

**E**

**e.** An abbreviation of "east" in descriptions of land, whether in stating the course of a boundary, e. g. "running e. 80 rods," or designating the fractional part of a section under the Congressional Survey, e. g. "the e. 1 / 2 of the NW quarter of Section 6."

In Latin, a preposition, the equivalent of "ex," meaning from, out of.

**E<sup>2</sup>.** An abbreviation of a fractional part of a section of land of 640 acres under the Congressional Survey, the figure whether 2, 4, 16, or whatever, indicating the fraction of the section designated, as 1 / 2, 1 / 4, 1 / 16, etc. of a numbered section. For example, E<sup>2</sup> NW<sup>4</sup> Sec 10 means 80 acres comprising the east half of the northwest quarter of section 10. *Power v Bowdle*, 3 ND 107, 54 NW 404.

**each.** Every one of the two or more comprising the whole. *Adams Express Co. v Lexington*, 83 Ky 657, 660. Indicating generally, as it appears in a designation of beneficiaries in a will, a gift to individuals rather than to a class. 57 Am J1st Wills § 1265. Significant in the same connection as tending to show intent for distribution per capita. 57 Am J1st Wills § 1296.

**each accident.** See **per accident clause**.

**each party.** Every one of two or more parties. Appearing in a statute giving "each party" a designated number of peremptory challenges to a juror, the term, in a case involving plural parties, means each side, notwithstanding the parties on one side plead separately, at least where their interests are common and their pleadings are substantially identical. 31 Am J Rev ed Jury § 238.

**eadem causa.** See **in eadem causa**.

**Eadem causa diversis rationibus coram iudicibus ecclesiasticis et secularibus ventilatur.** The same cause is argued with different reasons before both the ecclesiastical and the secular judges.

**Eadem est ratio, eadem est lex.** The reason being the same, the law is the same. *Follett v United States Mut. Acci. Asso.* 110 NC 377, 14 SE 923.

**Eadem mens praesumitur regis quae est juris et quae esse debet, praesertim in dubiis.** The king's mind is presumed to be in accord with law and as it should be, especially in doubtful matters.

**eadling.** Same as atheling.

**Ea est accipienda interpretatio, quae vitio caret.** That interpretation is to be accepted which is without fault.

**eagle.** A United States gold coin of the value of ten dollars. Withdrawn from circulation, along with other gold coin, in 1933.

**ea intentione.** With that intention.

**ealdor biscop.** A chief bishop, an archbishop.

**ealehus.** An alehouse.

**e. and o.e.** An abbreviation of "errors and omissions excepted," often noted upon financial statements and accounts.

**Ea quae commendandi causa in venditionibus dicuntur si palam appareant venditorem non obligant.** Those statements which are made in commendation at sales, if they appear openly, do not bind the seller.

**Ea quae dari impossibilia sunt, vel quae in rerum natura non sunt, pro non adjectis habentur.** Those things which it is not possible to give, or which in the nature of things have no existence, are not regarded as included (in the contract).

**Ea quae in curia nostra rite acta sunt debitae executioni demandari debent.** Those things which are regularly done in our court should be committed to a due execution.

**Ea quae raro accidunt, non temere in agendis negotiis computantur.** Those things which rarely happen are not to be taken into account in business transactions without sufficient reason.

**ear.** The organ of hearing. Grains of corn and the cob to which they are affixed by nature. In a mechanical sense, a part projecting from the side of anything. Consolidated Vapor-Stove Co. v Elwood Gas-Stove & Stamping Co. (CC Pa) 63 F 698.

**earl.** An English title of nobility below that of a marquis and above that of a viscount in rank. The custody of the shire is said to have been committed to an earl at the first division of the kingdom into counties, but later, by reason of their attendance on the king and other duties, the labor of the office was transferred to the vice-comes or sheriff, the earl, however, retaining the honor. See 1 Bl Comm 339.

**earldom.** The jurisdiction, seignior, or dignity of an earl.

**earles-penny.** A piece of money given as an earnest to bind a bargain.

**earliest possible convenience.** As a limitation upon a promise to pay, "earliest possible convenience" means payment when the promisor is able to pay, that is, has the means to pay. Halladay v Weeks, 127 Mich 363, 86 NW 799.

**earl marshal.** The eighth great officer of state in England. At one time the earl marshal presided over the court of chivalry when it was held as a military court, or court of honor and when this court was held as a criminal court, it was presided over by the lord high constable jointly with the earl marshal. See 4 Bl Comm 268.

**earl palatine.** Same as **count palatine.**

**earmark.** Any mark or means by which a thing can be identified or distinguished from other things of the same sort. A slit made in one or both ears of cattle, sheep, or hogs, for their identification.

**earmark doctrine.** The doctrine, now obsolete, that where a trustee or other fiduciary dies, the owner

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of money which has been entrusted to the decedent shares as a general creditor in the assets of the decedent's estate, unless the money so held had an "earmark" and was thus distinguishable from the mass of the decedent's own property. Such doctrine appears to have given way to the modern principle that the owner can recover the money or its equivalent whenever it can be traced to the estate, no matter what form it may take. First Nat. Bank v Hummell, 14 Colo 259, 23 P 986.

**earn.** To gain, obtain, or acquire as the reward of labor or performance of some service. Lewis' Estate, 156 Pa St 337, 340.

**earned premium.** See **premium earned.**

**earned surplus.** The surplus of a corporation derived from undistributed profits, not from a reduction of capital stock. *Willcutts v Milton Dairy Co.* 275 US 215, 72 L Ed 247.

**earnest.** Another term for **earnest money**.

**earnest money.** A downpayment of part of the purchase price made to bind the bargain. A part payment of the purchase price, within the meaning of the statute of frauds. *Goddard v Monitor Mut. Fire Ins. Co.* 108 Mass 54; 49 Am J1st Stat of F § 265. A downpayment or deposit required at an auction sale. 7 Am J2d Auct § 45.

**earning capacity.** The power of a person or a business enterprise to earn money or show a profit; to earn money or show a profit in a particular sum. The power to create property from earnings. *Local Loan Co. v Hunt*, 292 US 234, 78 L Ed 1230, 54 S Ct 695. An element considered in measuring damages recoverable for a personal injury. 22 Am J2d Damg § 92. The best test of the value of a going commercial enterprise; a test to be employed in the valuation of a corporation for the purpose of reorganization under the Chapter X of the Bankruptcy Act. For such purpose, "earning capacity" means normal capacity rather than an abnormal capacity consequent upon business conditions which cannot reasonably be expected to continue. 9 Am J2d Bankr § 1591.

A person may have an earning capacity, even though not employed at any labor or occupation at the particular time in question. 22 Am J2d Damg § 89.

