Authority in the sense of jurisdiction or the exercise of jurisdiction. Kendall v United States (US) 12 Pct 524, 622, 9 L Ed 1181, 1220. Authority, as the authority of an agent.

Capability of acting to bind one's self or another. In some contexts, a permissive or discretionary term. *Wadsworth v Eau Claire County*, 102 US 534, 26 L Ed 221. A power of appointment. Physical force. A term exclusive of hand power in workmen's compensation statutes. 58 Am J1st Workm Comp § 117.

**Power Act.** A comprehensive federal statute setting forth a complete plan for the development and improvement of navigation and for the development, transmission, and utilization of electric power in any of the streams or other bodies of water over which Congress has jurisdiction under its commerce powers, and upon the public lands and reservations of the United States under its property powers. 16 USC §§ 791(a) et seq.

**power appendant.** A power of appointment existing under the circumstances that it is given to a person having an estate in the property and the estate to be created by the power is to take or may take effect in possession, during the continuance of the estate to which the power is annexed, as a power to a life tenant in possession to make leases. 41 Am J1st Pow § 5.

**power appurtenant.** Same as **power appendant**.

**powerboat.** A boat which is propelled by power other than man-power. *United States v Olson* (DC Ky) 41 F Supp 433.  
See **motorboat; outboard**.

**power collateral.** Same as **collateral power**.

**Power Commission.** A commission created by the Federal Power Act, consisting of five members appointed by the President, by and with the consent of the Senate, to carry out the provisions of the act, including the regulation of electric utility companies engaged in interstate commerce. 43 Am J1st Pub Util § 236.

**power coupled with an interest.** A power conferred by a writing which vests in the agent an interest or property in the subject of the agency, not merely an interest in the proceeds or results of the exercise of the agency. *Cox v Freeman*, 204 Okla 138, 227 P2d 670, 28 ALR2d 430. A power of appointment coupled with an interest in the thing itself, that is to say, a power engrafted on the estate in the thing, not on the product of the exercise of the power. 41 Am J1st Pow § 5.

**power district.** An improvement district organized to establish and administer a project for the creation and distribution of electric power to consumers, or a district created as a special assessment district to function in the making and collection of special assessments for funds to build a power plant to be administered by a municipality or counts. 48 Am J1st Spec A § 114. Sometimes regarded as a governmental subdivision. *Platt Valley P. P. & I. Dist. v Lincoln County*, 144 Neb 583, 14 NW2d 202, 155 ALR 412.

**power-driven vessel.** A vessel propelled by power transmitted through machinery, rather than by sail 12 Am J2d Boats § 1.

**powered aircraft.** Aircraft having an engine or mechanical means of propulsion of some sort; not a mere glider. 29A Am J Rev ed Ins § 1263. Any airplane other than a glider. Anno: 17 ALR2d 1067; 54 ALR2d 415.

**power in gross.** A power of appointment given to a person having an estate in the property, where the

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estate to be created under or by virtue of the power is not to take effect in possession until after the determination of the donee's estate. 41 Am J1st Pow § 5.

**power in trust.** See **trust power**.

**power line.** An electric line of high voltage, particularly a cross-country line carrying electricity from place of production to cities, towns, and industrial plants. An instrumentality of commerce with the meaning of the commerce clause of the United States Constitution. 26 Am J2d Electr § 14.

**power of agent.** An ability on the part of an agent to produce a change in a given legal relation by doing or not doing a given task; also a limitation upon the ability of the agent to bind the principal, such ability resting only on his actual or apparent authority. 3 Am J2d Ag § 68.

**power of alienation.** The right and capacity to convey property.

See **rule against suspension of power of alienation.**

**power of appointment.** Authority enabling one person to dispose of an interest which is vested in another. Re Zanatta, 99 NJ Eq 339, 131 A 515. A liberty or authority reserved by, or limited to, a person to dispose of real or personal property for his own benefit, or for the benefit of others, and operating on an estate or interest, vested either in himself or in some other person, such liberty or authority, however, not being derived out of such estate or interest, but overreaching or superseding it, either wholly or partially. 41 Am J1st Pow § 2.

See **general power of appointment; special power of appointment.**

**power of attorney.** A written instrument, known as a power of attorney, letter of attorney, or warrant of attorney, People v Smith, 112 Mich 192, 70 NW 466, by which one person, as principal, appoints another as his agent and confers upon him the authority to perform certain specified acts or kinds of acts on behalf of the principal. Arcweld Mfg. Co. v Burney, 12 Wash 2d 212, 121 P2d 350. A written instrument authorizing an attorney at law to appear in an action on behalf of the maker or to confess judgment against him. Treat v Tolman (CA2 NY) 113 F 892.

A power of attorney may be general, as where it confers authority to sell property without specification of particular property, or special, as where it authorizes a sale to a particular person. 3 Am J2d Ag § 23.

A power of attorney creates an agency relationship, with the giver of the power remaining the legal owner of any property involved. Smith v United States (DC Hawaii) 113 F Supp 702.

**power of attorney to confess judgment.** A power or warrant of attorney which confers the authority to confess judgment against the grantor of the power upon an instrument evidencing an obligation. 30A Am J Rev ed Judgm § 170.

**power of consumption.** The power to use principal, particularly for support maintenance, and comfort. Anno: 36 ALR 1186, 1195.

**power of disposal.** An expression used in reference to the power of one other than the owner of property to dispose of it by will.

See **power of appointment; power of sale.**

**power of eminent domain.** See **eminent domain.**

**power of sale.** A provision in a chattel mortgage for the enforcement of the lien of the mortgage by sale, without the necessity of resort to judicial proceedings. 15 Am J2d Chat Mtg §§ 127 et seq. A provision in a real estate mortgage, or in a separate instrument, whereunder a sale may be had by way of enforcement of the mortgage upon default of the mortgagor. 37 Am J1st Mtg § 652. A power given a life tenant to dispose of the estate for the purposes of obtaining means of support, maintenance, education, etc. 28 Am J2d Est § 86. Authority conferred upon an agent for the sale of property of the principal. 3 Am J2d Ag §§ 99 et seq.

See **testamentary power of sale.**

**power of termination.** The interest which remains in the grantor or his successors, or the successors of a testator, where an estate on condition subsequent has been created, such being a right of re-entry for condition broken. 28 Am J2d Est §§ 188 et seq.

**power of the county.** A posse comitatus.

See **posse**.

**powers of corporation.** See **corporate powers**.

**powers of sale and exchange.** Literally, inclusive of any power conferred upon another to effect either a sale or exchange of property.

In the English law, the term has a definite meaning and implies that the proceeds of the sale are to be reinvested in another estate of the same character, and to be settled to the same uses. In practice they are often exercised in aid of, and not to interfere with, the ultimate limitations, and to carry out the intention of the parties. *Rail v Dotson*, 22 Miss (14 Smedes & M) 176, 184.

**powers that be.** Same as **constituted authorities**.

**power to modify.** See **modify**.

**power to defeat the corpus.** See **power of consumption**.

**power to sell.** Authority to sell.

Generally speaking, a fiduciary's "power to sell" means the authority given by statute, or by the instrument creating the trust, or the capacity inherent in the functioning of his office, as distinguished from his "right to sell," which is used in the sense of doing that which is proper or correct, in adherence to duty and necessity. *Virginia Trust Co. v Evans*, 193 Va 425, 69 SE2d 409, 32 ALR2d 769.

See **powers of sale and exchange**.

**poynding.** Same as **poinding**.

**Poynings' Laws.** A set of statutes enacted in the 10 Henry VII. (1494), so called because Sir Edward Poynings was then lord deputy, restraining the powers of the Irish parliament, and making English statutes then in force effective in Ireland. See 1 Bl Comm 102, 103.

**pp.** Abbreviation of **pages**.

**p.p.** , Abbreviation of **per procuration**.

Abbreviation of **propria persona**.

**p.p.a.** Abbreviation of **per power of attorney**.

**practicable.** Feasible; workable; usable.

See **if practicable**.

**practical.** That which pertains to actual practice or the doing of things, as distinguished from abstract theory.

**practical construction.** A construction of an instrument by the parties in interest while in interest. 23 Am J2d Deeds § 171. The construction of a contract, which is ambiguous, in accord with the presumption that the parties contracted with reference to fair, reasonable, and practical results. Ture-

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man v Altman, 361 Mo 1220, 239 SW2d 304, 26 ALR2d 729. An administrative construction of a statute enacted for the regulation of a department of government. Bloxham v Consumers' Electric Light & Street Railroad Co. 36 Fla 519, 18 So 444.

**practical joke.** An act committed against a person with the idea of causing the victim embarrassment, even with the possibility of some real pain and discomfort. 6 Am J2d Asslt & B § 116. The playing of a prank, especially one of a boisterous or rather violent nature, upon a fellow employee. 58 Am J1st Workm, Comp § 268.

**practical location.** An actual designation by the parties upon the ground of the monuments and bounds called for by the deed. Wells v Jackson Iron Mfg. Co. 47 NH 235.

**practice.** A custom, usage, or habit. 21 Am J2d Cost & U § 1. Adjective, as distinguished from substantive, law. Those legal rules which direct the course of proceeding to bring parties into court and the course of the court after they are brought in. Kring v Missouri (US) 17 Otto 221, 231, 27 L Ed 506, 510, 2 S Ct 443. The method of procedure whereby a case is started, parties brought in, and the case conducted to judgment or prior termination, even to and through an appeal. Kansas City v O'Connor, 36 Mo App 594, 599. All that relates to the manner in which a case shall be conducted and tried, from its inception to final judgment and execution. Wright v State, 5 Ind 290.

See **procedure.**

**practice act.** A statute regulating and prescribing procedure in courts of justice, sometimes in a comprehensive form, at other times supplemented by rules of practice. Helvering v Continental Oil Co. 63 App DC 5, 68 172d 750.

See **rules of practice.**

**practice court.** A court which is attached to the king's bench court and which hears ordinary matters and disposes of common motions.

See **moot court.**

**practice of dentistry.** The treating of diseases or lesions of the human teeth, or of jaws, or correction of malpositions thereof. State v Brown, 37 Wash 97, 79 P 635. In short the practice of the profession of dentistry.

See **dentist; dentistry.**

**practice of law.** Rendering the services peculiar to the profession. The work of an attorney at law in the preparation of pleadings and other papers incident to actions and special proceedings, the management of such actions and proceedings on behalf of clients before judges and courts, the preparation of legal instruments of all kinds, and, in general, advising clients and taking action for them in matters connected with law. 7 Am J2d Attys § 1. Inclusive of counseling as well as trial work. 30A Am J Rev ed Judges § 11. The giving of such advice or the rendition of such service as requires the use of any degree of legal knowledge or skill. Anno: 111 ALR 23. Not a business open to all, since it is limited to qualified individuals. Re Co-operative Law. Co. 198 NY 479, 92 NE 15.

**practice of medicine.** The practice of the art of healing disease and preserving health. Anno: 86 ALR 623. The treatment of a human being by another person for the purpose of relieving an ailment, with a public profession on the alleged doctor's part of the ability to cure and heal. State v Stoddard, 215 Iowa 435, 245 NW 273, 86 ALR 616. Diagnosing, prescribing, and treating persons who are sick and afflicted. People v T. Wah Hing, 79 Cal App 286, 249 P 229.

See **physician; surgery.**



**practicing dentistry.** See **practice of dentistry.**

**practicing law.** See **practice of law.**

**practicing lawyer.** A person who customarily and habitually holds himself out to the public as a lawyer and who demands compensation for his services rendered as such. *State v Bryan*, 98 NC 644, 647, 4 SE 522.

A retired lawyer who conducts but one suit in court for a friend or neighbor, without fee or reward, is not a "practicing lawyer." *McCargo v State (Miss)* 1 So 161.

See **practice of law.**

**practicing medicine.** See **practice of medicine.**

**practitioner.** A lawyer who is engaged in the practice of his profession; a physician who is similarly engaged. Any person who is practicing a profession. A Christian Science healer.

**prados.** A term encountered in Spanish-American land grants, signifying fields. See *Vernon Irrigation Co. v Los Angeles*, 106 Cal 237, 247, 39 P 762.

**prae.** Before.

**praebenda.** Same as **prebend.**

**praeceptores.** Masters in chancery.

**praecipe.** An order; a command; a writ ordering a person to do some act or to show cause why he should not do it. An application addressed to the clerk of court for the issuance of a summons. *McMillon v Harrison*, 66 Fla 200, 63 So 427. An order by a judgment creditor to the clerk of court for the issuance of a writ of execution. *Yazoo & M. V. R. Co. v Clarksdale*, 257 US 10, 66 L Ed 104, 42 S Ct 27. A demand by an appellant of the clerk of court for the inclusion of designated papers in the transcript. 4 Am J2d A & E § 405.

**praecipe in capite.** A writ of right which lay when one of the king's immediate tenants in capite was deforced. See 3 Bl Comm 195.

**praecipe quia dominos remisit curiam.** A writ because the lord has waived his court.

A writ of right thus called was formerly used for the same purpose as the later praecipe in capite to oust the lord of his jurisdiction by suing out this writ in the king's court, instead of by writ of right in the court-baron of the lord. See 3 Bl Comm 195.

**praecipe quod reddat.** Command him to restore; the name of a writ employed in a common recovery commanding the defendant to restore possession. See 2 Bl Comm 358.

**praecipe quod teneat conventionem.** The name of the writ which commenced the action of covenant in fines, which were abolished by 3 & 4 William IV, c. 74. See Jones' Blackstone, 1188, note.

**praecipitium.** An ancient form of punishment wherein the culprit was hurled from some high place head foremost.

**praeco.** (Roman law.) A court crier; a herald.

**praecogitata malicia.** See **ex praecogitata malitia.**

**praecognita.** Matters to be under-

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stood beforehand, as a prerequisite to the understanding of other matters.

**praecognitum.** Singular of **praecognita.**

**praed.** An abbreviation of **praedictus.**

**praedia.** Things which partake of the realty; things or rights which pertain to land. See 2 Bl Comm 428.

**praedia bella.** Same as **praedia bellica.**

**praedia bellica.** Goods captured in war; booty.

**praedial.** From the soil; out of the land. Pertaining to land or real estate.

**praedial servitute.** A servitude or easement in the land of another.

**praedial tithes.** Tithes which were products of the soil.

**praedia rustica.** Plural of **praedium rusticum.**

**praedia stipendiaria.** (Civil law.) Provincial lands belonging to the Roman people.

**praedia tributaria.** (Civil law.) Provincial lands of the Roman emperor.

**praedia volantia.** Volatile estates; that is, movables of a solid character such as beds, tables and heavy furniture which seem fixed to the house and are therefore considered as a part of the building. See 2 Bl Comm 428.

**praedicta.** Same as **praedictus.**

**praedictum.** Same as **praedictus.**

**praedictus.** Said; aforesaid; stated before.

**praedictus X similiter.** See **et praedictus X similiter.**

**praedium.** Singular of **praedia.**

**praedium dominans.** The dominant tenement of an easement. *Morgan v Mason*, 20 Ohio 401.

**Praedium domini regis est directum dominium, cujus nullus est author nisi Deus.** The estate of the king is direct ownership of which God alone is the author.

**praedium rusticum.** (Roman law.) A rural estate.

**praedium serviens.** The servient tenement of an easement. *Morgan v Mason*, 20 Ohio 401.

**Praedium servit praedio.** Land may be subject to an easement in land.

**praedium urbanum.** (Civil law.) A city estate.

**praef.** An abbreviation of **praefatus**.

**praefatus.** Said; aforesaid; stated before.

**praefectus.** Same as **prefect**.

**praefectus praetorio.** A pretorian prefect,—a high judicial officer in the Roman occupation of England.

**praefine.** The primer fine, or a noble for every five marks of land sued for, being one-tenth of the annual value, due the king, by ancient prerogative, upon commencing a suit for the alienation of land by fine. See 2 Bl Comm 350.

**praejudicialis.** (Civil law.) Prejudged; adjudicated beforehand or in advance.

**praejudicium.** Prejudgment; prejudice.

**praejuramentum.** A preliminary oath of innocence required of an accused under Saxon law.

**praelatus.** Same as **prelate**.

**praemissae.** The premises. See **ex praemissis**.

**praemissorum fidem.** See **inpraemissorum fidem**.

**praemissorum ignarus.** Not ignorant of the premises. *Gerard v Dickenson* (Eng) 2 Coke Rep. Part IV, 18.

**praemium.** A compensation; a reward; a price.

**praemium concubinati.** The price of concubinage; the price of the loss of chastity.

**praemium pudicitiae.** The price or value of chastity.

**praemium pudoris.** The price of shame.

**praemunire.** The offense, which was not a capital one, of obeying other authority in preference to that of the crown.

It originated from the exorbitant power claimed and exercised in England by the pope of Rome, and it took its name from the words of the writ which initiated a prosecution for the offense, "praemunire facias," etc., "Cause A to be forewarned that he appear before us to answer the contempt with which he stands charged." See 4 Bl Comm 103.

**praenomen.** A name preceding the surname or family name; a Christian name. *Laflin & Rand Powder Co. v Steytler*, 146 Pa 434, 23 A 215. The first of the three names which every Roman had.

**praepositus.** A presiding officer; a sheriff.

**praepositus ecclesiae.** A church-warden.

**praepositus villae.** A town constable.

**Praepropera consilia raro sunt prospera.** Precipitate or rash counsels are rarely prosperous.

**praerogativa regis.** The prerogative of the king.

**praescriptio.** (Civil law.) The mode of acquiring property by uninterrupted possession.

**Praescriptio est titulus ex usu et tempore substantiam capiens ab auctoritate legis.** Prescription is title taking its essence from use and time by authority of law.

**Praescriptio et executio non pertinent ad valorem contractus, sed ad tempos et modum actionis instituendae.** Prescription and execution do not affect the validity

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of a contract, but they go to the time and manner of instituting an action.

**praescriptio fori.** An objection to the forum or the jurisdiction.

**praesens in curia.** Present in court.

**Praesentare nihil aliud est quam praesto dare seu offere.** To present is nothing other than to give or offer forthwith.

**praesentes.** See **inter praesentes.**

**praesenti.** See **in praesenti.**

**praesentia.** See **in praesentia.**

**Praesentia corporis tollit errorem nominis.** The presence of the substance cures an error in the name of it. *Smoot v United States*, 237 US 38, 42, 59 L Ed 829, 830, 35 S Ct 540.

**Praesentia corporis tollit errorem nominis; et veritas nominis tollit errorem demonstrationis.** The presence of the person cures an error in his name; and the accuracy of the name cures an error of description.

**praesentia diversorum.** See **in auditu; in praesentia diversorum.**

**praesentiam mariti.** See **extra praesentiam mariti.**

**praeses.** A Roman governor.

**praestare.** (Roman law.) To perform; to fulfil; to execute; to guarantee; to become surety for; to answer for; to be responsible for; to excel.

**Praestat cautela quam medela.** Caution is better than cure.

**praestatio.** Same as **prestation.**

**praestation.** Same as **prestation.**

**Praesumatur pro iustitia sententiae.** A presumption exists in favor of the justice of a sentence.

**Praesumitur pro legitimatione.** There is a presumption in favor of legitimacy.

**Praesumitur pro negante.** There is a presumption in favor of a negation.

**Praesumitur pro reo.** There is a presumption in favor of a defendant. *Culpepper v State*, 4 Okla Crim 103, 111 P 679.

**praesumptio.** (Latin.) Presumption. A bold intrusion.

**Praesumptio ex eo quod plerumque fit.** A presumption (arises) from that which usually happens.

**praesumptio fortior.** A stronger presumption.

**praesumptio hominis.** A human or natural presumption.

**praesumptio juris.** A presumption of law; a rebuttable presumption; a prima facie presumption.

**praesumptio juris et de jure.** A presumption of law as to the law; a conclusive or irrebuttable presumption.

**Praesumptio juris plena probatio.** A presumption of law amounts to full proof.

**Praesumptiones sunt conjecturae ex signo verisimili ad probandum assumptae.** Presumptions are conjectures from probable indication which are assumed for purposes of proof.

**Praesumptio valet in lege.** A presumption prevails in law.

**Praesumptio violenta, plena probatio.** A violent or strong presumption amounts to full proof.

**Praesumptio violenta valet in lege.** A violent or strong presumption prevails in law.

**praeteritorum memoria eventorum.** The memory of past events. See 1 Bl Comm 69.

**Praetextu liciti non debet admitti illicitum.** An unlawful thing ought not to be permitted under a pretext of legality.

**praetor.** One of the two high Roman officers who performed judicial functions.

**praetor fidei commissarius.** (Civil law.) A praetor who was specially appointed to decide cases which involved trusts.

**praetorian law.** The law made by the Roman praetors, as distinguished from the civil law which was made by the people.

**praevaricator.** (Civil law.) A person who committed a breach of trust.

**pragmatic.** Practical. Pertaining to the civil or ecclesiastical affairs of a community. In a distinct sense, overly officious.

**prairie.** Land characteristic of the Mississippi Valley, gently rolling, bearing few trees, except along streams, having a deep fertile soil, and covered with grass until broken for cultivation. A meadow or tract of grass land especially a so-called natural meadow. *Interstate Galloway Cattle Co. v Kline*, 51 Kans 23, 28, 32 P 628, 629.

**prairie fire.** A grass fire covering an area often a large area of open or agricultural lands. *Rogers v Parker*, 159 Mich 278, 123 NW 1109.

**Prather speed device.** Same as **speed watch**.

**prava consuetudo.** A depraved or wicked custom; a perverse custom.

**Praxis judicum est interpres legum.** The practice of the judges is the interpreter of the laws.

**prayer.** A supplication addressed to God. That part of a pleading which designates and asks for the relief sought by the party.

The prayer is no part of a plaintiff's cause of action and it cannot aid in curing a defective complaint, but it may serve to show what kind of a case the plaintiff supposes he has made and the kind of relief to which he conceives himself to be entitled, and may indicate the object which he seeks to accomplish. See 41 Am J1st PI §§ 109 et seq.

An appropriate prayer should be incorporated in a bill or petition for equitable relief. 27 Am J2d Eq. § 182.

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**prayer for alternative relief.** See **prayer in the alternative**.

**prayer for process.** A technical requirement of a bill in equity that the plaintiff, as the last formal part of his bill, name the defendant, so that he may be brought into court. 27 Am J2d Eq. § 182.

**prayer for relief.** See **prayer**.

**prayer healing.** A purported healing of disease by prayer alone. 41 Am J1st Phys & S § 30.

**prayer in aid.** In real actions, the tenant may pray in aid; that is, he may call for assistance of another to help him to plead because of the feebleness or imbecility of his own estate.

Thus, a tenant for life may pray in aid of him that hath the inheritance in remainder or reversion, and an incumbent may pray in aid of the patron and ordinary; that is, that they shall be joined in the action and help to defend the title. See 3 Bl Comm 300.

**prayer in the alternative.** A prayer in a pleading by a plaintiff in doubt as to the specific relief to which he is entitled, being in the alternative, so that if one kind of relief be denied, another may be granted, each kind being consistent with the case made by the complaint or bill. 27 Am J2d Eq. § 182; 41 Am J1st PI§ 111.

**preacher.** See **minister; pastor**.

**preamble.** A prefatory statement most aptly illustrated by the fifty-two words at the beginning of the Constitution of the United States. A clause in a statute, following the title and preceding the enacting clause, explanatory of the reasons for the enactment and the objects sought to be accomplished. 50 Am J1st Stat § 152. A statement at the beginning of a municipal ordinance by

way of a finding of fact by the council and the reasons, purpose, or occasion of or for the enactment. *Continental Oil Co. v Santa Fe*, 25 NM 94, 177 P 742, 3 ALR 398.

The preamble to the Constitution of the United States indicates the general purposes for which the people ordained and established the Constitution, but the preamble itself has never been regarded as the source of any substantive power conferred on the Federal Government or on any of its departments. Although one of the declared objects of the Constitution, as stated in the preamble, was to secure the blessings of liberty to all under the jurisdiction and authority of the United States, no power can be exerted to that end by the United States unless, apart from the preamble, it is found in some express delegation of power or in some power to be properly implied therefrom, in the body of the Constitution. *Jacobson v Massachusetts*, 197 US 11, 49 L Ed 643, 25 S Ct 358.

**preamble of constitution.** See **preamble**.

**preamble of statute.** See **preamble**.

**preappointed evidence.** Evidence the form and character of which are prescribed by law.

**pre-audience.** The right which the crown may grant by letters patent to such barristers as it may think proper to honor as a mark of distinction, by which right those barristers were entitled to be heard before others; sometimes next after the king's attorney general, but usually following his majesty's counsel. See 3 Bl Comm 28.

**prebend.** The office of a prebendary. See 1 Bl Comm 383.

**prebendary.** An ecclesiastical officer subordinate to a bishop.

The dean and chapter are the assistants or council of the bishop. The chapter, consisting of canons or prebendaries, are sometimes appointed by the king, sometimes by the bishop, and sometimes elected by the prebendaries themselves. See 1 Bl Comm 383.

**precariae.** 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.-Wharton's Law Dictionary.

**precarious circumstances.** A desperate financial condition. A financial condition approaching insolvency or bankruptcy.

The circumstances of an executor are said to be "precarious" only when his conduct and character present such evidence of improvidence or recklessness in the management of the trust estate, or of his own, as in the opinion of prudent and discreet men, endangers its security. *Shields v Shields* (NY) 60 Barb 56, 61.

**precarious right.** A granted right which is revocable at the will of the person who granted it.

**precarium.** (Civil law.) A convention whereby one person allowed another the use of a thing or the exercise of a right gratuitously till revocation. See Mackeldey's Roman Law § 447.

**precatory.** Beseeching. Entreating.

**precatory trust.** A term of dual meaning: (1) a trust which is not enforceable for the reason that the words of entreaty or permission relied upon to create a trust are not to be construed as words of command or direction so as effectively to create a trust; (2) a trust employing precatory words which can be construed as words of command or direction effective to create a valid trust. 54 Am J1st Trusts §§ 54 et seq.

**precatory words.** Words of request, recommendation, suggestion, or expectation. *Re Bernheim*, 82 Mont 198, 266 P 378, 57 ALR 1169. Words whose ordinary significance imports entreaty, recommendation, or expectation, rather than mandatory direction, such as, "desire," "request," "beg," "wish," etc., but which, in a proper context, may be construed as words of command. 57 Am J1st Wills § 1180.

**precedence.** The right or privilege of preceding in time, rank, or order.

**precedent.** A decision or determination of a point of law made by a court in a case to be followed by a court of the same rank or of a lower rank in a subsequent case presenting the same legal problem, although different parties are involved in the subsequent case. 20 Am J2d Cts § 183. The decision of an administrative agency. 2 Am J2d Admin L § 241.

As to the effect of a decision of a court of one state in a court of a sister state, see 20 Am J2d Cts § 203.

As to the effect of a decision of a court in a foreign country as a precedent, see 20 Am J2d Cts § 200.

See **stare decisis**.

**precedent condition.** See **condition precedent**.

**preceding estate.** An estate after which a future interest is limited. 28 Am J2d Est § 208.

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**prece partium.** By the prayer of the parties.

**precept.** An order or direction. A warrant; an order in writing. A writ or process. *Adams v Vose*, 67 Mass (1 Gray) 51, 58.

**precept of clare constat.** The deed of a superior confirming title in the heir of a deceased vassal.

**precept of sasine.** The order of a superior that his vassal be invested with seisin.

**preces.** Same as **precariae**.

**precinct.** See **election district; magisterial precinct; police precinct**.

**precipe.** Same as **praecipe**.

**precipitate.** Impetuous. Acting in a hurry.

**precipitate.** To hurl downward. To form and fall, as rain.

**precium.** Same as **pretium**.

**precluded.** Prevented. Made impossible. *Coffin v Fidelity-Philadelphia Trust Co.* 374 Pa 378, 97 A2d 857, 39 ALR2d 625. Estopped. *Baskett v Ohio Valley Banking & Trust Co.* 214 Ky 41, 45, 281 SW 1022.

**Precludi non debet.** He ought not to be barred.

**precognition.** A preliminary examination of witnesses by the prosecuting attorney before the trial of a criminal case.

**precognosce.** To pre-examine.



**preconceived malice.** Same as **malice aforethought**.

**precondition.** A condition precedent; a condition which must happen before either party to a contract is bound by it. A redundancy for "condition," to put in shape, as a boxer for a contest.

**preconstruction costs.** Engineering and superintending expenses; contractors' profits; interest on the cost of plant during construction; insurance and taxes during construction; promotion expenses; and legal expenses connected with the organization of the company. 43 Am J1st Pub Util § 117.

**precontract.** A contract which a person has previously entered into and by which he has incapacitated himself from entering into a second contract of the same kind.

**precox paranoia.** See **dementia precox paranoia**.

**predated instrument.** An antedated instrument, that is, an instrument for the payment of money dated as of a day prior to the execution and delivery of the instrument. 11 Am J2d B & N § 208.

**predating.** Dating a contract as of a date earlier than the date of execution. 17 Am J2d Contr § 69.

**predatory animal.** An animal which preys upon the livestock of farmers.

**predecessor.** In its common acceptance, the word means a person who goes before or precedes another in a given state, position, or office.

The word does not necessarily express any relation of legal privity. One person may be a predecessor of another without the relation of contractual succession. *P. Lorillard Co. v Peper* (CC Mo) 65 F 597, 598.

**predestination.** Destiny. In theology, foreordination of events by God.

See **absolute predestination**; **limited predestination**.

**predial.** Same as **praedial**.

**predial servitude.** Same as **praedial servitude**.

**predial tithes.** Same as **praedial tithes**.

**predicate.** To use as a basis or ground of an action, defense, or argument.

**predominant.** Greater or superior in power and influence.

Thus, a predominant motive, when several motives may have operated, is one of greater force and effect, in producing the given result, than any other motive. See *Matthews v Bliss*, 39 Mass (22 Pick) 48, 53.

**pre-emption.** The act of buying anything before or ahead of others.

An entry made upon unappropriated public lands for homestead purposes. 42 Am J1st Pub L § 19. The right granted by act of Congress to settlers on public lands of the United States to cultivate, improve and acquire title thereto. *United States v Fitzgerald* (US) 15 Pet 407, 10 L Ed 785; *Nix v Allen*, 112 US 129, 28 L Ed 675, 5 S Ct 70. The right, otherwise known as a first-refusal option, of a unit owner in a condominium to purchase at a predetermined price or meet any offer of purchase by a matching offer, in the event another unit owner desires to sell. 15 Am J2d Con Apt § 17. The act of a nation in detaining property of foreigners brought within her boundaries, so that her own residents may have opportunity to purchase it.

**pre-emption entry.** An entry made upon unappropriated public lands for homestead purposes. *Hartman v Warren* (CA8 Minn) 76 F 157, 161.

**pre-emption laws.** Federal statutes beginning with the Act of September 4, 1841, under which a settler upon public lands of the United States, surveyed and subject to private entry, might acquire title.

The pre-emption laws differ from the homestead law in that under the former, claims might be initiated prior to record notice, three months being allowed the settler within which to file his declaratory statement with the register of the proper district, while under the homestead law, the rights of the settler only attached to the land from the date of the entry in the proper land office. *St. Paul, M. & M. R. Co. v Donohue*, 210 US 21, 52 L Ed 941, 28 S Ct 600; *Maddox v Burnham*, 156 US 544, 39 L Ed 527, 15 S Ct 448.

**pre-emption of field.** Action taken by Congress in passing legislation in a field theretofore open to state legislation. 16 Am J2d Conf L § 8; 15 Am J2d Com § 23.

**pre-emption of land.** See **pre-emption**.

**pre-emption of way.** The failure of a motorist to give right of way to another vehicle.

**pre-emptive rights of stockholders.** See **rights**.

**pre-existing debt.** See **antecedent debt**.

**pre-existing obligation.** See **antecedent debt**.

**prefabricated house.** A house constructed of materials cut and fit before they are brought upon the premises. *Community Home Builders, Inc. v Town Council of North Kingstown*, 83 RI 409, 117 A2d 544.

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**prefects.** Administrative officers, as known to history and, in some places, even in modern times.

Functionaries well known in the Roman law, and under the empire clothed with extensive powers, both judicial and administrative. With the decline of the empire they seem to have lost their importance and finally to have disappeared; but hundreds of years later, the office was revived in the French Republic in 1800, and was bestowed upon the heads of departments into which the country had been divided by the national assembly in 1790. These prefects were assisted by a council of prefecture. The prefect was charged with the administration of local affairs, and was practically the representative of the central government in public matters. The title was carried into several states of the Union whose legislation was framed upon the Code Napoleon, but until the establishment of the Republic, was apparently unknown in Mexico. It seems to have been recognized there prior to 1836, being mentioned in the constitutional law of that year. *Crespin v United States*, 168 US 208, 213, 42 L Ed 438, 440, 18 S Ct 53.

**preference.** The right of one person over other persons, to be appointed administrator, for example, the right of a surviving spouse. 31 Am J2d Ex & Ad §§ 50 et seq. A right given to a stockholder of a corporation to subscribe at a stated price for shares of a new issue in proportion to the shares already held by him. *Miles v Safe Deposit & Trust Co.* 259 US 247, 66 L Ed 923, 42 S Ct 483. A provision in a succession or inheritance tax statute which for the purposes of exemptions and rates divides recipients into classifications based upon relationship to decedent. 28 Am J Rev ed Inher T § 302. A term often confused with "priority," but distinguishable by considering a priority as legal and a preference as something which the law may make voidable. The act of a debtor in preferring one or more of his creditors to others by paying him or them without favoring the others with payment. 37 Am J2d Frd Conv § 89.

See **fraudulent preference; preferential transfer; tariff preference; voidable preference.**

**preference shares.** Same as **preferred stock.**

**preference to ports** of one state. A restriction upon the power of Congress under the commerce clause of the United States Constitution, but having no effect upon the states in the regulation of their domestic affairs, and restraining Congress in the enactment of legislation only in reference to positive legislation looking to a direct privilege or preference. 15 Am J2d Com § 81.

**preferential assignment.** An assignment for the benefit of creditors wherein the assignor gives a preference to certain of his creditors. 6 Am J2d Assign for Crs § 69. Broadly, any assignment which prefers one creditor over another.

See **voidable preference.**

**preferential dividend.** See **preferred dividend.**

**preferential primary.** A form of primary election, such as is now held in New Hampshire, Oregon, and some other states in reference to presidential candidates, which, while not conclusive of nomination, gives the members of a political party, who are qualified to vote at the primary, an opportunity for expressing their choice, and gives a candidate the opportunity of testing his appeal to the voters.

**preferential tariff.** See **tariff preference.**

**preferential transfer.** A transfer of property made by an insolvent debtor to one creditor to the exclusion of others. 29 Am J Rev ed Insolv § 82. An act of bankruptcy; a transfer of any of the property of a creditor for or on account of an antecedent debt, made or suffered by such debtor while insolvent and within four months before the filing by or against him of a petition initiating a proceeding under the Act, the effect of which transfer will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class. Bankruptcy Act § 60(a)(1); 11 USC § 96(a)(1); 9 Am J2d Bankr § 146.

See **voidable preference.**

**preferential voting.** A term used to describe various systems under which a voter is permitted or required to express more than one choice for the same office. 26 Am J2d Elect § 275.

**preferred.** Having a preference. Having an advantage which another person does not have. In the case of a thing, having an advantage attached which another thing of the same character does not have. State ex ref. Thompson v Cheraw & Chester Railroad Co. 16 SC 524, 530.

**preferred beneficiaries.** Beneficiaries under wrongful death statutes classified according to natural dependency on the deceased. 22 Am J2d Dth § 48.

**preferred creditor.** See **preference.**

**preferred dividend.** A dividend declared and paid on preferred stock. A dividend payable by virtue of contract to one class of stockholders in priority to that to be paid to another class. 19 Am J2d Corp § 809.

**preferred legacy.** A legacy which, by the terms of the will, is to be paid before other legacies. 57 Am J1st Wills § 1458.

**preferred maritime lien.** A lien arising prior in time to the recording and indorsement of a preferred ship mortgage; or alien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, husband, or

agent of the vessel, for wages of the crew of the vessel, for general average, or for salvage, including contract salvage. 46 USC § 953 (a).

**preferred share.** A share of a business trust carrying a preference in the payment of dividends. 13 Am J2d Bus Tr § 23.

See **preferred stock.**

**preferred ship mortgage.** A mortgage of a vessel given a preferred status by the Ship Mortgage Act, subject to conditions respecting the size of the vessel and compliance with registration and other provisions of the Act. 2 Am J2d Adm § 122.

**preferred stock.** A part of the capital stock of a corporation, the peculiar and distinctive characteristic of which is that it is entitled to a priority over other stock in the distribution of profits. Sometimes called guaranteed stock. Corporate stock given a preference over common stock in the distribution of capital assets upon a dissolution of the corporation. 18 Am J2d Corp § 213. Building and loan association stock to which a preference in payment of dividends or in distribution of assets upon insolvency is attached. 13 Am J2d B & L Assoc § 23.

The holder of preferred stock is a shareholder in the corporation. He is not a corporation creditor, and has no rights as such. His rights are those of the common shareholder, except as those rights are limited by the statute and the contract and the

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additional right to have his dividends paid out of earnings and his stock redeemed out of assets in preference to the common shareholder. Oklahoma Hotel Bldg. Co. v Houghton, 202 Okla 591, 216 P2d 288, 16 ALR2d 1307.

**prefiled.** A legislative bill filed before the opening of the legislative session.

**prefix.** Something added at the beginning of a word to create a new word, for example, "pre" to "filed" for "prefiled." A title preceding a name, for example, "Mr." or "Mrs." Feldman v Silva, 54 RI 202, 171 A 922.

**pregnancy.** The physical state of a mother in whose womb gestation has begun. Commonwealth v Parker, 50 Mass (9 Mete) 263, 267.

Pregnancy is neither an ailment, a condition of unsound health, nor a disease. Rasicot v Royal Neighbors of America, 18 Idaho 85, 108 P 1048.

See **sickness.**

**pregnant.** With child; bearing a fetus. Anno: 16 ALR2d 951.

See **affirmative pregnant; negative pregnant; quick with child.**

**pre-incorporation services.** Services in promoting and organizing a corporation.

**prejudge.** See **prejudice.**

**prejudgment interest.** Interest allowed by way of damages, as for the unlawful detention of money found to be due the plaintiff in action for breach of contract or tort. 22 Am J2d Damg § 179.