**earning power.** Same as **earning capacity**.

**earnings.** In a pristine sense, the gains of a person from his services or labor, without the aid of capital. 22 Am J2d Damg § 89; 31 Am J2d Exemp § 39. In the modern sense and development of the term, it includes profits from the employment of capital, as illustrated by the earnings of a corporation. 19 Am J2d Corp § 823. The term is equivalent to "income" where used in the limitation of a life estate and a remainder in connection with a provision for the disposition of extraordinary dividends and distributions as between life tenant and remainderman. 33 Am J1st Life Est § 378.

See **future earnings; net earnings; personal earnings; surplus earnings**.

**earnings and profits.** Wages of labor and income from business. 27 Am J1st H & W § 466.

See **earnings; profits**.

**earth.** The planet on which we live; the world. Soil of all kinds, including gravel, clay, loam, and the like, in distinction from the firm rock. *Dickinson v Poughkeepsie*, 75 NY 65, 76.

**earthquake.** A movement of the crust of the earth due to faults in the structure or rock or pressure originating in the interior of the earth; an act of God. 1 Am J2d Act of God § 6; a casualty for the purpose of deducting losses for income tax purposes. Anno: 41 ALR2d 711-713.

**ear-witness.** A witness who gives hearsay testimony.

**ease.** Comfort, contentment, enjoyment, happiness, pleasure and satisfaction. *National Surety Co. v Jarett*, 95 W Va 420, 121 SE 291

**easement.** A servitude imposed as a burden on land. The right which one person has to use the land of another for a specific purpose not inconsistent with a general property in the owner and not including the right to participate in the profits of the soil charged with it. Precisely, a liberty, privilege, or advantage in land without profit, existing distinct from the ownership of the soil. 25 Am J2d Ease § 1.

**easement appendant.** Same as **easement appurtenant**.

See **affirmative easement; apparent easement; continuous easement; discontinuous easement; dominant tenement; license; lost grant; necessary easement; negative easement; praedial servitude; praedium dominans; praedium serviens; prescriptive easement; public easement; quasi easement; secondary easement; servient tenement; urban easements; way of necessity.**

**easement appurtenant.** An easement of the conventional type, one that is appurtenant to a dominant tenement. An incorporeal right, a servitude, attached to, and belonging with, some greater or superior right-something annexed to another more worthy thing with which it passes as an incident, being incapable of existence separate and apart from the particular land to which it is annexed and to which it bears a relationship connected with the use of the dominant estate. 25 Am J2d Ease § 11.

**easement by custom.** A right acquired by custom, in the nature of an easement but lacking a dominant tenement, for example, a right of way by custom in favor of the inhabitants of a particular locality. Such easements have received little, if any, recognition in this country. 25 Am J2d Ease § 19.

**easement by implication.** See **implied easement**.

**easement by implied grant.** Same as **implied easement**.

**easement by natural right.** See **easement ex jure naturale**.

**easement by prescription.** See **prescriptive easement**.

**easement ex jure naturale.** Not a true easement, since not created by the act of man. A right, such as subjacent and lateral support or the right of an owner of land to have surface water flow freely from his land to that of his neighbor, arising by law and existing as a so-called natural right. 25 Am J2d Ease § 6.

**easement for years.** An easement created to endure for a specified period of time. 25 Am J2d Ease § 99.

**easement in gross.** An easement not supported by a dominant estate, consisting of a mere personal interest in or right to use the land of another. 25 Am J2d Ease § 12. A right, usufructuary in its nature and character, which entitles the owner to the use of the land for the profits which may be derived from its rents, or from quarrying and digging it for ores, or from harvesting its fruits, crops, and vintages, etc. *Smith v Cooley*, 65 Cal 46, 48, 2 P 880. A right of way which is personal to the grantee and

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not appurtenant to other premises. *Wagner v Hanna*, 38 Cal 111, 116.

**easement of highway.** See **highway easement**.

**easement of drip.** The servitude of the dripping of water from the eaves of a building on to the land of the adjoining owner. 1 Am J2d Adj L § 31.

**easement of natural support.** The easement or right which a landowner has to the lateral and subjacent support of his land in its natural condition. *Booth v Rome, Watertown & Ogdensburg Terminal R. Co.* 140 NY 267, 35 NE 592. An easement ex jure naturale rather than a true easement.

See **easement ex jure naturale; lateral support; subjacent support**.

**easements of light, air, and view.** Express or implied easements for the enjoyment of light, air, and view without obstruction by structures on the adjoining premises. 1 Am J2d Adj L §§ 89 et seq.

See **ancient lights**.

**east.** A direction; the direction of sunrise; a compass point, the point at which the sun rises at the equinox. A compass point which, appearing in a deed, means due east, in the absence of qualifying words in the instrument. 23 Am J2d Deeds § 248.

**Easter.** An annual Christian festival in commemoration of the resurrection of Christ. The date of the festival, as fixed by the first Council of Christian Churches in Nicaea in 325 A. D., is the first Sunday after the first full moon that occurs on or after March 21. For table of Easter dates for the 20th century, see The World Almanac, index reference "Easter Sunday."

**Easter dues.** Same as **Easter offerings**.

**easterly.** Due east, in the absence of qualifying words. 23 Am J2d Deeds § 248. When other words are used for the purpose of qualifying its meaning, it means precisely what the qualifying words make it mean. Fratt v Woodward, 32 Cal 213, 227.

See **east**.

**eastern time.** See **standard time**.

**Easter offerings.** Dues which were paid to the clergy at Easter.

**Easter term.** An English term of court which begins on April fifteenth and ends on the eighth day of May.

**East Greenwich.** A royal manor in Kent.

**Eastman formula.** A formula, said to have been suggested to Congress by Commissioner Eastman of the Interstate Commerce Commission, that fixed charges, under a plan for the reorganization of a railroad, should not exceed eighty per cent of the net available for interest in the three worst years of the last ten. Denver & R. G. W. R. Co. (DC Colo) 38 F Supp 106.

**east one-half.** See **fraction of section**.

**Ea sunt animadvertenda peccata maxime, quae difficillime praecaventur.** Those offenses should be most severely punished which are most difficult to prevent. See 3 Bl Comm 16.

**easy coal.** A technical term in coal-mining, designating coal which is to be handled with care, since its value is greatly impaired by breakage. Chesapeake & O. Ry. Co. v Kaltenbach (CA4 Va) 124 F2d 375.

**easy-divorce state.** A state having a number of grounds of divorce, a short residence requirement, and judges who are not inclined to doubt the plaintiff's testimony. Elwert v Elwert, 196 Or 256, 248 P2d 847, 36 ALR2d 741.

**easy girl.** Slang for a female who is easily seduced.

**easy virtue.** Willingness to engage in immoral practices, particularly on the part of a girl.

**Eat inde sine die.** Let him go hence without day,—formal words used in a judgment of acquittal on a charge of crime.

**eau.** (French.) Water.

**eaves.** The edges of the roof of a building, projecting beyond the face of the walls. *Proprietors of Center St. Church v Machias Hotel Co.* 51 Me 413.

**eaves-drip.** Water which drips from the eaves of a house.

See **easement of drip.**

**eavesdropper.** A person who listens under the windows or eaves of a house to hear the discourse therein and thereupon proclaim slanderous and mischievous tales. Such persons were regarded as nuisances at common law, and were required, in the discretion of the court, to find sureties for their good behavior. *Pavesich v New England Life Ins. Co.* 122 Ga 190, 50 SE 624. It is the habitual commission of the acts stated above which seems to constitute the gist of the common-law offense of eavesdropping, and the proof necessary for conviction must be such as will permit the jury to infer the habit of eavesdropping. *State v Davis*, 139 NC 547, 51 SE 897.

**eavesdropping.** See **eavesdropper.**

**ebb.** The falling or going out of the tides; the receding of the tide, moving back to the sea.

**ebba.** Same as ebb.

**ebb and flow.** The coming in and the falling back of the tide. A rejected test of navigability of water. 56 Am J1st Wat § 178.

**ebermord.** Same as **abermurder.**

**E bonds.** A convenient term for referring to series E of United States Savings Bonds, the distinguishing characteristic of which is an increasing redemption value in lieu of an expressly stated rate of interest.

**Ebor.** Latin for **York.**

**E.b S.** Abbreviation for east by south.

**eccentricity.** Deviation from the ordinary. Oddity in a person's conduct or manners, often so pronounced as to attract attention. Even glaring eccentricity is not the equivalent of insanity. 29 Am J Rev ed Ins Per § 7.

**eccl.** An abbreviation of ecclesiastical.

**eccles.** An abbreviation of ecclesiastical.

**ecclesia.** A church; a place of divine worship; a parsonage.

**ecclesia commendata.** Also called "commends,"-a church living commended by the crown to the care of a clerk, to hold until a proper pastor is provided for it. This might be temporary for from one to three years; or perpetual: being a kind of dispensation to avoid the vacancy of the living, and is called a commenda retinere. There was also a "commenda recipere," which was to take a benefice de novo, in the bish-

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op's own gift, or the gift of some other patron consenting to it. See 1 Bl Comm 393.

**Ecclesia decimas non solvit ecclesiae.** The church pays no tithes to the church. See 2 Bl Comm 31.

**Ecclesia ecclesiae decimas solvere non debet.** A church ought not to pay tithes to a church.

**Ecclesiae de feudo domini regis non possunt in perpetuum dari, absque assensu et consensione ipsius.** Parsonages partaking of the king's fee cannot be given in perpetuity without his approval and consent. See 2 Bl Comm 269, note.

**Ecclesia est domus mansionalis omnipotentis Dei.** The church is the mansion house of God Almighty.

**Ecclesia est infra aetatem et in custodia domini regis, qui tenetur jura et haereditates ejusdem manu tenere et defendere.** The church is under age and in the custody of the king, who is bound to support and defend her rights and inheritances.

**Ecclesia fungitur vice minoris; meliorem conditionem suam facere potest, deteriolem nequaquam.** The church occupies the position of a minor; she can make her own condition better, but never worse.

**Ecclesia magis favendum est quam personae.** The church is more to be favored than the individual.

**Ecclesia non moritur.** The church does not die.

**ecclesiastic.** Ecclesiastical; a churchman.

**ecclesiastical.** Religious; pertaining to the church.

**ecclesiastical commission.** A court which was instituted by Queen Elizabeth and which was clothed with great powers in religious matters.

**ecclesiastical corporations.** Corporations, either sole or aggregate the members composing which are all spiritual persons, such as bishops, certain deans, and prebendaries, all archdeacons, parsons, and vicars, all of which are corporations sole, and such corporations aggregate as deans and chapters, prior and convent (formerly), abbots and monks, and the like. See 1 Bl Comm 470; 18 Am J2d Corp § 7.

See **religious corporations; religious societies.**

**ecclesiastical council.** Another name for a church court or tribunal taking cognizance of spiritual matters and internal controversies.

See **ecclesiastical courts.**

**ecclesiastical courts.** In American usage, church tribunals taking cognizance of spiritual matters and internal controversies. English courts presided over by members of the clergy, which, in the course of time, have exercised jurisdiction over spiritual matters and some matters deemed temporal today. The ecclesiastical court was not made a part of the judicial system of the United States or of the several states. *Edgerton v Edgerton*, 12 Mont 122, 29 P 966.

**ecclesiastical law.** That system of jurisprudence which prevails in the ecclesiastical courts of England. There is a conflict of opinion as to whether the ecclesiastical law of England has been adopted as part of the common law of American states. 15 Am J2d Comm L § 10.

**ecclesiastical notary.** A secretary or clerk employed in the ecclesiastical courts and councils.

**ecclesiastical offense.** See **heresy.**

**ecclesiastical officer.** A person in the hierarchy of control in the Church. Known as a "dignitary" if of a rank superior to that of a priest or canon.

**ecclesiastical tribunal.** See **church tribunal.**

**ecclesiastical waste.** Waste occurring to church property-chancel, parsonage, or other buildings thereunto belonging-of a voluntary or permissive character. 3 Bl Comm 91.

**eccliaisticum.** See **forum ecclesiasticum.**

**eclampsia.** A toxic condition of the body, particularly a toxic condition during pregnancy. Walker v Distler, 78 Idaho 38, 296 P2d 452, 454.

**eclectic.** Gathered from various sources by choosing; not bound to a conventional system.

**eclectic practice of medicine.** An unusual and perhaps eccentric system of treating human maladies; selecting methods of treatment from various sources of learning rather than following one school. Bradbury v Bardin, 34 Conn 453.

**economic adulteration.** The substitution of less expensive ingredients, or the diminution of the proportion of more expensive ingredients, so as to make the product, although not in itself deleterious, inferior to that which the consumer expects to receive when purchasing the product. Anno: 56 ALR2d 1 132. The use of foreign and artificial ingredients as coloring matter in food to deceive or defraud the consuming public. 22 Am J1st Food § 3.

**economic burden.** Literally, any expense, e. g. supporting a mother-in-law. A speculative abstraction in taxation, signifying the intangible, unascertainable result borne by everybody when a tax is imposed on anybody, the theory being that tax burdens are passed on to be borne by the ultimate consumer. Cudahy Packing Co. v United States (DC Ill) 37 F Supp 563.