**prejudice.** In one sense, detriment, as where one has changed his position in reliance upon the promise of another. Suffering an invasion of one's legal right. Having one's pecuniary interest affected by a judgment. Gloss v People 259 Ill 332, 102 NE 763. In another sense, partiality; bias. Preconceived opinion. An opinion formed before the facts are known or in disregard of facts. Hudgins v State, 2 Ga 173, 176.

See **dismissal without prejudice; dismissal with prejudice; local influence; local prejudice.**

**prejudice of judge.** Pertaining to the mental attitude toward a party to the litigation, not the view entertained regarding the subject matter involved. 30A Am J Rev ed Judges § 170. A hostile feeling or spirit of ill will, or undue friendship or favoritism, directed against or for one of the litigants. *Haslam v Morrison*, 113 Utah 14, 190 P2d 520.

**prejudice of juror.** A leaning of the mind, a propensity or prepossession toward a view, so that the mind is not indifferent; a prejudgment of the case, not necessarily a matter of enmity or ill will against either party. 31 Am J Rev ed Jury § 172.

**prejudicial.** Detrimental or derogatory to a party. Naturally, probably, or actually bringing about a wrong result. *State v Farrar*, 103 Kan 774, 176 P 987.

**prejudicial alteration.** Such an alteration of an instrument as materially affects the rights of a party thereto. 4 Am J2d Alt Inst § 8.

**prejudicial error.** Reversible error. 5 Am J2d A & E § 783. Error of such substance that, upon a review of the record, it appears that the rights of the complaining party have been injuriously affected by the error, or that he has suffered a miscarriage of justice. 5 Am J2d A & E § 783.

**prejudicial evidence.** In the sense of evidence inadmissible because prejudicial, evidence which has no purpose other than to prejudice the minds of the jury. 29 Am J2d Ev § 260. In another sense, evidence so material to the issues or having such tendency to arouse the sympathy or passions of the jury that its admission, if in error, is ground for reversal on appeal. 5 Am J2d A & E § 801.

**prelate.** A superior ecclesiastical officer who does not act vicariously; as, a bishop or an archbishop.

**preliminary alimony.** See **temporary alimony.**

**preliminary arrest.** An arrest made before charges preferred against the person taken into custody; an arrest made without a warrant. 5 Am J2d Arr § 22.

**preliminary estimate.** A statement of value made on filing a declaration of taking under the power of eminent domain. *Jacksonville Expressway Authority v Bennett* (Fla App) 158 So 2d 821.

**preliminary examination.** A judicial inquiry to determine whether there is "probable cause" for an accusation of crime, the nature of which offense is thereby made known to the accused, the primary purpose being to ascertain whether there is reasonable ground to believe that a crime has been committed and whether there is just cause to believe that the defendant charged by the accusation committed it. 21 Am J2d Crim L § 443.

See **preliminary hearing.**

**preliminary hearing.** The hearing to which an accused is entitled on preliminary examination, leading to his commitment, his release on bail if the offense is bailable, or his discharge from custody for want of evidence to bind him over. 21 Am J2d Crim L §§ 449, 450. Not a "trial" within the meaning of a statute providing grounds for change of venue. *State ex rel. Hale v Marion County Municipal Court*, 234 Ind 467, 127 NE2d 897. A hearing in an eminent domain proceeding for the determination of questions respecting the right of the petitioner to maintain the proceeding. 27 Am J2d Em D § 401.

**preliminary injunction.** An injunction granted prior to a hearing on the merits, being in no way dependent upon such hearing, its purpose being merely to preserve the status quo until the final hearing on the merits. 28 Am J Rev ed Inj § 12.

In some jurisdictions, the term "injunction" means a preliminary, as distinguished from a final, injunction, the latter being considered merely as a decree in equity.

See **temporary injunction**.

**preliminary mandatory injunction.** An injunction in a form rarely granted, it being granted only on a clear showing of necessity of preventing irreparable or serious injury, the injunction calling for the performance of some act on the part of the party against whom it is granted. 28 Am J Rev ed Inj § 22.

**preliminary activity.** See **Portal-to-Portal Pay Act**.

**preliminary statement.** See **opening statement**.

**preliminary term insurance.** Term insurance provided during the earlier period of the coverage of a life insurance policy, no net value or reserve being built up during the period of the term, the policy to continue as a regular life insurance policy after the expiration of the preliminary term. 29 Am J Rev ed Ins § 623.

**premarital.** A characterization of conduct, particularly sexual relations, prior to marriage.

See **antenuptial**.

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**premature action.** An action commenced before the accrual of the cause of action sought to be enforced. *Sullivan v Arkansas Valley Bank*, 176 Ark 278, 2 SW2d 1096, 57 ALR 296; *Broyles v Commonwealth*, 309 Ky 837, 219 SW2d 52. An action for divorce commenced before the existence of the ground for divorce. 24 Am J2d Div & S § 184.

**premature birth.** A birth occurring before the expiration of the natural period of pregnancy. *Sullivan v Old Colony Street R. Co.* 197 Mass 512, 83 NE 1091.

See **miscarriage**.

**premature delivery.** A delivery by the seller of goods in advance of the time of delivery as fixed by the contract of sale. 46 Am J1st Sales § 232.

See **premature birth**.

**premature execution.** A writ of execution issued in advance of the time prescribed by law for the issuance of execution. 30 Am J2d Exec. § 49.

**premature judgment.** A judgment by default entered before return day. 30A Am J Rev ed Judgm § 205.

**premature labor.** Labor as characteristic in childbirth but occurring before the usual time, unexpectedly early.

See **miscarriage**.

**premature return.** The return of an execution at a time prior to that fixed by law. 30 Am J2d Exec § 555.

**premature sale.** An execution sale made before the day fixed by the notice of sale. *King v Cushman*, 41 Ill 31. An execution sale at a time in advance of the time prescribed by law. 30 Am J2d Exec § 332.

**premature tender.** A tender made before maturity of the obligation. 52 Am J1st Ten § 17.

**premeditate.** To meditate in advance of action; to form a clear intent.

For example, a robber with a dirk or pistol turns a corner and meets a bank messenger with a roll of bills. In a moment he determines to get it. In the next moment he shoots or stabs the messenger dead, takes the package and flees. His malice was deliberately premeditated though it occupied but a few seconds. *Commonwealth v Tucker*, 189 Mass 457, 76 NE 127.

**premeditated.** Thought of beforehand for any space of time, however short. *State v Landgraf*, 95 Mo 97, 8 SW 237.

**premeditation.** Forethought. Thinking and reflecting, having sufficient volition to make a choice, and by the use of mental powers, to refrain from a homicidal act. *People v Barberi*, 149 NY 256, 43 NE 635. Thinking beforehand for any time, however short. *State v Marsh*, 171 Mo 523, 528, 71 SW 1003.

**premier serjeant.** The first in rank of the king's serjeants, so constituted by letters patent and having the first right to pre-audience. See 3 Bl Comm 28, note.

**premises.** The grounds of an argument or dissertation. In an instrument, something written before in the same instrument. *Alaska Improv. Co. v Hirsch*, 119 Cal 249, 255, 47 P 124, 51 P 340. A formal part of a deed, otherwise known as the caption, preceding the habendum clause, containing recitals of the grantor's motive for the conveyance, the names and designations of the parties, the consideration expressed for the deed, words of grant, and the description of the property conveyed. 23 Am J2d Deeds § 33. The part of a bill in equity which embraces the real substance of the suit, setting out all the essential facts on which the plaintiff relies as grounds of relief. 27 Am J2d Eq § 181. Real estate, particularly real estate with buildings. *Meador v Blonde*, 34 Wyo 397, 244 P 222.

The word "premises," within the meaning of a clause in an insurance policy prohibiting the keeping of certain articles upon the premises, refers to the insured building, and is not inclusive of buildings not connected with the one insured or of the yard of the building insured. 29A Am J Rev ed Ins § 920.

The word as used in a provision prohibiting the sale of liquor to be drunk on the "premises," is sufficiently broad to include a bench which touches the wall of a house just outside the street door, which is under the control of the house owner, but does not include an independent building not under his control, or the adjoining highway. 30 Am J Rev ed Intox L § 20.

**premises liability.** The liability of the owner, lessee, occupant, contractor, or other person for a personal injury sustained on the property.

**premises liability insurance.** Insurance protecting an owner or occupant of real property against liability to a person injured by reason of a defective condition of the premises.

See **public liability insurance**.

**premium.** A premium is a reward or recompense for some act done. *Alvord v Smith*, 63 Ind 58. An amount offered by way of a prize to a successful competitor in a contest. 24 Am J1st Gaming §§ 100 et seq. A purse, prize, stake or sweepstake; some valuable thing offered by a person for the doing of something by others, into the strife for which he does not enter. *Harris v White*, 81 NY 532. Something given a purchaser of merchandise in addition to the article or commodity purchased. 52 Am J1st Trad St § 11. An amount paid above par value because of quality or of demand. An advance payment of rent in a lump sum, calculated on the basis of present worth of sums to be paid in the future. A sum paid to the master under a contract of apprenticeship, to cover instruction and maintenance. An amount paid by a borrower for the privilege of receiving a loan in preference to other applicants. 13 Am J2d B & L Assoc § 54.

See **bond premium; insurance premium**.

**premium earned.** An accounting term in the insurance business, meaning the pro rata portion of a premium, in force during the accounting period, applicable to the expired period of the policy. That part of the premium paid by a borrowing member of a building and loan association which is proportionate to the time which has elapsed upon a premature severance of their relation. 13 Am J2d B & L Assoc § 121.

Since a premium is paid in advance to cover a definite period of time, the company is said to have "earned" the premium in direct proportion to the amount of time that has elapsed since the policy was placed upon the books.

**premium loan provision.** The provision frequently found in life insurance contracts that upon the failure of the insured to pay a premium within a time stipulated for payment, the insurer, without more, will pay the premium in insured's behalf and charge it as a loan against the policy, provided the reserve value is sufficient. 29 Am J Rev ed Ins § 551.

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**premium note.** A note given to an insurance company, particularly a life insurance company, for a premium due upon a policy of insurance. 29 Am J Rev ed Ins § 542.

**premium pudicitiae.** Same as **praemium pudicitiae**.

**premium pudoris.** Same as **praemium pudoris**.

**premium rate.** The premium charged for insurance. 29 Am J Rev ed Ins §§ 503 et seq. The rate at which the premium on an insurance policy is calculated.

**premium receipt.** The receipt given by an insurance company upon receiving payment of a premium upon a policy.

See **interim receipt**.

**premium reserve.** See **unearned premium reserve**.

**premiums written.** An accounting term in the insurance business, meaning the amount of premiums for insurance written during the accounting period, subject to deductions for premiums returned to policyholders and risks reinsured.

**premunire.** Same as **praemunire**.

**prenatal injury.** An injury occurring to a child in the womb.

**prender.** See **in prender**.

**prender de baron.** To take a husband; to marry.

**prenomen.** A first name; a given name.

**prenuptial.** See **antenuptial; premarital**.

**prenuptial agreement.** See **antenuptial contract**.

**prenuptial settlement.** See **antenuptial settlement**.

**preoccupation.** Engrossed in one's thoughts, a mental condition sometimes so pronounced as to constitute unawareness of surroundings, even danger.

**prepaid.** Paid in advance.

See **prepayment**.



**prepaid stock.** See **paid-up stock.**

**preparation.** That which is prepared; something made, equipped, or compounded for a particular purpose. Anno: 77 ALR2d 1246. A drug. A patent medicine. An element considered in determining the offense of an attempt to commit a crime. Devising or arranging the means or measures necessary for the commission of the offense, as distinguished from an attempt which is the direct movement toward commission after the preparations are made. 21 Am J2d Crim L § 111.

No definite line can be drawn between an "attempt" and "preparation" to commit a crime, but the question is one of degree. The accused has frequently been held to have passed beyond "preparation," although interrupted before the last of his intended steps. *United States v Coplon* (CA2 NY) 185 F2d 629, 28 ALR2d 1041.

**prepayment.** Payment before the maturity of the obligation.

**prepayment meter.** An instrumentality containing a slot for money, the placing of which in the slot sets in motion a mechanism whereby a determined amount of gas is released for consumption in house or place of business. 43 Am J1st Pub Util § 58.

**prepay station.** A station at which the carrier delivers freight to the consignee, directly and without the intervention of a local agent, and to which consignments are accepted only upon the condition of charges for transportation being prepaid by the shipper. *Bird v Railroads*, 99 Tenn 719.

**prepense.** Planned ahead; premeditated. *Sullivan v State*, 100 Wis 283, 293.

See **premeditated.**

**preponderance of evidence.** The weight, credit, and value of the aggregate evidence on either side; the greater weight of the evidence the greater weight of the credible evidence. In the last analysis, the probability of the truth; evidence more convincing as worthy of belief than that which is offered in opposition thereto. 30 Am J2d Ev § 1164.

The expression does not mean the mere numerical array of witnesses; it means weight, credit, and value. *Willcox v Hines*, 100 Tenn 524, 45 SW 781.

**preprimary convention.** The convention of a political party held prior to a primary election for the purpose of nominating candidates, the names of which are to be placed on the primary ballot as convention candidates. *State ex rel. Palmer v Miller*, 74 NM 129, 391 P2d 416.

**prerogativa regis.** The prerogative of the king.

**prerogative.** Precedence. A prior right or privilege. In an older day, that power, pre-eminence, or privilege which the king hath or claimeth over and beyond other persons, and above the ordinary course of the common law, in right of his crown. *Atty. Gen. v Eau Claire*, 37 Wis 400, 443. In modern times, the inherent and paramount power of the people. *Bignell v Cummins*, 69 Mont 294, 222 P 797, 36 ALR 634, 637.

**prerogative court.** A probate court. *Robinson v Fair*, 128 US 53, 86, 32 L Ed 415, 423.

**prerogative cy pres.** See **cy pres.**

**prerogative law.** The law of royal prerogative.

**prerogative of purveyance and pre-emption.** A right 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 the consent of the owner; and also of forcibly impressing the carriages and horses of the subject, to do

the king's business on the public roads, in the conveyance of timber, baggage, and the like, however inconvenient to the proprietor, upon paying him a settled price. See 1 Bl Comm 287.

**prerogative remedial legislation.** A name given by Judge Cooley in his Constitutional Limitations to a species of legislation not obnoxious to the law, based upon the recognized power of the legislature, as *parens patriae*, to pass proper rules and regulations for superintendence, disposition, and management of the property of infants, lunatics, and others under disability.

Within the legitimate scope of such legislation is the power which may be conferred upon one standing in a fiduciary relation to a minor or incompetent, to change the character of the estate, and even to dispose of its proceeds, when it is to the interest of the minor or incompetent. *Rider v Regan*, 114 Cal 667, 678, 46 P 820.

**prerogative writs.** Writs issued in cases of public right and those affecting the sovereignty of the state, its franchises and prerogatives, or the liberties of its people. *State ex rel. Goodwin v Nelson County*, 1 ND 88, 45 NW 33; *Atty. Gen. v Railroad Co.* 35 Wis 513. Writs under which extraordinary remedies are made available.

See **extraordinary remedies**.

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**pres.** See **cy pres**.

**Pres.** Abbreviation of "resident." 1 Am J2d Abbr § 5.

**presbyter.** An elder in the church; a delegate representing a local church in presbytery. A priest or minister.

**Presbyterian Church.** A Protestant church. The United Presbyterian Church in the United States of America.

See **General Assembly; presbytery; synod**.

**Presbyterianism.** See **Calvinism**.

**presbytery.** The governing body of the United Presbyterian Church in the United States of America in a district of the church. The district itself.

**prescribable.** Capable of, or subject to, being acquired by prescription.

**prescribe.** To lay down beforehand as a rule of action; to ordain, appoint, define authoritatively. To impose as a peremptory order; to dictate, appoint, direct, ordain. *Sevier v Riley*, 198 Cal 170, 175, 244 P 323. To give law. *State v Seattle Nat. Bank*, 130 Wash 69, 226 P 259, 33 ALR 1206, 1209. To give a prescription.

**prescribed by law.** Made law by actual legislation. *Exline v Smith & McFarland*, 5 Cal 112. Broadly, made law by any authorized body.

**prescribing in a que estate.** Prescription in a man and all those persons whose estate he has. 25 Am J2d Ease § 58.

**prescription.** The acquisition of an easement by adverse user under claim of right for the prescriptive period. The acquisition of incorporeal hereditaments by adverse user. *Plaza v Flak*, 7 NJ 215, 81 A2d 137, 27 ALR2d 324. A presumption of grant from long possession and exercise of right. 25 Am J2d Ease § 39. In the broad sense of modern times, the gaining of a title by adverse possession. 3 Am J2d Adv P § 4. A direction in writing prepared by a physician, to be presented by the patient to a druggist setting forth the drug or medicine to be furnished the patient by the druggist and the manner in which it shall be prepared, and directions for its use by the patient. 25 Am J2d Drugs § 5. Any direction to a patient for the use or application by

him of any drug for the cure of any bodily disease; even an oral direction for the use of a drug. *State v Baker*, 229 NC 73, 48 SE2d 61.

While it has been contended that the term refers only to medical provision for human beings, there seems to be no reason why a recipe or formula for the treatment of animals may not be called a "prescription," from whatever source it may proceed. *Ray v Burbank*, 61 Ga 505.

See **municipal corporation by prescription; negative prescription; positive prescription; presumed grant.**

**prescription acts.** Statutes establishing the respective periods of time within which various rights or titles may be acquired by prescription. prescriptive easement. An easement arising, created, or acquired by prescription.

See **prescription.**

**prescriptive license.** A license in real property acquired by prescription. 33 Am J1st Lic § 97. An anomalous concept, since use under a license, being permissive, cannot ripen into a prescriptive right. *Los Angeles Brick & Clay Products Co. v Los Angeles*, 60 Cal App 2d 478, 141 P2d 46.

**prescriptive period.** The period of time necessary to acquire an easement by prescription. 25 Am J2d Ease § 50.

**prescriptive title.** See **title by prescription.**

**prescriptive way.** See **way by prescription.**

**presence.** The bearing or personality of a person. The fact of being at a place at a particular time.

The meaning of the word depends upon the circumstances. No one can accurately define it. It implies an area which has no metes and bounds. Anything done within the four walls of a room which is free from outside interference is usually done in the presence of all who are in the room whether it is seen or not. But proximity and consciousness may create presence. *Nock v Nock's Exrs.* 51 Va (10 Gratt) 106, 117.

See **constructive presence.**

**presence of accused.** The fundamental principle of criminal procedure that after indictment found, nothing shall be done in the absence of the prisoner and the correlative right of the accused to be present at his own trial. 21 Am J2d Crim L § 271. The right of the accused to be present at all stages of his trial, applicable in all capital cases, in fact, in all felonies; also applicable in prosecutions for misdemeanors to the extent that the accused undoubtedly has the right to be present, although in some jurisdictions authority to proceed in his absence is recognized where only a misdemeanor is involved. 21 Am J2d Crim L § 272.

**presence of officer.** When an offense is committed so as to justify an arrest without a warrant:—being in such a position that the commission of the offense is on view or that knowledge of the commission of the offense may be acquired by him through any of his senses including the sense of hearing or smell. 5 Am J2d Arr § 31.

Under the usual statutory provision authorizing a peace officer to arrest without warrant where an offense is committed in his "presence," the words do not necessarily mean within his sight, but it is held sufficient if the officer arrives on the scene immediately after the encounter, attracted by the noise of it. *Porter v State*, 124 Ga 297, 52 SE 283.,

**presence of the court.** A phrase to be given a liberal interpretation as it appears in a statute defining contempt of court.

The court consists not of the judge, the courtroom the jury, or the jury room individually, but all of these combined, so that the court is present wherever any of these constituent parts is engaged in the prosecution of the business of the court according to law. Anno: 42 ALR2d 970; 17 Am J2d Contpt § 7.

A court in session is considered present where its officers jurors, and witnesses are required to be in the performance of their several duties, so that an assault, threat, or act of intimidation against such a person while attendant upon the court is a direct contempt. *State v Goff*, 28 SC 17, 88 SE2d 788, 52 ALR2d 1292.

Since the grand jury is an arm of the United States District Court, proceedings before the grand jury are to be regarded as being proceedings in the court. Hence, contempts occurring in the presence of the grand jury are to be treated as taking place in the presence of the court and are therefore subject to be punished summarily by the court, without

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indictment. *Camarota v United States* (CA3 NJ)  
111 F2d 243. -

**presence of the testator.** See **in the presence of the testator.**

**present.** Noun: A gift; a gratuity; to make a gift or gratuity. Adjective: Being at a place at a particular time.  
See **presence.**

**presentation.** An offering by one entitled to do so of a qualified person to be installed in a benefice.

**presentation of bill.** The delivery of a bill passed by the legislature to the executive for his approval or veto. *State ex rel. State Pharmaceutical Asso. v Michel*, 52 La Ann 936, 27 So 565.

See **presentation of claim; presentment for acceptance; presentment for payment.**

**presentation of claim.** A notification by a creditor to the debtor of the existence of the claim, sometimes accompanied with an itemized statement, and usually given for the purpose of inducing payment. The filing of a claim, for example, the filing of a claim for workmen's compensation with the administrative board or commission. 58 Am J1st Workm Comp § 407. The filing of a claim against a decedent so as to make it a matter of record in court. 21 Am J1st Ex & Ad § 371. The furnishing of a statement or notice of claim against a municipal corporation to the corporation for the purpose of audit and allowance, such being a condition precedent to an action against the municipality upon the obligation comprehended by the claim. 38 Am J1st Mun Corp § 673.

**presentation of motion.** The making of a motion in court or to a judge at a time when the party making the motion has the right to have it heard by the court.

**presentative.** See **advowson presentative.**

**present danger doctrine.** See **clear and present danger.**

**presented.** See **presentation and expressions beginning presentation.**

**presentee.** The person to whom a presentation to a benefice was made.  
See **presentation.**

**present estate.** An estate which is presently vested.

**present fact.** A fact presently existing. 37 Am J2d Fraud § 47.

**present heirs.** A man's heirs as determined on the day of his death. In some connections, the heirs apparent. *Fountain County Coal & Mining Co. v Beckleheimer*, 102 Ind 76, 1 NE 202.

**presenting bank.** Any bank presenting an item except a payor bank. UCC § 4-105(e).

**presenting question in lower court.** A fundamental condition of right to review; the raising of objections and the taking of exceptions in the lower court. 5 Am J2d A & E §§ 545 et seq.

**present interest.** An interest which is presently vested.

As used in the Federal Gift Tax statute, a gift of income beginning at once and lasting for life or for a period of years is a gift of a present interest, and a gift of principal at a future date is a gift of a future interest. These rules are to be followed whether the two sorts of gifts are to different persons or to the same person. *Charles v Hassett* (DC Mass) 43 F Supp 432.

**presently.** At once; now; immediately; forthwith.

**presentment.** An informal accusation, made by the grand jury on its own knowledge, to be used by the prosecutor as the basis for a true bill or indictment. *Bennett v Kalamazoo Circuit Judge*, 183 Mich 200, 150 NW 141. Precisely, an accusation by the grand jury made on its own motion. Anno: 22 ALR 1367, s. 106 ALR 1388, 120 ALR 437; 27 Am J1st Indict § 4.

The words "presentment" and "indictment" have come to be substantially interchangeable terms. *Coons v State*, 191 Ind 580, 134 NE 194, 20 ALR 900.

**presentment for acceptance.** The presenting of a bill of exchange to the drawee therein named for his acceptance and agreement to pay the bill, usually at some time in the future. 11 Am J2d B & N § 730. Any act which amounts to a notification of the holding of a bill of exchange with a request to accept, accompanied by the bill. 11 Am J2d B & N § 734.

Where the acceptance of the bill is in writing, the word "seen," or the word "accepted," or the word "presented," written on the bill itself, or on any other paper relating to the transaction, will amount to an acceptance of the bill. *Barnet v Smith*, 30 NH 256.

**presentment for payment.** The method by which it is determined whether a person primarily liable on an instrument will pay or whether it will be necessary to resort for payment to persons secondarily liable. A demand for payment; a personal or face-to-face demand accompanied by a readiness to make actual presentment or exhibition of the instrument and its surrender upon payment. 11 Am J2d B & N § 738.

**presentment of bill of exchange.** See **presentment for acceptance; presentment for payment.**

**presentment of Englishry.** A relic of the Conquest.

In England, under Norman rule, Englishry was said to be presented when it was proved that a murdered man was an Englishman, and thus the county was saved from an amercement which otherwise would have been imposed upon it. See 4 Bl Comm 195.

**present prices.** As the term is used in a contract to purchase a commodity, the prices prevailing at the time of the making of the contract. *Flash v Rossiter*, 116 App Div 880, 102 NYS 449.

**presents.** See **these presents.**

**present use.** A new use of an old instrumentality. 40 Am J Pat § 45. A use immediately in existence so as to be operated upon forthwith by the statute of uses. 28 Am J2d Est §§ 340 et seq.

**present value.** The value under present conditions, as distinguished from the original cost. *National Water Works v Kansas City* (CA8 Mo) 62 F 853.

**present worth.** The value, to be ascertained by computation using a stated rate of assumed interest, of a sum to be paid in the future. *Commissioner v State St. Trust Co.* (CA1) 128 F2d 618, 142 ALR 943.

In reference to the allowance of damages for decreased earning capacity, the jury should be instructed that, in determining the amount of recovery for this item of damage, it should reduce

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such damages to their present worth. 22 Am J2d Damg § 349.

**preservation of self.** See **self-preservation**.

**preservative.** A substance placed in foodstuff to enable it to resist decomposition or fermentation. 22 Am J2d Food § 46.

**preserve.** See **game preserve**; **private preserve**.

**preserving tender.** See **keeping tender good**.

**presidential election.** An election at which a President of the United States is elected, albeit indirectly by the election of presidential electors. 25 Am J2d Elect § 9.

**presidential electors.** Persons chosen at a presidential election, comprising what is known as the electoral college, each state being entitled to as many as the total number of United States Senators and Representatives of such state in the Congress, entitled to elect a President and Vice President of the United States but in actual practice voting in accord with the vote cast in their respective states.

**president.** A chief officer of many corporations, associations, and societies. The presiding officer at a meeting of a body.

**presidential trade agreement.** An agreement concluded between the President of the United States and the representatives of a foreign country, intended to promote trade between the two countries and usually containing conditions respecting the granting of tariff preferences. 21 Am J2d Cost D § 11.

**president judge.** The title in some states of the ranking judge of a court having two or more judges.

**president of corporation.** A corporate officer, having powers which vary according to statute or the charter and bylaws of the corporation, but who, in the absence of statute, charter, or bylaw to the contrary, is the general manager of corporate affairs with authority to act for the corporation in its business. 19 Am J2d Corp § 1169.

**president of the council.** A member of the king's council or cabinet having precedence next after the lord chancellor and the lord treasurer. See 1 Bl Comm 230.

**President of the United States.** The chief executive officer of the federal government, the executive power being vested in him by the Constitution of the United States. Article 2, § 1. That officer of the United States Government upon whom the Constitution has conferred the executive power of the government; whom it has made the commander-in-chief of the army and navy; whom it has authorized, by and with the consent of the senate, to make treaties, and to appoint ambassadors, ministers and consuls; and whose duty it has made to take care that the laws be faithfully executed. See 54 Am J1st US§36.

**President's Committee on Equal Employment Opportunity.** A federal agency charged with duties intended to prevent discrimination in employment because of race, creed, color, or national origin.

**presiding judge.** The judge who presides at the trial of a case. Tucker v Yandow, 100 Vt 169, 135 A 600, 601.

**press.** Verb: To insist; to importune; to force. Noun: A tool or instrument which applies pressure in an industrial operation. A form of punishment by torture. *State v Woodward*, 68 W Va 66, 69 SE 385. Newspapers and other publications considered collectively.

See **freedom of speech and of the press.**

**press association.** An organization engaged in gathering news of events occurring throughout the country and over the world and distributing reports thereof to newspapers. 39 Am J1st Newsp § 26.

**press freedom.** See **freedom of speech and of the press.**

**pressing of seamen.** See **impressment.**

**pressure gauge.** A gauge showing the pressure of steam in a boiler or of gas in a chamber.

**prest.** Ready.

**prestation.** A feudal rent paid by the tenant to the lord either in services or in the yield of the land.

**presume.** To assume. To take for granted, on the basis of human experience or of facts in evidence, although the precise thing assumed is not proved. *Morford v Peck*, 46 Conn 380, 385.

**presumed bias.** The bias of a juror conclusively presumed on account of his relation to a party or to the cause. *United States v Wood*, 299 US 123, 81 L Ed 78, 57 S Ct 177, reh den 299 US 624, 81 L Ed 459, 57 S Ct 319.

**presumed compulsion.** See **legal compulsion.**

**Presumed Decedent's Act.** A statute which provides for the disposition of the property of a person presumed dead because of an unexplained absence for a stated number of years. 1 Am J2d Absent § 3.

**presumed dereliction.** The doctrine that a thing is presumed to have been abandoned when it so appears by acts or circumstances, as when it is thrown away in any public place where it cannot be taken up, or where another is suffered to possess it without contradiction, or where possessory acts have long been abstained from. *Rhodes v Whitehead*, 27 Tex 304.

**presumed grant.** A theoretical basis of the acquisition of title by adverse possession or of a prescriptive right by adverse possession or adverse user. 3 Am J2d Adv P § 3; 25 Am J2d Ease § 39.

**presumed malice.** See **malice in law.**

**presumitur pro reo.** It is presumed in favor of the defendant. *Culpepper v State*, 4 Okla Crim 103, 111 P 679.

See **presumption of innocence.**

**presumptio.** Same as **presumption.**

**Presumptio, ex eo quod plerumque fit.** A presumption arises from that which occurs many times. *Post v Pearsall* (NY) 22 Wend 425, 475.

**presumptio juris et de jure.** Same as **presumption de juris et de jure.**

**presumption.** A rule of law that attaches definite probative value to specific facts or draws a particular inference as to the existence of one fact, not actually known, arising from its usual connection with other particular facts which are known or proved. 29 Am J2d Ev § 160. The assumption or taking for granted of the existence of a fact, permitted or required under the law as a self-evident result of human reason and experience. *Ward v Metropolitan Life Ins. Co.* 66 Conn 227, 238, 33 A 902. An effect of an evidentiary fact from which the trier of fact must find the existence of another fact unless

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and until evidence is introduced which will support a finding of its nonexistence. UCC § 1-201(31). A rule of law attaching definite probative value to a specific fact, as distinguished from an inference which is a permissive conclusion by a trier of fact, unaided by any rule or theory of law directly applicable. *People v Hillebrandt*, 308 NY 397, 126 NE2d 377 49 ALR2d 449; *Stumpf v Montgomery*, 101 Okla 257, 226 P 65, 32 ALR 1490, 1496.

See **conclusive presumption; conflicting presumptions; legal presumption; mixed presumption; presumption; rebuttable presumption; violent presumption.**

**presumption juris et de jure.** A presumption of law and from law; that is, a conclusive presumption.

**presumption of access.** The presumption of sexual intercourse between husband and wife having opportunity for intercourse. The presumption of access between husband and wife for sexual relations which prevails until the contrary is plainly proved. 10 Am J2d Bast § 12.

**presumption of coition.** The presumption that married persons have co-habited. *Whitney v Whitney*, 169 Cal App 2d 209, 337 P2d 313.

**presumption of death.** The presumption that the death of a certain person has occurred, where his survival to the pertinent date is contrary to the ordinary course of nature, or opposed to the common experience of mankind. *Young v Shulenberg*, 165 NY 385, 59 NE 135. A presumption arising upon proof that a person disappeared and has not been heard of for a long period of time, usually 7 years, without explanation of the purpose or reason of his absence. 1 Am J2d Absent § 1. The presumption arising from the continued and unexplained absence of a person from his home or place of residence, without intelligence from or concerning him, for a period of seven years. 22 Am J2d Dth § 304.

**presumption of fact.** A logical and reasonable conclusion of the existence of a fact in a case, not presented by direct evidence as to the existence of the fact itself, but inferred from the establishment of other facts from which by the process of logic and reason, based upon human experience, the existence of the assumed fact may be concluded by the trier of the fact. 29 Am J2d Ev § 161. An inference arising from the commonly accepted experiences of mankind. *Meares v Meares*, 256 Ala 596, 56 So 2d 661.

**presumption of guilt.** An anomalous expression except as it be understood to mean something which authorizes but does not require conviction. 13 Am J2d Burgl § 54.

See **presumption of innocence.**

**presumption of innocence.** The presumption in a criminal prosecution that the accused is innocent until he is proved guilty, a presumption which places upon the state the burden of proof of guilt and, according to some authority, is of evidentiary value in favor of the accused. 29 Am J2d Ev §§ 225, 226. A presumption which applies, not only in criminal cases, but in civil cases where the commission of a crime is in issue. 29 Am J2d Ev § 224.

**presumption of law.** An assumption made by the law itself, compelling the court to a resulting conclusion, which may or may not have a logical or reasonable foundation in basic fact. 29 Am J2d Ev § 163. A presumption which derives its force from the



law of the jurisdiction, not from logic or probability as such, but is usually founded upon public policy, social convenience and safety. *Indianapolis v Keeley*, 167 Ind 516, 79 NE 499.

There are two kinds of presumptions of law, irrebuttable or conclusive presumptions and rebuttable or disprovable presumptions. 29 Am J2d Ev § 163.

See **conclusive presumption; rebuttable presumption.**

**presumption of law and fact.** See **mixed presumption.**

**presumption of legitimacy.** The presumption that a child born in wedlock is legitimate. 10 Am J2d Bast § 11. The presumption that a child was born in lawful wedlock, such prevailing, in the absence of proof to the contrary, upon the broad principles of natural justice and the supposed virtue of the mother. 10 Am J2d Bast § 10.

**presumption of marriage.** The very strong presumption that a marriage, once shown, is legal and valid. 35 Am J1st Mar § 192. The presumption, where legitimacy is in issue, that the relations between a man and woman who produced offspring were lawful rather than meretricious. 10 Am J2d Bast § 10.

If a former marriage is necessary to sustain the presumption of legitimacy, such marriage will be assumed until proof to the contrary is forthcoming. *Re Mathew's Estate*, 153 NY 443, 47 NE 901.

**presumption of paternity.** The presumption that a child born in wedlock is the child of the husband, except as it be proved that the husband did not have access to the wife. 10 Am J2d Bast § 12.

See **presumption of access.**

**presumption of payment.** The presumption that a transfer of money or property by a debtor to the creditor is a payment of the debt rather than a gratuity. 40 Am J1st Paym § 238. The presumption that a debt evidenced by a writing has been paid where such written evidence is in the possession of the obligor. 40 Am J1st Paym § 240. The presumption, arising as a matter of convenience and of sound public policy, that after a great lapse of time between the creation of an obligation and an attempt to enforce it, usually twenty years but a lesser period in some jurisdictions, the debt is presumed to have been paid. 40 Am J1st Paym §§ 243 et seq.

**presumption of regularity.** The presumption, subject to rebuttal, that a public officer has performed his duty, acting in a regular and lawful manner. The rebuttable presumption that regulations, decisions, or orders of an administrative agency acting within the limits of the jurisdiction conferred upon it by law are regular and valid. 2 Am J2d Adm L § 748.

**presumption of sanity.** The presumption, holding until satisfactory proof to the contrary is presented, that a man is sane, capable of managing his own affairs, competent to enter into contracts, and capable of understanding the nature and effect of his own acts. 29 Am J2d Ev § 203. The presumption that every man is sane and fully competent until satisfactory proof to the contrary is presented; the presumption, in the absence of proof to the contrary, that a man is capable of understanding the nature and effects of his contracts, and that he comprehends the effect and result of legal proceedings. *First Christian Church v McReynolds*, 194 Or 68, 241 P2d 135.

**presumption of survivorship.** The presumption that a person shown to be alive at a given time remains alive until the contrary is shown by some sufficient

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proof, or, in the absence of such proof, until a different presumption arises. 22 Am J2d Dth § 294.

As to survivorship as between persons who died in a common disaster, see 22 Am J2d Dth §§ 295 et seq.

**presumptive.** Founded upon or resting upon a presumption.

**presumptive damages.** Another term for punitive or exemplary damages. 22 Am J2d Damg § 236.

**presumptive evidence.** A term of variable meaning. Evidence to be considered as proof of a point unless rebutted. Circumstantial evidence; that is, evidence which shows the existence of one fact by proof of the existence of others from which the first may be inferred. State v Kornstett, 62 Kan 221, 61 P 805. Evidence which is not conclusive but subject to rebuttal or explanation.

**presumptive heir.** See **heir presumptive.**

**presumptive title.** A title appearing from nothing more than occupancy of the premises. The naked possession of a disseisor. 3 Am J2d Adv P § 236.

**presumptive trust.** Same as **resulting trust.**

**pretenced.** Pretended.

**pretended.** Sham; fictitious; make-believe.

**Pretended Title Statute.** The statute 32 Henry VIII., c. 9, providing that no one shall sell or purchase any pretended right or title to land unless the vendor has received the profits thereof for one whole year before such grant, or has been in actual possession of the land, or of the reversion or remainder, on pain that both purchaser and vendor shall each forfeit the value of the land to the king and the prosecutor. See 4 Bl Comm 135.

**pretense.** See **false pretense; pretext.**

**pretensed.** Pretended.

**preterition.** (Civil law.) The failure of a testator to make some provision in his will for an heir who would be entitled to succeed to his estate or some portion of it in the absence of a will.

**pretermission.** The act of pretermittting. The condition of being pretermitted.  
See **pretermit.**

**pretermit.** To fail to take note of a person. To omit a person particularly one's child from one's will. 57 Am J1st Wills § 573.

**pretermitted child.** See **pretermitted heir.**

**pretermitted heir.** One who as a child or descendant of another would have shared in the estate of the latter if the latter had died intestate but who is not named in or provided for by the will left by such ancestor.

As to statutes respecting right of pretermitted children, see 57 Am J1st Wills § 573.

**pretext.** An ostensible reason or motive assigned or assumed as a color or cover for the real reason or motive false appearance; pretense. State v Ball, 27 Neb 601, 604.