**economic compulsion.** See **business compulsion.**

**economic depression.** An unhappy state in commerce and industry, carried over to the entire populace, resulting from decreasing business, falling prices, the closing down of factories, wide-spread unemployment, and increasing numbers of people subsisting on public welfare.

See **Great Depression.**

**economic pressure.** The force of circumstances in the field of economics that controls the course taken in a business or industry. The condition which forces one to sell on a low market or purchase on a high market.

See **business compulsion; economic depression.**

**economics.** A study in the abstract of the production and distribution of wealth and the problems related

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thereto, such as those of taxation, finance, labor, etc.

**economic waste.** An overproduction of oil and gas, relief against which is obtained by proration of production. 24 Am J1st Gas & O § 150.

**economizer.** Something working in the interest of economy. An attachment to a steam boiler. 29A Am J Rev ed Ins § 1365.

**e contra.** On the contrary; on the other hand.

**e converso.** Conversely; turned around.

**écrit.** See **droit écrit.**

**ecumenical.** Universal; pertaining to the Christian church in its entirety; disregarding denominations in order to view the Church as a whole. Belonging to the whole of the Christian church.

**ed.** Abbreviation of edition.

**edge lease.** An oil and gas lease located on the edge of an oil bearing structure. *Carter Oil Co. v Mitchell* (CA10) Okla 100 F2d 945.

**edict.** A command or prohibition promulgated by a sovereign and having the effect of law.

**Edict of Theodoric.** See **Edictum Theodorici.**

**edictum.** Same as **edict.**

**edictum perpetuum.** A perpetual edict.

**Edictum Theodorici.** The Edict of Theodoric,—a code of laws compiled in the sixth century, A. D., under the Roman Emperor Theodoric.

**edile.** Same as **aedile.**

**edition.** The total of copies of a book, magazine, or newspaper printed and published at one time or during a period of time, e. g. the second edition of *American Jurisprudence*, cited Am J2d.

**editus.** Issued; promulgated.

**Edmunds Anti-polygamy Law.** A federal statute of 1892 which punished bigamy and also the act of cohabitation with more than one woman at the same time. 10 Am J2d Blg § 5.

**Edmundus autem latusferreum, rex naturalis de stirpe regum, genuit Edwardum et Edwardus genuit Edgarum, cui de jure debebatur regnum Anglorum.** But Edmund Ironside, natural king from the race of kings, begat Edward and Edward begat Edgar, to whom the kingdom of England belonged of right. See 1 Bl Comm 199.

**educate.** To lead forth, to train, to develop physically and mentally. *McNair v School Dist.* 87 Mont 423, 288 P 188, 69 ALR 866.

See **education.**

**education.** The cultivation of the mind, the improvement of moral and religious natures, and the development of physical faculties. *German Gymnastic Asso. v Louisville*, 117 Ky 958, 80 SW 287.

Herbert Spencer said, "to prepare us for complete living is the function which education has to discharge." *McNair v School Dist.* 87 Mont 423, 288 P 188, 69 ALR 866.

**educational appliance.** Something necessary or useful to enable the teacher to teach the school children, such as a blackboard, map, or dictionary, but not an ordinary school book. *Honaker v Board of Education*, 42 W Va 170, 24 SE 544.

**educational corporation.** A corporation not for profit but for an educational purpose, particularly the establishment and maintenance of a school, college, or university. Public or private according to its foundation; founded by private individuals or supported by private funds or privately endowed, it is a private corporation. Founded and supported by the state or a municipal subdivision thereof, it is a public corporation. See 15 Am J2d Colleges § 3.

**educational institution.** An institution for the teaching and improvement of its students or pupils; a school, seminary, college, or university. Anno: 95 ALR 63. An institution giving a course of instruction for the cultivation of the mind, the inculcation of a clearer sense of moral and spiritual values, or the obtaining of a better physical development. *German Gymnastic Asso. v Louisville*, 117 Ky 958, 80 SW 201. Art galleries, museums, public libraries, even labor union buildings have at times been held to be educational institutions. 51 Am J1st Tax § 620.

See **general educational institution.**

**educational purpose.** Broadly, the establishment and maintenance of any kind of educational institution, but sometimes acquiring a more restricted meaning from the context in which it appears. In the ordinary and commonly accepted sense, the term does not include a general hospital which has, as an incident to its main purpose and usefulness an educational feature. *Cedars of Lebanon Hospital v Los Angeles County*, 35 Cal 2d 729, 221 P2d 31, 15 ALR2d 1045. While a public library is in one sense an educational agency, it is not an educational purpose within the meaning of a constitutional provision that no sum shall be raised by taxation for education other than in common schools, etc. *Ramsey v Shelbyville*, 119 Ky 180, 83 SW 116.

See **educational institution.**

**education expense.** A deduction in an income tax return where required to retain salary, status or employment.

**Edward I.** Edward the First, king of England from November 20th, 1272, to July 7th, 1307.

**Edward II.** Edward the Second, king of England from July 8th, 1307, to January 25th, 1327.

**Edward III.** Edward the Third, king of England from January 25th, 1327, to June 21st, 1377.

**Edward IV.** Edward the Fourth, king of England from May 4th, 1461, to April 9th, 1483.

**Edward V.** Edward the Fifth, king of England from April 9th, 1483, to June 26th, 1483.

**Edward VI.** Edward the Sixth, king of England from January 28th, 1547, to July 6th, 1553.

**Edward VII.** Edward the Seventh, king of England from January 22nd, 1901, to May 7th, 1910.

**Edward VIII.** Edward the Eighth, king of England from Jan. 20, 1936, to Dec. 11 of the same year, when he abdicated, giving up the throne, as he said, because, as king, he could not marry "the woman I love," the divorced Mrs. Wallis Warfield of Baltimore, Maryland, better known in the press of the United States as Mrs. Simpson.

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**Edward the Confessor.** King of England from 1043 to 1066. He was so called because of his reputation for piety.

**eé.** To be.

**e. e.** An abbreviation of the words "errors excepted," frequently used in accounts.

See **e. and o.e.**

**eeg.** Abbreviation for electroencephalogram.

**effect.** Verb: To accomplish. Noun: An impression. A belonging, especially one of a personal nature.

See **effects; in effect.**

**effecting a loan.** Arrangement of terms and completion of a loan of money; to be distinguished from the renewal of a loan. *State v Love*, 170 Miss 666, 150 So 196, 90 ALR 506.

**effective.** In force; in effect.

**effective absence.** The absence of an officer upon an occasion which demands the immediate exercise of his powers. *State v Lahiff*, 146 Wis 490, 131 NW 824; Anno: 98 ALR 1149.

**effective blockade.** A blockade so effective as to make it dangerous in fact for vessels to attempt to enter the blockaded port; the question of effectiveness is not controlled by the number of the blockading force. One modern cruiser may suffice. 56 Am J1st War § 173.

**effective date.** The date when a code of laws, a constitution, or single statute or constitutional amendment becomes binding as law. Anno: 132 ALR 1060.

A bill introduced in the legislature is ordinarily regarded as becoming a law upon its enactment, but the time as of which its provisions become operative may be earlier by application of a legal fiction, or later by the application of an express statutory or constitutional provision. 56 Am J1st Stat § 502.

**effective height.** The height of a mill dam at which, the dam, being in good condition, will flow land, unaffected by changes in seasons or occasional leakage. *Carr v Piscataquis Woolen Co.* 110 Me 184, 85 A 497.

**effective money.** Coin.

**effective possession.** Otherwise known as virtual possession, being an actual occupancy of part of a tract under color of title, sufficient where continued for the statutory period to support a claim of title to the whole tract as acquired by adverse possession. Sometimes called "constructive possession," but to be distinguished from the conventional constructive possession which follows the title where the owner of the title is not in actual possession and there is no adverse possession. *Wheeler v Clark*, 114 Tenn 117.

**effects.** One's belongings, especially things of a personal nature. Personal property. 57 Am J1st Wills § 1344.

In the context of a statute such as one defining the offense of false pretenses, the term may include real as well as personal property. *State v Newell*, 1 Mo 248. As the word appears in a treaty respecting inheritance rights of aliens, the term may be sufficiently broad, in the light of the context, to include real estate. 3 Am J2d Aliens § 33. Construed in the light of the entire context of a testamentary gift, the term may include both real and personal property. 57 Am J1st Wills § 1346.

See **goods and effects.**

**Effectus punitur licet non sequatur effectus.** The act may be punished that the consequence may not follow.

**Effectus sequitur causam.** The effect follows the cause.

**effets.** (French.) Effects.

The word "effets" when used in a will, has the same meaning as the English word "effects," and this depends largely upon the context. In some cases the word has been properly held to cover the whole personal estate of the testator. In other cases it has been limited by the accompanying words. *Ennis v Smith* (US) 14 How 400, 421, 14 L Ed 472, 482.

**efficient.** Producing outward effects; of a nature to produce a result; active; causative; acting or able to act with due effect; adequate in performance; bringing to bear the requisite knowledge, skill, and industry; capable; competent. *Thayer v Denver & R. G. R. Co.* 25 NM 559, 185 P 542.

**efficient cause.** The primary responsible cause of a legal liability, even though, being first of a chain of events leading to the infliction of injury, it is most remote in point of time of any event preceding the injury and connected therewith. *Stacy v Williams*, 253 Ky 353, 60 SW2d 697. The proximate cause. 38 Am J1st Negl § 50. The cause that necessarily sets the other causes in operation; the act or omission which directly brings about the happening complained of, and in the absence of which the happening complained of would not have occurred. *White v Ellison Realty Corp.* 5 NJ 228, 74 A2d 401, 19 ALR2d 264.

**efficient intervening cause.** A cause intervening the negligence of the defendant and the occurrence of injury to the plaintiff, without which the injury would not have occurred. 38 Am J1st Negl § 68. A new and independent force, which breaks the causal connection between the original wrong and the injury, and itself becomes the direct and immediate—that is, the proximate-cause of an injury. *Pullman's Palace Car Co. v Laack*, 143 Ill 242, 32 NE 285; *Ney v Yellow Cab Co.* 2 Ill 2d 74, 117 NE2d 74, 51 ALR2d 624; *Hall v Coble Dairies*, 234 NC 206, 67 SE2d 63, 29 ALR2d 682.

**effigy.** A stuffed figure made to represent some person. A form of libel where exposing the subject to ridicule. 33 Am J1st L & S § 55.

**efflux.** A flowing.

**efflux of time.** The lapse of time.

**efforce.** To force; to effect an entry by force.

**efforcialiter.** Forcibly.

**effraction.** A breaking effected by force.

**effractor.** A housebreaker; a burglar.

**effractores.** Plural of **effractor**.

**effranchise.** Same as **enfranchise**.

**effray.** Same as **affray**.

**effusio sanguinis.** The shedding of blood; bloodshed.

**e. g.** An abbreviation of "exempli gratia," meaning for or by way of example.

**egalitarian.** A person who advocates equality of political and social rights between all men.

**equality.** Equality.

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**ejecter.** To eject.

**eglise.** Same as **eglise.**

**egidos.** Same as **exidos.**

**eglise.** A church.

**ego.** The self. Colloquial term for conceit. (Latin.) The pronoun I.  
See **alter ego.**

**ego, talis.** I, such a one.

**egrediens et exeuns.** Going forth and issuing.

**egreditur personam.** It issues out of his person; that is, he is the author of it. *Scott v Shepherd*, 2 William Blackstone (Eng) 892.

**egress.** A means of exit.

**egressus.** See **ingressus et egressus.**

**eia.** An island.

**Eighteenth Amendment.** The Eighteenth Amendment to the Constitution of the United States, since repealed by the Twenty-First Amendment, established national prohibition of the traffic in intoxicating liquors.

**eight-hour law.** A term of dual meaning. A statute which restricts absolutely the length of a day's labor to eight hours; a statute which provides that eight hours shall be a lawful day's work. 31 Am J Rev ed Lab § 780. The federal statute fixing an eight hour day for the purposes of compensation of railroad employees, with certain exceptions. 31 Am J Rev ed Lab § 799.

**eighty per cent credit.** A credit provided against federal estate tax for estate, inheritance, or succession taxes paid a state. 28 Am J Rev ed Inher T § 426.

**eigne.** The eldest.

**eignesse.** The share of the eldest son. Same as **esnecy.**

**Ei incumbit probatio qui dicit, non qui negat.** The burden of proof is upon him who alleges, not upon him who denies. *Patterson v Gaines* (US) 6 How 550, 596, 12 L Ed 553, 572.

**Ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum, negantis probatio nulla sit.** The proof is incumbent upon him who asserts, not on him who denies; since in the nature of things there can be no proof of a negative. See 3 Bl Comm 366.

**eik.** An addition.

**ei legitur in haec verba.** See **et ei legitur in haec verba.**

**einecia.** Same as **einetia.**

**einetia.** The share of the eldest son. Same as **esnecy.**

**Ei nihil turpe, cui nihil satis.** Nothing is base to a person to whom nothing is sufficient.

**eins ceo que.** Inasmuch as.

**eirant.** Errant; wandering.

**eire.** Same as **eyre.**

**Eire.** The Republic of Ireland.

**Eisdem modis dissolvitur obligatio quae nascitur ex contractu, vel quasi, quibus contrahitur.** An obligation which arises in contract or quasi contract is dissolved in the same manner in which it is contracted.