**pretium.** Price; value; reward; pay.

**pretium affectionis.** The price or value of affection.

The term is applied to that rule for the estimation of damages for the loss of things having peculiar personal value to the owner, such as a family portrait or a pleasure yacht wherein the measure of damages is the actual value to the owner, taking into account its cost, the practicability and expense of replacing it, and such other considerations as in the particular case affect its value to the owner. *The H. F. Dimock (CAI Mass) 77 F 226, 233.*

**pretium feudi.** The price of a fief or fee. See 4 Bl Comm 96.

**pretium periculi.** The price of peril or risk; the compensation paid or the charge made for assuming a marine insurance hazard.

**Pretium succedit in locum rei.** The price or value of a thing takes the place of it.

**pretor.** Same as **praetor**.

**pretorian prefect.** See **praefectus praetorio**.

**pretorium.** The official residence of a Roman praetor; a court room.

**pretrial conference calendar.** A court calendar, in addition to the trial calendar, listing the cases wherein a pretrial conference has been called and the time therefor. *Union Oil Co. v Hanes, 27 Cal App 2d 106, 80 P2d 516; State ex rel. Kennedy v District Court, 121 Mont 320, 194 P2d 256, 2 ALR2d 1050.*

**pretrial deposition.** See **deposition**.

**pretrial discovery.** See **discovery**.

**pretrial procedure.** Provision made by statute or rule of court for a conference between court and counsel to consider simplification of the issues, the necessity or desirability of amendment of the pleadings, the possibility of obtaining admissions to avoid unnecessary proof, limitation on the number of expert witnesses, a preliminary reference, and such other matters as may aid in the disposition of the action. 53 Am J1st Trial § 11. An informal proceeding before an administrative agency for the submission and consideration of facts, arguments, offers of settlement, and proposals of adjustment. 5 USC § 1004 (d).

See **deposition; discovery**.

**prevailing party.** The party who is successful or partially successful in an action, so as to be entitled to costs. 20 Am J2d Costs §§ 14, 15.

To be a prevailing party does not depend upon the degree of success at different stages of the suit; but upon whether at the end of the suit or other proceeding, the party, who has made a claim against the other, has successfully maintained it. If he has, he is the prevailing party. *Bangor & Piscataquis Railroad Co. v Chamberlain, 60 Me 285, 286.*

**prevailing party on appeal.** The party who obtains a reversal or a modification of judgment substantially favorable to him. 5 Am J2d A & E § 1015.

In eminent domain proceedings instituted by the state wherein an appeal is taken to the District Court from an award of the commissioners, the "prevailing party", entitled by statute to an award of costs and disbursements, is the litigant who prevails with respect to the particular issues raised and determined by the appeal, rather than the litigant who ultimately prevails in the condemnation proceeding. *State v Miller Home Development, 243 Minn 1, 65 NW2d 900, 50 ALR2d 1377.*

**prevailing rate of wages.** The wages received generally by those who are working at the same trade or occupation. People ex rel. *Rolf v Coler, 58 App Div 347 68 NYS 1101.* The average, rather than the highest or lowest, wages paid for a legal day's work

in the same trade or occupation. Anno: 93 ALR 1255.

**prevailing wages.** See **prevailing rate of wages.**

**prevarication.** A lie. (Civil law.) A breach of trust.

**prevent.** To hinder; to obstruct; to intercept.

A person who is "induced" by means of representations or promises to delay a suit, is not thereby "prevented" from suing. *Burr v Williams*, 20 Ark 171, 185.

**prevention.** The act of preventing. The means of preventing. (Civil law.) The right of a judge to take cognizance of an action over which he has concurrent jurisdiction with another judge.

See **writ of prevention.**

**prevention of cruelty to animals.** See **society for the prevention of cruelty to animals.**

**preventive injunction.** An injunction in the ordinary form, one directed against an act or acts, rather than one in the affirmative requiring the performance of an act. An injunction which commands the party against whom it is directed to refrain from doing a specified act or acts. *Lakesville Woolen Mills v Spray Water Power & Land Co.* 183 NC 511, 112 SE 24.

**preventive justice.** Requiring security to keep the peace. 12 Am J2d Breach P § 41. Any relief, such as an injunction, which prohibits or restrains certain acts.

**preventive remedies.** Those remedies in equity by which a violation of a primary right is prevented before the threatened injury is done, or by which the further violation is prevented after the injury has been partially effected, so that some other relief for the wrong actually accomplished can be granted.

The injunction is a familiar example. See 1 Pomeroy's Equity Jurisprudence § 112.

**previous.** Prior; preceding; earlier in point of time; former.

See words and phrases beginning **prior.**

**previous chaste character.** A familiar expression characterizing the victim of seduction.

As the expression is used in the ordinary statutory definition of seduction under promise of marriage, as seducing and having illicit connection with an unmarried female of "previous chaste character," it does not mean purity of mind, nor purity of heart, but merely purity of body; that is, that the female has never sustained illicit relations with anyone prior to the alleged offense of the defendant. *State v Holler*, 32 SD 43, 142 NW 657.

**previous experience.** See **experience.**

**previous indorsements guaranteed.** See **prior endorsements guaranteed.**

**previous insurance.** See **other insurance; other insurance clause; prior application, rejection, or cancellation.**

**previously.** An adverb of time, used in comparing an act or state named, to another act or state, subsequent in order of time, for the purpose of asserting the priority of the first. *Lebrecht v Wilcoxon*, 40 Iowa 93, 94.

**price.** The consideration furnished or to be furnished by a buyer of property. 46 Am J1st Sales § 60; 55 Am J1st V & P § 23.

The consideration for a sale, whether of personally or realty. 46 Am J1st Sales § 60; 55 Am J1st V & P § 334. The consideration for services rendered. The amount charged or asked for property or services.

**price book.** A book carried by a traveling salesman, showing the current price for the merchandise he sells.

**price control.** The control and regulation by the government, state, or federal, of the prices at which commodities may be marketed. *Charles Uhden, Inc. v Greenough*, 181 Wash 412, 43 P2d 983, 98 ALR 1181. Relieving farmers from unfavorable economic conditions by maintaining a price for a farm product or products by government purchases, government loans, or a planned and accomplished reduction of acreage devoted to a particular crop or crops. 3 Am J2d Agri §§ 26, 27. The exercise of the war powers of Congress in providing an effective means for the control of prices of commodities, thus preventing unbridled price inflation. 56 Am J1st War § 39. The exercise of the legislative power in fixing prices of motor vehicles, particularly maximum-price allowances for used cars. 7 Am J2d Auto § 34. Partaking of a judicial nature in some aspects, of a legislative character in others. 1 Am J2d Admin L § 181.

**price discrimination.** Charging one customer more than another for the same article or service.

Accepting the doctrine that it is unlawful for anyone engaged in interstate commerce to discriminate in price between customers, we would accept the further doctrine that selling to one at a price and refusing to sell to another at any price is a price discrimination, there being no other reason for the refusal to sell. The "one price" policy, although now accepted as sound, wise, and just is of comparatively recent adoption. It has however been written into the amendments to what we know as the Sherman Anti-Trust Act. *Shaw's Inc. v Wilson-Jones Co.* (DC Penn) 26 F 713.

**price fixing.** The product of an unlawful combination where perfected by an agreement between manufacturers or dealers to maintain specified prices. 36 Am J1st Monop etc. § 7.

See **price control**.

**price quotations.** See **market quotations**.

**Price v Neal.** A case known for the doctrine that, as between equally innocent persons, the drawee who pays money on a check or draft the signature to which was forged cannot recover the money from the one who received it; in other words, a drawee who has paid a bill of exchange or check cannot recover the payment from a holder in good faith for value and without fault. 3 Burr 1354, 97 Eng Reprint 871.

**pride gavel.** A rent or tribute.—Wharton's Law Dictionary.

**prier.** See **age prier**.

**priest.** A clergyman, particularly a clergyman of the Roman Catholic or other Catholic Church.

**Priestly v Fowler.** An English Case sometimes said to have been the source of the doctrine of assumption of risk by an employee. 3 Mees & W 1, 150 Eng Reprint 1030, 19 ERC 102.

**primae impressionis.** Of first or novel impression; without a precedent; involving a point not previously decided.

**prima facie.** At first sight. In reference to evidence, adequate as it appears, without more.

**prima facie case.** A case supported by sufficient evidence to warrant submission to the jury or trier of the fact and the rendition of a verdict or finding in accord therewith. A cause of action or defense sufficiently established by a party's evidence to justify a verdict in his favor, provided the other party does not rebut such evidence. *Atlas Bank v Doyle*, 9 RI 78.

**prima facie evidence.** Evidence which if unexplained or uncontradicted, is sufficient to carry the case to the jury and to sustain a verdict or finding in favor of the side of the issue which it supports, but which may be contradicted by other evidence. *McKenzie v Standard Acci. Ins. Co.* 198 SC 109, 16 SE2d 529.

That is prima facie just, reasonable, or correct which is presumed to be just, reasonable, or correct until the presumption has been overcome by evidence which clearly rebuts it. *Atchison, Topeka & Santa Fe Railway Co. v State*, 23 Okla 210, 100 P 11.

**prima facie presumption.** A presumption which holds good until overthrown by proof; a rebuttable presumption; a presumption which is not conclusive.

**primage.** A small compensation paid by a shipper to the master of a ship for his trouble and care bestowed on the shipper's goods and which the master is entitled to retain, in the absence of an agreement to the contrary with the owners of the vessel. *Peters v Speights*, 4 Md Ch 375, 381.

**prima materia.** See **materia prima**.

**Prima pars aequitatis aequalitas.** The prime or foremost feature of equity is equality.

**primaria ecclesia.** (Latin.) The main or mother church of the faith.

**primariae preces.** First prayers or suits,—the imperial prerogative of the emperor of Rome whereby he always exercised the right of naming a person to fill the office of prebendary in the first prebend to become vacant after his accession. See 1 Bl Comm 381.

**primaries.** See **primary election**.

**primarily engaged.** Substantially engaged in an enterprise, even though less than one half of one's time or efforts are expended upon it. *Federal Reserve System v Agnew*, 329 US 441, 91 L Ed 408, 67 S Ct 411.

**primarily for sale to customers.** An income-tax law term signifying property held by a dealer for sale to customers in the ordinary course of business. Anno: 46 ALR2d 639.

**primarily liable.** See **primary liability**.

**primary.** Adjective: First in order of time or development; original; preparatory to something higher. *State of Indiana v Hirsch*, 125 Ind 207, 24 NE 1062. Noun: Any convention, caucus, or meeting of voters, or a primary election, for choosing candidates for public office or selecting delegates to a convention.

See **primary election**, also words and phrases beginning "principal."

**primary administrative jurisdiction.** See **primary jurisdiction doctrine**.

**primary boycott.** A boycott applied directly and alone to the offending person by withdrawing from him all business relations on the part of the organization that initiated the boycott. *Booker & Kinnaird v Louisville Board of Fire Underwriters*, 188 Ky

771, 224 SW 451, 21 ALR 531. A combination to refrain from dealing with an employer, or to advise, or by peaceful means persuade, his regular customers to refrain. 31 Am J Rev ed Lab § 462.

**primary cause.** An efficient cause; a proximate cause. 38 Am J1st Negl § 50.

See **proximate cause**.

**primary contract.** A contract which has been superseded or modified by a later contract called the secondary contract. 17 Am J2d Contr § 459. A building or construction contract between the owner of the premises and a building contractor, as distinguished from a contract made by the latter in subletting a part of the work.

**primary conveyance.** See **original conveyance**.

**primary easement.** An easement to which a secondary easement is appendant, as an easement in a ditch attached to which there is a secondary easement of access over the servient premises for the purpose of cleaning out and repairing the ditch. Carson v Gentner, 33 Or 512, 52 P 506.

**primary election.** A nominating device of a political party; the selective mechanism by which the members of a political party express their preference in the selection of the party's candidates for public office. 25 Am J2d Elect § 148. An election conducted as a party affair for the selection of candidates to be placed on the official ballot at an election. Wagner v Gray (Fla) 74 So 2d 89.

**primary evidence.** The best evidence of which the case in its nature is susceptible. 29 Am J2d Ev § 448. That evidence which suffices for the proof of a particular fact until contradicted or overcome by other evidence. Cross v Baskett, 17 Or 84, 21 P 47.

**primary franchise.** The franchise of corporate existence; the result of a grant of special privileges to the incorporators which enables them to act for certain designated purposes as a single individual and exempts them unless otherwise specially provided, from individual liability. 18 Am J2d Corp § 66.

**primary jurisdiction.** The power of a court to hear and adjudicate a case brought before it. State ex ref. Barker v Assurance Co. of America, 251 Mo 278, 158 SW 640.

**primary jurisdiction doctrine.** The principle that the courts can not or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, prior to the decision of that question by the administrative tribunal, (1) where the case demands the exercise of administrative discretion, requiring the special knowledge, experience, and services of the administrative tribunal, to determine technical and intricate matters of fact; and (2) where uniformity of ruling is essential to comply with the purposes of the regulatory statute administered. 2 Am J2d Admin L § 788.

**primary legal right.** A right with which the law invests a person and for the infringement of which he is entitled to a remedy. Granahan v Celanese Corp. of America, Plastics Div. 3 NJ 187, 69 A2d 572; Norwood v McDonald, 142 Ohio St 299, 27 Ohio Ops 240, 52 NE2d 67.

**primary liability.** The liability of the person who, by the terms of the instrument of obligation, is absolutely required to pay the same. 11 Am J2d B &

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N § 525. The liability of a maker or principal, as distinguished from that of a guarantor, indorser, or other person under secondary liability. Winkle v Scott (CA8 Mo) 99 F2d 299. The liability of personal property, left by a decedent, for his debts before resorting to real estate, left by him, for the satisfaction of such obligations. 23 Am J2d Desc & D § 137. The liability of a

person causing an injury to another who because of his relation to the injured person and the legal obligation to such person should bear the responsibility in damages rather than another person also liable to the injured person but under a different relationship and different character of legal obligation. *Builders Supply Co. v McCabe*, 366 Pa 322, 77 A2d 368, 24 ALR2d 319; *Schaefer v Fond du Lac*, 99 Wis 333, 341.

**primary material.** Raw material.

**primary meeting.** A political convention; an organized assemblage of electors or delegates representing a political party or principle.

The usual purpose of such a meeting is the nomination of candidates to be voted for at a general election. *Price v Lush*, 10 Mont 61, 24 P 749.

**primary negligence.** The original, as distinguished from the subsequent, negligence of the defendant. 7 Am J2d Auto § 379.

**primary obligation.** An obligation imposed by law in consequence of a person's voluntary undertaking, or by the law on the ground of public policy or utility; as, for example to perform one's contract or to refrain from committing a trespass. See 8 Harvard L Rev 200.

See **primary liability**.

**primary patent.** Same as **basic patent**.

**primary powers.** Main or principal powers as distinguished from incidental, implied, or mediate powers.

**primary purpose.** The principal motivation for a course of conduct. *State v Erickson*, 44 SD 63, 182 NW 315, 13 ALR 1189.

**primary receivership.** A receivership to which another receivership, usually in another jurisdiction, is ancillary. 45 Am J1st Rec § 420.

**prima seisina.** Same as **primer seisin**.

**primate.** One of the most highly developed animals ape or man. (Ecclesiastical.) A presiding archbishop in the Church of England.

**prima tonsura.** The first cutting, the right to the first crop.

**prime.** First class. First in quality.

**prime.** (French.) Premium. Bonus.

**prime minister.** In a parliamentary system, such as that in Great Britain, the head of the government, subject to the will of parliament.

**primer.** (French.) To lead. To surpass.

**primer election.** The first choice; the first selection.



**primer fine.** A sum which by ancient prerogative was due the king upon the suing out of the writ or praecipe at the commencement of a suit to levy a fine.

This sum was a noble for every five marks of land sued for; that is, one tenth of the annual value. See 2 Bl Comm 350.

**primer seisin.** A feudal burden, only incident to the king's tenants in capite and not to those who held of inferior or mesne lords.

It was a right which the king had, when any of his tenants in capite died seised of a knight's fee, to receive of the heir, provided he was of age, one whole year's profits of the lands, if they were in immediate possession; and half a year's profits, if the lands were in reversion expectant on an estate for life. See 2 Bl Comm 66.

**primes.** See **en primes.**

**prime serjeant.** Same as **premier serjeant.**

**primis.** See **in primis.**

**primitiae.** First fruits; the first year's profits of a clergyman's benefice, which were claimed by and went to the pope. See 2 Bl Comm 67.

**Primo excutienda est verbi vis, ne sermonis vitio obstruatur oratio, sive lex sine argumentis.** The force of a word should be weighed in the beginning, lest the sentence be stifled by the fault of expression or the law be without reason.

**primogeniture.** The condition or state of the child who is the first born. The principle of descent of real estate to the eldest son of the decedent. 23 Am J2d Desc & D § 6.

**primogenitus.** The child first born.

**primo venienti.** To the first person who comes.

**Primum coram comitibus et viatoribus obviis, deinde in proxima villa vel pago, postremo coram ecclesia vel iudicio.** First before the inhabitants and the casual travelers, then in the nearest town or village, lastly before the church or court house. See 1 Bl Comm 297.

**primum decretum.** A preliminary or provisional decree which was granted in ecclesiastical and admiralty suits.

**primus inter pares.** First among one's peers or equals.

**prince.** A ruler; a sovereign. As in Great Britain, the son of a king or queen. In a democracy, a person of eminence, a person of quality, an engaging personality.

**prince consort.** The husband of a reigning queen, as Prince George of Denmark was to Queen Anne. See 1 Bl Comm 222.

**Prince of Wales.** The oldest son of a British sovereign and, as such, first in line of succession.

**princeps.** (Civil law.) A chief; a leader; a prince; a ruler; the Roman emperor.

**Princeps et respublica ex justa causa possunt rem meam auferre.** The sovereign and the state can take away my property for a justifiable cause.

**Princeps legibus solutus est.** The ruler or sovereign is exempt from the law.

**principal.** Adjective: Of first importance. In the first rank. Noun: The head of a high school or grade school. The amount of an original indebtedness as distinguished from interest accruing. The corpus of

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an estate in property. In an agency relationship, the person for whom another acts and from whom he derives authority to act. 3 Am J2d Agency § 1. In bail and recognizance:—the person released on bail. 8 Am J2d Bail § 1. The party to a suretyship who enters into the main contract with the obligee, the one who is directly interested in and benefited by the main contract, and the one to whom or from whom the consideration for the main obligation flows. 50 Am J1st Suret § 3. In guaranty, the person whose obligation is covered by the undertaking of the guarantor. 24 Am J1st Guar § 29. In crime:—one actually or constructively present, and abetting the commission of the offense, that is, doing some act at the time of the commission of the crime that is in furtherance of the offense. 21 Am J2d Crim L § 120.

Under Federal statutes, he who, in the commission of an illegal act with others, such as maintaining an illicit still, conducting a burglary or a holdup, arms and instructs his confederates to kill if obstructed in the attempt, with the purpose and intent that they do so, is in law a principal in any wilful killing which results from carrying out those instructions. *Young v United States* (CA5 Tex) 97 F2d 200. See, also **principal D**, 1010.

**principal action.** An action in which or from which an auxiliary, ancillary, or provisional remedy develops or arises.

**principal administration.** The administration of the estate of a decedent in the jurisdiction of his domicil, as distinguished from ancillary administration in another jurisdiction where there are assets left by the decedent which require administration. 31 Am J2d Ex & Ad § 681.

**principal cause.** See **challenge for principal cause.**

**principal challenge.** See **challenge for principal cause.**

**principal contract.** A contract entered into by the principals themselves, as distinguished from a contract in which one or both or all the principals are represented by an agent, or by agents.

**principal contractor.** The contractor standing in direct relation to the owner and responsible to him, but ordinarily permitted by the nature of his contract to perform the contract by subletting to others, if he sees fit. 36 Am J1st Mech L § 51.

**principal debt.** The original debt, as distinguished from liability enhanced by accruing interest. The primary liability. The obligation of a principal in a transaction. The obligation of a principal debtor, as distinguished from the obligation of his surety, guarantor, or indemnitor. An indebtedness or liability, as distinguished from a promise to pay such indebtedness or liability. *London & San Francisco Bank v Bandmann*, 120 Cal 220, 52 P 583.

See **primary liability; principal.**

**principal debtor.** A debtor whose obligation is covered by a guaranty or contract of suretyship.

**principal defendant.** The defendant in an action as distinguished from a debtor served with a notice of garnishment in the action.

**principal employment or business.** The occupation or business on which the debtor chiefly relies for a livelihood, and which engrosses most of his time and attention, not for a day, a week, or a month, but throughout the year. *Smalley v Masten*, 8 Mich 529.

**principal fact.** The main or chief fact at issue in a cause.

**principal in first degree.** One who commits a criminal act either in person or through an innocent agent. *State v Wilson*, 235 Iowa 538, 17 NW2d 138; *State v Minton*, 234 NC 716, 68 SE2d 844, 31 ALR2d 682; *Red v State*, 39 Tex Crim 667, 47 SW 1003.

**principal in second degree.** One present at the commission of a criminal act, lending countenance, aid, encouragement, or other mental assistance, while another commits the act. *Red v State*, 39 Tex Crim 667, 47 SW 1003. One present at the time a crime is committed, lending countenance, aid, or encouragement, or one keeping watch at some convenient distance while another person performs the actual criminal act. *Brown v Commonwealth*, 130 Va 733, 107 SE 809.

**principalis.** A principal.

**Principalis debet semper excuti antequam perveniatur ad fideijussores.** The principal debtor should always be exhausted before resort is had against the sureties.

**principally engaged.** See **principal employment or business.**

**principal meridian.** A north and south line, running as any meridian of longitude, established and numbered in connection with the government survey of public lands for the purpose of numbering townships laid out by the survey, a township being given a range number according to the tier of townships in which it appears east or west of such meridian, which number, taken in connection with a number similarly recognized in reference to an east and west or base line, serves to locate the township in the vast area surveyed. *Meas v Whitener-London Realty Co.* 119 Ark 301, 178 SW 390.

See **base line; range.**

**principal obligation.** See **principal debt.**

**principal office.** The principal place of business of a corporation, the activities of which extend over a wide area, sometimes over state lines, even into foreign countries. 18 Am J2d Corp § 160.

**principal officer or agent.** An agent of a foreign corporation upon whom service of process may be made in an action against the corporation; a chief officer or agent. 36 Am J2d For Corp § 556.

**principal place of business.** The criterion of the residence or nonresidence of a corporation. 36 Am J2d For Corp § 38. As a venue for the adjudication of a debtor in bankruptcy, the place where the debtor's personal business affairs are conducted, notwithstanding his principal income is from a business conducted elsewhere. *Re Knox* (CA6 Tenn) 11 F2d 743.

The principal place of business of a corporation is that place which has been designated by the corporation in compliance with, and in the manner prescribed by statute. That place is often the principal or main office of the company in the case of a domestic corporation, but obviously the principal place of business as here defined is not necessarily the office of the corporation. *State v Vincent*, 144 Wash 246, 257 P 849.

**Principia data sequuntur concomitantia.** The principles given, the concomitants follow.

**Principia probant, non probantur.** Principles prove; they are not proved.

**Principiis obsta.** Oppose or withstand beginnings; nip trouble in the bud.

**principio.** See **in principio.**

**Principiorum non est ratio.** A reason for principles does not exist; there is no reason for principles.

**principium.** The beginning; the outset.

**Principium est potissima pars cujusque rei.** The beginning is the strongest part of anything.

**principium et fons.** The origin and source.

**principle.** The cause, source, or origin of anything; that from which a thing proceeds, as the principle of motion, the principles of action; ground, foundation, that which supports an assertion, an action or a series of actions, or of reasoning; a general truth; a law comprehending many subordinate truths; as the principles of morality, of law, of government. *People v Stewart*, 7 Cal 140, 143.

**print.** See **printing.**

**printed form.** See **form.**

**printed matter.** See **printing.**

**printed scroll.** The common modern and valid form of a seal. 47 Am J1st Seals § 4.

**printing.** Putting words, figures, or characters on paper by the use of type and ink. *Arthur v Moller*, 97 (US) 7 Otto 365, 24 L Ed 1046, 1047; *Forbes Lithograph Mfg. Co. v Worthington*, 132 US 655, 660, 33 L Ed 453, 454, 10 S Ct 180. Writing in letters used in printing rather than in the script of ordinary handwriting.

**prior.** Preceding. Having precedence.

See expressions which follow, beginning "**prior**;" also expressions beginning "former" or "previous."

**prior acquittal.** See **prior jeopardy.**

**prior action pending.** See **pendency of action; pending action; plea of another action pending.**

**prior adjudication.** A previous judgment in which the same matter in a dispute between the same parties was, or might have been put in issue and tried. *Cromwell v Sac County* (US) 4 Otto 351, 24 L Ed 195.

See **res judicata.**

**prior application, rejection, or cancellation.** A matter of information sought by an insurance company of an applicant for insurance respecting prior history of his experience in obtaining or being rejected for insurance.

**prior appropriation.** The doctrine which prevails in some American jurisdictions that the person who first diverts and applies to a beneficial use the waters of a stream of public right has a prior right of continued use to the extent of his appropriation.

Wyoming v Colorado, 259 US 419, 66 L Ed 999, 42 S Ct 552. The doctrine of the western states concerning the use of water for irrigation. 30 Am J Rev ed Irrig § 18.

**prior conviction.** As a prerequisite to punishment as a subsequent offender, a conviction which denotes the establishment of guilt according to some legal mode, whether it be by judgment on plea or verdict. 25 Am J1st Habit Cr § 10.

See **prior jeopardy**.

**prior decision.** See **precedent**.

**prior equity.** A superior equity required as a condition of equitable relief. Jefferson County v McGrath, 205 Ky 484, 266 SW 29, 41 ALR 586.

**prior estate.** See **preceding estate**.

**priori.** See **a priori**.

**prior indorsements guaranteed.** A guaranty of the genuineness of the indorsements and no more. Johnston v Schnabaum, 86 Ark 82, 109 SW 1163.

**Prior in tempore, potior in jure.** First in time, superior in right. He has the better title who was first in point of time. See Broom's Legal Maxims 353.

**priority.** The attribute or quality of that which is earlier or previous in point of time. Precedence. Of lien:—a superiority of security over other liens either in point of time or as declared by law from considerations of public policy. Of claim:—the right to have one's claim against a decedent's estate satisfied out of estate assets before other claimants are permitted to resort to such assets, 21 Am J1st Ex & Ad §§ 393 et seq; the status of a claim in insolvency proceedings which calls for payment of it before any payment is made on other claims, 29 Am J Rev ed Insolv §§ 46 et seq; in bankruptcy, distribution in order determined by classes of debts of funds not subject to lien in the hands of the trustee in bankruptcy as assets of the estate in bankruptcy. 9 Am 12d Bankr § 528.

See **preference**.

**priority of attachment.** Priority of an attachment in reference to another attachment of the same property, as determined by order of levy or by order of issuance of the writs. 6 Am J2d Attach § 468. The priority of an attachment in reference to other liens. 6 Am J2d Attach §§ 464 et seq.

**priority of exercise.** The principle that in a case of concurrent jurisdiction, the court which first exercises jurisdiction acquires exclusive jurisdiction to proceed further in the case. Scott v Industrial Acci. Coin. 46 Cal 2d 76, 293 P2d 18.

**prior jeopardy.** A defense, otherwise known as double jeopardy or former jeopardy, based upon a provision of the United States Constitution found in the Fifth Amendment or a similar provision of a state constitution, deriving from a principle of the common law that a man shall not be brought into danger of his life or limb more than once for one and the same offense; a rule prohibiting a second punishment for the same offense and, as well, a second trial for the same offense. 21 Am J2d, Crim L § 165.

The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. See Gavieres v United States, 220 US 338, 55 L Ed 489, 31 S Ct 421.

See **identity of offenses**.

**prior lien.** See **priority**.

**prior losses.** A matter of information sought by an insurance company of an applicant for insurance respecting the experience of the applicant in reference to losses of his property covered by insurance.

**prior mortgage.** A mortgage entitled to satisfaction out of the mortgaged property before other liens or mortgages on such property are to be satisfied.

See **priority**.

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**prior negligence.** Negligence so remote from the time of the injury as not to constitute a proximate cause. *Holwerson v St. Louis & Suburban Railway Co.* 157 Mo 216, 57 SW 770.

**prior petens.** The first applicant; the earlier claimant. A plaintiff who sues first, that is, before the defendant sues him. *Conant v Conant*, 10 Cal 239, 245.

**Prior possessio cum titulo posteriore melior est priore titulo sine possessione.** Prior possession with subsequent title is better than prior title without possession.

**prior recovery.** See **prior adjudication**.

**Prior tempore, potior jure.** First in time, superior in right.

**prior tenant.** Same as **casual ejector**.

**prior testimony.** Testimony given at a former trial, admitted under an exception to the hearsay rule upon a showing of necessity arising from the death or incompetency of the witness or his unavailability for the instant case, provided certain conditions such as identity of parties and issues, opportunity for cross examination in the former case, an authenticity of reproduction are met. 21 Am J2d Crim L § 343; 29 Am J2d Ev §§ 738 et seq.

**prior title.** A title which will prevail in law or equity as against another asserted title, lien, or interest.

**prior use principle.** The rule that property devoted to a public use is not subject to condemnation under the power of eminent domain for the same use, since no public use or public necessity can be served by such a taking. 26 Am J2d Em D § 93.

**priory.** A religious house presided over by a prior and next in dignity after an abbey.

**prisage.** The king's right to share in a prize; his right of taking two tons of wine from every ship importing into England 20 tons or more.

Under Edward 1, this was changed into a duty of 2s. for every ton imported by merchant strangers and called butlerage, because paid to the king's butler. See 1 Bl Comm 315.

**prise.** A capture, but not necessarily a lawful taking by a belligerent in a lawful war. *Dole v New England Mut. Marine Ins. Co.* 88 Mass (6 Allen) 373, 388.

See **prize**.

**prisel en outer lieu.** A taking in another place.

**priso.** A prison; a prisoner; a prisoner of war.

**prison.** A generic term comprising places maintained by public authority for the detention of persons confined under legal process, whether criminal or civil, and whether the imprisonment is for the purpose of insuring the production of the prisoner to answer in future legal proceedings, or whether it is for the purpose of punishment for an offense of which the prisoner has been duly convicted and sentenced. 41 Am J1st Pris & P § 2.

**prison bounds.** See **liberties of the jail.**

**prison breach.** A criminal offense, at common law and by statute in some jurisdictions, in breaking from prison with or by the exertion of force, in contrast to an escape by stratagem. Anno: 96 ALR2d 525-527, §§ 6-8.

**prison breaking.** Same as **prison breach.** 27 Am J2d Escape § 2.

**prisoner.** A person deprived of his liberty by virtue of a judicial or other lawful process. 41 Am J1st Pris & P § 2.

**prisoner of war.** A person who has been captured by hostile troops while engaged in warfare and who is held by them as a prisoner.

**prison rule.** A rule whereunder the conduct of a prisoner is regulated and controlled.

See **liberty of the rules.**

**prisoner's domicil.** See **domicil of a prisoner,** supra.

**prison warden.** See **warden.**

**prist. Ready.**

**Prius vitiis laboravimus, nunc legibus.** First we labored with the vices, now with the laws.

**privacy.** The right to be left alone, that is, to be free from unwarranted publicity and to live without unwarranted interference by the public in matters with which the public is not necessarily concerned. *Prentiss v Morgan*, 221 Ky 765, 299 SW 967, 55 ALR 964. The so-called right, founded upon the claim that a man has the right to pass through this world, if he wills, without having his picture published, his business enterprises discussed, his successful experiments written up for the benefit of others, or his eccentricities commented upon either in handbills, circulars, catalogues, periodicals, or newspapers; and, necessarily, that the things which may not be written and published of him must not be spoken of him by his neighbors, whether the comment be favorable or otherwise. *Roberson v Rochester Folding Box Co.* 171 NY 538, 64 NE 442. The right of a person to demand that his private affairs be not scrutinized in public without his consent. Annos: 138 ALR 22; 168 ALR 446; 14 ALR2d 750. A right premised upon the individual's right to the pursuit of happiness. *Barsky v United States*, 83 App DC 127, 167 F2d 241, cert den 334 US 843, 92 L Ed 1767, 68 S Ct 1511, rear den 339 US 971, 94 L Ed 1379, 70 S Ct 1001. An independent legal right of the individual, the violation of which constitutes a tort. 4) Am J1st Priv § 2.

The theory that everyone has a right to privacy, and that the same is a personal right growing out of the inviolability of the person. The right to one's person may be said to be a right of complete immunity, to be let alone. That a person is entitled to relief at law or in equity for an invasion of this right, is generally understood to have been first publicly advanced in an article entitled "The Right to Privacy," in 4 Harvard Law Review, 193 (December, 1890), wherein some of the necessities for involving such relief are set out. *Henry v Cherry*, 30 RI 13, 73 A 97.

**private.** Adjective: Belonging to an individual or group of persons. Not for the public or open to the public. Noun: An enlisted man in the Army of the lowest, or next to the lowest, rank.

**private act.** A statute which is confined in operation and effect to particular individuals, associations, or corporations, not affecting the community at large, and must be pleaded and proved by a party who relies upon it. 50 Am J1st Stat § 12.

**private alley.** A narrow way not open to public use, the use being confined legally to a certain owner or owners of property. 25 Am J1st High § 8.

**private attorney.** Same as **attorney in fact.** Hall v Sawyer (NY) 47 Barb 116, 119.

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**private bank.** An unincorporated bank. 10 Am J2d Banks § 13.

**private banker.** The proprietor of an unincorporated bank. A person or firm engaged in receiving deposits, discounting commercial paper, selling bills of exchange, and doing a banking business without special privileges or authority from the state. Perkins v Smith, 116 NY 441, 446, 23 NE 21. A person or firm engaged in the banking business under authorization by the state, subject to the general requirements of supervision and inspection. Ex parte Wisner, 36 Mont 298, 92 P 958.

According to most authorities, the legislature may prohibit all private banking and restrict the right to conduct a banking business to corporations. The term "bank" as used in some statutes does not include a private banker. 10 Am J2d Banks § 13.

**private bill office.** An office in the British parliament where private acts are framed.

**private boarding house.** See **boarding house.**

**private bonded warehouse.** A bonded warehouse but under bond only for the storing of such merchandise as shall belong or be consigned to the owner or proprietor. 19 USC § 1555.

See **bonded warehouse.**

**private capacity.** The capacity in which a municipal corporation operates where not engaged as an arm of the state in a governmental capacity. The capacity in which a municipal corporation operates where it enters into the business of furnishing water, lights, power and sewerage, or passenger transportation by streetcar. J. B. McCrary Co. v Winnfield (DC La) 40 F Supp 427.

**private car.** A railroad passenger car owned or engaged by a certain person or persons only.

**private carrier.** One who transports only for those with whom he sees fit to contract. Ace High Dresses v J. C. Trucking Co. 122 Conn 578, 191 A 536, 112 ALR 86. One who, without making it a vocation, or holding himself out to the public as ready to act for all who desire his services, undertakes, by special agreement in a particular instance only, to transport property or persons from place to place either gratuitously or for hire. 13 Am J2d Car § 8.

See **contract carrier by motor vehicle.**

**private carrier by motor vehicle.** A carrier who is neither a common carrier or a contract carrier by motor vehicle but which transports property of which it is the owner, lessee, or bailee for the purpose of sale, rent, or bailment, or in furtherance of a commercial enterprise. Interstate Commerce Com. v A. W. Stickle & Co. (DC Okla) 41 F Supp 268 (definition in § 305(a) of the Motor Vehicle Carrier Act of 1935).

**private cemetery.** A cemetery devoted to one family or a small part of the community. 14 Am J2d Cem § 2.



**private college or university.** A college or university supported by private funds or privately endowed. 15 Am J2d Colleges § 2.

The fact that a private institution of learning receives aid from the state or federal government does not of itself make it a public corporation. 15 Am J2d Colleges § 2.

**private communication.** See **privileged communication.**

**private convenience yields to the convenience of the public.** An equitable principle. *North Hill Memorial Gardens v Hicks*, 230 Ark 787, 326 SW2d 797.

**private corporation.** A corporation created for private as distinguished from purely public purposes. *Miller v Davis*, 136 Tex 299, 130 SW2d 973, 136 ALR 177.

The character of a corporation as public or private is determined by the terms of its charter and the general law under which it was organized, not upon the character of its stockholders or the number of persons engaged in the enterprise. *Macon County Tel. Co. v Bethany Mut. Tel. Asso.* 270 Ill 183, 110 NE 334.

**private court.** Not at all a court in the usual and proper sense of the term; merely a body set up by a private organization for its internal purposes. *State ex rel. Henderson v Boone County Court*, 50 Mo 317.

**private credit to seal.** See **seals of private credit.**

**private crossing.** An overhead crossing erected and maintained by a private person for passageway across a highway. 25 Am J1st High § 295. A passage across, under, or over a railroad track running across a farm, for the use and convenience of the proprietor or tenant of the farm. *Wheeler v Rochester & Syracuse Railroad Co.* (NY) 12 Barb 227, 230.

**private duty.** A duty owed by an individual under particular circumstances. The duty of a municipality operating in a private capacity.

See **private capacity.**

**private dwelling.** A dwelling house. A room or rooms used and occupied, not transiently, but as a residence, in an apartment house, hotel, or boarding house. *Carroll v United States*, 267 US 132, 143, 69 L Ed 543, 547, 45 S Ct 280 (definition in statute establishing National Prohibition).

**private dwelling house.** A dwelling house for a single family. 20 Am 12d Cov § 196.

A majority of courts have reached the conclusion that the term when used in a restrictive covenant prohibits the use of property for a duplex or double house. Anno: 14 ALR2d 1395.

**private easement.** An easement which confers a benefit upon certain individuals only.

See **private way.**

**private eleemosynary corporation.** A corporation created for the administration of a public or private charity, the endowments of which have been received from individuals. 15 Am J2d Char § 43.

**private enterprise.** Cultivating the soil, manufacturing articles for sale, dealing in merchandise, and the pursuit of numerous and various other activities which enlist individual energy. *Dodge v Mission Tp.* (CA8 Kan) 107 F 827. In the language of the ultraconservative, something undefiled by governmental regulation or participation.

As used in a provision of a state constitution forbidding the state to be interested in any "private or corporate enterprise," the term has been held not merely to forbid the state to become interested in private enterprise carried on by

individuals and corporations, but also to prohibit the state from itself engaging in private enterprises ordinarily undertaken only by private promoters. *State ex rel. Wilkinson v Murphy*, 237 Ala 332, 186 So 487, 121 ALR 283.

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**privateer.** A private armed vessel commissioned by a belligerent to capture vessels of the enemy. 56 Am J1st War § 169. A vessel owned and manned by private persons, acting under a commission or letters of marque from a recognized government, and equipped to plunder the maritime commerce of the enemy of the country granting the commission. 41 Am J1st Pir § 2.

**privateering.** Operating a vessel as a privateer. 41 Am J1st Pir § 2.

See **privateer**.

**private ferry.** The means maintained by individuals for personal use in crossing a stream.

Such a ferry is mainly for the use of the owner, and although he may take pay for ferriage, he does not follow it as a business. His ferry is not open to the public at its demand. He may, or may not keep it going. 35 Am J2d Ferr § 2.

**private first class.** An enlisted man of the Army, ranking immediately above a private.

**private function.** The function of a municipal corporation in the exercise of powers conferred upon it, not primarily or chiefly from considerations connected with the government of the state at large, but for the private advantage of the compact community which is incorporated as a distinct legal personality, particularly the function in reference to the property or contracts of the municipality. 37 Am J1st Mun Corp § 114. In a broader sense, any activity in a private as distinguished from a public capacity.

See **private capacity; private enterprise**.

**private gain.** A gain accruing to the benefit of an individual, not to the benefit of the public or of a charity.

Under Federal statute exempting the property of educational institutions from taxation in the District of Columbia, provided the property is not used for private gain, as so used, the term has reference only to gain realized by any individual or stockholder who has a pecuniary interest in the corporation, and not to profits realized by the institution, but turned back into the treasury or expended for permanent improvements. *District of Columbia v Mt. Vernon Seminary*, 69 App DC 251, 100 F2d 116.

**private garage.** A building or structure appurtenant to a private residence or apartment house, etc., designed for the housing or storage of a motor vehicle by the owner, tenant, or other person. Anno: 61 ALR 312.

**private injury.** See **private wrong**.

**private international law.** The subject of conflict of laws, that which regulates the comity of states in giving effect in one to the municipal laws of another relating to private persons, or concerns the rights of persons within the territory and dominion of one state or nation, by reason of acts, private or public, done within the dominion of another, being based on the broad general principle that one state or country will respect and give effect to the laws of another so far as can be done consistently with its own interests. 16 Am J2d Cones L § 1.

**privately stealing.** Committing larceny from the person by picking pocket, cutting away a purse, etc. Larceny in taking property directly from the person of the owner, as by snatching it from his hands, albeit the taking is in a public place. 32 Am J1st Larc § 44.

**private market.** An anomaly since any market, as properly defined, is public in character. 35 Am J1st Mark & M § 2. A market kept by an individual for his personal use and advantage, without letting out of stalls to others. *State v Natal*, 41 La Ann 887, 890, 6 So 722.

**private motor carrier.** See **private carrier.**

**private nuisance.** A nuisance which threatens injury to one or a few persons. *McFarlane v Niagara Falls*, 247 NY 340, 160 NE 391, 57 ALR 1. A nuisance which violates only private rights and produces damages to one or to no more than a few persons. *Riggins v District Court*, 89 Utah 183, 51 P2d 645.

See **nuisance.**

**private passenger automobile.** An automobile kept for use by the owner or members of his family, not for carrying passengers for hire as a business. A four wheeled vehicle; a vehicle other than a motorcycle. *Paupst v McKendry*, 187 Pa Super 646, 145 A2d 725.

See **passenger motor vehicle.**

**private pass way.** See **private way.**

**private person.** An individual who acts as such, as distinguished from one who acts officially or on behalf of the public.

**private pond.** A pond above land privately owned and subject to private control only.

To fall within the meaning of the term, the pond must be essentially private. It must be a sheet of water covering exclusively the land of its owner, and must be such as no one could forbid him its use, any more than the cultivation of the soil underneath, if it was free from water. A body of water covering 1040 acres, 1000 acres of which covers land of one owner and forty acres of which covers the land of an adjoining owner, is not a private pond. *Peters v State*, 96 Tenn 682, 36 SW 399.

For cases holding certain ponds or lakes to be private, see Anno: 15 ALR2d 755.

**private powers.** The powers of a municipality exercised for the advantage of the inhabitants of the municipality as such, and of itself as a legal personality, not powers exercised in a governmental capacity as a political subdivision of the state. *Winona v Botzet* (CA8 Minn) 169 F 321.

See **private capacity.**

**private preserve.** An area set apart on one's own premises as a game or fish preserve. A natural or artificial pond for the culture of fish, privately owned and maintained. *State v Theriault*, 70 Vt 617, 41 A 1030.

See **game preserve.**

**private property.** The property of a person as distinguished from the property of a government or a governmental body. Inclusive of property privately owned, although devoted to a public purpose. 42 Am J1st Prop § 12.

See **right of private property.**

**private prosecutor.** One appointed to assist the state in a particular criminal case or requested to appear by the regular prosecutor. 24 Am J1st Grand J § 43.

See **relator.**

**private publication.** See **limited publication.**

**private purpose.** A building up of a private fortune; the redress of a private wrong; the improvement of private property; the promotion of private enterprise, except where such is incident to the public benefit. 51 Am J1st Tax § 321.

**private railroad.** A railroad confined to the transportation of one's own property, not open to public use.

See **private track**.

**private residence.** A residence for one family only. Anno: 18 ALR 460.

See **private dwelling house**.

**private right of way.** The privilege which one person or particular class of persons have of passing over the land of another in some particular line. 25 Am J2d Ease § 7.

See **private way**.

**private rights.** Rights which a person is entitled to exercise as an individual, such as ownership and enjoyment of property, the right to travel, to communicate, privacy, etc. Such rights, when applied to property, as persons may possess unconnected with, and not essentially affecting, the public interest, or growing out of a public institution of society. *Rugh v Ottenheimer*, 6 Or 231.

**private road.** A road maintained and open on one's own premises for his own use, the use of his tenant, or the use of their licensees, invitees, or guests; not open to the public. A road which, although public in the sense of being open to use by the public, actually subserves the convenience of such a limited number of persons that it falls within a separate classification in respect to establishment, maintenance, and repair. *Sherman v Buick*, 32 Cal 242, 252.

See **private railroad; private track; private way**.

**private sale.** A sale negotiated and completed otherwise than by auction upon notice. 30 Am J2d Exec § 342; 31 Am J2d Ex & Ad §§ 343, 378, 445; 30A Am J Rev ed Jud S § 67.

**private school.** A school organized and maintained by a private person or corporation. *State v Counort*, 69 Wash 361, 124 P 910. A school organized and managed by individuals, and not by the public as an institution of the state. *Livingston v Davis*, 243 Iowa 21, 50 NW2d 592, 27 ALR2d 1237.

As to what constitutes "private school" within statute making attendance at such a school compliance with compulsory school attendance law, see Anno: 14 ALR2d 1369.

**private secretary.** A person employed for the rendition of services for one or a few persons, as distinguished from one employed to render services, as such may be required, for any executive, manager, officer, or employee of a business. A "laborer" for the purposes of an exemption from execution. *Abrahams v Anderson*, 80 Ga 570, 5 SE 778.

**private session.** A hearing or investigation by an administrative agency not open to the public. 2 Am J2d Admin L §§ 229, 258. A hearing in chambers. A session of court during which the public is excluded from the courtroom by order of the court. 24 Am J2d Div & S § 334.

**private statute.** See **private act**.

**private stream.** See **private waters**.

**private track.** A railroad track maintained for the convenience of one or more persons or of one or more industries, not open to public use. A railroad track not constructed or used for general traffic or devoted to public use, as a spur track used by a railroad merely for the purpose of reaching its roundhouse. 44 Am J1st R R § 227.

**private trust.** Any trust which has been created for a purpose other than a public or charitable purpose. 15 Am J2d Char § 6.

**private use.** The use of public funds, public property, or the powers of government for such a purpose or in such a manner that it is not a public use.

Under the settled doctrine that a municipal corporation cannot use its funds to promote a private commercial enterprise, a management and use of land as a street to promote the interests of merchants and traders who might occupy it, and to furnish better facilities for doing business and making profits, is not a public, but a private use of the land. *Re Opinion of Justices*, 197 NY 58, 91 NE 405.

See **public use**.

**private warehouseman.** A person maintaining a warehouse for his own use or under conditions such that the function of maintenance is not of any public interest. 56 Am J1st Wareh § 4.

**private waters.** Waters above land privately owned and subject to private control only. A stream to the bed of which a riparian owner can show title deraigned from the United States or from the state. *Webb v Board of Comrs.* 124 Kan 38, 257 P 966.

**private way.** A road or way intended for the exclusive use and benefit of one or more particular persons. 25 Am J1st High § 4. A means of passage for one or more individuals from some place to some other place. *Seery v Waterbury*, 82 Conn 567, 74 A 908. A way for travel over the surface of land, even over an artificial passageway or stairway. 25 Am J2d Ease § 7. An incorporeal hereditament of a real nature, being the right of going over another man's ground. The privilege which one person or particular class of persons have of passing over the land of another in some particular line. 25 Am J2d Ease § 7.

See **way of necessity**.

**private way appurtenant.** An incorporeal right of passage over the land of another, which is annexed to and belongs with another distinct tenement. 25 Am J2d Ease § 11.

**private way in gross.** The merely personal right or privilege of passing over the land of another in a specified line.

Such a right being personal to the one who is entitled to its enjoyment cannot be transferred by deed, assignment or otherwise, but it ceases to exist upon his death. *Kripp v Curtis*, 71 Cal 62, 11 P 879.

**private wharf.** A wharf for private use only, not open to the use of the public. 56 Am J1st Wharves § 3.

**private wrong.** An infringement or violation of a right belonging to an individual as an individual, in distinction from the violation of a duty to the nation, to a state, or to the community considered as a community. A violation of a duty due from one person to another, for the breach of which the law provides a right of action. *Rhobidas v Concord*, 70 NH 90, 47 A 82.

**Privatio praesupponit habitum.** A deprivation presupposes something held or possessed.

**Privatis pactionibus non dubium est non laedi jus caeterorum.** (Roman law.) There is no doubt that the rights of others are not prejudiced by private agreements. See *Broom's Legal Maxims* 697.

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**Privatorum conventio juri publico non derogat.** An agreement of private persons cannot derogate from public right.

**Privatorum pacta non derogant juri communi.** The agreements of private persons cannot derogate from common right.

**Privatum commodum publico cedit.** Private convenience must yield to public welfare.

**Privatum incommodum publico bono pensatur.** Private inconvenience is compensated by the public welfare. The interest of the individual will not be permitted to stand in the way where the public good is concerned. *Daniels v Homer*, 139 NC 219, 51 SE 992.

**privement enceinte.** Pregnant in the first stages. Pregnancy not observable on a passing glance.

**privies.** See **privy**.

**privigna.** (Civil law.) A step-daughter.

**privignus.** (Civil law.) A step-son.

**privilege.** A right peculiar to an individual or body. *Ripley v Knight*, 123 Mass 519. An advantage held by way of license, franchise, grant, or permission, not possessed by others. Special enjoyment of a good, or exemption from an evil or burden. *Wisener v Burrell*, 28 Okla 546, 118 P 999. An immunity existing under the law. For tax purposes, any occupation or business which the legislature may declare to be a privilege and tax as such. *Seven Springs Water Co. v Kennedy*, 156 Tenn 1, 299 SW 792 56 ALR 496. (Civil law.) A tacit hypothecation of a thing without any transfer of the possession of it or of the right to possession. *The Glide*, 167 US 606, 42 L Ed 296, 17 S Ct 930.

See **immunity; special privilege; writ of privilege**.

**privilege against self-incrimination.** A privilege of one who is accused of a crime, existing under the Fifth and Fourteenth Amendments to the Federal Constitution, as well as under the constitutions of most of the states, not to be compelled to give self-incriminating testimony. 21 Am J2d Crim L § 349. The privilege of a witness, based upon the Fifth Amendment to the Constitution of the United States, a provision of a state constitution, 58 Am J1st Witn § 36, or a principle of the common law, *Allen v State*, 183 Md 603, 39 A2d 820, 171 ALR 1138; *State v Cdanowicz*, 69 NJL 619, 55 A 743. To refuse to answer any question that will incriminate or tend to incriminate himself. 58 Am J1st Witn § 36.

The wisdom of the exemption has never been universally assented to since the days of Bentham, many doubt it today, and it is best defended not as an unchangeable principle of universal justice, but as a law proved by experience to be expedient. *Twining v New Jersey*, 211 US 78, 53 L Ed 97, 29 S Ct 14.

The privilege of immunity from self-incrimination under the Fifth Amendment to the United States Constitution, to be available, must be invoked by the witness. The privilege of silence is solely for his benefit and is deemed waived unless invoked. The Fifth Amendment affords no immunity to a witness against the use of his voluntary testimony against him. *United States v Mary Helen Coal Corp.* (DC Ky) 24 F Supp 50.

See **self-incrimination**.

**privileged communication.** A communication between persons in such a confidential relationship, be it attorney and client, physician and patient, or confessor and penitent, that public policy prohibits the disclosure thereof by the person to whom it was made, as a witness testifying in an action or proceeding, upon objection thereto by the person who made it. 58 Am J1st Witn §§ 363 et seq. Communications between husband and wife, declared privileged in encouragement of the utmost confidence between the spouses, thus aiding in the preservation of the marital status, so that neither spouse is competent to testify to a confidential communication, made to him or her by the other spouse, in a civil action, whether or not the husband or wife is a party, or in a criminal prosecution against one of the spouses, apart from actions or prosecutions excepted by statute or which are such that the exclusion of the testimony would not be in fulfillment of the principle of the privilege. 58 Am J1st Witn §§ 375 et seq. Within the meaning of the law of defamation:—a statement uttered or published which, by reason of its character or the occasion upon which it was made, is to be deemed, absolutely or conditionally, wanting in respect of the essential element of the tort or offense of libel or slander, 33 Am J1st L&S § 124; a communication which would be defamatory and actionable, except for the occasion on which, or the circumstances under which it was made. *Mullens v Davidson*, 133 W Va 557, 57 SE2d 1, 13 ALR2d 887.

As to the effect of an act as a confidential communication between husband and wife, see *Anne*: 10 ALR2d 1389.

**privileged copyholds.** Copyholds held in ancient demesne, called "privileged" because, although they could not be conveyed by feoffment, but had to pass by surrender to the lord or his steward, in the manner of common copyholds, yet they were not to be held at the will of the lord, but according to the custom of the manor. See 2 Bl Comm 100.

**privileged debts.** Obligations entitled to a priority or preference.

See **preference; priority.**

**privileged occasion.** An occasion the circumstances of which are such as to make privileged a statement otherwise defamatory, thereby rendering the statement wanting in respect of the essential element of the tort of libel or slander. *Blakeslee v Carroll*, 64 Conn 223, 29 A 473.

See **privileged communication.**

**privileged relation.** A relation of such nature that communications between the parties thereto are protected against disclosure by one of the parties, as a witness testifying in an action or proceeding, upon objection thereto by the other party. 58 Am J1st Witn §§ 363 et seq.

See **privileged communication.**

**privileged vessel.** Same as **favored vessel.**

**privileged villeinage.** Same as **villeinage socage.**

**privileged will.** A civil-law term for nuncupative will. *Castro v Castro*, 6 Cal 158, 160.

**privilege fee.** An occupation tax.

The sales tax of Michigan is said to be a privilege fee imposed upon persons doing business at retail. It is not imposed upon the consumer, but upon those engaged in the business of making sales at retail. It is left optional with the retailer whether he will absorb the tax himself or collect it from his

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customers. *Miles Laboratories v Simon* (DC Mich) 33 F Supp 962.

**privilege from arrest.** See **immunity from arrest.**

**privilege in defamation.** See **privileged communications.**

**privilege of five years.** A privilege of extension of the term of a lease, granted by a clause in the lease. 32 Am J1st L & T § 961.

**privilege of renewing one year more.** A privilege of extension of the term of a lease, granted by a clause in the lease. 32 Am J1st L & T § 961.

**privilege of return.** The right to return a mare for breeding without payment of an additional breeding fee, where the previous service by the stallion has proved to be fruitless. 4 Am J2d Am § 77.

**privilege of sanctuary.** See **sanctuary.**

**privilege of telegraph company.** Absence of liability in transmitting a defamatory message, except where the transmitting agent of the telegraph company happened to know that the message was spurious or that the sender was acting, not in the protection of any legitimate interest, but in bad faith and for the purpose of traducing another. *O'Brien v Western Union Tel Co.* (CA1 Mass) 113 F2d 543.

**privileges and appurtenances.** An apt word in a conveyance carrying easements. 25 Am J2d Ease § 95.

**privileges and immunities.** Synonymous terms in reference to the guarantee of the United States Constitution. 16 Am J2d Const L § 476. Of citizens of the several states within the meaning of the guarantee under Article IV § 2 of the United States Constitution:—the fundamental privileges and immunities belonging of right to the citizens of all free governments, which have at all times been enjoyed by citizens of the several states of the Union from the time of their becoming free, independent, and sovereign states; protection by the government, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject to such restraints as the government may prescribe for the general good of the whole people. 16 Am J2d Const L § 477.

See **immunity; privilege.**

**privileges and immunities clause.** Section 2 of Article IV of the United States Constitution and a clause of the 1st section of the Fourteenth Amendment to the United States Constitution.

See **privileges and immunities.**

**privileges and immunities of citizens.** See **privileges and immunities.**

**privilege tax.** A tax upon the pursuit of an occupation or the conducting of a business. *Bank of Commerce & Trust Co. v Senter*, 149 Tenn 574, 577, 579, 260 SW 144.

When a statute authorizes the levy and collection of taxes upon taxable property, and to license, tax and regulate certain businesses and "all other privileges" taxable by the state, the word "privileges" does not mean such things as are technically privileges, and cannot ever be enjoyed or exercised in England except through the prerogative of the crown or under act of parliament, or, in this country, by authority of law, but to denote other occupations and business of the kind mentioned. *Jacksonville v Ledwith*, 26 Fla 163, 7 So 885.

See **occupation tax.**

**privilegia.** (Roman law.) Private laws.

**privilegia favorabilia.** A private law enacted for the benefit of an individual or a corporation. *Christ Church v Philadelphia* (US) 24 How 300, 16 L Ed 602.

**privilegium.** An advantage or favor granted by law but not possessed under the common law.

**privilegium clericale.** The clerical privilege, benefit of clergy. See 3 Bl Comm 365.

**Privilegium contra rempublicam non valet.** Privilege as against the state is of no avail.

**Privilegium est beneficium personale et extinguitur cum persona.** A privilege is a personal benefit and is extinguished with the person.

**Privilegium est quasi privata lex.** A privilege is, as it were, a private law.

**Privilegium non valet contra rempublicam.** A privilege is of no avail as against the state.



**privity.** Privately or secretly. *Coombes v Thomas*, 57 Tex 321, 322.

**privity.** An elusive term. In general, an identity of interest between persons, so that the interest of the one is measured by the same legal right as that of the other. *Fleming v Cooper*, 225 Ark 634, 284 SW2d 857, 58 ALR2d 694. The relation between two titles where one derives from the other or both derive from a common source. *Jax Ice & Cold Storage Co. v South Florida Farms Co.* (Fla) 109 So 212, 218. Continuity of interest; successive relationships to the same rights of property, as between decedent and heir, intestate and administrator, testate and executor, and grantor and grantee. *Zaragosa v Craven*, 33 Cal 2d 315, 202 P2d 73, 6 ALR2d 461. For the purposes of the doctrine of *res judicata*, such an identity in interest that one person represents the same legal right as another, as a consequence of which, the judgment is binding as to a subsequent grantee, transferee, or lienor of property. 30A Am J Rev ed Judgm § 399. For the purposes of estoppel by judgment, one who has an interest in the subject matter through a party to the action. *Seymour v Wallace*, 121 Mich 402, 80 NW 242. In reference to the scope and effect of an injunction, mutual or successive relationship to the rights of property. 28 Am J Rev ed Inj § 296. As an element of admissibility of former testimony of a witness since become unavailable:—a relationship arising from connection with a decedent's estate or out of interest in property, or the relationship of principal and surety or of successive plaintiffs in actions for wrongful death, the word being used in somewhat the same sense as in the field of property law. *Re Silvie's River*, 115 Or 27, 237 P 322.

**privity in law.** Identity of interest between persons, so that the interest of one is measured by the same legal right as that of the other. *Fleming v Cooper*, 225 Ark 634, 284 SW2d 857, 58 ALR2d 694. Successive relationships to the same right of property.

**privity of contract.** A material interest in the performance of a contract of one who did not join in the making of the contract. The impact of a con-

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tract upon a person from or to whom the consideration moves. 17 Am J2d Contr § 297.

**privity of estate.** A connection between the estate of one and the estate of another, for example, as between lessor and lessee. *Davidson v Minnesota Loan & Trust Co.* 158 Minn 411, 197 NW 833, 32 ALR 1418. A succession in rights. *Vineberg v Hardison* (Fla App) 108 So 2d 922; *Heiman v Pittsburgh C. C. & St. L. R. Co.* 58 Ohio St 400, 50 NE 986.

See **privity**.

**privity of possession.** A continuity of actual possession, as between prior and present occupant, the possession of the latter succeeding the possession of the former under deed, grant, or other transfer, or by operation of law. *Vance v Wood*, 22 Or 77, 29P73.

**privity.** One in privity with another. *Shew v Call*, 119 NC 450, 26 SE 33. One connected with another by reason of their having a mutual interest in the same action or thing. *Western Loan & Sav Co. v Silver Bow Abstract Co.* 31 Mont 448, 78 P 774. An outside toilet. *Monroe v Gerspach*, 33 La Ann 1011.

See **privity**; **privity vault**.

**Privy Council.** Advisers of the crown.

**privity examination.** The examination of a married woman, separately from her husband, in taking her acknowledgment to the execution of a deed or other instrument in which she joins with her husband. *Henderson v Smith*, 26 W Va 829.

**privity in estate.** See **privity of estate**.

**privy in representation.** The executor of a testator, or the administrator of an intestate.

**privy to an action.** See **privy**.

**privy seal.** A seal which is affixed to royal grants or letters patent which are to pass under the great seal.

The sign manual is the warrant to the privy seal and the privy seal is the warrant to the great seal. See 2 Bl Comm 347.

**privy signet.** A seal which was always in the custody of the principal secretary of state and was affixed to royal grants and letters patent after the king's own sign manual had been superscribed. See 2 Bl Comm 347.

**privy vault.** The walled-in space below an outdoor privy. Not a water closet, since no supply of water is maintained for flushing it. *Commonwealth v Roberts*, 155 Mass 281, 29 NE 522.

**privy verdict.** A verdict delivered to the judge out of court, relieving the jury from their confinement in case of agreement after the judge has adjourned court, to be affirmed by an oral verdict given publicly in court upon resumption of the session. 53 Am J1st Tr § 1010.

**prize.** A sum offered by way of reward for the winner of a contest, without opportunity for the person offering it to compete for the purpose of gaining back the thing offered or any part thereof. 24 Am J1st Gaming § 100. That which is offered and is to be won in a lottery. 34 Am J1st Lot § 5. Property legally captured in time of war. 56 Am J1st Wars § 180.

**prize candy.** A lottery scheme involving the sale of candy in boxes, each box being represented to contain a prize of money or jewelry and the purchaser selecting his box in ignorance of its contents. 34 Am J1st Lot § 7.

**prize contest.** A contest in which a prize is given as a matter of grace and favor and as a reward for skill or quality of endeavor. 24 Am J1st Gaming § 100. A guessing or puzzle contest; a voting or popularity contest. 34 Am J1st Lot §§ 12, 17. A lottery where tickets are sold, some to draw prizes, some to draw nothing as blanks. 34 Am J1st Lot § 7.

**prize court.** A court which administers prize law, adjudicating the right to property as prize of war. An anomaly in jurisprudence as a domestic court administering law of the nations. 56 Am J1st War § 182.

Having taken goods of the enemy, the captors have a right to proceed against them as belligerent property in a court of prize; for in no other way, and in no other court can the questions presented on a capture *jure belli* be properly and effectually examined. *The Schooner Adeline & Cargo (US)* 9 Cranch 244, 284, 3 L Ed 719, 733.

**prize fight.** A pugilistic encounter or boxing match for a prize or wager. 4 Am J2d Amuse §§ 81, 86. Engaging in any fight for a prize, stake, or reward, whether in public or private and however conducted, in which the contestants intend to inflict some degree of bodily harm on each other. *People v Taylor*, 96 Mich 576 56 NW 27; *Seville v State*, 49 Ohio St 1 17, 30 NE 621.

**prize goods.** See **prize of war**.

**prize law.** A body of international law under which the right to movable property and claimed a prize of war is determined. 56 Am J1st War § 180.

**prize money.** A sum of money offered by way of a reward to the winner of a contest or as the stake in a lottery. The purse or stake in a prize fight. The proceeds of the sale of a vessel or goods taken as prize of war.

Under the federal prize statutes the net proceeds of all property condemned as prize are to be decreed to the United States and be ordered by the court to be paid into the Treasury of the United States. 56 Am J1st War § 201.

**prize of war.** Goods or movables in the hands of the enemy, used, or intended to be used, for hostile purposes, captured by land or naval forces in time of war. 56 Am J1st War § 180.

**prize package.** A scheme of lottery whereby a person who pays a certain price for a package of candy, tea, or other merchandise is entitled to select it from a number of packages, some of which, in addition to the commodity, contain a ticket which entitles the purchaser to a prize, while other packages contain nothing but the commodity. 34 Am J1st Lot § 7.

**prize proceeding.** A proceeding for the condemnation of property as constituting prize of war. 56 Am J1st War § 181.

**prize ring.** The so-called "squared circle," enclosed by ropes, where boxing contests and prize fights are held.

**prize ring rules.** The rules of a prize fight.

See **London Prize Ring Rules.**

**pro.** For; before; on behalf of; in favor of; in place of; in consideration of; in proportion to; as; by way of.

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**pro aetate probanda.** See **commission pro aetate probanda.**

**proavo.** See **de proavo.**

**proavus.** A great grandfather.

**probabilis causa litigandi.** A probable cause of litigation.

**probability.** Likelihood, but coupled with some uncertainty, of occurrence.

To instruct the jury that they may act on probabilities means simply that they may act on less than convincing evidence, or without that moral certainty required by law. *People v O'Brien*, 130 Cal 1, 8, 62 P 297, 299.

See **in all probability.**

**probable.** Likely to occur, but involving an element of uncertainty. *Green v Catawaba Power Co.* 75 SC 102, 55 SE 125. With a greater weight of evidence in support than against. *State v Trout*, 74 Iowa 545, 38 NW 405.

**probable cause.** Reasonable cause as shown by the circumstances of the case. *Goldstein v Sabella (Fla)* 88 So 2d 910, 58 ALR2d 1418.

**probable cause for a prosecution.** A reasonable ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious, or as some courts put it, a prudent man, in believing that the party charged is guilty of the offense with which he is charged. The existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged is guilty of the offense for which he is prosecuted. Such facts and circumstances as, when communicated to the generality of men of ordinary and impartial minds, are sufficient to raise in them a belief or real, grave suspicion of the guilt of the person charged. 34 Am J1st Mal Pros § 47.

**probable cause for arrest.** A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty. In substance, a reasonable ground for belief in guilt. *Brinegar v United States*, 338 US 160, 93 L Ed 1879, 69 S Ct 1302, reh den 338 US 839, 94 L Ed 513, 70 S Ct 31.

**probable cause for attachment.** A reasonable belief in the existence of facts necessary to sustain an attachment. The actual existence of facts necessary to sustain an attachment. 6 Am J2d Attach § 599.

**probable cause for capture.** The existence of circumstances such as to warrant a reasonable ground of suspicion that the vessel is engaged in an illegal traffic. 56 Am J1st War § 198.

**probable cause for issuance of a search warrant.** A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a prudent and cautious man in the belief that the person accused is guilty of the offense with which he is charged. 47 Am J1st Search § 22.

**probable cause for statement otherwise tortious as defamatory.** A reasonable ground of suspicion, supported by circumstances sufficient to warrant a cautious man in believing in the truth of the statement pleaded as the basis of a cause of action for defamation. *Coates v Wallace*, 4 Pa Super 253, 257.

**probable cause to hold accused for trial.** Reasonable ground to believe that a crime has been committed and just cause to believe that the defendant committed it. *State ex rel. Stevenson v Jameson*, 78 SD 431, 104 NW2d 45.

**probable consequence doctrine.** A test of proximate cause according to whether or not the injury was reasonably foreseeable by a person of ordinary intelligence and prudence. 26 Am J2d Electr § 48.

**probable consequences.** Those consequences which are more likely than not to follow the use of a given means. *Western Commercial Travelers' Asso. v Smith* (CA8 Mo) 85 F 401. A result which, when viewed in retrospect, appears to be the reasonable rather than the extraordinary consequences of a wrong. *Brown v Rhoades*, 126 Me 186, 137 A 58, 53 ALR 834. Those consequences which a person of average competence and knowledge being in the situation of a person whose conduct is in question, and having the same opportunities of observation, might be expected to foresee as likely to follow such conduct. 38 Am J1st Negl § 57.

**probable evidence.** Same as **presumptive evidence**.

**probable expectancy.** Such a thing as one has the right to expect as a concomitant of civilized society, for example, the right to a reasonably free labor market. *L. D. Wilcutt & Sons v Driscoll*, 200 Mass 110, 85 NE 897.

See **expectation of life; mortality tables**.

**Probandi necessitas incumbit illi qui agit.** The necessity of proving, the burden of proof, lies upon him who sues.

**probandum.** See **factum probandum**.

**probans.** See **factum probans**.

**probata.** See **allegata et probata**.

**probate.** The judicial act whereby an instrument is adjudged a valid will and ordered to be recorded; the statutory method of establishing the proper execution of the instrument and giving notice of its contents. 57 Am J1st Wills § 743. Broadly, a characterization of functions of the probate court, whether it be the probate of a will, the approval of the accounts of an administrator of a decedent's estate, or any other judicial act within the province of the court. *Johnson v Harrison*, 47 Minn 575, 578. In older usage, the equivalent of acknowledgment, 1 Am J2d Ack § 1; relating to proof.

**probate code.** The body or system of law relating to the estates of deceased persons and of persons under guardianship. *Johnson v Harrison*, 47 Minn 575, 579.

**probate court.** A court exercising jurisdiction in probating wills and in matters of administration of decedents' estates, guardianships, absentees, etc. 20 Am J2d Cts § 32.

It is generally considered that probate, orphans' and surrogate courts are courts of special and limited jurisdiction, but instances are not lacking to sustain the statement that such courts have general jurisdiction. 20 Am J2d Cts § 32.

**probate duty.** A duty to be treated as an expense of administration of a decedent's estate. The earliest form of death duty in England. 28 Am J Rev ed Inher T § 4. An estate tax.

**probate estate.** The estate of a decedent in probate.

**probate fee.** See **probate duty**.

**probate homestead.** Premises of a decedent set apart to the surviving spouse and minor children, to be

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held by them exempt from liability for the debts of the decedent. 26 Am J1st Home § 185.

**probate in common form.** A survival of probate procedure under ecclesiastical law; an ex parte proceeding instituted by the executor or other proponent of a will to obtain the admission of the propounded instrument to record as a valid will.

It is distinguished from the other form of probate, known as solemn probate, by its ex parte character, no opportunity being given for a contest. 57 Am J1st Wills § 758.

**probate in solemn form.** A proceeding by the executor or other proponent of a will to obtain the admission of the propounded instrument to record as a valid will, under summons to interested parties calling upon them to witness the proceeding and to take whatever part therein they see fit. An adversary proceeding upon notice or citation in which parties in interest opposed to the will have the opportunity to contest its validity. 57 Am J1st Wills § 758.

**probate judge.** The judge who presides in a probate court.

**probate jurisdiction.** A special jurisdiction for the probate of wills, the appointment of executors, administrators, guardians, and committees, the approval of the accounts of such fiduciaries, etc., sometimes exercised by a separate court, at other times by a separate division of a court of general jurisdiction. 20 Am J2d Cts § 32.

**probate law.** In common understanding, -as distinct and clearly defined a branch of the law as is criminal law or corporation law; in popular signification including all matters of which probate courts generally have jurisdiction, among which are estates of deceased persons. *Johnson v Harrison*, 47 Mich 575, 579.

**probate matters.** Matters within the jurisdiction of a probate court. *Re Mortenson*, 248 Ill 520, 94 NE 120.

See **probate jurisdiction**.

**probate of will.** See **caveat; probate**.

**probate proceeding.** A proceeding in the probate court, usually upon notice of motion or order to show cause. Sometimes upon summons or other formal process as in the probate of a will in solemn form. A "civil action" for the purpose of a statute which disqualifies a judge in a civil action for causes specified in the statute. 30A Am J Rev ed Judges § 95.

**probate research.** A matter of searching for heirs of a particular decedent or in finding evidence to substantiate the claim of a person made as an heir. *Cochran v Zachery*, 137 Iowa 585, 115 NW 486.

See **heir hunter**.

**probate sale.** A sale, such as an executor's or administrator's sale, had under order of court in a proceeding in probate.

**probate tax.** See **probate duty; estate tax**.

**probatio.** Proof; a trial; an examination.

**probatio mortua.** Dead proof; that is, proof by writings or by things or objects offered in evidence.

**probation.** A trial or test, particularly of the fitness of a person for a position. Also a period for the observance of a person under a suspended sentence for crime with reference to the advisability of giving him opportunity to resume his place in society without undergoing confinement in prison. A matter of action taken before the prison door is closed, being the suspension of sentence or suspension of execution of sentence prior to commitment, for the purposes of education and rehabilitation of the accused. 21 Am J2d Crim L §§ 562 et seq. A discharge from commitment as an insane person upon condition of remaining in a condition of sanity, to be recommitted summarily upon insanity appearing. *Metaxos v People*, 76 Colo 264, 230 P 608.

**probationary custody.** An award of the custody of a child of divorced parents, made upon the granting of the divorce, but with the expectation that an application for a final award will be made and heard at a later date. 24 Am J2d Div & S § 809.

**probationary discharge.** See **probation**.

**probationary status.** A person having a period of probation in a civil service position by way of a further test of his qualifications for appointment. 15 Am J2d Civ S § 24. The status of a person convicted of a crime during the period of suspension of sentence, or suspension of execution of sentence, as ordered by the court to afford opportunity for his rehabilitation. 21 Am J2d Crim L §§ 562 et seq.

**Probationes debent esse evidentes, id est, perspicuae et faciles intelligi.** Proofs ought to be evident; that is, they ought to be plain and easily understood.

**probation officer.** An officer, usually attached to a juvenile court, who is charged with the care of juvenile delinquents, and in some jurisdictions with the superintendence of convicts who are at large on probation or suspended sentence.

**probatio plena.** (Civil law.) Full proof; that is, proof by two witnesses, or by a public document. See 3 Bl Comm 370.

**probatio semi-plena.** (Civil law.) Half proof; that is, proof by one witness only. See 3 Bl Comm 370.

**probatio viva.** Living proof; that is, proof by a living witness or witnesses.

**Probatis extremis, praesumitur media.** When the extremes have been proved, those things which lie between are presumed.

**probative.** Having a tendency to prove or establish.

**probative facts.** Evidentiary facts. Facts which tend to prove ultimate facts. 41 Am J1st Pl § 8.

**probative value.** The weight as evidence of evidentiary facts. *Wilson v Haughton* (Ky) 266 SW2d 115, 41 ALR2d 950.

See **weight of evidence**.

**probator.** Also called an "approver" or "prover,"—a person who, after having been indicted for treason, or other felony, and arraigned for it, confesses his guilt before pleading guilty or not guilty and accuses the persons who were his accomplices of the same crime, in order to obtain a pardon for himself. See 4 BI Comm 330.

**probi et legales homines.** Plural of **probus et legalis homo**.

**pro bono et malo.** For good and evil.

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**pro bono publico.** For the public good or welfare.

**probus et legalis homo.** A true and lawful man; that is, a man who can serve upon a jury, be a witness, or bring an action to recover lands or money due him. See 3 BI Comm 102.

**procedendo.** An order or writ issued by an appellate court commanding a court of inferior jurisdiction to proceed to judgment in a case pending before it, but not attempting to control the inferior court as to what the judgment should be. *State ex rel. Davey v Owen*, 133 Ohio St 96, 12 NE2d 144, 114 ALR 686. An order issued by a court of review on the decision of a cause on appeal or writ of error, directing the action to be taken or disposition to be made of the cause by the lower court. *State v Banning*, 205 Iowa 826, 218 NW 572; *Yates v People* (NY) 6 Johns 337, 403.

**procedendo ad iudicium.** A remedy under early English common-law and chancery practice to compel an inferior tribunal to proceed to judgment in a given case where the judge of such court was delaying the proceeding, but without directing any particular judgment. *Re Press Printers & Publishers* (CA3 NJ) 12 F2d 660.

**procedendo de loquela.** A king's writ which directed the court to proceed in a tenant's real action, in response to the latter's aid prayer.

The aid prayer was a call for assistance to plead because of the feebleness or imbecility of the estate of the tenant himself. See 3 BI Comm 300.

**procedendo on aid prayer.** See **procedendo de loquela**.

**procedural due process.** A regular course of justice, which is not unreasonable or arbitrary, upon notice and hearing, in pursuance of an efficacious remedy secured by the law of the state. 16 Am J2d Const L § 549. An orderly proceeding appropriate to the case or adapted to its nature, just to the parties affected, and adapted to the ends to be attained; one in which a person has an opportunity to be heard, and to defend, enforce, and protect his rights with the assistance of counsel before a competent and impartial tribunal legally constituted to determine the right involved. 2 Am J2d Admin L § 353.

**procedural law.** The law which governs the manner in which rights are enforced and wrongs rectified. *Hardie v Bryson* (DC Mo) 44 F Supp 67. The law which prescribes the procedure to be followed in a case.

**procedure.** The means adopted, that is the practice followed, whereby a court adjudicates controversies within its jurisdiction and properly presented to it, as distinguished from the substantive principles according to which rights and wrongs are determined. *Green v Board of Comrs*. 126 Okla 300, 259 P 635; *Nordling v Johnston*, 205 Or 315, 283 P2d 994, 48 ALR2d 1369.

See **practice**.