**eisna.** The eldest.

**eisnetia.** The share of the eldest son. Same as **einetia.**

**either.** Preferably, one or the other of two. Permissibly, one or another of several. Never, one of many. *Messer v Jones*, 88 Me 349, 356.

**either extremity.** Any one of the four extremities of the body, that is, of the hands and feet. *Brotherhood of Locomotive Firemen & Engineers v Aday*, 97 Ark 425, 134 SW 928.

**either or survivor.** A term used in leasing a safe deposit box; a joint tenancy with right of survivorship is not necessarily created by the use of such term. 10 Am J2d Banks § 474.

**eject.** To turn out; to expel.

**ejecta.** Refuse matter; offal.

**ejection.** Compelling a person to leave a place, whether by force administered to his person or by order or command to leave, as where the conductor of a passenger train explicitly orders a passenger to leave the train. 14 Am J2d Car § 1092. An ouster or turning out of a person in possession of land. See 3 Bl Comm 198.

**ejection and intrusion.** An action to recover real property and also for damages sustained, by a plaintiff who was forcibly dispossessed.

**ejectione custodiae.** See **de ejectione custodiae.**

**ejectione firmæ.** A writ or action of trespass in ejectment which lay when lands or tenements had been let for a term of years, and afterwards the lessor, reversioner, remainderman, or a stranger, ejected or ousted the lessee of his term. See 3 Bl Comm 199.

**ejectment.** An action which is purely possessory; a form of action in which the right of possession to corporeal hereditaments may be tried and possession obtained. *Kingsnorth v Baker*, 213 Mich 294, 182 NW 108. At common law a purely possessory action; even as modified by statute, and though based upon title, it is essentially of that nature. 25 Am J2d Eject § 1.

See **equitable ejectment; writ of ejectment.**

**ejector.** The person or thing by which a person or thing is ejected.

See **casual ejector.**

**ejectum.** Wreckage which has been cast upon the shore by the sea.

**ejectoria.** (Spanish.) An action against the owner of a ship for an indebtedness incurred by the master of the ship.

**ejettement.** Same as **ejectment.**

**ejettement de garde.** Ejectment of ward.

**ejidos.** (Spanish.) Commons. Lands used in common by the inhabitants of a place for pasture, wood, threshing-ground, etc.; particular

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names are assigned to each, according to its particular use. *Hart v Burnett*, 15 Cal 530, 554.

**ejurare.** To abjure; to renounce by oath; to resign.

**ejusdem generis.** Of the same kind or class. The rule of construction that where general words are used in a contract after specific terms, they are to be confined to things of the same kind or class as the things previously specified. 17 Am J2d Contr § 270. The principle applicable in the construction of wills that where certain things are enumerated and a more general description is coupled with the enumeration, the general expressions are understood to cover only things of alike kind with those enumerated. 57 Am J1st Wills § 1130. The rule of statutory construction that where general words follow a designation of particular subjects or classes or persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation, and to include only things or persons of the same kind, class or nature as those specifically enumerated, unless there is a clear manifestation of a contrary purpose. 50 Am J1st Stat § 249.

The rules as stated above are not to be applied by rote against the obvious intent of the contracting parties, the testator, or, in the case of a statute, the legislature. If upon consideration of the whole subject matter of the contract or the law upon the subject in the case of a statute and the purposes sought to be effected, it is apparent that the intention was that the general words should go beyond the class specifically designated, the rule does not apply. Moreover, if the particular words exhaust the class, then the general words must have a meaning beyond the class, or be discarded altogether. *Kansas City Southern Railway Co. v Wallace*, 38 Okla 233, 132 P 908.

**ejusdem negotii.** Of the same transaction.

**Ejus est interpretari cujus est condere.** It is for him who writes or composes anything to give it interpretation.

**Ejus est nolle, qui potest velle.** He who can consent can refuse.

**Ejus est non nolle qui potest velle.** He who can consent should not be noncommittal.

**Ejus est periculum cujus est dominium aut commodum.** He should have the hazard who has the ownership or profit of a thing.

**Ejus nulla culpa est cui parere necesse sit.** No blame attaches to a person who is compelled to obey.

**ekg.** Abbreviation for **electrocardiogram**.

**elaborare.** To acquire by labor or effort.

**elapse.** To pass or slip by; to expire as a period of time; to intervene points of time. *Logsdon v Logsdon*, 109 Ill App 194.

**elder brethren.** A name which is applied to the masters of Trinity House, an official board having charge of English buoys and lighthouses.

**eldest.** Oldest; firstborn.

**elect.** Verb: To make a choice. To select a person for office by a majority or a plurality of votes. *State ex rel. Cook v Doss*, 102 W Va 162, 134 SE 749. Noun: A person elected to public office but awaiting inauguration or installation.

See **appoint; election**.

**Electa una via, non datur recursus ad alteram.** Having chosen one course, he is not allowed to have recourse to another.

**elected.** Chosen. In the most ordinary significance, chosen by vote, usually by popular vote, but applicable also to a choice by a restricted vote. *Clarke v Irwin*, 5 Nev 111, 121.

**elected domicil.** The domicil of a party or parties to a contract as fixed by the contract for the purposes of the contract. *Woodworth v Bank of America (NY)* 19 Johns 391.

**Electio est creditoris.** The creditor has his election.

**Electio est debitoris.** The debtor has his election.

**Electio est intima (interna), libera, et spontanea separatio unius rei ab alia, sine compulsione, consistens in animo et voluntate.** Election is the internal, free, and spontaneous separation of one thing from another, without compulsion, and consists of intention and will.

**election.** In the most common usage, the expression of a choice by the voters of a body politic, or the means by which a choice is made by the electors. *State ex rel. La Follette v Kohler*, 200 Wis 518, 228 NW 895, 69 ALR 348. Precisely, a choosing or selection, by those having a right to participate, of persons to fill public offices or of public measures which shall be adopted or rejected. 25 Am J2d Elect § 1. The choosing of a public officer by an organized body, such as the legislature of a state. *Speed & Worthington v Crawford*, 60 Ky (3 Met) 207, 211. The designation of corporate directors by the vote of the stockholders and the designation of corporate officers by the vote of the directors. 19 Am J2d Corp §§ 1081, 1082. In an abstract sense, a choice between two or more substantive rights, either one or any one of which may be asserted at the will of the person making the choice, which are so inconsistent that a choice once made is binding upon beyond recall. *Wilhorn Builders v Cortaro Management Co.* 81 Ariz 381, 307 P2d 94, supp op 82 Ariz 48, 308 P2d 251. The choice which a person must make

between the acceptance of a benefit under an instrument, and the retention of some property already his own, which the same instrument purports to dispose of to another. *McDermid v Bourhill* 101 Or 305, 199 P 610, 22 ALR 428, 433. The right or privilege, accorded by statute in some states to the eldest heir, if of age, of taking the whole estate of the deceased ancestor, upon paying to the others their just proportions of the value in money.

If the eldest refuse, the next eldest succeeds to the right of election until all the adults have enjoyed the opportunity of election. If all refuse, the property is sold and the proceeds divided. *Catlin v Catlin*, 60 Md 573, 575.

The doctrine of election is applicable to a taxpayer having a choice of two legal methods of computing his tax and having chosen one he is not permitted to change his mind to the detriment of

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the revenue. *Ross v Commissioner* (CA 1) 169 F2d 483, 7 ALR2d 719.

See **corrupt practices acts; cumulative voting; general election; primary election; referendum; registration; special election; suffrage.**

**election auditor.** An officer who audits and publishes an account of election expenses.

**election bet.** The subject of a criminal offense as prescribed by statute in most jurisdictions. A transaction, whatever the name given it, the real effect of which, as intended, is that one party may lose, and the other may gain, money or property, or the representative of either may so gain or lose, according to whether the election terminates for or against a particular person, or may result in one way or another. 26 Am J2d Elect § 378. To bet that one of the candidates will or will not obtain a stated number of votes is an election bet. *Commonwealth v Brandon*, 43 Ky (4 B Mon) 1, 2.

**election between causes of action.** See **election of counts.**

**election between defenses.** See **election of defenses.**

**election between dower and will.** The doctrine that puts the surviving spouse to an election between her right to dower and the benefits provided for her by the will. 57 Am J1st Wills § 1560.

**election between offenses.** See **election of counts.**

**election by ballot.** Nothing less than an election by secret ballot. *Ex parte Arnold*, 128 Mo 256, 30 SW 768.

See **Australian Ballot System; ballot; distinguishing mark; marked ballot.**

**election contest.** See **contest of election.**

**election district.** A territorial unit of a state or of a county or municipality established with reference to various offices to be filled by election, such as legislative, congressional, or councilmanic districts, and often with reference to apportionment according to population. 25 Am J2d Elect §§ 12 et seq. A small territorial unit, otherwise known as an election precinct, established for administrative purposes and laid out with the view of accommodating the voters of the district at a single voting place. *Kerlin v Devils Lake*, 25 ND 207, 141 NW 756.

**election dower.** The estate which a widow may elect to take in lieu of dower. *Chrisman v Linderman*, 202 Mo 605, 100 SW 1090.

See **election between dower and will.**

**electioneering.** The solicitation of votes. A criminal offense where conducted at certain times and places on election day. 26 Am J2d Elect § 374.

**Electiones fiant rite et libere sine interruptione aliqua.** Elections should be made regularly and freely and without any interruption.

**election of counts.** The doctrine under which the prosecution may be required to elect on which charge it will proceed to the trial under an indictment which is in two or more counts for separate and distinct offenses. 27 Am J1st Indict § 133. The doctrine that a plaintiff, who has misjoined causes of action in his declaration, complaint, or petition will be required upon motion of the adverse party to elect upon which cause of action or count he will proceed in the action. 41 Am J1st Pl § 357.

**election of defenses.** The doctrine that a defendant who has joined defenses improperly may be required to elect upon which defense he shall rely. 41 Am J1st Pl § 358.

**election officers.** Wardens, clerks, tellers, inspectors, etc. and sometimes town or township officers, such as selectmen, trustees, and town clerks, whose official duties include taking part in the conduct of a general or special election. 25 Am J2d Elect § 39.

**election of place of payment.** The right of the holder of a note, payable, by its terms, at any one of several places, to choose the particular place at which payment shall be made. Also, the right of the maker of such note to choose the place of payment, once he has called upon the holder to elect and the holder has failed to elect. 11 Am J2d B & N § 972.

**election of remedies.** The choosing between two or more different and co-existing modes of procedure and relief allowed by law on the same state of facts. *Mansfield v Pickwick Stages*, 191 Cal 129, 215 P 389. The doctrine, not a rule of substantive law but a technical rule of procedure, that the adoption, by an unequivocal act, of one of two or more inconsistent remedial rights has the effect of precluding a resort to the others. *Arzuaga v Gonzalez* (CA1 Puerto Rico) 239 F 60.

**election precinct.** See **election district**.

**election returns.** The report made by the polling officials to the higher authority as to the number of votes cast for each candidate, or the number of votes cast for or against the propositions or questions submitted to the voters at the election. *Bond v Rogers*, 219 Ark 319, 241 SW2d 371. An official statement of the votes cast at an election, transmitted to some authorized custodian, for the purpose of being canvassed by some proper authority. *State v Common Council of St. Paul*, 25 Minn 106, 108.

See **canvass**.

**elections.** See **election**.

**election to fill vacancy in office.** The next election at which a successor to the incumbent of the office would have been elected if there had been no vacancy, or the election next in point of time after the vacancy occurs, the divergence of view arising in the construction of statutes containing such varied phrases as "first annual election," "next election," "regular election," and "proper election." Anno: 132 ALR 574.

**election to hold agent.** The doctrine applicable in a case of undisclosed principal that since the liability of an undisclosed principal and his agent is an alternative liability, rather than a joint liability or a joint and several liability, the third party, after he becomes aware of the agency and the identity of the principal, is put to an election to hold either the agent or the principal; he cannot hold both. 3 Am J2d Agency § 308.

**election under will.** The doctrine that one who is given a benefit under a will must choose between such benefit and an estate or interest in the testator's property which he claims but which is taken from him by the terms of the will. 57 Am J1st Wills § 1526. The making of an election to take under or against a will. 57 Am J1st Wills § 1534.

**Electio semel facta, et placitum testatum, non patitur regressum.** An election once made, and the plea witnessed, is not permitted to be revoked.

**Electio semel facta non patitur regressum.** An elec-

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tion which has once been made is not permitted to be revoked.

**elective.** Contingent upon a selection or choice; subject to choice; dependent upon the votes to be cast at an election by voters.

**elective franchise.** The right, rather the privilege, of voting at an election; not a natural right or a civil right, but a political right or privilege conferred and existing only by law, that is, by constitution or statute. Chamberlin v Wood, 15 SD 216, 88 NW 109.

See **suffrage**.

**elector.** A person having constitutional and statutory qualifications which entitle him to vote, including not only one who votes, but one who is qualified, yet fails to exercise the right of suffrage. 25 Am J2d Elect § 52.

See **elective franchise; presidential electors; suffrage**.

**electoral college.** The presidential electors considered as a body.

See **presidential electors**.

**electors of president.** See **presidential electors**.

**electric company.** A public utility engaged in the production, transmission, or furnishing of electricity to customers for heating, lighting, or other domestic, mechanical or scientific purposes.