**procedure extra ordinem.** (Civil law.) An informal proceeding before a magistrate terminating in a decision which could not be enforced without a further action to secure execution.

**proceeding.** In ordinary usage, including all methods of invoking the action of courts and applicable generally to any step taken by a suitor to obtain the interposition or action of a court. 1 Am J2d Actions § 3. An action. More particularly, 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. 1 Am J2d Actions § 3. In reference to the restriction upon federal courts of granting an injunction to stay proceedings in state courts:-any step taken, or which may be taken, in the state court or by its officers, from the institution of the action to the termination of final process. *Hill v Martin*, 296 US 393, 80 L Ed 293, 56 S Ct 278. In one peculiar sense, the equivalent of special proceeding. In a broad sense, inclusive of an inquiry before a grand jury. *Hale v Henkel*, 201 US 43, 66, 50 L Ed 652, 662, 26 S Ct 370, even of the conduct of a matter before an executive department or administrative agency. *Bowers v New York & Albany Lighterage Co.* 273 US 346, 71 L Ed 676, 47 S Ct 389.

See **action; ancillary proceeding; practice; procedure; special proceeding; summary proceeding.**

**proceeding according to the course of the common law.** A rhetorical statement, pleasing to the ear but leaving no definite impression upon the understanding. *Hahn v Kelly*, 34 Cal 391, 411.

**proceeding for information of title.** See **information of title.**

**proceeding in admiralty.** See **admiralty.**

**proceeding in bankruptcy.** In the broad sense, any invoking of the jurisdiction of the bankruptcy court; in a technical sense, a summary proceeding in a court of bankruptcy. 9 Am J2d Bankr §§ 68 et seq.

**proceeding in court.** See **proceeding.**

**proceeding in error.** A proceeding by writ of error for the removal of a cause to a higher court for review. *State v Scott*, 34 Wyo 163, 242 P 322.

**proceeding in insolvency.** Any assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved. UCC § 1-201(22). A proceeding wherein a person may be adjudicated insolvent and the assets of his estate be distributed according to law. 29 Am J Rev ed Insolv §§ 14 et seq.

State insolvency statutes sometimes provide for the discharge of the debtor from his debts, but discharge under state laws is subject to material exceptions or limitations. 29 Am J Rev ed Insolv § 88.

**proceeding in personam.** See **in personam action.**

**proceeding in rem.** See **in rem action.**

**proceeding quasi in rem.** See **quasi in rem action.**

**proceeding supplementary to execution.** See **supplementary proceeding.**

**proceeds.** That which is received for something, whether in cash or other thing of value. *Phelps v Harris (US)* 11 Otto 370, 380, 25 L Ed 855, 858.

The term as used in a statute requiring labor claims to be first paid out of the "proceeds of sale" of property of an insolvent means, in case of a receivership, what remains after payment of the costs and expenses of the receivership necessary



to the carrying out of the trust by the receiver as the hand of the court. *Sloan & Z. Co. v Lyons Ref. Co.* 290 Pa 442, 139 A 133, 55 ALR 275.

As used in a will or other trust instrument the term, used alone, is generally regarded as equivocal, meaning either (1) the income, product or profits from property, or (2) the fund arising upon the sale

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of property; its meaning in the particular case is to be determined primarily from the context of the instrument in which it is used and the subject matter to which it is applied. Anno: 1 ALR2d 194.

**proceeds and avails of insurance.** For the purposes of exemption from execution, the amount collected from an insurance company under a contract of insurance. *Le Blane's Succession*, 142 La 27, 76 So 223.

**proceeds of sale.** See **proceeds**.

**proceeds receivable by the executor.** Funds in the hands of the executor where he is named as beneficiary, where the proceeds are subject to estate obligations, or where there is a legal obligation on the part of the executor to use them for the benefit of the estate. Anno: 80 L Ed 174, s. 85 L Ed 1012, 1013.

**proceres.** Chiefs; nobles; princes; municipal magistrates.

**process.** A method of producing something from raw material. Producing by chemical action, by the operation or application of some element or power of nature, or by adding one substance to another. *Corning v Burden* (US) 15 How 252, 267, 14 L Ed 683, 690. A series of actions, motions, or occurrences; progressive act or transaction; continuous operation or treatment; a method of operation or treatment. *Martin v Minerals Separation North American Corporation* (DC Md) 29 F Supp 146. In patent law, a manner of treatment of certain materials to produce a given result; an act or series of acts performed upon the subject matter to transform and reduce it to a different state or thing. *Cochrane v Deener*, 94 US 780, 24 L Ed 139. In a broad sense, all of the acts of the court from the beginning to the end of an action or proceeding. *Blair v Maxbass Secur. Bank*, 44 ND 12, 176 NW 98. The means by which the purposes of the law may be applied and executed as between private litigants or as between the state and an accused. In a technical sense, the means of compelling a defendant to appear in court, whether in a civil or criminal case. A writ, warrant of arrest, or other means of subjecting person or property to the jurisdiction of the court. 42 Am J1st Proc § 2.

See **due process of law; service of process**.

**processing materials.** Applying a process to materials. Materials used in manufacturing; raw materials. Anno: 30 ALR2d 1439.

See **process**.

**process in rem.** A process, as that of a court of admiralty, adapted to the establishment and enforcement of a right in a thing, as distinguished from the enforcement of a personal liability. *State v Voorhies*, 39 La Ann 499, 2 So 37.

**procession.** A line of persons on foot or in vehicles, proceeding in an orderly manner, as in bearing the body of a friend or relative to place of burial. 25 Am J1st High § 212.

See **parade**.

**processioned.** See **processioning**.

**processioner.** A person appointed upon the application of the owner or owners of land, the boundaries of which are in doubt, to determine the correct boundary. 12 Am J2d Bound § 94.

**processioning proceeding.** A special statutory proceeding for the determination of a boundary in dispute. *Andrews v Andrews*, 252 NC 97, 113 SE2d 47. A proceeding invoked by a landowner who desires a survey whereby the boundary lines of his tract may be surveyed, established, and marked anew, being in the nature of preventive relief. *Watson v Bishop*, 69 Ga 51, 53.

**process of attaint.** See **attaint**.

**process of garnishment.** See **garnishment**.

**process of gavellet.** See **gavellet**.

**process of law.** See **due process of law; process; service of process**.

**process of manufacturing.** In the broad sense, manufacturing something from raw material. Making an article entirely by hand or machinery into a new form capable of being used and designed to be used in ordinary life. 21 Am J2d Cust D § 43.

**process of mining.** The obtaining of mineral from an excavation in the earth, which necessarily implies two things: First, the actual cutting or hewing of the mineral; and, second, its removal to the surface. *Anne*: 11 ALR 154.

See **strip mining**.

**process of outlawry.** See **attainder by process of outlawry; outlawry**.

**processor.** One who receives material, particularly grain, fruit, or other product of the farm, and converts it to a form suitable for consumption or use.

See **process**.

**process regular on its face.** See **regular on its face**.

**process roll.** A record wherein process was entered to interrupt the running of the statute of limitations.

**process tax.** An excise imposed on the processing rather than on the product. *Glenn L. Martin Co. v United States* (DC Md) 23 F Supp 262.

**processum continuando.** For continuing the process,—the name given to a writ which lay to keep process of the court alive and in force beyond the time of its normal life.

**Processus legis est gravis vexatio, executio legis coronat opus.** The process of the law is a grave vexation; the execution of the law crowns the work.

**process verbal.** A detailed account of the proceedings held before a public officer and the result thereof, formally attested by him as true and correct. *Hall v Hall*, 11 Tex 526, 539.

**procès-verbal.** (French.) An official report.

**prochain.** (French.) Same as **prochein**.

**prochein.** Nearest; next.

**prochein ami.** (French.) Same as **next friend**.

**prochein amy.** Same as **prochein ami**.

**prochein avoidance.** The next vacancy.

**procheyn.** Same as **prochein**.

**procheyn heir.** The next heir.

**proclaimed rate.** A rate of customs duty proclaimed by the President. 19 USC § 1202, Headnote 9(d).

**proclamare.** To call out; to proclaim; to warn.

**proclamation.** An announcement made on behalf of the government. *Lapeyre v United States* (US) 17 Wall 191, 21 L Ed 606. An official announcement

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of a matter of great and vital public interest, such as the ratification of an amendment to the United States Constitution. 16 Am J2d Const L § 25. As made by the President of the United States, a public act of which all courts of the United States are bound to take notice and to which they must give effect. *Panama Refining Co. v Ryan*, 293 US 388, 79 L Ed 466, 55 S Ct 241.

See **writ of proclamation**.

**proclamation of a fine.** A statutory requirement.

By 1 Richard III, c. 7 (Fines, 1483), confirmed and enforced by 4 Henry VII, c. 24 (Fines, 1488), the fine, after engrossment, was required to be openly read and proclaimed in court sixteen times (four in the term in which it was made, and four in each of the three succeeding terms), but this requirement was reduced to once each term by 31 Elizabeth, c. 2 (Fines, 1588), and these proclamations were indorsed on the back of the record. See 2 Bl Comm 352.

**proclamation of election.** The notice of an election to be held for the election of officers or passing upon propositions submitted to the voters. The formal statement made by an election officer at the opening of the polls, usually:—"Hear ye, hear ye, the polls are now open."

**proclamation of peace.** A proclamation by the President of the United States announcing the end of war and the return of peace. 56 Am J1st War § 13.

**proclamation of the President.** See **proclamation**.

**proclamation on exigent.** In outlawry proceedings, the sheriff's proclamation that the defendant will be outlawed if he does not surrender.

If a non est inventus is returned upon a *capias*, an *alias writ*, and a *pluries writ*, successively, a writ of exigent is sued out requiring the sheriff to cause the defendant to be proclaimed, required, or exacted, in five county courts successively, to render himself; and, if he does, then to take him, but if he does not appear, and is returned required for the fifth time, he is to be outlawed by the coroners of the county. See 3 Bl Comm 283.

**pro concilio.** For advice.

**pro confesso.** See **confession of judgment; decree pro confesso.**

**pro correctio et salute animae.** For the cure and welfare of the soul.

**procreation.** The production of offspring.

See **words of procreation.**

**proctor.** An officer of the ecclesiastical court corresponding to an attorney at law in the courts of the common law. See 3 Bl Comm 25. One licensed to practice admiralty law. One who stands in the relationship to a litigant in admiralty as the attorney of a party in an ordinary civil action. *Jackson v Ore Navigation Corp.* (DC Md) 159 F Supp 935. One, familiar to generations of law students, who supervises examinations.

See **divorce proctor.**

**procul dubio.** Without doubt.

**procuracy.** The written authority of a procurator which empowers him to act for his principal.

**procurador del comun.** A solicitor-general. The title of an officer of the Spanish government frequently encountered in Spanish-American grants in certain districts.

He was an officer appointed to make inquiry, put the petitioner in possession of the land prayed for, and execute the lieutenant-governor's and commandant's orders relative to the premises. *Lecompte v United States (US)* 11 How 115, 13 L Ed 627.

**procuratio.** Procuration; management; administration; a letter of attorney; an attorney in fact; an attorney; an agent.

**procuration.** Every power or authority given by one person to another by means of an instrument in writing. *Williams v Conger*, 125 US 397, 422, 31 L Ed 778, 789, 8 S Ct 933. (Ecclesiastical.) An annual payment made by a parish priest to the bishop or archdeacon.

**procuration money.** Charges of a scrivener or broker for procuring loans. See 4 Bl Comm 157.

**procurator.** The donee of a procuration; a proctor.

See **procuration; proctor.**

**procurator fiscal.** A public prosecutor; a prosecuting attorney.

**procuratorium.** The written authority or proxy of a proctor.

**procurator litis.** (Civil law.) A person who performed services in a litigation or lawsuit corresponding to those of a modern attorney.

**procurator negotiorum.** (Civil law.) A manager of affairs; a business manager; an attorney in fact.

**procure.** To bring into possession; to obtain. *Mighell v Dougherty*, 86 Iowa 480, 53 NW 402. To cause to occur. To bring about, especially an event fraught with evil. *United States v Richmond (CA3 Pa)* 17 F2d 28.

**procurer.** One who uses means to bring anything about, especially one who does so secretly and corruptly. *United States v Richmond* (CA3 Pa) 17 F2d 28. One who seduces females into prostitution. A pimp.

See **pandering; pimp.**

**procuring breach of contract.** A tort, in interfering with the right of another, under the doctrine of *Lumley v Gye*, 118 Eng Reprint 749, 1 ERC 706.

**procuring cause.** The act which effects a sale or transaction. 12 Am J2d Brok § 189.

As the basis of a broker's right to his commissions, the term refers to the cause originating from a series of events that without break in their continuity results in the prime object of the employment of the broker. *Roth v Thomson*, 40 Cal App 208, 215; *Smith v Preiss*, 117 Minn 392, 136 NW 7.

**pro defectu.** For failure of; because of the lack or want of.

**pro defectu emptorum.** For want or failure of buyers.

**pro defectu exitus.** For failure of issue.

**pro defectu haeredis.** For want or failure of an heir.

**pro defectu justitiae.** For defect or want of justice.

**pro defendente.** For, or in favor of, the defendant.

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**pro derelicto.** For a derelict; as abandoned property.

**prodigal.** A spendthrift; an unthrift.

Under the Roman law, if a man by notorious prodigality was in danger of wasting his estate, he was looked upon as non compos, and committed to the care of curators or tutors by the praetor. But under the common law, when a man on an inquest of idiocy has been returned an "unthrift," and not an idiot, no further proceedings are had. See 1 Bl Comm 305.

See **spendthrift trust.**

**pro dignitate regali.** For or because of the royal dignity.

Pro dignitate regali, no man can marry a queen dowager, without special license from the king, on pain of forfeiting his lands and goods. See 1 Bl Comm 223.

**prodigus.** (Roman law.) A prodigal; a spendthrift; an extravagant person.

**prodition.** Treason.

**proditor.** A traitor; a person who has committed treason.

**proditorie.** Traitorously; treasonably.

**pro diviso.** As divided, that is, in severalty.

**pro domino.** As master.

**pro donato.** As a gift; by way of gift.

**pro dote.** (Civil law.) As a dowry; by way of dowry.

**produce.** Verb: To give being or form to; to manufacture; to make. *Mighell v Dougherty*, 86 Iowa 480, 53 NW 402. (prod-us'). Noun: In the broad sense, anything grown or manufactured, whether by hand or machinery. In a more limited sense, products of the farm, particularly those marketed daily or at least weekly, such as milk, other things from the dairy, fruits, and vegetables.

**produce broker.** A broker who negotiates for the sale or exchange of the produce of others. *Banta v Chicago*, 172 Ill 204, 50 NE 233.

**producent.** A party who produces or offers a person as a witness.

**producer.** One who produces whether by farming or manufacturing, although used more commonly to denote a person who raises crops or puts crops in condition for marketing. *Allen v Smith*, 173 US 389, 399, 43 L Ed 741, 744, 19 S Ct 446.

**producers' bounties.** Bounties allowed to producers for the purpose of stimulating manufacturing. 12 Am J2d Bount § 3.

**product.** That which is produced in manufacturing or farming. The result of a course of conduct. The result of a chemical change. The number obtained upon multiplying one number by another.

See **by-product**.

**product and profit of labor.** A term of art.

As the expression is used in a statute prohibiting the product and profit of convict labor, the words do not refer to articles of property, but to the net value of labor. A manufactured article is not known in common parlance, in law or in political economy, as the product of labor. Labor enters into its production, but is often an insignificant element. The article is the product of raw material and labor combined, or, as it is commonly expressed, labor and capital. *People v Hawkit-*, 157 NY 1, 51 NE 257.

**production.** A bringing forth. The output of a factory; the grain, produce, fruit, and increase in number or weight of animals realized on a farm. A painting, a literary or musical composition. *Dano v Mississippi O. & R. R. Co.* 27 Ark 564, 567.

**production and subsistence loans.** Loans for agricultural purposes where production or economic disaster has caused need of farmers for credit not otherwise available. 7 USC §§ 1007-1009; 12 USC § 1148a-2.

**production certificate.** A certificate issued by the Administrator of the Federal Aviation Agency authorizing the production of duplicates of an aircraft, aircraft engine, propeller, or appliance for aircraft. 49 USC § 1423(b).

**production facility.** Any equipment or device determined by rule of the Atomic Energy Commission to be capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or any important component part especially designed for such equipment or device as determined by the Commission. 42 USC § 2014(t).

For other definitions contained in the regulations of the Atomic Energy Commission see 10 CFR §§ 50.2(a) (1) (2), 10 CFR Cum Supp § 50.2(a) (3).

**production of documents.** Relief under statute or according to principles of equity by a discovery. 23 Am J2d Dep §§ 164 et seq.

See **subpoena duces tecum**.

**production of goods for commerce.** Manufacturing, mining, handling, or working on goods in any other manner. Borden Co. v Borella, 325 US 679, 89 L Ed 1865, 65 S Ct 1223, 161 ALR 1258.

**production of suit.** An old term for making a case in the first instance.

Anciently, at common law, a defendant was not required to answer the charge made by the plaintiff until the plaintiff had, by his witnesses, made out at least a probable case, and this was called the "production of the suit." But this practice was discontinued and has not been followed since the reign of Edward the Third. See 3 Bl Comm 295.

**production payment.** A right to a specified sum of money or a specified amount of minerals, payable out of an agreed share of minerals produced or of proceeds from sale of minerals.

If the right must continue over the entire term of a mineral lease, it is a royalty, not a production payment. United States v Morgan (CA5 Miss) 321 F2d 781.

**production tax.** A tax upon the production or severance from the soil of natural resources such as timber, oil, gas, and the like. 51 Am J1st Tax § 1259.

See **gross production tax**.

**productio sectae.** Same as **production of suit**.

**productivity of land.** Cropping value; the ability to produce in terms of specified amounts, such as a stated number of bushels of grain per acre. 55 Am J1st V & P § 84.

**products liability.** The liability of the manufacturer or seller of an article for an injury caused to person or property by a defect in or condition of the article sold. 46 Am J1st Sales § 799. The liability of a manufacturer or packer of drugs or poisonous sub-

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stances to an ultimate consumer injured as a result of defects in, or mislabeling of, the product consequent to his want of exercise of due care in the preparation and marketing of the product. 25 Am J2d Drugs § 49. The liability of a druggist for an injury resulting to another from the use of a drug compounded or dispensed by the druggist, where the injury is chargeable directly to a want of due or ordinary care on the part of the druggist in the compounding or dispensing of the drug. 25 Am J2d Drugs §§ 52 et seq.

**products liability insurance.** A contract or policy of insurance specifically designed to protect the producer, manufacturer, or seller of goods against liability arising by reason of injury to the person or property of others caused by the use of his products. 29A Am J Rev ed Ins § 1360.

**product test.** The test of criminal responsibility according to whether or not the unlawful act was the product of either mental disease or mental defect. 21 Am J2d Crim L § 39.

**pro emptore.** (Civil law.) As a purchaser.

**pro eo quod.** For this, that.

**pro et durante.** For and during.

**pro facti.** As a fact.

**pro falso clamore.** For false claim.

**pro falso clamore suo.** For or by reason of his own false claim.

**profane.** Adjective: Common rather than sacred. Irreverent toward or contemptuous of sacred things. Verb: To desecrate. To put to an ignoble or improper use.

**profane language.** See **profanity.**

**profanity.** Calling for or implying divine vengeance or divine condemnation, with or without directly employing the name of the Deity. *Gaines v State*, 75 Tenn (7 Lea) 410.

See **blasphemy; cursing.**

**profanity in presence of female.** A distinct crime or offense in some jurisdictions. *Ray v State*, 113 Ga 1065, 39 SE 408.

**profectitium peculium.** That property which children make out of the property of their father.

All they acquire in this way, belongs entirely to their father, who has them under his power. *Sparks v Spence*, 40 Tex 694, 700.

**profectitus.** (Civil law.) Inheritable property.

**profer.** Same as **profert.**

**profert.** An offer made formally in a pleading to produce a particular document relied upon by the pleader by way of cause of action or defense. 41 Am J1st Pl § 60. The production of, or offer to produce, a document, made by a party to an action for the purpose of enabling his adversary to read and examine the document. A means of getting a bail bond before the court for action. 8 Am J2d Bail § 154.

**profert ad curiam.** Same as **profert in curia.**

**profert and oyer.** The production of a document for reading by the adverse party. 41 Am J1st Pl § 60.

**profert in curia.** Producing a document in court for reading or attaching a copy thereof to the pleading. *Germain v Wilgus* (CA9 Cal) 67 F 597, 599.

**profession.** A statement or declaration, especially a declaration of religious faith or belief. A vocation or employment in preparation for which specialized education and training is required as in law, medicine, or engineering. *Cummings v Pennsylvania Fire Ins. Co.* 153 Iowa 579, 134 NW 79. A vocation characterized by the use of specialized knowledge or attainments. *Ocean Acci. & Guarantee Corp. v Herzberg's, Inc.* (CA8 Neb) 100 F2d 171. A vocation wherein one puts his specialized knowledge to use for the benefit of others, not confining its use to study, to the enhancement of knowledge, or to the accomplishment of an abstract purpose. *Edwards v Bates County*, 163 US 258, 266, 41 L Ed 151, 155, 16 S Ct 998. For the purposes of an exemption statute, the employment in which the debtor habitually earns his living. 22 Am J1st Exemp § 35.

**professional.** One engaging in a profession in accordance with the standards of conduct required of one in such profession. One who has made a career, engaging for pay or prize money, out of an activity others follow for diversion or pleasure, such as



a professional football player or professional golfer. One who has concentrated his efforts upon performing an art for pay as a means of subsistence, as distinguished from the amateur who engages for the sake of the art or his own pleasure.

**professional adviser.** One advising upon matters purportedly within the scope of his professional capacity. 37 Am J2d Fraud § 52.

**professional bailee.** One who makes it his business to act as a bailee and deals with the public on a uniform basis, such as a common carrier, the proprietor of a parking lot, or a warehouseman. 8 Am J2d Bail § 131.

**professional baseball.** A sport conducted for profit in charging admissions. A business for some purposes. Anno: 56 ALR 813.

**professional capacity.** A function or status characterized by the employment of the specialized knowledge and skill of a particular profession in attending upon another.

Within the statutory rule which prohibits a physician from testifying as to facts learned while attending his patient in a "professional capacity," a physician who was called as a physician, attended the patient as a physician, diagnosed the case as a physician, and administered remedies as a physician, acted in a professional capacity. And he so acted even though called in by a third party and against the protests of the patient. *Meyer v Supreme Lodge Knights of Pythias*, 178 NY 63, 70 NE 111.

**professional corporation.** A corporation formed for the purpose of practicing a profession. 18 Am J2d Corp §§ 31, 32.

As a general rule a corporation cannot lawfully engage in the practice of law, or in the practice of medicine, surgery, or dentistry. Some statutes, however, permit persons engaged in other professions to form corporations or associations for the practice of their professions. 19 Am J2d Corp § 1052.

**professional employee.** Broadly, any employee whose duties call for the practice of a profession. For the

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purposes of the Fair Labor Standards Act, an employee whose primary duties consist of the performance of work requiring knowledge of an advanced type in the field of science or learning, or original and creative in character in a recognized field of artistic endeavor, and whose work requires the consistent exercise of discretion and judgment in its performance, is predominantly intellectual and varied in character, and is generally compensated on a salary or fee basis in a specified amount. 29 USC Appx § 5431.3.

**professional ethics.** See **ethics; judicial ethics; legal ethics.**

**professional expert.** A person who is skilled in a professional occupation, the word professional being here used as it generally is, to distinguish classes of professional persons from those who are engaged in the various occupations of business or trade.

We speak of the professions of medicine, law, and divinity as the learned professions, and also of the profession of arms. And the term has come to be applied to other occupations or callings, all of which require learned and special preparation in the acquirement of scientific knowledge and skill, necessary to a proper understanding and successful management of such occupations; for example the professional occupation of a civil engineer. *Commonwealth ex rel. Hensel v Fidler*, 147 Pa 288, 23 A 568.

See **expert witness.**

**professional gambler.** A person who makes his living or a substantial portion thereof in pursuing the business or practice of unlawful gambling by the use of cards, dice, or other gambling device, with the purpose of thereby winning money or other property, or who conducts, either as owner or employee, a place for gambling. 24 Am J1st Gaming § 46.

**professional journal.** A publication devoted to the special interests of the members of a particular profession, such as a medical journal or a publication for members of the bar. 39 Am J1st Newsp § 9.

**professional judgment.** The judgment exercised by a professional man in a bona fide manner and in reference to a matter within the scope of his profession. 41 Am J1st Phys and S § 103.

**professional liability insurance.** A policy protecting insured, a professional man, against liability arising from his acts or omissions in the practice of his profession. 29A Am J Rev ed Ins § 1358.

**professional misconduct.** Conduct of an attorney at law which shows him to be unfit or unsafe to manage the business of others in the capacity of a lawyer. 7 Am J2d Attys § 25. Conduct that tends to bring reproach on the legal profession or to injure it in the favorable opinion of the public. *Wernimont v State*, 101 Ark 210, 142 SW 194. The conduct of a physician which is dishonorable or disreputable in connection with the practice of his profession, which demonstrates incompetency and unfitness for such practice, or is substantially in conflict with the ethics of the profession. 41 Am J1st Phys & S § 49.

See **misconduct of attorney; misconduct of physician.**

**professional partnership.** A nontrading partnership; a partnership for the practice of a profession, such as a partnership between attorneys at law. 40 Am J1st Partn § 12.

**professional services.** Services rendered in a professional capacity.

**professional society.** An organization of the members of a particular profession, for their mutual benefit, the benefit of the profession, and the benefit of the public, on a local, statewide, or national basis, one of the outstanding examples of which is the American Bar Association.

**proffer.** To offer.

See **offer of proof; profert.**

**profile.** A side view represented in a plan prepared by an architect. 27 Am J2d Em D § 424.

**pro fine.** See **capias pro fine.**

**profit.** See **profit a prendre; profits; transaction for profit.**

**profit appendre.** Same as **profit a prendre.**

**profit à prendre.** A right exercised by one person in the soil of another, accompanied with participation in the profits of the soil or right to take a part of the produce of the land. 25 Am J2d Ease § 4. The power and privilege to acquire through severance ownership of some part of the physical substances included in the possession of land. *United States v Gossler* (DC Or) 60 F Supp 971.

Examples of profit a prendre are the right to take timber from the land of another, or coal, or to fish in water belonging to another. 25 Am J2d Ease § 4.

**profit à rendre.** The produce of the soil of his land which the tenant yielded up or rendered to him who had a profit a prendre in the land.

**profit corporation.** A business corporation, organized with a view toward realizing gains to be distributed among its members. Anno: 16 ALR2d 1347.

**profiteering.** Any conduct or practice involving the acquisition of excessive profits. *Mount v Welsh*, 118 Or 568, 247 P 815, 822.

**profits.** Gains. The excess of gross sales over cost of goods plus expenses of operation. *McDaniel v State Fair* (Tex Civ App) 286 SW 513, 516. The excess of receipts over expenditures. *Connolly v Davidson*, 15 Minn 519. For some purposes, the equivalent of income. Anno: 24 ALR 17; 130 ALR 512. The return to capital rather than earnings from labor performed or services rendered. *Columbus Mining Co. v Ross*, 218 Ky 98, 101, 290 SW 1052.

See **mesne profits**; **net profits**; **undivided profits**.

**profit-sharing plan.** An arrangement in a corporation whereby the compensation of officers, agents, or employees is in part dependent upon or payable out of profits of the business. 19 Am J2d Corp §§ 1413 et seq.

**pro forma.** As a matter of form.

**progeny.** Children, descendants, offspring.

**prognosis.** A statement by a physician concerning the probable course of a disease or the duration of an injury and the possibility or probability of recovery. 37 Am J2d Fraud § 82.

**progress certificate.** A certificate issued by an architect or engineer during the course of construction of a building or other improvement, prepared for the information of the owner concerning performance by the contractor, particularly in reference to payments to be made during the course of construction. 13 Am J2d Bldg Contr §§ 32-40.

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**progressive capacity.** The capacity of an infant increasing from babyhood to the age of majority. 27 Am J1st Inf § 7

**progressive tax.** Strictly, a tax which, as in the case of the federal income tax, applies higher rates progressively as the taxable amount increases. State ex rel. *Foot v Bazille*, 97 Minn 11, 106 NW 93. An excise or license tax on retail merchants computed on their gross sales at a percentage which increases with the volume of the taxpayer's business. *Stewart Dry Goods Co. v Lewis*, 294 US 550, 79 L Ed 1054, 55 S Ct 525, reh den 295 US 768, 79 L Ed 1709, 55 S Ct 652. Inclusive in the broad sense, of a graduated tax.

See **graduated tax**.

**progress payments.** Payments made to a contractor during the performance of the work, usually calculated in amount according to the percentage of work accomplished. Anno: 22 ALR2d 1344; 17 Am J2d Contr § 348.

**pro hac vice.** For this occasion. *McNeal v Braun*, 53 NJL 617, 23 A 687.

**Prohibetur ne quis facial in suo quod nocere possit alieno.** It is prohibited to do on one's own property that which may injure another's. *Conrad v Baltimore & Ohio Railroad Co.* 64 W Va 176, 61 SE 44.

**prohibit.** To forbid, To prevent.

**prohibited goods.** Goods, merchandise, and other articles, the importation of which into the United States is prohibited. 21 Am J2d Cust D § 22.

**prohibitio de vasto, directa parti.** A writ which lay to prohibit the tenant from committing waste during the pendency of an action.

**prohibition.** A remedy the purpose of which is to prevent a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance, or exceeding its jurisdiction in matters of which it has cognizance. Anno: 77 ALR 246. A total restraint on traffic in intoxicating liquors. Ex parte Meyer, 84 Tex Crim 288, 207 SW 100. National prohibition under the act of Congress passed in 1919 (41 Statutes at Large, 305), known as the Volstead Act prohibiting the manufacture, sale, transportation, and exportation of intoxicating liquors for beverage purposes, for the enforcement of the Eighteenth Amendment to the United States Constitution. National Prohibition Cases, 253 US 350, 64 L Ed 946, 40 S Ct. 486, 588.

See **writ of prohibition.**

For repeal of Eighteenth Amendment, see **Twenty-first Amendment.**

**prohibition agent.** A federal officer in the hierarchy for the enforcement of the former National Prohibition Act. Not an internal revenue officer. United States v Parzah, (DC Pa) 18 F2d 1003.

**prohibition commissioner.** The Commissioner of Internal Revenue in his capacity of officer for administration of the National Prohibition Act. Gnerich v Rutter, 265 US 388, 390, 68 L Ed 1068, 1069.

See **prohibition.**

**prohibition director.** A federal officer in the hierarchy for the enforcement of the National Prohibition Act.

See **prohibition.**

**prohibition of waste.** See **writ of prohibition of waste.**

**prohibitive.** Tending to prohibit or prevent or to exclude or bar.

**prohibitive impediments.** Those impediments or restrictions which do not make a marriage void, but which render the parties liable to punishment.

**prohibitive license.** A license required as a condition of doing business the fee for which is so high as to be prohibitive of engaging in the business. 52 Am J1st Trad St § 14.

**prohibitory injunction.** Same as **preventive injunction.**

**prohibitory writ.** See **injunction; writ of prohibition.**

**prohibitum.** See **malum prohibition.**

**pro ignorantia literarum.** Through ignorance of letters; by reason of inability to write.

**pro illa vice.** For that occasion.

**proinde.** Therefore; accordingly.

**pro indefenso.** As undefended.

**pro indiviso.** As undivided.

**pro interesse suo.** In proportion to his own interest.

**projecting load.** A load on a vehicle on the highway, part of which projects beyond the body of the vehicle, sometimes to the side but more often to the rear. 25 Am J1st High § 234.

**projectio.** Alluvion, or the gradual washing up of the sand and earth so as to increase the quantity of land owned by a riparian proprietor.

**projection.** An overhang.

**projection of the shore.** An extension of the land by wharf or pier. The Russell No. 6 (DC NY) 42 F Supp 904.

**projectoscope.** An instrumentality for displaying a photographic impression by throwing an enlargement upon a screen. Anno: 72 ALR2d 316, § 6[a].

**projet.** The draft of a proposed treaty between two or more nations.

**pro laesione fidei.** For breach of faith.

In the reign of Stephen, the clergy tried to turn their ecclesiastical courts into courts of equity by entertaining suits pro laesione fidei, as a spiritual offense against conscience, in case of nonpayment of debts or breaches of contract generally, until this attempt was checked by the Constitutions of Clarendon. See 3 Bl Comm 52.

**prolapsus uteri.** Falling of the womb. Cole v Cole, 37 Tenn (5 Sneed) 57.

**prolatum.** An extra judicial opinion, given in or out of court; a saying not to be accepted as an opinion. Thorne v San Francisco, 4 Cal 127, 156.

**pro legato.** As a legacy.

**proles.** Issue; offspring; descendants; posterity.

**Proles sequitur sortem paternam.** The child follows the lot of the father. Lynch v Clarke (NY) 1 Sandf 583, 660.

**proletarius.** (Civil law.) A person who had no property to be taxed, but paid a tax

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only on account of his children.-Wharton's Law Dictionary.

**prolicide.** The killing by a parent of his offspring.

**prolixity.** Verbosity, particularly in a pleading. 41 Am J1st PI § 27. Excessiveness in wording. 27 Am J1st Indict § 51.

**prolocutor.** (Ecclesiastical.) The presiding officer in a convocation or assembly of the English clergy.

**prolongation.** An extension of the time within which an act is required to be done or within which an obligation is to be performed.

**pro lucrari.** For the sake of gain.

**pro majori cautela.** For greater caution; for greater security.

**promenade.** A public place for strolling or walking for pleasure. *Appleton v New York*, 219 NY 150, 114 NE 73, 7 ALR 629.

**promise.** Verb: To engage. To pledge one's self to performance. To assure the performance of a particular act. To pledge by contract. *Knecht v Mutual Life Ins. Co.* 90 Pa 118. Noun: An assurance, in whatever form of expression used, that a thing will or will not be done. *Baehr v Penn-O-Tex Oil Corp.* 258 Minn 533, 104 NW2d 661. Something more than an acknowledgement of an obligation. UCC § 3-102(I)(c), and Comment 2. A declaration which gives to the person to whom it is made a right to expect or claim the performance or non-performance of some particular thing. *Taylor v Miller*, 113 NC 340, 342, 18 SE 504. An undertaking which binds the promisor for the happening of a future event, provided it is supported by a consideration. 17 Am J2d Contr § 2.

**promisee.** The person to whom a promise is made.

**promise of immunity.** A promise, made by a person in authority in obtaining a confession, that the accused shall be immune in whole or in part from prosecution or punishment. 29 Am J2d Ev § 563.

**promise of marriage.** An engagement of marriage to the promisee.

As the words are used in the statutory offense of seduction under promise of marriage, the promise need not be expressed in any set form, or in any particular words. It is enough if language is used which implies such a promise, and is intended to convey that meaning, and is in fact so understood by the prosecutrix. *State v Brinkhaus*, 34 Minn 285, 286.

See **breach of promise.**

**promise to answer for the debt, default, or miscarriage of another.** An undertaking by a person not before liable, for the purpose of securing or performing the same duty for which the original debtor continues to be liable. *Dillaby v Wilcox*, 60 Conn 71, 22 A 491.

**promise to pay.** An undertaking to pay. UCC § 3-102(1)(c).

**promise to pay the debt of another.** See **promise to answer for the debt, default, or miscarriage of another.**

**promise to pay when able.** An acknowledgment sufficient for the purpose of creating a stated account only where there is an absolute assent to the amount. *Kaunitz v Wheeler*, 344 Mich 181, 73 NW2d 263.

**promisio.** See **stipulatio.**

**pro misis et custagiis.** For his costs and charges.

**promisor.** A person who makes a promise to another; a person who promises.

**promissory estoppel.** A new name for an established doctrine. The principle that an estoppel may arise from the making of a promise, even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. 28 Am J2d Estop § 48.

A promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by the enforcement of the promise. *Fried v Fisher*, 328 Pa 497, 196 A 39, 115 ALR 147.

**promissory note.** A contract in writing for the payment of money, usually with the added feature of negotiability. *Annis v Pfeiffer*, 278 Mich 692, 271 NW 568; *Sabine v Leonard (Mo)* 322 SW2d 831. A term used interchangeably with note. *Shawano Finance Corp. v Julius*, 214 Wis 637, 254 NW 355. A term well understood as indicating a negotiable note. *Road Improv. Dist. v Southern Trust Co.* 152 Ark 422, 239 SW 8.

See **negotiable note; note.**

**promissory oath.** A solemn appeal to God, or, in a wider sense, to some superior sanction or a sacred or revered person (as the temple, the altar, the blood of abel, the Koran, a tribal superior, etc.) in witness of the inviolability of a promise or undertaking. *People ex rel. Bryant v Zimmerman*, 241 NY 405, 150 NE 497, 43 ALR 909, 913.

**promissory representation.** A representation as to something which will be or is intended to be done in the future. 37 Am J2d Fraud § 57. In the law of insurance, an allegation as of something to happen during the existence of the insurance. 29 Am J Rev ed Ins § 698.

As the basis of estoppel, see **promissory estoppel.**

**promissory statement.** See **promissory representation.**

**promissory warranty.** An absolute undertaking by an insured, contained in a policy of insurance or in a paper properly incorporated by reference, that certain facts or conditions pertaining to the risk shall continue, or that certain things with reference thereto shall be done or omitted. 29 Am J Rev ed Ins § 709.

**promontory.** A headland; a high point of land jutting into sea or lake. *United States v Otley (DC Or)* 34 F Supp 182.

**promote.** To give a start to something, perchance the organization of a corporation. To forward. To contribute to growth and enlargement. *Bank of Italy v Johnson*, 200 Cal 1, 251 P 784, 792.

**promoter.** A person who undertakes to bring about the incorporation and organization of a corporation, procures for it the rights and capital by which it is to carry out the purposes set forth in its charter, and establishes it as able to do business, bringing together the person interested in the enterprise, aiding in procuring subscriptions to stock, and setting in motion the machinery which leads to the formation of the corporation. 18 Am J2d Corp § 106. One

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who performs in like manner in the organization of a co-operative apartment association. 15 Am J2d Con Apt § 21. In a less well-known sense, an informer, one who is responsible for the starting of a criminal prosecution. In the broadest sense, one who promotes, be it nothing more than a game of cards.

**promotion.** The advancement of an employee from one position in the work to a position of more significance and better compensation. The advancement of a person in the civil service to a higher position on the basis of qualifications. 15 Am J2d Civ S § 20. The work in organizing and establishing a corporation in business, bringing together persons interested in the enterprise, aiding in procuring subscriptions to stock, and doing other work leading to the formation of the corporation. 18 Am J2d Corp § 106. Any activity by a person in the status of a promoter.

See **promoter.**

**promotional examination.** A civil service examination given persons in the service as the basis of determining merit for promotion. 15 Am J2d Civ S§10.

**promotion expenses.** Necessary expenses incurred by promoters before incorporation of the company being organized with their aid. 18 Am J2d Corp § 108.

**prompt.** Adjective: Punctual. Expeditious; quick. *Pearson v Washingtonian Pub. Co.* 68 App DC 373, 98 F2d 248. Prepared beforehand. *Tobias v Lissberger*, 105 NY 404, 12 NE 13. Verb: To urge. To cue an actor.

**promptly.** Expeditiously. 46 Am J1st Sales § 163. With reasonable diligence. having regard to the circumstances. *Bowles v Mutual Ben. Health & Acci. Asso.* (CA4 Va) 99 F2d 44, 119 ALR 756.

**prompt-note.** A notice given to one who has bought on credit of the due date of his obligation to pay.

**prompt notice.** Notice given within a reasonable time. Anno: 76 ALR 59; 41 ALR2d 853 (notice of breach of warranty). Notice given with reasonable dispatch. *Black & W. Cab. Co. v New York Indem. Co.* 108 W Va. 93, 150 SE 521 (notice of accident as required by insurance policy).

**promptu.** See **in promptu.**

**promulgate.** To give notice to the public of the enactment of a law or the prescribing of a rule of court.

**promulgation.** Making known to the public the enactment of a statute or the prescribing of a rule of court. To publish a statute or rule of court. 20 Am J2d Cts § 83.

**promutuum.** A quasi contract whereby a person to whom money had been paid under a mistake, became bound to repay it.

**pro non scripto.** As though not written; as though it had never been written.

**pronouncement of judgment.** The rendition of judgment by the court. 30A Am J Rev ed Judgm § 49. The rendition of judgment and direction for the entry thereof. *People v Walker*, 76 Cal App 192, 200, 244 P 94, 98.

**pronouncement of sentence.** The judgment of a court of criminal jurisdiction. *Kennedy v Reid*, 101 App DC 400, 249 F2d 492. The act of a court of criminal jurisdiction in formally declaring to the accused the legal consequences of the guilt which he has confessed or of which he has been convicted. *State v Fedder*, 1 Utah 2d 117, 262 P2d 753.

**proof.** Evidence. More precisely, the effect of evidence; the establishment of a fact by evidence. 29 Am J2d Ev § 2. A matter of conviction or persuasion resulting from a consideration of the evidence. *Dege v Produce Exchange Bank*, 212 Minn 44, 2 NW2d 423.

**proof beyond reasonable doubt.** See **reasonable doubt.**

**proof gallon.** A gallon of proof spirits or the equivalent thereof. 26 USC § 5002(a)(8).  
See **proof spirits.**

**proof of claim.** A written and verified statement of a claim against a decedent, presented for payment by filing in the probate court or serving the same upon the personal representative as the statute may require. 31 Am J2d Ex & Ad §§ 298 et seq. In bankruptcy, a demand against a fund in possession of the court for distribution. 9 Am J2d Bankr § 428. A statement in writing,



signed and verified by the creditor, with caption and title as prescribed by Order 21 of the General Orders in Bankruptcy, setting forth a claim against the estate in bankruptcy, the consideration therefor, whether any and, if so, what securities are held therefor, whether any and, if so, what payments have been made thereon, and declaring that the claim is justly owing from the bankrupt to the creditor. Bankruptcy Act § 57(a); 1 I USC § 93(a); 9 Am J2d Bankr § 439. A sworn statement of subject matter and amount of a claim against an insolvent in insolvency proceedings, made for the purpose of participating in the distribution of assets to creditors. 29 Am J Rev ed Insolv § 31.

**proof of death.** Evidence of death. 22 Am J2d Dth §§ 299 et seq. The proof of loss under a life insurance policy.

See **death certificate**.

**proof of loss.** A statement in writing, usually under oath, of a loss sustained by an insured, required by policy provision or statute to be submitted to the insured within the time prescribed by the policy or statute, stating the amount of the loss and the manner in which it occurred. 29A Am J Rev ed Ins §§ 1373-1439.

See **due proof of loss**.

**proof of publication.** An affidavit or certificate of publication made by the publisher of a newspaper or his authorized agent as proof of the publication of a notice, summons, order, and so forth. 39 Am J1st Newsp § 14.

**proof of service.** See **return of process**.

**proof per testes.** Proof of a disputed will by the persons who witnessed its execution.

**proof spirits.** A liquid which contains one-half its volume of ethyl alcohol of a specific gravity of .7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity. 26 USC § 5002(a)(7).

**proof to a moral certainty.** The equivalent of proof beyond a reasonable doubt, signifying such proof as satisfies the judgment and conscience of the jury, as reasonable men, that the defendant is guilty of the crime charged. 30 Am J2d Ev § 1171.

**pro omni servitio.** In lieu of all service.

**pro opere et labore.** For work and labor. See 1 Bl Comm 471.

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**prop.** A support.

See **mine prop**.

**propaganda.** Ideas communicated for the purpose of influencing the thoughts of another, especially, in the modern sense, distorted principles intended to deceive. An antisocial activity insofar as it advocates the destruction of organized government, of mass industrial revolts against municipal government, and revolutionary mass action for the final destruction of government. 47 Am J1st Sedit Etc § 13.

The term "political propaganda," for the purposes of the Foreign Agents Registration Act, is defined at length in such statute. 22 USC §§ 611616.

One of the qualifications which charitable organizations generally must meet in order that a gift to them may be deductible for gift tax purposes is that carrying on "propaganda" or otherwise attempting to influence legislation shall not constitute a substantial part of their activities. IRC 1954 § 2522; 26 USC 2522.

**propane gas.** A chemical combination of carbon and hydrogen, about 1-1 /2 times heavier than air, odorless, colorless, invisible, and highly inflammable. 26 Am J2d Electr § 5.

**pro patria.** For one's country.

**proper.** Fitting. Conforming to an accepted standard. Decent.

**proper action.** A technical term of very limited usage for an action brought in the name of the county. *Richardson v Stuesser*, 125 Wis 66, 103 NW 261.

**proper books of account.** The books of account of a merchant or trader kept in such a manner, however inartistic or unprofessional it may be, that the real condition of the financial affairs of the business may be ascertained and determined upon an examination thereof. *Siegel v His Creditors*, 95 Cal 409, 414, 30 P 559.

**proper burial.** See **decent burial; respectable burial.**

**proper care.** See **standard of care.**

**proper district.** The federal district to which a cause removed from state court should be brought; the district which includes the county or place where the suit is pending at the time of removal. *General Invest. Co. v Lake Shore & N. S. R. Co.* 260 US 261, 67 L Ed 244, 43 S Ct 106.

**proper election.** See **election to fill vacancy in office.**

**proper evidence.** See **admissible evidence.**

**proper feud.** A military fee or feud.

**proper independent advice.** Advice by a competent and disinterested person. *Zwartz v Dorl*, 123 Okla 284, 253 P 75.

**proper indorsement.** An indorsement of a bill or note, embracing the signature of the indorser and in such form as to transfer title to the instrument and warrant payment by the maker to the indorsee. *Thompson v Farmers' State Bank*, 159 Iowa 662, 140 N W 877.

The signature of an indorser without additional words is a sufficient indorsement to effect an assignment or negotiation, as the case may be, of a bill or note, when the assignment or negotiation is completed by such delivery as is requisite. Such is the customary or usual indorsement. Additional words, however, may be employed to express the intent to negotiate or assign, as the case may be. 11 Am J2d B & N § 351.

**proper lookout.** See **lookout.**

**proper name.** The first or Christian name of a person. 38 Am J1st Name § 4.

**proper parental care.** Such care as an ordinarily prudent parent would exercise over the child for its welfare under the same or similar circumstances. *Mitchell v Davis* (Tex Civ App) 205 SW2d 812, 12 ALR2d 1042.

**proper party.** A person who may but need not be joined. *McAndrews v Krause*, 245 Minn 85, 71 NW2d 153, 53 ALR2d 312. A person without whom a judgment or decree may be rendered in the action, but not a judgment or 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 an interest of some kind in the subject matter of the litigation. *Serr v Biwabik Concrete Aggregate Co.* 202 Minn 165, 278 NW

355, 117 ALR 1009. Any person materially interested, either legally or equitably, in the subject matter of the litigation, such person, having been joined, being bound by the judgment or decree rendered in the action. 39 Am J1st Parties § 5.

**proper person.** A person whose condition entitles him to be carried as a passenger by a common carrier, the carrier having the right to refuse transportation to a person who is disorderly, intoxicated, afflicted with a contagious disease, or in such condition otherwise as to render his presence dangerous to the lives or health of passengers. *Bogard v Illinois Central Railroad Co.* 144 Ky 649, 139 SW 855.

**proper purpose of inspection.** A lawful purpose, not contrary to the interests of the corporation, whereby a stockholder in good faith seeks information bearing upon the protection of his interest and that of other stockholders in the corporation, as distinguished from a purpose to be vexatious, to gratify curiosity, or to use the information obtained for speculation. *Sawyers v American Phenolic Corp.* 404 Ill 440, 89 NE2d 374, 45 ALR2d 1.

**proper title.** A title sufficient to comply with the vendor's obligation under contract of sale. 56 Am J1st V & P § 166.

Within the meaning of the Puerto Rican law that allows a ten-year prescription, a "proper" title does not mean a perfect title. If the title is good on its face, and the possessor under it has no notice of any extrinsic defect, it will found a good title in ten years. *Fernandez & Bros. v Ayllon Y Ojeda*, 266 US 144, 146, 69 L Ed 209, 211, 45 S Ct 52.

See **good title; marketable title.**

**proper tool or implement.** For the purposes of an exemption of a debtor, a tool or implement adapted to the trade or business in which he is engaged. *Baker v Maxwell*, 183 Iowa 1192, 168 NW 160, 2 ALR 814.

**property.** In a popular sense, a chattel or tract of land. 42 Am J1st Prop § 3. Inclusive of both real estate and personalty. Anno: 115 ALR 553; 57 Am J1st Wills § 1338. Inclusive of both tangibles and intangibles; that which is corporeal and that which is incorporeal. *Bouse v Hutzler*, 180 Md 682, 26 A2d 767, 141 ALR 843. Strictly, that dominion or indefinite right of user, control, and disposition which one may lawfully exercise over particular things or objects. 42 Am J1st Prop § 2. The right and interest which a man has in lands and chattels to the exclusion of others. *Ralston Steel Car Co. v Ralston*, 112 Ohio St 306, 147 NE 513, 39 ALR

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334. The right of a person to possess, use, enjoy, and dispose of a thing. *Willcox v Penn Mut. Life Ins. Co.* 357 Pa 581, 55 A2d 521, 174 ALR 220. The free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land. *Department of Financial Institutions v General Finance Corp.* 227 Ind 373, 86 NE2d 444, 10 ALR2d 436. Not the material object itself, but the right and interest or domination rightfully obtained over such object, with the unrestricted right to its use, enjoyment, and disposition. *Howlett v Doglio*, 42 Ill 311, 82 NE2d 708, 6 ALR2d 790; *Akron v Chapman*, 160 Ohio St 382, 116 NE2d 697, 42 ALR2d 1140. A species of title, inchoate or complete, legal or equitable, embracing rights which lie in contract, executory or executed. *Smith v United States (US)* 10 Pet 326, 9 L Ed 442.

As the term is used in the guarantee of the Fourteenth Amendment:—the right to acquire, possess, and enjoy particular things and objects in any way consistent with the equal rights of others and the just exactions and demands of the state. *Wright v Hart*, 182 NY 330, 75 NE 404 *Ives v South Buffalo R. Co.* 201 NY 271, 94 NE 431; all valuable interests which a man may possess outside of himself—outside of his life and liberty—being more than that which a person owns. 16 Am J2d Const L § 364. As the term appears fit constitutional provisions respecting taking of property:—a word of most general import, extending to every species of right and interest, capable of being enjoyed its such, upon which it is practicable to place a money value. 26 Am J2d Em D § 173.

As used fit a statutory provision authorizing a corporation to receive "property" in payment for its stock, the term is not used fit its broad sense which includes anything susceptible of ownership, but is limited to that which may readily be applied to the debts of the corporation. 18 Am J2d Corp § 258.

**Property Act.** A uniform law drawn primarily to abolish anachronisms in the law of property, to abolish many out of date characteristics which have come down from the early feudal law of England, and which are out of place in the law of today, in effect to make the law a much more modern and effective instrument and to free courts and lawyers of the present from being compelled in cases involving the title to real property, to wander in a labyrinth of ancient learning. *Ellingrod v Trombla*, 168 Neb 264, 95 NW2d 635.

**property covered.** Properly within the coverage of an insurance policy; property within the terms of any instrument, particularly an instrument which purports to create a lien.

**property damage.** A part of the coverage of an automobile liability policy. 7 Am J2d Auto Ins § 80.

**property dividend.** A dividend on corporate stock paid in real or personal property. 19 Am J2d Carp § 809.

**property held for sale.** See **sale in ordinary course of business.**

**property in custodia legis.** Property in custody of the law.

See **custody of the law.**

**property in estate in bankruptcy.** Inclusive of both legal and equitable interests, embracing everything that has exchangeable value or goes to make up a man's wealth, and every interest or estate which the law regards of sufficient value for judicial recognition. 9 Am J2d Bankr § 848.

**property insurance.** Insurance in which the risk is that of the loss of property, as from fire, flood, windstorm, etc A contract of insurance whereby the insurer becomes bound, for a consideration in the form of a premium or premiums, to indemnify the insured for actual loss, in whole or in part, not exceeding title to real property, to wander in a labyrinth policy as insured. 29 Am J Rev ed Ins § 4.

**property not administered.** See **not administered.**

**property per industriam.** A term of art for the qualified right of property acquired in a wild animal by capturing, confining, taming, and domesticating it. 4 Am J2d Ani § 17.

**property propter impotentiam.** Property by reason of its inability.

The term is applied to that qualified property which a person may have in animals *ferae naturae* which are too young to stray; such as young conies fit a burrow, or young birds in a nest. *State v Theriault*, 70 Vt 617, 41 A 1030.

**property propter privilegium.** Property by reason of privilege.

The term is applied to that qualified property which a person may have in animals *ferae naturae*, by reason of his exclusive right or privilege of hunting them. See 2 Bl Comm 394.

**property ratione impotentiae.** Same as **property propter impotentiam.**

**property ratione soli.** Property by virtue of ownership of the soil, for example, fish in private waters. 4 Am J2d Ani § 18, 35 Am J2d Fish § 3

**property rights.** Economic interests supported by the law. *United States v Willow River Power Co.* 324 US 499, 89 L Ed 1101, 65 S Ct 761.

See **property.**

**property settlement.** An agreement between husband and wife settling property rights in anticipation of the breaking up of the marital union: (1) determining the rights of the parties in jointly owned property and stating the disposition to be made of it; (2) settling all claims of each spouse in the property of the other and claims of each spouse to title to property held in the name of the other, (3) mutually releasing all past and present claims except as established by the agreement: (4) waiving and releasing all future rights as spouse in the property of each other; (5) surrendering the right of each on the death of the other, including rights of inheritance, homestead, dower, and the right to administer the estate of the other and to have exemptions and allowances from the estate; and (6) agreeing that each will execute all documents necessary or desirable to carry out the purposes of the agreement. Anno: 35 ALR2d 712, § 2: 24 Am J2d Div & S § 883.

**property tax.** A tax on the ownership of property, without reference to the particular name by which the tax is designated. 51 Am J1st Tax § 29. A tax assessed on all property or on all property of a certain class located within a certain class located within a certain territory on a specified date in proportion to its value, or in accordance with some other reasonable method of apportionment, the obligation to pay which is absolute and is not based upon any voluntary action of the person assessed. 51 Am J1st Tax § 29. A tax

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on things tangible or intangible, as distinguished from a tax on a right to use or transfer things, or on the proceeds of a business in which the use of things is essential. Anno: 103 ALR 20.

Property taxes are not personal debts; they are enforced contributions to the state or taxing unit and unless otherwise provided are collectible only from the property assessed. *Maricopa County v Trustees of Arizona Lodge*, 52 Ariz 329, 80 P2d 956.

**property tort.** An unlawful interference by one person with the enjoyment by another of his private property. 52 Am J1st Torts § 40.

**propiedad.** A term found in Spanish-American grants signifying the right to enjoy and dispose freely of things which are ours, so far as the law forbids not.

Commonly, the dominion which is not accompanied by the usufruct is called "propiedad" or "nuda propiedad," and the dominion which is accompanied by the usufruct is called "plena propiedad." *Castillero v United States (US)* 2 Black 1, 17 L Ed 360, 400.

**Propinquior excludit propinquum; propinquus remotum; et remotus remotiorem.** The one who is nearer excludes the one who is near; the near excludes the remote; and the remote excludes the more remote.

**propinquity.** Relationship; consanguinity. Nearness in point of time or place.

**propinquus.** A near relative; next of kin; a kinsman.

**propios.** (Spanish.) Land reserved for public buildings.

When a town was founded in Spanish America, certain portions of ground termed "propios" were laid off and reserved as the inalienable 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. They were not held for specific purposes, but the municipality might convert them to the uses which it should judge most convenient. *Strother v Lucas (US)* 12 Pet 410, 442, footnote, 9 L Ed 1137, 1150, footnote.

**propone.** To propound; to proffer; to offer as, to propone a will for probate; to make a motion.

**proponent.** A party who proposes or who alleges; a person who offers a will for probate; a party who makes a motion.

**proportion.** A part; a share. Equality between ratios.

See **apportionment.**

**proportional rate.** One carrier's part of a through rate over the lines of two or more carriers. *Hocking Valley R. Co. v Lackawanna Coal & Lumber Co.* (CA4 W Va) 224 F 930.

See **pro rata freight charge.**

**proportional representation.** A generic term for various involved systems of voting, similar in essentials, but varying in details, usually having reference in particular to the election of a legislative body, the underlying theory being that the conventional system of election by a majority or plurality of the votes cast does not result in the election of a body as representative of the people as it is possible to obtain by a more scientific system. 26 Am J2d Elect § 273.

See **apportionment; Hare system; list system.**

**proportional system.** Taxation at a fixed and uniform rate in proportion to the amount of taxable property based upon a cash valuation. *State ex rel. Foot v Bazille*, 97 Minn 11, 106 NW 93.

See **apportionment; proportional representation.**

**proportionate negligence.** Same as **comparative negligence.**

**proportionate recovery clause.** Same as **pro rata clause.**

**proportum.** Purport; meaning; import; signification.

**proposal.** An offer. An offer of marriage. The introduction of a measure in a legislative body. An expression of intention. *Taylor v Miller*, 113 NC 340, 342, 18 SE 504. Precisely, a suggestion to induce negotiations or offers by others. *Williston*, *Contracts* 3d ed § 27; *Restatement Contracts* § 25; 17 Am J2d Contr § 33.

**proposition.** A proposed law submitted to the voters at an election. The statement on the ballot in submitting a question of a bond issue to the vote of the people at an election. 43 Am J1st Pub Sec § 88. A proposal or offer inviting an acceptance. *Perry v Dwelling House Ins. Co.* 67 NH 291, 33 A 731. A proposal to a female that she submit to an illicit relation.

**proposition of law.** A point of law presented in assignments of error or brief on appeal. 5 Am J2d A & E §§ 661, 684 et seq.

**Propositum indefinitum aequipollet universali.** An indefinite proposition is equivalent to a general one.

**propositus.** The person proposed; the person from whom all the degrees of relationship are computed in a tree or table of consanguinity. See 2 Bl Comm 203.

**Pro possessione praesumitur de jure.** A presumption of law arises from possession.

**pro possessore.** As a possessor.

**Pro possessore habetur qui dolo injuriave desiit possidere.** A person is deemed to be a possessor who has been dispossessed by fraud or injury.

**pro posse suo.** According to his own ability.

**propound.** To propose. To set forth. To offer a will for probate.

**propres.** See **res propria est quae, etc.**

**propria causa.** See **in propria causa.**

**propria manu.** By his own hand.

**Propria manu pro ignorantia literarum signum sanctae crucis expressi et subscripsi.** On account of ignorance of letters I have impressed and subscribed the sign of the sacred cross with my own hand. See 2 Bl Comm 305.

**propria persona.** See **in propria persona.**

**propriedad.** (Spanish.) Property.

**proprietary.** Adjective: In the capacity of an owner. Being a proprietor. Noun: A proprietor. An owner. Trustees of New Castle Common v Gordy (Sup) 33 Del Ch 334, 93 A2d 509, 40 ALR2d 544. A certain

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owner. Ferguson v Arthur, 117 US 482, 487, 29 L Ed 979, 981, 6 S Ct 861.

**proprietary function.** The function of a municipal corporation which it exercises with respect to its private rights as a corporate body. 37 Am J1st Mun Corp § 114. The function of a municipal corporation in which it acts and contracts for the private advantage of the inhabitants of the city and of the city itself. Omaha Water Co. v Omaha (CA8 Neb) 147 F 1.

**proprietary lease.** A lease by a co-operative apartment association which carries with it the right to occupy a specific apartment. 15 Am J2d Con Apt § 21.

**proprietary medicine.** A medicine compounded of various single ingredients. De Forest (US), 13 How 274, 14 L Ed 143. More precisely, a medicine compounded by a manufacturer according to his own formula. 25 Am J2d Drugs § 3.

**proprietary powers.** The powers of a municipal corporation in exercising proprietary functions, as distinguished from its public or governmental powers. High Point v Duke Power Co. (CA4 NC) 120 F2d 666.

See **proprietary function.**

**proprietas.** (Civil law.) Property; that which is peculiarly one's own; ownership.

**proprietas nuda.** Naked property; property in which the owner has title without the use.

**proprietas plena.** Full property; that is, property in which the owner has both the title and the use.

**Proprietas totius navis carinae causam sequitur.** The property in the whole ship follows that of the keel. Glover v Austin, 23 Mass (6 Pick) 209, 220.

**Proprietas verborum est salus proprietatum.** The propriety or aptness of words is the salvation of property.

**proprietate probanda.** See **de proprietate probanda.**

**Proprietates verborum observandae sunt.** The proprieties of words should be preserved.

**proprietor.** An owner of premises. An owner of property. *Turner v Cross*, 83 Tex 218, 18 SW 578. The owner of a business. *Cady v Kerr*, 11 Wash 2d 1, 118 P2d 182, 137 ALR 713.

**proprietor of subject of copyright.** The author or one to whom he assigns his right to the work. 18 Am J2d Copyr §§ 28, 32.

**propriis manibus.** With his own hands.

**proprio jure.** In his own right.

**proprio motu.** See **ex proprio motu.**

**proprio nomine.** In his own name.

**proprios.** (Spanish.) Same as **propios.**

**proprio vigore.** Of its own force; by its own force; automatically.

**proprium.** See **feudum proprium.**

**propter.** On account of; by reason of; because of; for.

**propter adulterium.** By reason of adultery.

**propter affectum.** See **challenge propter affectum.**

**propter commodum curiae.** For the convenience or accommodation of the court.

**propter consuetudinem.** Property by reason of the tendency of a wild animal to come on a person's land. *Hannam v Mockett*, 2 Barn & C 934, 107 Eng Reprint 629.

**propter curam et culturam.** For care and cultivation.

**propter defectum.** For failure of; because of the lack or want of.

See **challenge propter defectum.**

**propter defectum sanguinis.** Through failure of blood; that is, through failure of issue.

If the tenant dies without heirs, it is a cause for the escheat of the land to the lord. See 2 BI Comm 245.

**propter delictum.** On account of a crime, wrong, or fault.

See **challenge propter delictum.**

**propter delictum tenentis.** Through the fault of the tenant.

It was a cause for escheat of the land to the lord if the blood of the tenant was attained. He who was attained suffered an extinction of blood as well as he who died without heirs. See 2 BI Comm 245.



**propter hoc.** On account of this; because of this. *Reynold v Texas & P. Railroad Co.* 37 La Ann 694.

**propter honoris respectum.** See **challenge propter honoris respectum.**

**propter impotentiam.** On account of inability.

See **property propter impotentiam.**

**propter majorem securitatem.** For greater security.

**propter nuptias.** See **donatio propter nuptias.**

**propter odium delicti.** By reason of the wickedness of the offense.

**propter privilegium.** By reason of his privilege.

A man may have a qualified property in wild animals because of his privilege (*propter privilegium*). That is, he may have the privilege of hunting and killing them to the exclusion of other persons. See 2 Bl Comm 394.

See **property propter privilegium.**

**propter rem ipsam non habitum.** Because he could not recover the thing itself.

**propter saevitiam.** Because, or by reason of, cruelty.

**pro quer.** An abbreviation of **pro querente.**

**pro querente.** For the plaintiff.

**pro rata.** In proportion; proportionately according to the share, interest, or liability of each person concerned. *Home Ins. Co. v Continental Ins. Co.* 180 NY 389, 73 NE 65. in proportion to some rate or standard, fixed in the mind of the person speaking or writing, manifested by the words spoken or written, according to which rate or standard the

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allowance is to be made or calculated. *Rosenberg v Frank*, 58 Cal 387, 406.

For the meaning of "pro rata" as the term appears in contracts of sale, see Anno: 74 ALR 995.

See **apportionment**, also terms commencing **pro rata**; **prorating**.

**pro rata clause.** A clause in an insurance policy, otherwise known as a proportionate recovery clause, to the effect that the insurer shall not be liable for any greater proportion of any loss which may occur than the amount named in the policy shall bear to the entire amount of insurance upon the property. 29A Am J Rev ed Ins § 1707. The provision in an automobile liability insurance policy that if the insured has other insurance against a loss covered by the policy, the insurer shall not be liable for a greater proportion of such loss than the applicable limit of liability stated in the policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss. 7 Am J2d Auto Ins § 200.

**pro rata contribution.** Contribution between several co-obligors so that no one of them will be compelled to bear the whole, or more than his just share, of the common burden or obligation. 18 Am J2d Contrib §§ 19 et seq.

**pro rata distribution.** See **pro rating claims.**

**pro rata freight charge.** A charge for delivery of shipment short of destination.

Pro rata freight is sometimes allowed a carrier when transportation has been interrupted or delayed by stress of weather or other cause. In such case, if the freighter or his consignee is willing to dispense with the performance of the whole voyage, and voluntarily accept the goods before the end of the voyage, a proportionate amount of freight will be due as freight "pro rata itineris." 13 Am J2d Car § 465; 48 Am J1st Ship § 432.

See **proportional rate**.

**pro rata itineris.** See **pro rata freight charge**.

**pro rata itineris peracti.** In proportion to the voyage performed.

See **pro rata freight charge**.

**prorate.** To divide or distribute proportionately; to assess pro rata. *Rosenberg v Frank*, 58 Cal 387, 405.

**prorating attachments.** Placing all attaching creditors on an equality in point of precedence, each one sharing in the property attached in the proportion which his claim bears to the total of claims of attaching creditors. 6 Am J2d Attach § 467.

**prorating claims.** A distribution of assets to creditors in proportion to the size of their respective claims where there are insufficient assets for payment of all claims in full. 31 Am J2d Ex & Ad § 314. The rule in bankruptcy as between claims of equal standing and priority. 9 Am J2d Bankr § 1262.

**prorating taxes.** A division of the burden of taxes upon real estate as between vendor and purchaser. *Thompson v Crams*, 294 Ill 270, 128 NE 508, 12 ALR 931.

**proration.** Apportionment.

See **apportionment; pro rata**.

**proration allowance.** The allowance, made an oil producer as his share of the total production of oil within a given area, in the course of limiting production to prevent economic waste. *Champlin Refining Co. v Corporation Com.* 286 US 210, 76 L Ed 1062, 52 S Ct 559, 86 ALR 403.

**proration of production.** An economic measure in oil production to avoid a flooding of the market.

The usual type of statute in this field imposes upon a regulatory body the duty of determining from time to time the reasonable market demand for gas and oil, limiting the total production to the amount of demand, and prorating that among the several producers. *Thompson v Consolidated Gas Utilities Corp.* 300 US 55, 81 L Ed 510, 57 S Ct 364.

**proration statute.** A statute providing that the amount of estate taxes shall be paid out of the estate before its distribution and shall be equitably prorated among the persons interested in the estate to whom benefit accrues, except as the testator directs otherwise in his will. Anno: 26 ALR2d 927; 37 ALR2d 203.

See **proration of production**.

**pro rege.** For the king; for the crown.

**pro rege et republica necessarium.** Necessary for the king and the commonwealth.

**pro re nata.** For the occasion as it arises; for the immediate occasion; according to circumstances.

**pro retorno habendo.** That he have a return.

See **judgment pro retorno habendo**.

**pro rigore justitiae.** For greater strictness of justice. *Hurtado v California*, 110 US 516, 529, 28 L Ed 232, 237, 4 S Ct 11 1, 292.

**prorogue.** To terminate a legislative session.

**pro salute animae.** For the welfare of his soul; for the salvation of his soul.

**pro salute animae ejus, ecclesiae consilio.** For the salvation of his soul, by direction of the church.

**pro salute animarum.** For the salvation of souls.

**proscribed.** Forbidden. (Civil law.) Outlawed; sentenced to civil death.

**pro se.** For one's self. Appearing for one's self in an action or criminal prosecution. 5 Am J2d *Appear* § 10; 21 Am J2d *Crim L* § 310.

**prosecute.** To proceed against judicially. *Brooks v Bates*, 7 Colo 576, 580. To maintain rather than to commence or begin an action. Anno: 75 ALR 461, 465 et seq. To maintain a criminal proceeding.

**prosecuted with effect.** A phrase to be found in appeal bonds.

The weight of authority holds that the expression means more than a mere prosecution of the appeal to a final determination and that it requires a final determination in favor of the appellant. But other authorities hold that the phrase merely means a prosecution of the appeal is to be conducted with due diligence to a final determination, whether favorable or unfavorable to the appellant. 5 Am J2d A & E § 1030.

**prosecuting attorney.** A public officer elected or appointed, as provided by constitution or statute, to conduct suits, generally criminal on behalf of the state in his jurisdiction. 42 Am J1st *Pros Atty* § 2.

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Broadly, any attorney at law who represents the state or political body under which a criminal prosecution is waged. The officer attending on grand jurors with matters on which they are to pass, aiding in the examination of witnesses, and giving such general instructions as they may require, but under duty to retire while the jury is deliberating on the evidence or voting on a matter under investigation. 24 Am J1st *Grand J* § 43.

**prosecuting officer.** A prosecuting attorney. The sheriff or other peace officer who makes the affidavit or signs the information under which a criminal prosecution is begun.

**prosecuting witness.** The witness upon whose complaint a prosecution, particularly a prosecution for rape, is begun.

**Prosecutio legis est gravis vexatio; executio legis coronat opus.** The prosecution of the law is a grave vexation; the execution crowns the work.

**prosecution.** In the usual sense, a criminal proceeding at the suit of the government. *Tennessee v Davis (US)* 10 Otto 257, 269, 25 L Ed 648, 652. Broadly, the maintaining of an action or proceeding, whether civil or criminal.

See **prosecute**.

**prosecution of a common purpose.** The distinctive element of a joint enterprise. The equivalent of a joint enterprise. *Rodgers v Saxton*, 305 Pa 479, 158 A 166, 80 ALR 280.

**prosecutor.** A prosecuting attorney; a prosecuting officer; a prosecuting witness.

The plaintiff or petitioner for a writ of certiorari is called a prosecutor in some jurisdictions. *State, Cape May etc., Railway Co. v Cape May*, 59 NJL 396, 36 A 696.

**prosequi.** To follow; to pursue; to prosecute.

See **nolle prosequi**.

**pro socio.** For a partner; in behalf of a partner.

**pro solido.** As a bulk; in bulk.

**prospect.** Something in anticipation, as the prospect of a crop or of a victim to be fleeced. (Mining law.) An undeveloped mine. See *Kelly v Clark*, 21 Mont 291.

**prospecting.** Looking over the field and taking samples for analysis to determine where there is mineral in paying quantities.

Used with reference to annual labor to be expended upon a mining claim, the word is not used in the sense of exploration and discovery, which are necessary before a valid location can be made, but rather in the sense of development and demonstration, that the value of the ledge may be determined, as distinguished from the ascertainment of its existence. Anno: 14 ALR 1465.

**prospective.** Looking to the future.

**prospective damages.** Same as **future damages**.

**prospective heir.** See **heir apparent; heir presumptive**.

**prospective statement.** See **promissory representation**.

**prospective statute.** A statute without retrospective effect, having no application to transactions which occurred, or rights which accrued, before it became operative. 50 Am J1st Stat § 476.

**prospectus.** A brochure describing property offered for sale. 55 Am J1st V & P § 81. A statement giving information respecting securities offered for sale or to be issued. 47 Am J1st Secur A § 8. A proposal upon which negotiations by offer and acceptance may be based. 17 Am J2d Contr § 34. A statement, usually in the form of a printed brochure, of the advantages of taking shares in a corporation to be organized. 18 Am J2d Corp § 332.

**prosthetic appliance.** A replacement of a missing limb or other part of the body.

**prostitute.** One who practices prostitution. A whore. Anno: 14 ALR 1502.

See **prostitution**.

**prostitution.** The practice of a female in offering her body to indiscriminate sexual intercourse for pay. 42 Am J1st Prost § 1. In a more general sense, the selling of one's self or devoting to infamous purposes that which is in one's power. *State v Gardner*, 174 Iowa 748, 156 NW 747, overruled on other grounds *State v Frey*, 206 Iowa 981, 221 NW 445.

**pro suo.** As his own.

**pro tanto.** For so much; for as far as it goes; to such an extent.

**pro tanto acquittance.** A receipt for part of a demand. *State v Shelters*, 51 Vt 102.

**pro tanto ademption.** The destruction or alienation of a part of the subject of a legacy or bequest, the remainder still passing to the devisee or legatee. 57 Am J1st Wills § 1581.

**pro tanto validation.** The validation of an assignment for the benefit of creditors by assent thereto given by only a part of the creditors. *Smith v Leavitts*, 10 Ala 92.

**protect.** To cover, shield, or defend against injury, harm or danger of any kind.

As the word is used in a statute giving alien for materials used for the "protection" of machinery in a mill, the furnishing of lubricating oil is not a protection within the meaning of the statute, although it may preserve the machinery and keep it from wearing out. *Standard Oil Co. v Lane*, 75 Wis 636, 44 NW 644.

**protecting commercial paper.** Making sure that it is paid. *Equitable Trust Co. v First Nat. Bank*, 275 US 359, 72 L Ed 313, 48 S Ct 167, 168.

**protection personnel.** See **plant guard**.

**protection order.** An order of court made for the protection of the property of a wife upon her husband's desertion of her.

**protection writ.** See **writ of protection**.

**Protectio trahit subjectionem, et subjectio protectionem.** Protection draws to itself allegiance, and allegiance, protection. *United States v Wong Kim Ark*, 169 US 649, 655, 42 L Ed 890, 893, 18 S Ct 456.

**protective agency.** A detective or investigating agency. *Burns v Johnson*, 174 Tenn 615, 130 SW2d 89, 123A LR 1022. An agency which furnishes protection personnel for industrial plants, mercantile establishments, public institutions, etc.

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**protective devices.** See **safety appliances**.

**protective jurisdiction.** Jurisdiction to entertain preventive remedies.

See **preventive remedies**.

**protective tariff.** A tariff maintained at such a high rate as to discourage importation, thereby relieving an American industry of competition from abroad.

**protective theory.** A theory sometimes applied in determining the amount of property which can be taken in condemnation proceeding, the theory being that more can be taken than that which is barely necessary, since if the condemner owned the adjacent land, it could sell it under restrictions preserving the beauty of the project, thus facilitating an increase in the value of the surrounding private properties. *Cincinnati v Vester* (CA6 Ohio) 33 F2d 242, 68 ALR 831, affd 281 US 439, 74 L Ed 950, 50 S Ct 360.

**protective trust.** Similar to a spendthrift trust, the indenture of trust protecting against alienation and liability for debts of the beneficiary by providing conditions for the termination or forfeiture of the trust estate, by giving the trustee discretion to be exercised in making disbursements to beneficiaries, or by similar devices. 54 Am J1st Trusts §§ 147, 148.

**protector.** Literally, one who protects, as a king may be a "protector of the faith."

**protectorate.** Government by a protector. A country which the United States has taken under its protection but not with the intent to assume sovereignty over it. *Pearcy v Stranahan*, 205 US 257, 51 L Ed 793, 27 S Ct 545.

**protectory.** An institution for the education and care of destitute or homeless boys, especially those in danger of becoming delinquent. *Duggan v Slocum* (CC Conn) 83 F 244, 246.

**pro tem.** Abbreviation of **pro tempore**.

**pro tem. clerk.** A person appointed and serving as clerk of court during the absence of the regular clerk, when he is unable or unwilling to attend to the duties of the office, or during such period of time as he may be under disqualification to act. 15 Am J2d Clk Ct § 8.

**pro tem. officer.** A person serving in an office during the absence of the duly appointed or elected officer.

**pro tempore.** For the time; temporarily; during the inability or absence of the regular or standing officer. *Cutter v Tole*, 3 Me 38, 41.

**pro tempore judge.** A judge selected to act in the absence, disability, or disqualification of the regular judge, or temporarily under other circumstances, as provided by constitution or statute. 30A Am J Rev ed Judges § 237.

**pro termino vitarum suarum.** For the term of their own lives.

**protest.** A remonstrance. A technical term for a proceeding to cancel or defeat an entry of public lands. 42 Am J1st Pub L § 31. A notice, preferably in writing, given at the time a payment is paid, to the person who made the demand, that the person making the payment does not acquiesce in the legality of the demand or surrender any right he may have to recover back the money paid. *Meyer v Clark* (NY) 13 Daly 497, 509. An objection to the payment of a customs duty; a distinct and clear specification of each substantive ground of objection to the payment of the duty. 21 Am J2d Cust D §§ 91 et seq. An objection within limitations of time fixed by law to an administrative rule or regulation. 2 Am J2d Admin L § 288. A formal objection to the proposed action of a city council or other authority in making a local improvement. 48 Am J1st Spec A § 153. The procedure of a taxpayer who questions his liability to the tax assessed against him or the validity of the statutes or proceeding pursuant to which it was assessed, thereby making a basis for the recovery back of the money paid by showing that payment was not voluntary. *Jaynes v Heron*, 46 NM 431, 130 P2d 29, 142 ALR 1191.

The expression "under protest" has a well-known meaning in the business world and when written upon a receipt imports that the person writing it intends to enforce his rights. The words ordinarily signify that the receipt or objects to receiving the thing in its condition, or under the circumstances, but does so, under compulsion of circumstances, to prevent still further loss, but at the same time retaining all his rights of action against the other party. Anno: 1 ALR 904.

See **marine protest; objection; protest of negotiable instrument; remonstrance**.

**protestando.** A notice or statement by which a party to an action preserves his right of disputing the fact protested against, in some other suit or proceeding. *State v Beason*, 40 NH 367, 372.

**Protestants.** Christians but not Roman Catholics or members of the Eastern Orthodox Church.

In consequence of the protest against the decree of the Diet of Spires (or Spire or Speiers), held in Germany, under the Emperor Charles V, in 1529, the followers of Luther were denominated Protestants, a general term which was applied alike to all who adopted the principles of the Reformation in opposition to the Catholic Church, and which has continued to the present time. *Hale v Everett*, 53 NH 9.

**protestation.** A formal part of a plea in equity, no longer required or in general use, wherein the defendant negated any confession or acknowledgment by him of all or any part of the matters contained in the bill. 27 Am 72d Eq § 207. A manner of pleading whereby the party interposes an oblique allegation or denial of some fact, protesting that such a matter does or does not exist, and at the same time avoiding a direct affirmation or denial, its purpose being to save the party from being concluded as to some fact, which cannot be directly affirmed or denied without falling into duplicity of pleading, and which if he did not thus protest, he might be deemed to have tacitly waived or admitted. See 3 Bl Comm 311.

**protest for nonacceptance.** See **protest of negotiable instrument.**

**protest of negotiable instrument.** The formal certificate, notice, declaration, or memorandum, drawn up and signed by a notary public, that he presented the instrument for acceptance or for payment and that it was refused. In loose usage, an act or series of acts in presenting the instrument for acceptance or payment, noting the fact of dishonor by nonacceptance or nonpayment, and the making of the formal certificate, declaration, memorandum, or notice of protest by the notary. 11 Am J2d B & N § 789.

For contents and formal requisites of protest or certificate thereof, see 11 Am J2d B & N § 798.

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**prothonotary.** A clerk of court, particularly a chief or principal clerk. A ministerial officer of the court, having the custody of its records and seals, with power to certify to the correctness of transcripts from such records, and possessing authority to perform certain acts of a judicial nature incidental to his ministerial duties.

**pro timore mortis, et recesserunt quam cito potuerunt.** In fear of death, and they ran away as quickly as they could. *McGrowther's Case*, Fost CL 13, 168 Eng Reprint 8.

**protocol.** A record; a register; a rough or preliminary draft of a contract or a treaty. Ceremonial forms, particularly those governing conduct toward heads of state or their diplomatic representatives.

**protocollum.** (Civil law.) A memorandum made by a notary of an official transaction.

**protocolo.** (Spanish.) The original draft of a document which is retained by the notary.

**protonotary.** Same as prothonotary.

**protutor.** (Civil law.) A person who acted as a guardian when he was not one, or who was really a guardian and acted as one without knowing it.

**prout.** According as; as; as charged.

**prout eis visum fuerit, ad honorem coronae et utilitatem regni.** As it should appear to them to the honor of the crown and the advantage of the kingdom. See 1 Bl Comm 408.

**prout moris est.** As is the custom, usage, or practice.

**prout patet per recordum.** As it appears by the record. *Philpot v McArthur*, 10 Me 127, 134.

**provable claim.** See **provable debt**.

**provable debt.** A debt susceptible of proof against a bankrupt estate. *Davis v Aetna Acceptance Co.* 293 US 328, 79 L Ed 393, 66 S Ct 151. A claim provable against an estate in bankruptcy within the meaning of § 63 of the Bankruptcy Act (11 USC § 103). 9 Am J2d Bankr § 390.

**prove.** To establish a fact by the requisite degree of evidence, whether it be an affirmative or a negative, one which the plaintiff must establish as a part of his case or a defense to be established affirmatively by the defendant. *People v Winters*, 125 Cal 325, 328, 57 P 1067.

**proved.** See **prove**; **legally proved**.

**prover.** Same as **probator**.

**pro veritate.** For the truth; as true.

**provided.** Upon condition. *Clausen v Title Guaranty & Surety Co.* 168 App Div 569, 153 NYS 835, affd 222 NY 675, 119 NE 1035. An apt word in the creation of a condition subsequent. 28 Am J2d Est § 144. An apt and appropriate word in the creation of a contingent remainder. 28 Am J2d Est § 265.

It does not always follow that a clause operates as a proviso in a technical sense, merely because it is preceded by the word "provided." Whether it is a proviso in effect, or merely a conjunction equivalent to the word "and" or the word "but," must in part be determined from the context and from all the provisions relating to the same subject matter. *Radil v Morris & Co.* 103 Neb 84, 170 NW 363, 7 ALR 539, 541.

**providentia.** (Latin.) Forethought. Divine will.

**province.** A duty or function. A colony. A political subdivision of Canada comparable to a state in the United States. A region removed from the center of government and culture. The circuit of an archbishop's jurisdiction. 1 Bl Comm 111.

**province of court and jury.** The separate and distinctive functions characteristic of a system of jurisprudence derived from the common law, the province of the court being to determine and decide questions of law presented at the trial and to state the law to the jury, the province of the jury being to decide or determine the facts of the case from the evidence adduced, in accordance with the instructions given by the court. 53 Am J1st Trial § 156.

**provincial constitutions.** The decrees of provincial synods, held under the bishops of Canterbury province, from Stephen Langton in the reign of Henry III (1216-1272) to Henry Chichele in the reign of Henry IV (1399-1413), and adopted also by the province of York in the reign of Henry VI (1422-1461). See 1 Bl Comm 83.

**provision.** See **heir of provision**; **provided**; **provisions**.

**provisional.** That which is merely temporary, or for the time being, or for the occasion, excluding the idea of permanency. *De Haro v United States (US)* 5 Wall 599, 18 L Ed 681, 688.

**provisional appointment.** An appointment to a civil service position made in an emergency where there is no appropriate eligible list for the position, being made in anticipation of an examination, with a view to the appointee's qualifications to serve for the period of an emergency and pending the promulgation of an eligible list. 15 Am J2d Civ S § 25.



**provisional assignee.** A receiver.

**provisional courts.** Courts which were established during the Civil War in insurgent territory occupied by national forces, under the authority of the President as Commander-in-chief of those forces. *Mechanics' & Traders' Bank v Union Bank of Louisiana* (US) 22 Wall 276, 22 L Ed 871.

**provisional government.** A government temporarily established, in anticipation of, and to exist and continue until, another shall be instituted and organized in its stead. *Chambers v Fisk*, 22 Tex 504, 535.

**provisional injunction.** See **temporary injunction**.

**provisional judgment.** A judgment to be made absolute on motion, unless cause is shown against judgment. 30A Am J Rev ed Judgm § 119.

**provisional order.** An order made during the course of an action or proceeding, not constituting a final adjudication. The temporary order of an administrative agency. 2 Am J2d Admin L § 466.

See **interim order; interlocutory order**.

**provisional policy.** Same as **monthly reporting policy**.

**provisional receivership.** A term sometimes confused with ancillary receivership, but standing for that which is substantially a pendente lite receivership.

See **pendente lite receivership**.

**provisional remedy.** A remedy of a party to an action, not intended as a means of reaching a determination and adjudication of the issue or issues, but as a means whereby the party who invokes it successfully prevents the adverse party from taking steps during the course of the action which would

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thwart the enforcement of a judgment obtained in the action. Not a special proceeding, but a merely collateral proceeding permitted only in connection with a regular action, and as one of its incidents. *Snaveley v Abbott Buggy Co*. 36 Kan 106, 12 P 522.

See **attachment; injunction**.

**provisional revocation.** See **dependent relative revocation**.

**provisioe hominis.** See **ex provisione hominis**.

**provisioe legis.** By provision of law.

**provisioe mariti.** See **ex provisione mariti**.

**provisioe viri.** By provision of the husband.

**Provisions of Oxford.** Those enactments of the English Parliament passed to prevent Henry the Third from interfering with the enforcement of Magna Charta.

**provisions.** Food for men or animals. 31 Am J2d Exemp §§ 77-79.

**proviso.** A clause which imposes a condition.

See **provided.**

**Proviso est providere praesentia et futura, non praeterita.** A proviso is to provide for the present and the future, but not for the past.

**proviso in statute.** A clause in a statute which limits, restrains, or determines in some particular the application of the statute. 50 Am J1st Stat § 435.

In determining whether a given provision in a statute is an exception or a proviso, the true test is to be found, not in whether the qualifying words are prefaced by the term "except" or "provided," but in the nature or meaning of the qualifying words themselves. 50 Am J1st Stat § 430.

A proviso is not always limited in its effect to the part of the enactment with which it is immediately associated; it may apply generally to all cases within the meaning of the language used. *McDonald v United States*, 279 US 12, 73 L Ed 582, 49 S Ct 218.

**provisor.** A candidate for a bishopric or a living nominated by the Pope before there was a vacancy. See 4 BI Comm 111.

**provocation.** A defense in a divorce case based upon physical violence, verbal abuse, or other course of conduct on the part of the plaintiff likely to lead to retaliation by the defendant, thereby inducing the conduct of the defendant complained of as a ground of divorce. 24 Am J2d Div & S § 174. As an element of voluntary manslaughter as distinguished from murder:—an act, the natural tendency of which is to produce passion in ordinary men, and which, the jury are satisfied, did produce it in the case before them. 26 Am J1st Homi § 25.

It is generally agreed that in the determination of whether the provocation is sufficient or reasonable, ordinary human nature, or the average of men recognized as men of fair average mind and disposition, should be taken as the standard, unless, indeed, the person whose guilt is in question is shown to have some peculiar weakness of mind or infirmity of temper, not arising from wickedness of heart or cruelty of disposition. 26 Am J1st Homi § 25.

**provoke.** To excite; to stimulate; to arouse to make angry. *State v Warner*, 34 Conn 276, 279.

See **provocation.**

**provoking a difficulty.** Making trouble with a purpose.

An assault or the menace of one, by an overt act, with intent to inflict death or great bodily harm in the event it is resisted, made maliciously to bring about that result and enable the provoking party to wreak his vengeance on the assailant, is an "aggression," or "fault," and a "provoking of a difficulty," within the legal sense and meaning of the terms. *Foutch v State*, 95 Tenn 711, 34 SW 423.

**provocative language.** See **offensive language.**

**provoked error.** See **invited error.**

**provost.** The chief executive officer in certain corporations, principally educational institutions.

In Scotland, a magistrate.

**provost court.** A military court in occupied territory.

**provost marshal.** An officer of the military in charge of military police or having custody of prisoners.

**prox.** An abbreviation of **proximus**.

**proximate cause.** As an element of tort liability:—that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. The primary moving cause, or the predominating cause, from which the injury follows as a natural, direct, and immediate consequence, and without which it would not have occurred. 38 Am J1st Negl § 50. That act or omission which immediately causes or fails to prevent the injury. *Stacy v Williams*, 253 Ky 353, 60 SW2d 697. The efficient cause; the one that necessarily sets the other cause in motion, and brings about the result without the intervention of any force started and working actively from a new and independent source. 38 Am J1st Negl § 50. Such cause, not necessarily the last cause or the act nearest to the injury, but such act as actually aided in producing the injury as a direct and efficient cause. *Milton Bradley Co. v Cooper*, 79 Ga App .302, 53 SE2d 761, 11 ALR2d 1019. As element of liability for wrongful death:—an act which produces the injury and death in a natural and continuous sequence, unbroken by any new, independent cause. 22 Am J2d Death § 31.

As an element of recoverable damages in tort cases:—legal cause, something beyond mere cause in fact, something other than a remote cause. That cause which in natural and continuous sequence, unbroken by an efficient intervening cause, has produced the injuries for which damages are sought to be recovered. 22 Am J2d Damg § 20. As an element of damages in contract cases:—a requirement that gives way to the doctrine of foreseeable or anticipated consequences. 22 Am J2d Damg § 20.

Proximate cause has a different meaning in insurance cases than it has in tort cases. In insurance cases the concern is not with the question of culpability or why the injury occurred but only with the nature of the injury and how it happened. If the nearest efficient cause of the loss is one of the perils insured against, the court looks no further. In such cases, the insurer is not relieved from responsibility by showing that the property was brought within the peril insured against by a cause not mentioned in the contract. 29A Am J Rev ed Ins § 1134.

See **concurrent cause; contributory cause; efficient cause; immediate cause; natural and probable**

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**consequences; primary cause; producing or inducing cause.**

**promixate consequences.** See **proximate cause; proximate result.**

**proximate legal cause.** See **proximate cause.**

**proximate result.** A result traceable directly to an act or omission, without the occurrence of another culpable and efficient agency intervening. *McMann v Newark & South Orange Railway Co.* 58 NJL 642, 34 A 1052.

See **proximate cause.**

**proximation doctrine.** See **cy pres; equitable approximation doctrine.**

**proximity.** Nearness in space, time, distance, kinship, etc.

**proximo gradu.** See **in proximo gradu.**

**proximus.** The nearest; the next.

**Proximus est cui nemo antecedit; supremus est quem nemo sequitur.** He is next whom no one precedes; he is last whom no one follows.

**proximus haeres.** The nearest heir; the next heir.

**proximus sequente.** The next following.

**prox, seq.** An abbreviation of **proximus sequence**.

**proxy.** An authorization, usually given in writing, under which one person acts for another. An authority given in writing by the holder of corporate stock to another to exercise the voting rights to which he is entitled as a stockholder. *Commissioner of Banks v Cosmopolitan Trust Co.* 253 Mass 205, 148 NE 609, 41 ALR 658. An authority given by one delegate to another whereunder the latter votes in place of the other at a political convention. 26 Am J2d Elect § 235. An authority given by a creditor whereunder another votes in the place of him at a creditors' meeting in a proceeding in bankruptcy. 9 Am J2d Bankr § 593. The person who holds an authorization to act in the place of another. 9 Am J2d Bankr § 593; 19 Am J2d Corp §§ 669 et seq.

**proxy holder.** See **proxy**.

**proxy signature.** A signature affixed for another.

**prudence.** The matter of being prudent.

**prudent.** Sensible, cautious, exercising judgment.

There may be an infinitesimal shade of difference between "cautious" and "prudent," but a reasonably prudent person and a reasonably cautious person are substantially the same, and possess identical significance for all practical purposes. Certainly, the words "cautious" and "prudent" are used interchangeably in defining negligence. *Malcolm v Mooresville Cotton Mills*, 191 NC 727, 730, 133 SE 7.

**prudent investment theory.** The theory, sometimes applied in the earlier days of public utility rate regulation, that a public utility is entitled to a return based only on its actual sacrifice, represented by the amount of capital prudently put into the business. 43 Am J1st Pub Util § 105.

See **safe investment rule**.

**prudent man.** See **the ordinary prudent man**.

**prudent man rule.** The rule that one taking a negotiable instrument from the payee or prior endorsee is put upon inquiry as to infirmity or defect in the instrument by circumstances calculated to arouse the suspicions of a prudent man, so as to be charged with constructive notice of the infirmity or defect by his failure to make inquiry with reasonable diligence. 11 Am J2d B & N § 431.

**prudent operator rule.** The rule that a stipulation in an oil and gas lease on a royalty basis that development shall be at the discretion of the lessee does not leave development to the uncontrolled will of the lessee, he being required to do by way of development that which a prudent operator would deem just and proper under the circumstances. 24 Am J1st Gas & O § 62.

See **the ordinary prudent man**.

**Prudenter agit qui praecepto legis obtemperat.** He acts prudently who is obedient to the precept of the law.

**p. s.** An abbreviation of **public statutes; abbreviation of postscript**.

**pseudo-corporation.** An income-tax term for a closely held corporation.

**psoriasis.** A chronic inflammatory skin disease. *Sawyer v Department of Labor & Industries*, 48 Wash 2d 761, 296 P2d 706,709.

**psychiatric examination.** See **mental examination.**

**psychiatrist.** A doctor of medicine who specializes in psychiatry.

**psychiatry.** The practice of medicine in the study and treatment of disorders of the mind.

**psychic healer.** One who professes to treat disease by the application of forces beyond the physical world. *Post v United States (CA5)* 135 F 1022.

**psychopath.** A person afflicted with a psychopathic condition.

See **psychopathic; sexual psychopath.**

**psychopathic.** Characterized by emotional instability, impulsiveness of behavior, lack of customary standards of good judgment, or failure to appreciate the consequences of one's act. *Ditrich v Brown County*, 215 Minn 234, 9 NW2d 510.

See **sexual psychopath.**

**psychopathic personality.** See **psychopathic; sexual psychopath.**

**ptomaine poisoning.** A stomach disorder caused by the eating of food containing toxic bacilli. *Newsoms v Commercial Cas. Ins. Co.* 147 Va 471, 137 SE 456, 52 ALR 363.

**Pubertas.** In the civil law, the age of a child from fourteen years upward. See 4 Bl Comm 22.

**Puberty.** The age under the common law at which a person may lawfully marry, twelve for girls and at fourteen for boys. See 1 Bl Comm 436.

**pubic.** Characterizing the lower part of the abdomen, the part covered with hair.

**public.** Adjective: Belonging to the entire community. Unrestricted in participation. Noun: The people. The populace; the community. "That vast multitude, which includes the ignorant, the unthinking, and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearance and general impressions." *J. W. Collins Co. v F. M. Paist Co.* (DC Pa) 14 F2d 614.

It is conceded that the public does not mean all

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the people in the state or in any county or town. The public is a term used to designate individuals in general without restriction or selection. *Garkane Power Co. v Public Service Co.* 98 Utah 466, 100 P2d 571, 132 ALR 1490.

The word sometimes has the meaning of international sometimes national, and sometimes state. See *Morgan v Cree*, 46 Vt 773.

**public accommodation.** A place open to serve the public. An inn. A hotel. A restaurant. A place to obtain food and lodging, rather than a place of amusement. 4 Am J2d Amuse § 1.

**public accountant.** One who furnishes accounting or auditing service on a fee basis, per diem, or otherwise, for more than one employer. *Frazer v Shelton*, 320 Ill 253, 150 NE 696, 43 ALR 1086.

One who comes into the offices of a company one or two days a month for the purpose of auditing and balancing its books, reconciling its bank account with its books, checking and totaling the bookkeeper's records of the payroll checks, and who also prepares the income tax returns of the company, performs the services of a public accountant rather than those of a bookkeeper. *Jaeger Mfg. Co. v Maryland Casualty Co.* 231 Iowa 151, 300 NW 680.

See **certified public accountant**.

**public acknowledgment of paternity.** Holding a child out to relatives, friends, acquaintances, and the world as one's own. *Estate of Jessup*, 81 Cal 408, 21 P 976, 22 P 742.

**public act.** A statute. 16 Am J2d Const L § 588. An act which concerns the whole community. A statute which concerns the whole community, the public at large. An act which applies equally to all persons within the territorial limits of its operation, even though it applies to a particular locality alone. 50 Am J1st Stat § 12. For some purposes, a statute of another state. Anno: 134 ALR 1472.

**public adjuster.** One whose business is the adjustment of claims for insurance, employed, not regularly for full time by one person or company, but by members of the public, insureds or insurers, as their need of an adjuster arises. *Larson v Lesser*, (Fla) 106 So 2d 188.

**public administrator.** A public officer who administers the estates of decedents where no one else qualifies to act as a personal representative. 31 Am J2d Ex & Ad § 61.

**public affair.** A matter relating to government. *State v Mitchell*, 210 Wis 381, 245 NW 640, 86 ALR 1361. An assemblage thrown open to the public. An event much talked about. A scandal constituting an item of conversation for many persons.

**public aid.** See **farm aid; railroad aid; welfare**.

**public aircraft.** An aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes. 49 USC § 1301(30).

**public alley.** A highway, usually a narrow way bisecting a city block, existing through dedication to the public or acquisition by the municipality. 25 Am J1st High § 8.

**publican.** One who serves food or drink prepared for consumption on the premises. *Friend v Childs Dining Room Hall Co.* 231 Mass 65, 120 NE 407, 5 ALR 1100. An innkeeper. A saloonkeeper. (Civil law.) A tax collector.

**public and domestic tranquillity.** Public peace.

The expression means nothing more than the public peace, which is made up of the aggregate of individual peace and domestic peace, and is nothing more than a subdivision of the one and an aggregation of the other. One cannot lawfully disturb the quiet of domestic life by that same kind of offensive and tumultuous carriage which would anywhere constitute a breach of public peace, although no one but the family of which he is a member is present. Anno: 1 ALR 591.

**publicanus.** (Civil law.) Same as publican.

**publication.** A newspaper or magazine; a book. Dissemination of information by notice given the public. *State, ex rel. Torryson, v Gray*, 21 Nev 378, 32 P 190. The issuance of a newspaper or magazine from the place where it has been printed. *Re Monrovia Evening Post*, 199 Cal 263, 248 P 1017. The composing, printing, issuance, and distribution of a newspaper to its subscribers and the public. *Age-Herald Publishing Co. v Huddleston*, 207 Ala 40, 92 So 193, 37 ALR 898, 905. The printing

of a notice in a newspaper of general circulation and distribution. 39 Am J1st Notice § 30. A means of service of process where authorized by statute. 42 Am J1st Proc §§ 89 et seq. In reference to copyright and the law of literary property, those acts of an author which evidence a dedication of his work to the public and on which depends the loss of his common-law copyright, the acquisition of his statutory copyright, or both. *American Visuals Corp. v Holland* (CA2 NY) 239 F2d 740. In the law of libel and slander:—the communication of defamation to one or more persons other than the person defamed. 33 Am J1st L & S §§ 90 et seq. In criminal libel, a communication to anyone at all, even to the person defamed. 33 Am J1st L & S § 311.

**publication date.** The earliest date when copies of the first authorized edition are placed on sale, sold, or publicly distributed by the proprietor of a copyright or under his authority. 17 USC § 26.

**publication of forgery.** Asserting expressly or impliedly that a forged instrument is genuine. *People v Bradford*, 84 Cal App 707, 258 P 660.

**publication of marriage bans.** The announcement made in church of an intended marriage. 35 Am J1st Mar §24.

**publication of newspaper.** See **publication**.

**publication of process.** See **service by publication**.

**publication of summons.** See **service by publication**.

**publication of will.** The communication by the testator to the attesting witnesses at the time they attest of his intention that the instrument which they are called upon to attest shall take effect as his will. 57 Am J1st Wills § 283.

**public attorney.** An attorney at law.

**public auction.** See **auction**; **public sale**.

**public authority.** An agency created for the construction and maintenance of a public work or public improvement, such as a port authority, power authority, etc. In the most general sense, the authority of government, the power of the nation, state, or political subdivision.

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**public benefit.** See **public use**.

**public blockade.** A naval blockade of a port, established in fact and publicized by notice given to other governments. 56 Am J1st War § 172.

**public body.** A governmental body. A public corporation.

**public bond.** A bond issued by a state, municipality, or other public body, usually, although not necessarily, under seal, constituting a promise binding the obligor to pay a sum of money to the holder thereof or to bearer, and, where made payable to order, or to bearer, having all the qualities of commercial paper. 43 Am J1st Pub Sec § 6.

**public bonded warehouse.** A warehouse bonded for the storage of imported merchandise generally. 19 USC § 1555.

**public bridge.** A bridge which forms a part of a public highway and which has been erected for the use of the public. *First Nat. Bank v Malheur County*, 30 Or 420, 45 P 781.

**public building.** A building owned by a public body, particularly if it is used for public offices or for other public purpose. Anne: 19 ALR 543.

See **public improvement.**

**public business.** The business affairs of the government. The business of a public body. The business of a public service corporation in its relations with the public. Minnesota Canal & Power Co. v Pratt, 101 Minn 197, 112 NW 395.

**public calamity.** See **calamity.**

**public carrier.** A common carrier. A carrier which holds itself out in its dealings and course of business with the public as being ready and willing for hire to perform the services rendered by it and within the field of its operations for the public generally. State v Washington Tug & Barge Co. 140 Wash 613, 250 P 49.

See **common carrier.**

**public cemetery.** A cemetery available for use by the general community, a neighborhood, or a church, the characteristic being public use rather than title to the ground. 14 Am J2d Cem § 2.

**public character.** Same as **public personage.**

**public charge.** A person who cannot support himself, has no means of support, has no one to furnish him support, and accordingly must look to a public body or public welfare agency for his maintenance and care. Ex parte Fragoso (DC Cal) 11 F2d 988.

**public charity.** Any real charity, the word "charity" implying public interest or welfare. 15 Am J2d Char § 6. A charity for the benefit of an indefinite number of persons. 51 Am J1st Tax § 601.

**public college or university.** A college or university founded or taken over and supported by the state or a political subdivision thereof.

The fact that a college or university founded by the state is given or accepts donations from private persons does not alter the nature of its foundation or change the character of the corporation. 15 Am J2d Colleges § 2.

**public contract.** A contract for the construction of a public improvement or for the furnishing of supplies to a public body. 43 Am J1st Pub Wks § 10.

**public contractor's bond.** See **contractor's bond.**

**public convenience.** That which is fitted or suited to the public need. Milwaukee Co. of Jehovah's Witnesses v Mullen, 214 Or 281, 330 P2d 5, 74 ALR2d 347, app dismd and cert den 359 US 436, 3 L Ed 2d 932, 79 S Ct 940 (zoning ordinance.)

See **public necessity and convenience.**

**public conveyance.** A vehicle used for carrying passengers for compensation. 7 Am J2d Auto Ins § 35. A conveyance the proprietor of which makes a public offer of conveyance at a fixed fare to all persons. Stanley v American Motorists Ins. Co. 195 Md 180, 73 A2d 1, 30 ALR2d 268; Anderson v Fidelity & Casualty Co. 228 NY 475, 127 NE 584, 9 ALR 1544, 1550. In one sense, a vehicle, such as a passenger elevator, which is open for service to the public, even without payment of a fare. Davis v Colorado Sav. Bank, 78 Colo 509, 242 P 985.



Contract carriers who may not be compelled to become common carriers but who may be subjected to many of the same regulatory requirements as common carriers may be within the term "public or livery conveyances." *Stanley v American Motorists Ins. Co.* 195 Md 180, 72 A2d 1, 30 ALR2d 268.

**public corporation.** A municipal or political corporation. A corporation with political powers. *Phillips v Baltimore*, 110 Md 431, 72 A 902. A corporation created for public purposes only, connected with the administration of the government, the interests and franchises of which are the exclusive property and domain of the government itself. *Dartmouth College v Woodward (US)* 4 Wheat 518, 4 L Ed 629.

A corporation may have a double aspect according to the nature of the powers granted and exercised. If they were granted and exercised for public purposes exclusively, they belong to the corporate body in its public, political, or municipal character. If the grant was for purposes of private advantage and emolument, though the public may derive a common benefit therefrom, the corporation, quoad hoc, is to be regarded as a private company. 18 Am J2d Corp § 8.

**public credit.** The value of a thing, the worth of a performance, in the opinion of the public.

See **seals of public credit.**

**public dance.** A dance to which the public is admitted, and which is held for profit, direct or indirect. 4 Am J2d Amuse § 3. A place of amusement. 4 Am J2d Amuse § 1.

**public danger.** See **public peril.**

**public debt.** In a narrow sense, national or state obligations; in a broader sense, national obligations, state obligations, county obligations, town obligations, in fact the obligations of any public body. 43 Am J1st Pub Sec § 3.

public debtor. Broadly, the nation, a state, county, town, municipal corporation, or political subdivision obligated under outstanding indebtedness. A municipal corporation, school district, local improvement district, county, or other political subdivision eligible for relief by the composition of its indebtedness under provisions of the Bankruptcy Act. 9 Am J2d Bankr § 1416.

**public decency.** See **disorderly conduct; indecency; obscenity.**

**public defender.** An attorney at law appointed to aid indigent persons accused of crime, becoming in the individual case in which he acts counsel for the accused to the same extent as if retained by the accused regularly and for all purposes of the case. 21 Am J2d Crim L § 323.

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**public depository.** A bank or other institution authorized to receive deposits of public moneys. *United States Fidelity & Guaranty Co. v Kansas*, 81 Kan 660, 106 P 1040.

**public disorder.** See **disorderly conduct; insurrection; riot.**

**public dispensary.** A liquor store conducted by the state or municipality. 30 Am J Rev ed Intox L § 204.

**public dock.** See **public wharf.**

**public documents.** Official papers. Documents on file in a public office. All publications printed by order of Congress, or either house thereof. *McCall v United States*, 1 Dak 307, 314.

**public domain.** The public lands of the United States or of a state. *Barker v Harvey*, 181 US 481, 490, 45 L Ed 963, 968, 21 S Ct 690; *People v Shearer*, 30 Cal 645, 658. Literary, musical, or dramatic compositions so dedicated to the public as not to be subject to copyright. 18 Am J2d Copyr § 42. A device or process so well known and in such common use as not to be patentable. 40 Am J1st Pat § 25.

**public duty.** A duty owed the public, whether by a public officer or employee or by one who comes in contact with the public.  
See **governmental functions**.

**public easement.** A public right of way. 25 Am J2d Ease § 7. The right of the public to use a highway; an easement which embraces every reasonable and proper use of the way in the transportation of persons or property not prohibited by law. 25 Am J1st High § 166.

**public eating house.** A restaurant. 29 Am J Rev ed Innk § 9.

**public emergency.** An unusual exigency bearing directly upon the public welfare, the determination of which is primarily a legislative function. 16 Am J2d Const L §§ 270, 300. Any emergency so affecting the public health and safety that summary relief by restriction of the offending thing is necessary. 39 Am J1st Nuis § 187.

**public employee.** A federal or state employee. An employee of any public body. Inclusive of public officer only by express stipulation or where such construction is the only reasonable one under the circumstances. Anno: 5 ALR2d 415.

**public enemy.** A nation with which the country is at war or a subject or citizen of a nation with which the country is at war. A pirate on the high seas. 14 Am J2d Car § 523.

**public escheator.** A public officer or public body upon whom rests the duty of bringing actions for escheat or for a sale or conveyance of escheated property. 27 Am J2d Esch § 32.

**public exigency.** A sudden and unexpected happening, an unforeseen occurrence or condition, a perplexing contingency or complication of circumstances, or a sudden or unexpected occasion for action. *Good Roads Machinery Co. v United States* (DC Mass) 19 F Supp 652. An occurrence which bears directly upon the public welfare.

See **public emergency**.

**public flag.** See **flag**.

**public footway.** A footway in public use, independent of a highway.

**public fund.** Money belonging to the United States, an agency of the United States, a state or subdivision thereof, or a municipal corporation. *Smyer v United States*, 273 US 333, 71 L Ed 667, 47 S Ct 375; *Pinal County v Hammons*, 36 Ariz 36, 243 P 919; *Beckner v Commonwealth*, 174 Va 454, 5 SE2d 525. Money raised by the operation of law for the support of the government or the discharge of its obligation. 42 Am J1st Pub F § 2.

**public garage.** An automobile repair place or business open for service to the public generally; a garage which accepts cars for parking or storage. 24 Am J1st Garag § 2.

As used in a restrictive covenant the term has been given various meanings. According to some interpretations, it is restricted to places for the storage of automobiles. According to others, it includes every phase of the business, including storing, hiring, sales, servicing, and repairs. Anno: 54 ALR 666; 99 ALR 543.

**public grant.** A conveyance or grant of land by the United States or a state.

**public ground.** Ground in which the general public has a common use; streets, alleys, commons, and the like. *Patrick v Young Men's Christian Asso.* 120 Mich 185, 191.

**public health.** See **health** and expressions beginning "health."

**Public Health Service.** A federal agency of the Department of Health, Education, and Welfare.

**public hearing.** A hearing or investigation by an administrative agency which is open to the public. 2 Am J2d Admin L § 229.  
See **public trial.**

**public highway.** A way for the use of the public; a highway. For the purposes of an accident insurance policy which contains a provision for compensation for injuries received on a public highway:—any way used by the public in going from one place to another, such as a platform at a railroad depot used by the public for the purpose of going to and from trains. *Rudd v Great Eastern Casualty & Indem. Co.* 114 Minn 512, 131 NW 633.

**public hospital.** A hospital open to the public generally for the rendition of its services, especially where operated without purpose of financial gain, albeit charges are made for its services. *Hibbing v Commissioner*, 217 Minn 528, 14 NW2d 923, 156 ALR 1294.

**public house.** An inn, hotel, or other place of public accommodation. A restaurant. 29 Am J Rev ed Innk § 9. A house commonly open to the public, either for business, pleasure, religious worship, the gratification of curiosity, or the like, and including all houses made public by the occupation of them, as taverns or inns, or in any other way. *Cole v State*, 28 Tex App 536, 13 SW 859.

**public housing.** Housing provided by public funds in slum clearance and the construction of low-cost housing in the interest of people of limited means. 42 Am J1st Pub H L § 1.

**Public Housing Administration.** A federal agency assisting local housing authorities in building low-rental public housing for low-income families, making contributions and making or backing up loans to finance such housing.

**public ignominy.** Infamy, reproach, dishonor. Public hatred or detestation. *Mahanke v Cleland*, 76 Iowa 401, 405. Public disgrace;

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public dishonor. *Brown v Kingsley*, 38 Iowa 220, 221.

**publici juris.** Of public right.

**public improvement.** Things planned, established, or constructed by public bodies for the use of the public, such as a library, schoolhouse, park, etc. 43 Am J1st Pub Wks § 2. Original construction or substantial reconstruction, as distinguished from repair. *Hazard v Main Street Realty Co. (Ky)* 262 SW2d 87, 41 ALR2d 609.

As used in connection with municipal government, the term must be taken as applying to those improvements which are the proper subject of police and municipal regulation—such as gas, water, almshouses, hospitals, etc.,—and cannot be extended to subjects foreign to the object of incorporation, and beyond its territorial limits. *Low v Marysville*, 5 Cal 214, 215.

See **public works.**

**public indebtedness.** See **public debt.**

**public institution.** One which is created and exists by law or public authority, such as an asylum, charity, college, university, hospital, schoolhouse, etc. *Henderson v Shreveport Gas, Electric Light & Power Co.* 134 La 39, 63 So 616.

**public interest.** Matters of general right or interest, such as state or municipal boundaries, the existence or location of a highway, the existence of a private right or privilege in public land, and so forth. 29 Am J2d Ev § 506. Something more than an interest on the part of many members of the public, each from the standpoint of an individual. Anno: 132 ALR 1188.

**public international law.** The law of nations, being that law which regulates the political intercourse of nations with each other or concerns questions of rights between nations. 16 Am J2d Confl L § 1.

**publicist.** A writer, particularly a writer on political and international law subjects. 30 Am J Rev ed Internal L § 2. A publicity agent.

**publicity.** See **publication.**

**public land.** Land of the United States or a state, particularly land open to public sale or other disposition under general laws. 42 Am J1st Pub L § 13. A term of varying senses, depending largely on the context in which it appears and the special circumstances of the case. *Kindred v Union Pacific R. Co.* 225 US 582, 56 L Ed 1216, 32 S Ct 780.

**public-land-grant rates.** See **land-grant rates.**

**public land survey.** See **governmental survey.**

**public laundry.** A laundry which distributes the products of its work to the public. *Van Zandt's Inc. v Department of Labor*, 129 Misc 747, 222 NYS 450.

**public lavatory.** A lavatory maintained by the municipality or other public body for public use, often with direct access from street or public way.

**public law.** The part of the law which is concerned with the state in its sovereign capacity, including international law and criminal law. A statute which concerns the public, as distinguished from a private act.

**public laws.** Statutes.

See **public law.**

**public liability insurance.** Insurance protecting the insured against liability to a member or members of the public.

See **automobile liability insurance; liability insurance; premises liability insurance.**

**public library.** A general library for the use of inhabitants of a city, village, or political subdivision. A charitable purpose. 15 Am J2d Char § 47.

**public market.** A place designated by municipal authority for the sale of articles necessary or convenient for the subsistence of men and domestic animals. 35 Am J1st Mark & M § 2. Any market open to the public.

"It may well be doubted whether the term 'public market' is one which is known to our law. Markets overt, such as exist in England, are unknown here; nor is it usual in this country to grant to private parties the franchise or liberty of keeping or holding a fair or market, as is done in England. Our statute authorizes municipal corporations to establish markets and market houses, and to provide for the regulation and use thereof. But we are not aware that any class of markets in this country, not

established by municipal authority, or by virtue of a market franchise granted by the state, has been held, merely because of the magnitude of the business carried on therein, to be impressed with a public use, so as to be held by the courts to be public markets, in that sense." *American Livestock Com. Co. v Chicago Live Stock Exchange*, 143 Ill 210, 32 NE 274.

See **market**.

**public mill.** A water, steam, wind, or other mill whose owner or tenant grinds or offers to grind, grain for toll or pay. *Howard Mills Co. v Schwartz Lumber & Coal Co.* 77 Kan 599, 95 P 559.

**public minister.** A diplomatic representative serving his government in a foreign country. 4 Am J2d Ambss § 1. A member of the cabinet and head of a department of government in Great Britain.

**public money.** See **public fund**.

**public necessity.** An exigency or expediency which justifies the taking of property for a public use. 26 Am J2d Em D §§ 111 et seq.

See **public use**.

**public necessity and convenience.** Need for the services of a carrier to operate upon the highway sufficient to justify the public authority in granting franchise, license, or permission for operation. 13 Am J2d Car § 82. Ground for the improvement of a highway, existing in use by the public rather than for the benefit of one or a few individuals. 25 Am J1st High § 60. The convenience of the public prompting state or municipality in authorizing special, permissive, or incidental use of a highway, always in subordination to the use of the way for travel and transportation. 25 Am J1st High §§ 168 et seq.

The public necessity, which is a statutory condition precedent in many states to the granting of a franchise to a public service corporation, does not mean indispensable to the public. An urgency less pressing will suffice. The expression means a public need without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or wholesome pleasure, or both-without which people generally of the community are denied, to their detriment, that which is enjoyed by other people generally, similarly situated. *Chicago, Rock Island & Pacific Railway Co. v State*, 126 Okla 48, 258 P 874.

See **certificate of public necessity and convenience**.

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**public note.** A note for money borrowed by a public body, usually payable and issued to a single investor and maturing at a date earlier than a bond issue. 43 Am J1st Pub Sec § 11.

**public notice.** A notice given to the public either by posting the notice in a public place or by its publication in a newspaper.

**public nuisance.** A violation of a public right, either by a direct encroachment upon a public right or property or by doing some act which tends to a common injury, or by omitting to do some act which the common good requires, and which it is the duty of a person to do, which results in injury to the public. A common nuisance, that is, the doing of, or the failure to do, something that injuriously affects the safety, health, or morals of the public, or works some substantial annoyance, inconvenience, or injury to the public. 39 Am J1st Nuis § 8. A condition of things which is prejudicial to the health, comfort, safety, property, sense of decency or morals of the citizens at large, resulting either from an act not warranted by law, or from neglect of a duty imposed by law. *Nuchols v Commonwealth*, 312 Ky 171, 226 SW2d 796, 13 ALR2d 1478.

**public offenses.** Actions or omissions in violation of law for which punishment is provided by law. *State ex rel. Streit v Justice Court*, 45 Mont 375, 123 P 405. All crimes and misdemeanors, not merely those constituting breaches of the peace. *Oleson v Pincock*, 68 Utah 507, 251 P 23.

**public office.** A term of vague and variant import, the meaning of which varies necessarily with the context and the circumstances surrounding the use of the term. 42 Am J1st Pub Of § 2. A public agency or trust created in the interest and for the benefit of the people. 42 Am J1st Pub Of § 8. An office the duties of which partake in some degree of the sovereign powers of the state or are imposed upon the incumbent by authority of the law. 42 Am J1st Pub Of § 4. An office the duties of which are not merely clerical or those only of an agent or employee but are performed in the execution or administration of the law. 42 Am J1st Pub Of § 4.

**public officer.** An incumbent of a public office invested with certain powers and charged with certain duties pertinent to sovereignty. State ex rel. Newman v Skinner, 128 Ohio St 325, 191 NE 127, 93 ALR 331. Such an officer as is required by law to be elected or appointed, who has a designation or title given him by law, and who exercises functions concerning the public, assigned to him by law. 42 Am J1st Pub Of § 2.

See **de facto public officer; de jure officer.**

**public park.** See **park.**

**public parking.** See **parking lot.**

**public passage.** A public way over land or water.

**public peace.** That invisible sense of security, which every man feels so necessary to his comfort, and for which all governments are instituted. State v Benedict, 11 Vt 236.

See **public and domestic tranquillity.**

**public performance.** See **performance; performance for profit.**

**public peril.** A term pertinent to a discussion of workmen's compensation, referring to a peril to which the public is exposed rather than a peril peculiar to the employment. 58 Am J1st Workm Comp § 257.

See **public emergency.**

**public personage.** A person who, by his accomplishments, fame, or mode of life, or by adopting a profession or calling which gives the public a legitimate interest in his doings, has rendered his affairs and his character matters of public interest, thereby relinquishing at least a part of his right of privacy. 41 Am J1st Priv § 18.

**public place.** A place commonly open to the general public. Pugh v State, 55 Tex Crim 462, 117 SW 817. A place where the public resorts. Armstrong v New La Paz Gold Mining Co. (CA9 Cal) 107 F2d 453. Within a requirement as to the posting of notices: -a place to which the public resorts, so that a notice in such a place may be expected to be seen by persons who are interested in or affected by the subject of the notice. Anno: 2 ALR 1008; 30A Am J Rev ed Jud S § 52. Within the meaning of statutes defining the criminal offense of exposure of person:—a place where acts performed are likely to be seen by a number of casual observers, for example, a public highway or bus. 33 Am J1st Lewd etc § 7.

**public policy.** The policy of the law; the policy in relation to the administration of the law. Practically synonymous with public good or public welfare. National Bank of Commerce v Greenberg, 195 Tenn 217, 258 SW2d 765, 38 ALR2d 1337. The policy of promoting the public welfare and opposing that which is at war with society and in conflict with the moral principles of the period. 17 Am J2d Contr § 175. The protection and promotion of public welfare, including public health and morality. Hanks v McDanell, 307 Ky 243, 210 SW2d 784, 17 ALR2d 1. That principle of law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good. Consumers' Oil Co. v Nunnemaker, 142 Ind 560, 41 NE 1048. A will-o'-the-wisp of the law which varies and changes with the interests, habits, needs, sentiments, and fashions of the day. Wallihan v Hughes, 196 Va 117, 82 SE2d 553. Not a matter of principle to be laid

down by the court, although the court may be called upon to determine what the public policy is in a particular respect, as for example, where it must determine whether a contract is or is not invalid because it is contrary to good public policy. 20 Am J2d Cts § 64.

**public port.** A complex subject, consisting of something that is natural, as a convenient access from the sea, a safe situation against winds, and a shore upon which vessels may well unlade; something that is artificial, as keys, wharves, and warehouses; and something that is civil, as privileges and regulations given to it by the government.

It often includes more than the bare place where ships may lade or unlade; it is sometimes extended many miles, including several places as members of the port; designating one as a port of entry and another as a port of delivery. Wharf Case (Md) 3 Bland 361, 369.

**public proceedings.** The proceedings of an administrative board.

See **public hearing**.

**public property.** Property owned by the government or a governmental body. Property owned by the public as such in a governmental capacity. 42 Am J1st Prop § 12. Property belonging to the state or a political subdivision thereof, such as a county, city, town, and the like, used exclusively for a public purpose. Anoka County v St. Paul, 194 Minn 554, 261 NW 588, 99 ALR 1157 (tax exemption).

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See **public land**.

**public prosecutor.** See **prosecuting attorney; prosecuting officer**.

**public purpose.** A classification distinguishing objectives for which the government is to provide from those which are left to private inclination, interest, or liberality. The support of government, or a recognized object of government, or promotion of the welfare of the community. 51 Am J1st Tax § 326.

To conserve and develop water resources, for domestic use, for irrigation, and for power and light, are all common public purposes or uses. Gallardo v Porto Rico Railway, Light & Power Co. (CA1 Puerto Rico) 18 172d 918.

A use of public property for any public purpose, to warrant exemption from taxation, must be an exclusive use by the public, open to all the people on a basis of equality to such extent as the capacity of the property admits, or an exclusive use by some public or quasi-public agency on behalf of the public. Cleveland v Board of Tax Appeals, 153 Ohio St 97, 91 NE2d 480, 16 ALR2d 1354.

See **public use**.

**public record.** A record required by law to be kept, or necessary to be kept, in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done. 45 Am J1st Reeds § 2. Inclusive of a legislative, judicial, or executive record. 45 Am J1st Reeds § 3. Inclusive of a record of title. 45 Am J1st Reeds § 4.

**public relations.** A term of frequent usage in modern times, often over-worked, concerned with informing the public of activities and creating favorable public opinion, whether such is sought by a public body, a charitable organization, a corporation, or business enterprise.

**public relief.** See **relief; welfare**.

**public report.** See **report; repute**.

**public revenue.** See **taxation**.

**public river.** A navigable river.

**public road.** A way open to all the people, without distinction, for passage and repassage at their pleasure. *Sumner County v Interurban Transportation Co.* 141 Tenn 493, 213 SW 412, 5 ALR 765,  
Same as a **highway**.

**public room.** A room in an inn or hotel, such as the lobby, to which guests or visitors are admitted indiscriminately.

**public sale.** A sale at auction to the highest bidder at which the public is given the opportunity to bid. *Offredy v Huhla*, 135 Conn 20, 60 A2d 779, 4 ALR2d 572. A sale at auction, made upon notice or invitation to the public so that the public be given the opportunity to engage in competitive bidding, and held at a place to which the public have access. 30A Am J Rev ed Jud S § 67.

See **auction**.

**public school.** A primary, elementary, intermediate, grammar, or high school, organized and maintained as an institution of the state or a political subdivision of the state, and open to all on equal terms. *Yanow v 7 Oaks Park, Inc.* 11 NJL 341, 94 A2d 482, 36 ALR2d 639.

**public seal.** See **official seal**.

**public securities.** The bonds issued by a state, municipal corporation, or other public body. In a broader sense, including United States bonds, but usually referring to state and local obligations.

**public service.** Service rendered as a public officer or employee; service rendered in any capacity for or on behalf of the government, national, state, or local. Utility service, such as the furnishing of gas or electricity. The public service that may entitle certain individuals, including private corporations, to privileges and immunities not enjoyed by the public generally, is a public service that carries with it some measure of public control and supervision; and the right of public control and authority must precede or accompany the grant of the privilege, and be so much a part of it that the privilege cannot be exercised without incurring the responsibility and liability that attaches to the performances of public duties. The beneficiary of the grant must be, in some degree, the servant of the public, and subject to the control and authority of some public agency. This is the test to which the right to the enjoyment of special privileges by individuals and private corporations must be subjected, and by this standard their right to privileges and immunities not allowed to the general public must be adjudged. *Louisville Railway Co. v Louisville Fire & Life Protective Asso.* 151 Ky 644, 152 SW 799.

**public service commission.** A state agency to which the state or state legislature has delegated the power to regulate public utilities. 43 Am J1st Pub Util § 193.

**public service company.** See **public service corporation; public utility**.

**public service corporation.** A quasi-public corporation, operating for the purpose of supplying gas or electricity to users, carrying passengers or freight, or otherwise as a public utility. 18 Am J2d Corp § 9.

See **public utility**.

**public sewer.** See **sewer**.

**public square.** See **square**.



**public statute.** See **public act.**

**public stocks.** Government or municipal bonds or obligations; public securities.

**public store.** Any premises owned or leased by the, government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued. 19 USC § 1561.

**public streams.** Same as **navigable waters.**

**public swearing.** Profane swearing, or cursing, or taking the name of God in vain, in the presence and hearing of other persons and in a public place. Commonwealth v Linn, 158 Pa 22, 27 A 843.

**public tax.** A general federal, state, or municipal tax. J. W. Perry Co. v Norfolk, 220 US 472, 55 L Ed 548, 31 S Ct 465. A tax for a general public purpose, as distinguished from an assessment to obtain funds to expend for a purpose of special or particular benefit to the property of the taxpayer. Schulz v Dixon County, 134 Neb 549, 279 NW 179, 119 ALR 1294.

**public toilet.** A toilet maintained by the municipality or other public body for public use, often with direct access from street or public way.

**public track.** A railroad track whereon cars are placed for loading or unloading by shippers or consignees of carload lots. Illinois Cent. R. Co. v Crawford, 244 Miss 300, 140 So 2d 90, 143 So 2d 427.

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A comparatively short railroad track connecting an industry with the main line of a railroad, used principally by the industry but open to other shippers. Wolfard v Fisher, 48 Or 479, 84 P 850, 87 P 530.

**public transportation.** Service in transportation of passengers or freight for hire, available to the public, and rendered without discrimination. Rutledge Co-op. Asso. v Baughman, 153 Md 297, 138 A 29, 56 ALR 1042.

**public trial.** A trial which is not secret; a trial open for attendance by the public, except as a limitation upon number attending, imposed without partiality or favoritism, is necessary to prevent overcrowding or disorder or to obtain the testimony of a witness emotionally disturbed. People v Jelke, 308 NY 56, 123 NE2d 769, 48 ALR2d 1425; State v Hensley, 75 Ohio St 255, 79 NE 462.

See **open court.**

**public trust.** A charitable trust. A public office.

See **charitable trust.**

**publicum jus.** (Civil law.) Public law.

**public urinal.** See **public toilet.**

**public use.** The use of premises by the public at large, that is, the general, unorganized public, rather than by one person, a limited number of persons, or a restricted group. 23 Am J2d Ded § 5. In patent law, a use in public as distinguished from a secret or experimental use. Electric Storage Battery Co. v Shimadzu, 307 US 5, 83 L Ed 1071, 59 S Ct 675, reh den. 307 US 650, 83 L Ed 1529, 59 S Ct 675.

For the purpose of exercise of the power of eminent domain, a matter of public employment or public advantage dependent upon the view taken in the particular jurisdiction involved. Employment or use by the public involving a right on the

part of the public, or some portion of it, or some public or quasi-public agency on behalf of the public; to use the property after it is condemned. From the opposite standpoint, public advantage, convenience, or benefit, anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor, thereby contributing to the general welfare and prosperity of the whole community. 26 Am J2d Em D § 27.

It is a well-established doctrine that, where the owner of property has devoted it to a use in which the public has an interest, he in effect, grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public for the common good, so long as such use is maintained. *People v Steele*, 231 Ill 340, 83 NE 236.

See **more necessary public use; public purpose.**

**public utilities commission.** Same as **public service commission.**

**public utility.** That which is of use and of service to the public. A corporation or business rendering, and devoting its property to, a public use or service. *Nevada-California Power Co. v Borland*, 76 Cal App 519, 245 P 209. That which serves, or stands ready to serve, an indefinite public which has a legal right to demand and receive its services or commodities. 43 Am J1st Pub Util § 2. Including every common carrier, gas, electric, telephone, telegraph, water, and heat corporation, and warehousemen, where the service is performed for, or the commodity delivered to, the public generally. *Garkane Power Co. v Public Service Com.* 98 Utah 466, 100 P2d 571, 132 ALR 1490.

**public utility franchise.** See **franchise.**

**public verdict.** A verdict delivered by the jury in open court. 53 Am J1st Tr § 1010.

**public vessel.** A vessel of the government or of a foreign government. *The Navemar*, 303 US 68, 82 L Ed 667, 58 S Ct 432; 2 Am J2d Adm § 120.

**Public Vessels Act.** A federal statute which provides that a libel in personam may be brought against the United States in admiralty, or the United States may be impleaded in admiralty, for damages caused by a public vessel of the United States, and for compensation for towage and salvage service, including contract salvage, rendered to a public vessel of the United States. 46 USC § 781; 2 Am J2d Adm § 120.

**public war.** Any contention by force between two nations, in external matters, under the authority of their respective governments. 56 Am J1st War § 2.

**public warehouseman.** The proprietor of a warehouse the services of which are offered on a compensated basis to the public without discrimination. A warehouseman subject to regulation by the government as performing a function of interest to the public. 56 Am J1st Wareh § 4.

**public waters.** Navigable waters.

**public way.** A highway.

**public weigher.** A public officer, weighing grain or other commodities at terminal elevators or other public warehouses. 56 Am J1st Wareh § 18.

**public welfare.** A variety of interests, spiritual, monetary, physical and aesthetic. The primary social interests of safety, order, and morals. That condition of the public in which it best enjoys the advantages of life as offered by nature to which man must and has oriented himself. 16 Am J2d Const L § 307.

See **general welfare**.

**public wharf.** A wharf open to public use in the docking of vessels and the loading and unloading of cargo.

Whether a wharf or landing is public or private depends on the ownership of the soil, the purposes for which it was built, the authority by which it was erected, the uses to which it has been applied, and the nature and character of the structure. If the land on which it is constructed is vested in the public, or if built by public authority on land condemned, or if it be at the terminus of a public highway, and practically forms a part thereof, or has been dedicated by the owner to the use of the public, it may be regarded as a public wharf or landing. See 56 Am J1st Whar § 3.

**public works.** All works of a fixed nature, such as highways, canals, waterworks, docks, etc., constructed by public bodies for public use, protection, or enjoyment. 43 Am J1st Pub Wks § 2.

See **public contract; public improvements**.

**public worship.** Church services. Worship conducted by religious societies constituted according to their own notions of ecclesiastical authority and ritual propriety, opening their places of worship and admitting to their religious services such persons and upon such terms and subject to such regulations as they may choose to designate and establish.

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**public writings.** The acts of public functionaries, in the executive, legislative, and judicial departments of government, including the transactions which official persons are required to enter in books or registers, in the course of their public duties, and which occur within the circle of their own personal knowledge and observation. (Greenleaf on Evidence, section 470.)

See **public record**.

**public wrongs.** Crimes and misdemeanors, breaches and violations of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity. Anno: 23 ALR 529.

**publish.** To make or effect a publication. To give publicity.

See **publication**.

**publisher.** A person who publishes or makes anything known. One whose business is the publishing of a newspaper or periodical.

See **publication**.

**pubendum.** The external female genitals. The vulva. State v Wisdom, 122 Or 148, 257 P 826.

**pudicity.** Chastity; personal purity.

**pueblo.** A large structure made of stone or adobe, housing a village of Southwestern Indians living on a communal basis. United States v Chavez, 290 US 357, 78 L Ed 360, 54 S Ct 217.

In its original signification, the term means people or population, but it 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 US 251, 25 L Ed 626.

**Pueblo dwellers.** Indians of the southwest, sedentary rather than nomadic in inclination, and disposed to peace and industry. United States v Chavez, 290 US 357, 78 L Ed 360, 54 S Ct 217.

See **pueblo**.

**pueblo right.** The right of a pueblo under Mexican law to the use of so much of the waters of a stream flowing through it as is necessary for municipal purposes and for the supply of its inhabitants; a right superior to those of riparian proprietors which prevails in modern times in favor of cities which are the successors of the Mexican pueblos. 56 Am J1st Watwk § 45.

**puer.** (Civil law.) A boy; a child; an unmarried man.

**puerility.** (Civil law.) The condition of boys from the ages of seven to fourteen, inclusive, and that of girls from the ages of seven to twelve, inclusive.

**Pueri sunt de sanguine parentum, sed pater et mater non sunt de sanguine puerorum.** Children are of the blood of the parents, but the father and the mother are not of the blood of the children.

**pueritia.** (Civil law.) The age of childhood; that is, from seven to fourteen years. See 4 Bl Comm 22.

**puerperal.** The condition of a woman in the labor of child birth. Relating to childbirth.

**puerperal insanity.** A form of insanity arising from some peculiar transitional condition of the system. *Leache v State*, 22 Tex Crim 279.

**Puerto Rico.** An island lying between the Atlantic Ocean on the north and the Caribbean Sea on the south; a free commonwealth associated with the United States under an act of Congress approved by President Truman, July 3, 1952.

**pues.** Same as **pals**.

**puffer.** One who exaggerates, especially in respect of the quality of goods offered for sale by him. A fictitious bidder at an auction, engaged as such by the person conducting the sale. 7 Am J2d Auct § 26.

See **puffing**.

**puffing.** The talk of a seller or trader in expounding the merits of his property, so much to be expected of him as not to amount to fraud. *Curby v Mastenbrook*, 288 Mich 676, 286 NW 123, or a warranty. 46 Am J1st Sales § 326. Making fictitious bids at an auction sale, under employment by the seller or proprietor of the sale, to increase the competition among bidders, thereby enhancing the price at which a bona fide bidder purchases, the fictitious bidder being protected by an understanding with the seller or proprietor of the sale that he shall not be bound by his bids. 7 Am J2d Auct § 26; 30 Am J2d Exec § 365; 31 Am J2d Ex & Ad § 380; 30A Am J Rev ed Jud S § 97.

**pug.** A small dog with a snub nose. Slang for pugilist.

**pugilist.** One who has made an occupation out of boxing or prize fighting.

**puis darrein continuance.** See **plea puis darrein continuance**.

**puisne.** Younger; junior in point of time, right, or rank.

See **mulier puisne**.

**puisne judge.** An associate judge.

**puis que.** After that.

**puissance.** Power; authority.

**pulley.** A mechanical contrivance of rope or cable running over a grooved wheel, convenient in lifting weights in its most simple state and a means of increasing the effect of applied power when employed in combinations. A machine for tariff purposes. *Nord Light, Inc. v United States*, 49 Cast & Pat App 12.

**Pullman.** See **sleeping car company.**

**Pullman porter.** An employee of a sleeping car company who serves passengers as an attendant.

**pulmonary embolism.** The plugging up of an artery in a lung by a blood clot. Anno: 20 ALR 81.

**puncheon.** A punch. A tool used by counterfeiters for stamping out counterfeit coins. *Ridgeley's Case* (Eng) 1 East PC 171. A barrel or cask. A short post.

**punctuation.** The use of certain marks, such as a comma, colon, semicolon, bracket or parenthesis, in a sentence to give it clarity. A minor, not a decisive or controlling, element in the construction of a statute. 50 Am J1st Stat § 253. Not of controlling significance in the construction of a will. 57 Am J1st Wills § 1155. Subordinate to the text in the construction of a contract. 17 Am J2d Contr § 279.

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**punctum temporis.** A point of time; a moment; an instant.

**pundbrech.** Same as **pound breach.**

**punish.** To impose punishment. To impose and inflict a penalty. *Bradley v State ex rel. Hill*, 111 Ga 168, 36 SE 630.  
See **punishment.**

**punishable.** Liable to punishment.

Where statute makes an offense "punishable" in a certain manner, the use of the word is held to make it a matter of discretion as to whether or not the court will impose the designated punishment. *Ex parte Mills*, 135 US 263, 34 L Ed 107, 10 S Ct 762.

**punishment.** Physical or mental distress inflicted. The penalty for a transgression of the law. *Orme v Rogers*, 52 Ariz 502, 260 P 199. The suffering or confinement inflicted on a person by authority of law and the judgment or sentence of a court for some crime or offense committed by him. *Washington v Dowling*, 92 Fla 601, 109 So 588. Synonymous with "penalty," "liability," and "forfeiture," as such terms are used in penal provisions. *United States v Reisinger*, 128 US 398, 32 L Ed 480, 9 S Ct 99.

**punitive damages.** Damages which are allowed as an enhancement of compensatory damages because of the wanton, reckless, malicious, or oppressive character of the acts of which the plaintiff complains. 22 Am J2d Damg § 236. Damages awarded to punish the defendant for a wilful act and to vindicate the rights of a party in substitution for personal revenge, thus safeguarding the public peace. *Winkler v Hartford Acci. & Indem. Co.* 66 NJ Super 22, 168 A2d 418.

**punitive statute.** A statute which creates a forfeiture or imposes a penalty. *Peterson v Ball*, 211 Cal 461, 296 P 291, 74 ALR 187.

**punitory damages.** Same as **punitive damages.**

**pupil.** One in attendance to receive instruction at a private or public school. (Civil law.) A minor; a ward under guardianship.

**pupil assignment laws.** The laws governing the assignment of students to the public schools, particularly in reference to the elimination of race segregation. 15 Am J2d Civ R § 42.

**pupillaris substitutio.** (Civil law.) Pupillary substitution, which consists in a father or paternal grandfather nominating an heir for an impubescent child immediately subject to his paternal power, in the event that such child should die after his father or grandfather, in his impubescence. A testament which one makes for his impubescent child, because his child, while impubescent, cannot testamentate.—Mackeldey's Roman Law § 721.

**pupillarity.** The age of a child's puerility; minority.

**Pupillus pati posse non intelligitur.** A ward or minor is not considered as being able to suffer prejudice.

**pur.** For; during; by.

**pur autre vie.** For the life of another.

See **estate pur autre vie.**

**pur cause de vicinage.** See **common because of vicinage.**

**pur ceo que.** Forasmuch as; inasmuch as.

**purchase.** To acquire title otherwise than by descent. 23 Am J2d Desc & D § 2. To acquire title by the voluntary act of another. For the purposes of recording laws, a purchaser acquiring legal title, or, under some statutes, a person acquiring an equitable title, even a mortgagee. 45 Am J1st Reeds § 147. To take as owner, mortgagee, or pledgee. Uniform Warehouse Receipts Act § 58. Including a taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. UCC § 1-201 (32).

See **buyer; words of purchase.**

**purchase money.** Money paid by the purchaser upon a purchase or in satisfaction of a debt to the seller or vendor created by the purchase. *Austin v Underwood*, 37 Ill 438.

**purchase-money judgment.** A judgment for purchase money due the vendor or seller entered after the conveyance of title to the purchaser. *Coke's Appeal*, 23 Pa 186.

**purchase-money mortgage.** A mortgage executed to secure the purchase money or a part thereof by a purchaser of property, contemporaneously with the acquisition of the title thereto, or afterward, but as a part of the same transaction. 36 Am J1st Mtg § 15.

**purchase-money paper.** A note or draft given the vendor or seller in payment of the purchase price of real or personal property purchased by the maker.

See **purchase-money mortgage.**

**purchase on margin.** See **marginal purchase.**

**purchase option rider.** Same as **guaranteed insurability rider.**

**purchase price.** See **price; purchase money; total contract price.**

**purchaser.** A person who takes by purchase. UCC § 1-201(33).

See **buyer; purchase.**

**purchaser for value.** A purchaser under a contract based upon a valuable consideration. 17 Am J2d Contr § 85.

A person who acquires property in consideration of the complete satisfaction and discharge of an antecedent debt is a purchaser for value, according to the weight of numerical authority. *Noe v Smith*, 67 Okla 211, 169 P 1109.

**purchaser in bad faith.** An inexact terminology for a purchaser who does not qualify as a bona fide purchaser because of notice of defects in title and outstanding equities. *Forbes v First Nat. Bank*, 21 Okla 206, 95 P 785.

**purchaser in good faith.** See **bona fide purchaser.**

**purchaser of note or bill.** Either an indorsee, assignee, or transferee of a bill or note.

**purchaser pendente lite.** See **pendente lite purchaser.**

**purchaser's risk.** See **buyer's risk.**

**purchaser without notice.** See **bona fide purchaser.**

**purchasing agent.** An agent whose duties consist in purchasing supplies and materials needed in the operation of an industrial plant. Not a managing agent within the meaning of a statute concerning

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the service of process upon a foreign corporation. *Anne*: 113 ALR 78.

**pure accident.** An accident involving two or more persons but no negligence or fault on the part of any one of them. 38 Am J1st Negl § 6.

**pure and wholesome water.** Water reasonably clean and free from dirt, discoloration, and odor, and reasonably free from bacteria and coli, or any other infection and contamination rendering the water unfit for domestic use and unsafe and dangerous to individuals. 56 Am J1st Watwk § 75.

**pure bill of discovery.** A bill wherein the only relief sought is a discovery, no demand being made for the recovery of damages or the accomplishment of anything other than a disclosure by the defendant. 23 Am J2d Dep § 141.

**pure bill of review.** A bill of review in equity to obtain a review and reversal of the decree for error apparent, that is, error or defect on the face of the proceeding. 27 Am J2d Eq § 257.

**pure-blooded livestock.** See **purebred livestock.**

**purebred livestock.** Livestock of one breed only, so kept over years and generations by careful selection of sires and dams for mating.

**pure chance.** A happening by the hand of fate alone, without control or direction.

**pure chance doctrine.** The principle followed, particularly in England and Canada that a lottery is characterized by winning or losing entirely by chance; that there is no lottery where merit or skill play any part in determining the distribution to be made. 34 Am J1st Lot § 6.

**pure charity.** An undertaking for a charitable purpose only. The relief of poverty, advancement of education, advancement of religion, promotion of health, the obtaining of good government, and the accomplishment of that which is beneficial to the community in any other respect. 15 Am J2d Char § 57.

**pure democracy.** A form of government under which the laws are made, not by elected representatives of the people, but by the people in assembly.

**pure endowment insurance.** See **endowment insurance.**

**pure food laws.** Statutes intended primarily to protect the public from fraud in the sale of food and to secure the general health. 35 Am J2d Food § 2.

See **Food, Drug, and Cosmetic Act.**

**purely.** Completely; closely; unqualifiedly. *White v Smith*, 189 Pa 222, 42 A 125.

**purely public charity.** See **pure charity.**

**pure obligation.** An obligation with respect to which no condition precedent remains which has not been performed.

**pure plea.** An affirmative plea in equity, consisting entirely of new matter in defense. 27 Am J2d Eq § 204.

**pure tax.** An obligation, which is not a debt, imposed on property or persons alike for the support of the government or other public purpose. *Dressman v Farmers' & Traders' National Bank*, 100 Ky 571, 38 SW 1052.

**pure villeinage.** Same as **purum villenagium.**

**purgation.** Getting rid of the undesirable. Elimination of contents of stomach or bowels. Cleansing.

**purgation by oath.** The ancient practice whereby the defendant cleared himself of a criminal charge by a denial of it under oath or by the aid of compurgators who swore to his innocence. The filing in a contempt proceeding of a verified categorical denial of a charge of criminal contempt, thereby disposing of the case in contempt, but leaving the accused punishable for perjury in the event his oath is false. *Osborne v Purdome (Me)* 244 SW2d 1005, 29 ALR2d 1141, cert den 343 US 953, 96 L Ed 1354, 72 S Ct 1046, reh den 343 US 988, 96 L Ed 1375, 72 S Ct 1072.

**purgatory.** A state of suffering after this life, in which those souls are for a time detained who depart this life, after their deadly sins have been remitted as to the stain and guilt, and as to the everlasting pain that was due to them, but who have, on account of those sins, still some debt of temporal punishment to pay; as also those souls which leave this world guilty only of venial sins.

In purgatory these souls are purified and rendered fit to enter into heaven, where nothing defiled enters. (Catholic Belief, Lambert.) *Harrison v Brophy*, 59 Kan 1, 51 P 883.

**purge by the hot iron.** See **ordeal.**

**purge by water.** See **ordeal.**



**purge of wrong.** An adequate and effective renunciation and repudiation by a person of his prior unconscionable or wrongful conduct. *Dickerson v Murfield*, 173 Or 662, 147 P2d 194. The assumption of responsibility for a tortious act committed by another person.

**purgery.** A room in which hogsheads full of sugar are placed in a standing or upright position for the purpose of being drained of the molasses contained in the sugar. *V. & A. Meyer & Co. v Queen Ins. Co.* 41 La Ann 1000, 6 So 899.

**purging contempt.** To free one's self from guilt of contempt of court.

See **purgation by oath.**

**purging tort.** See **purge of wrong.**

**purging usury.** Removing the taint of usury, as by abandoning the usurious agreement and the execution of a new obligation for the amount of the actual debt, free from the usury, and bearing legal interest. 55 Am J1st Usury § 97.

**purlieu.** Land which was near a royal forest and which had previously formed a part of the forest itself.

**purloin.** To pilfer; to steal; to filch.

**pur moyen.** By means of.

**purpart.** That part of an estate, which, having been held in common, is by partition allotted to anyone of the parties to it. *Seiders v Giles*, 141 Pa 93, 101, 21 A 514.

**purparty.** Same as **purpart.**

**purport.** That which appears on the face of an instrument. *The United States v Turner (US)* 7 Pet 132, 136, 8 L Ed 633, 635. The apparent, but not necessarily the legal, import of the instrument. *Lacy v State*, 33 Okla 161, 242 P 296.

**purport clause.** A clause in an indictment, setting forth the substance of a written instrument, not purporting to give the precise terms. 27 Am J1st Indict § 85.

**purpose.** An aim. A design or plan. An intention.

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**purposely.** Intentionally; designedly. *Fahnestock v State*, 23 Ind 231, 262.

**purpose of legislative bill.** The general intent of the bill, not the details through and by which such intent is manifested and effectuated. *Allied Mut. Ins. Co. v Bell*, 353 Mo 891, 185 SW2d 4, 158 ALR 415.

**purpose of statute.** The object, aim, design, or motive of the statute; the end in view. 50 Am J1st Stat § 303.

**purposes of corporation.** See **corporate purposes.**

**purpresture.** An obstruction of or encroachment on a highway, made without right or proper authorization. 25 Am J1st High § 273. A structure obstructing a navigable water. 56 Am J1st Whar § 10. An encroachment on or appropriation of lands or waters which are common or public. *People ex rel. McCormick v Western Cold Storage Co.* 287 Ill 612, 123 NE 43, 11 ALR 437. Sometimes known as "pourpresture."

**purprisum.** An enclosure; a close.

**purq.** Same as **purquoi.**

**purquoi.** Wherefore; why.

**purse.** A pocket book. The handbag of a woman. Something valuable offered by way of a prize for the winner of a contest. *Stone v Clay* (CA7 Ill) 61 F 889, 890 (horserace). A wager if the person offering it stands a chance of winning it back in competition. 24 Am J1st gaming § 100.

**purser.** An officer of a ship, particularly a ship carrying passengers, in charge of the accounts of the vessel and transactions with passengers. A ship's officer who represents the owners of the vessel as their fiscal agent. *Spinette v Atlas Steamship Co.* (NY) 14 Hun 100, 105. Not a "clerk" within the meaning of a bequest to clerks. Anno: 38 ALR 789, 790.

**purse snatching.** A form of larceny. 32 Am J1st Larc § 44.

**pursuant to.** Acting or done in consequence or in prosecution (of anything); hence, agreeable; conformable; following; according. *Old Colony Trust Co. v Commissioner*, 301 US 379, 81 L Ed 1169, 57 S Ct 813.

**pursue.** To follow for the purpose of overtaking. To cause a person's prosecution for crime; to prosecute. To follow as a profession or occupation.

**pursuer.** The complainant in a suit in the ecclesiastical courts.

The plaintiff is so designated in the law courts of Scotland.

See **pursue.**

**pursuit.** A following after one for the purpose of overtaking him. Engaging in something as a profession, an occupation, or a recreation. *Cook v Massey*, 38 Idaho 264, 220 P 1088, 35 ALR 200, 206.

See **fresh pursuit.**

**pursuit of happiness.** See **life, liberty, and pursuit of happiness.**

**pursuit of principal debtor.** The taking of measures for the collection of a debt from the principal debtor before seeking payment by the guarantor. 24 Am J1st Guar § 108.

**pur tant que.** Because; forasmuch as.

**purum villenagium.** Absolute or pure villeinage, wherein the service was base in its nature and uncertain as to time and quantity. See 2 Bl Comm 62.

**purus.** Pure; clear; absolute.

**purus idiota.** An absolute idiot. See 1 Bl Comm 303.

**purveyance.** An ancient prerogative of the English crown in making purchases of provisions and necessities.

It was regulated by Magna Charta and later abolished altogether. By virtue of it, the crown enjoyed the right of buying up provisions and other necessities for the use of the royal household at an appraised valuation, and in preference to all others, even without the consent of the owner. *Re Barre Water Co.* 62 Vt 27, 20 A 107.

**purveyance and pre-emption.** The royal prerogative often referred to as purveyance. See 1 Bl Comm 287.

**purveyor.** A provider; a royal officer who purchased articles for the king at his own price.

**purview.** The subject matter of a statute in contradistinction to the other parts of it, such as the preamble, the saving, and the proviso. *The San Pedro (US) 2 Wheat 132, 4 L Ed 202.* All that portion of a statute following the preamble—the whole scope of the enactment. *McNeeley v South Penn Oil Co.* 52 W Va 616, 44 SE 508.

**pus.** Suppuration from an infection.

See **puis.**

**push car.** A small vehicle propelled by manpower, frequently used in handling baggage at air and railway terminals.

**put.** An option to sell, particularly corporate stock, securities, or commodities, at a stipulated price, on or before a specific future date or within a specified future period of time, such as 30, 60, or 90 days. An option of the class of future contracts in which one of the parties has a right to insist on compliance with the terms of the contract, or to cancel the contract, at his election. More precisely, the privilege of delivering or not delivering things sold. Anno: 83 ALR 573; 36 ALR2d 1397.

**putative.** Reputed; supposed; assumed; believed.

**putative father.** The man charged as the father of an illegitimate child.

**putative marriage.** A marriage which, although invalid on account of some impediment, is nevertheless contracted in good faith by both or one of the parties. 35 Am J1st Mar § 52.

**put in fear.** Intimidated.

When a robbery is alleged to have been committed by putting in fear, this does not imply any great degree of terror or fright in the victim. It is sufficient if so much force or threatening by word or gesture, be used as might create an apprehension of danger; or induce a man to part with his property without, or against, his consent. See 4 Bl Comm 243.

**put in issue.** To raise an issue by the denial of an allegation or the allegations of one's adversary.

To put an alleged fact or matter in issue is to plead by way of plea or answer in such manner as to show that the said fact or matter is in issue, and, if the statute requires, to verify such plea or answer. *Johnson v Greenen*, 98 Ind App 612, 188 NE 796.

**put in suit.** To bring an action upon; to sue upon; as, to put a promissory note in suit.

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**put in ure.** To put into use or practice.

**put out of court.** The status of the case after a decision which is final for the purpose of appeal, that is, a decision which places it beyond the power of the court, after expiration of the term, to place the parties back in their original condition. 4 Am J2d A & E § 56. Having sustained the direction of a verdict unfavorable to one's case.

**puts.** Options.

See **put.**

**putting witnesses under the rule.** Excluding subpoenaed or proposed witnesses from the courtroom during the examination of a witness. 53 Am J1st Tr § 31.

**put to answer.** Held for trial on a criminal charge.

**put to a right.** Having a mere right to property, without either possession or even the right of possession. 2 Bl Comm 197.

**put upon.** To submit to trial.

**puy.** Same as **puis.**

**puz.** Same as **puis.**

**puzzle.** A difficult problem. A toy which presents a problem, such as a jigsaw picture, the solution of which requires ingenuity. *White v Aronson*, 313 US 16, 82 L Ed 20, 58 S Ct 95.

**puzzle contest.** A contest in the working of a puzzle, a prize being awarded to the winner, the question whether such constitutes a lottery being best determined according to whether or not the prize is won by chance or by skill. 34 Am J1st Lot § 12.

**pyelogram.** An X-ray picture taken with the use of an injected solution necessary to make a picture. *Klein v Yellow Cab Co.* (DC Ohio) 7 FRD 169.

**pykerie.** Same as **pickery.**

**pyramiding.** Building up to a peak. Merging corporations in a complex form with a holding corporation at the top. Controlling prices in a stock or commodity market by a series of operations.

Pyramiding occurs when a producer authorizes several persons to sell the same coal, and they may in turn offer it for sale to other dealers. In consequence the coal competes with itself, thereby resulting in abnormal and destructive competition which depresses the market price for all coals in the market. *Appalachian Coals v United States*, 288 US 344, 77 L Ed 825, 53 S Ct 471.

**pyromania.** An uncontrollable passion or mania for burning buildings. *Smith v Commonwealth*, 62 Ky (1 Duv) 224, 231, overrd on other grounds *Shannahan v Commonwealth*, 71 Ky (8 Bush) 463.

**pyx.** A receptacle in a mint where sample coins are placed for testing.

**pyx-jury.** A jury composed of goldsmiths, formed to test the English coinage.