**electric eye.** A device whereby a ray is controlled to open a door, turn on a lamp, etc.; a game played on a machine called the "electric eye," whereby a ray or beam of light is shot at a target. Anno: 135 ALR 158.

**electricity.** A subtle agency that pervades all space and evades successful definition. A dangerous, invisible, subtle, silent, deadly, and instantaneous force. Austin v Public Service Co. 299 Ill 112, 132 NE 458, 17 ALR 795.

**electric line.** A line of insulated wire for conducting electricity.

See **power line**.

**electric meter.** See **meter**.

**electric plant.** See **plant; public utility**.

**electric power line.** See **power line**.

**Electric Safety Code.** A code of regulations with respect to the installation and maintenance of electrical equipment and wires, issued by the Bureau of Standards of the United States Department of Commerce. 26 Am J2d Electr § 44.

**electric telegraph.** An apparatus or instrument used to transmit intelligence to a distant point with the aid of electricity. *Western Union Tel Co. v Hill*, 163 Ala 18, 50 So 248. electric wire. See electric line.

**electric work.** Construction, installation, operation, alteration, removal or repair of electrical apparatus. *Hollingsworth v Berry*, 107 Kan 544, 192 P 763, 11 ALR 151.

**electrocardiogram.** The record of the test made of a heart by an electrocardiograph.

**electrocardiograph.** An instrument by which the contractions of the heart are measured.

**electrocution.** Death caused by electricity. A method of executing the death penalty; passing through the body of the convict a current of electricity of sufficient intensity to cause his death. *People ex rel. Kemmler v Durston*, 119 NY 569, 579.

**electrodes.** The poles or terminals of an electric circuit or source, such as a battery. *California Electrical Works v Henzel* (CC Cal) 48 F 375, 378.

**electroencephalogram.** A record of a medical study of the brain with the aid of apparatus whereby waves of the brain are recorded.

**electrolysis.** The action of an electric current passing through a chemical compound in a fluid condition or solution; a source of destruction of water mains and steel reinforcements in buildings where a current escapes from a wire to the ground. *Lowrey v Cowles Electric Smelting & Aluminum Co.* (CC Ohio) 68 F 354, 366.

**electrolyte.** A chemical substance which, when dissolved in a liquid, will be dissociated and render the liquid conductive of an electric current. *Ruben v Ariston Laboratories* (DC Ill) 40 F Supp 551.

See **electrolysis**.

**electronic eavesdropping.** A recording of speech or conversation by an electronic apparatus operating without the knowledge of the speaker. Anno: 97 ALR2d 1288.

**electrotherapy.** The use of different forms of electric machines for therapeutic purposes. *Joyner v State*, 181 Miss 245, 179 So 573, 115 ALR 954.

**eleemosyna.** Alms.

**eleemosynarius.** A person who dispenses or bestows alms.

**eleemosynary.** Charitable. *People ex rel. Ellen v Cogswell*, 113 Cal 129, 45 P 270.

**eleemosynary corporation.** A corporation created for or devoted to charitable purposes or one supported by charity. 15 Am J2d Char § 145. A corporation created, not for private gain or profit, but for the administration of a charitable trust or for a charitable purpose, such as the maintenance of a hospital. *Gilbert v McLeod Infirmary*, 219 SC 174, 64 SE2d 524, 24 ALR2d 60.

**eleemosynary purpose.** A charitable purpose. A "charitable purpose" as such term is used and understood in treatises and decisions upon the subject of trusts. *Estate of Wirt* (Cal App) 263 P 271, 272.

**elegant**. Accurately; with due regard to form.

**elegit**. A writ, provided by the Statute of Westminster 2, ch. 18, Edw. 1, for the enforcement of a judgment, by virtue of which the sheriff seized and delivered a moiety of the defendant's lands until the debt was levied out of the rents and profits. 30 Am J2d Exec § 29.

See **estate by elegit; tenant by elegit**.

**element**. Any one of the four substances or elements, earth, air, fire, and water. A component or essential part, such as proximate cause in liability for negligence.

**elementary**. Pertinent to the elements, rudiments, or first principles of anything; initial; rudimental. *Livingston v Davis*, 243 Iowa 21, 50 NW2d 592, 27 ALR2d 1237.

**elementary school**. A school for the elementary education of children. *Livingston v Davis*, 243 Iowa 21, 50 NW2d 592, 27 ALR2d 1237.

**elements**. The four substances believed by former generations to constitute all matter of a physical nature: earth, air, fire and water. Sudden, unusual or unexpected manifestations of the forces of na-

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ture, such as floods, tornadoes, etc. 32 Am J1st L & T § 505. Sometimes considered the equivalent of act of God. 32 Am J1st L & T § 811.

See **damage by the elements**.

**elevated railway**. A railway elevated above the streets upon an overhead roadbed. 55 Am J1st Urb Trans § 12.

**elevator**. A car, platform, or cage, known in England as a "lift," used for the vertical conveyance of persons or property between the floors of a building. More broadly defined as the car, platform, or cage and the power machinery propelling such device, the cables or connections by means of which the power is supplied, and the shaft in which the carriage moves. 26 Am J2d Elev § 1. Cases construing the term as it appears in the double indemnity clause of an accident insurance policy are divided in opinion, some holding that the term is confined to the car, platform, or cage, while others hold that it includes, not only the car, platform, or cage, but the shaft as well. 29A Am J Rev ed Ins § 1235.

A lifter or conveyer, in the form of an endless belt or chain bearing cups or scoops for picking up threshed grain, or other material which handles easily, and carrying it above to another floor or a higher point for processing, is called an "elevator." Also called an "elevator" is a structure used for the storage of grain, usually referred to as a "grain elevator."

See **escalator; freight elevator; grain elevator; passenger elevator**.

**elevator attendant**. The person or individual who is engaged in the actual operating, running, or handling of the elevator car, platform, or cage. 26 Am J2d Elev § 1.

**elevator operator**. An elevator attendant. A person other than the owner of the building who may nevertheless be under duties with regard to an elevator, such as a managing agent in control, or any other person who has general charge of the elevator. 26 Am J2d Elev § 1.

**elevator insurance**. Insurance against liability arising from the death of or injury to a person or persons caused by the operation of an elevator.

**eligibility**. Fitness for selection. Fitness for election or appointment to a public office. 42 Am J1st Pub Of § 37.

See **eligible to an office; qualification.**

**eligible alien.** An alien who may become a citizen of the United States, having the qualifications and meeting the requirements imposed by Congress in granting the privilege of naturalization. *Terrace v Thompson*, 263 US 197, 68 L Ed 255, 44 S Ct 15.

**eligible list.** A list of applicants for a Civil Service position found upon a test to possess the qualifications requisite for the position. *State v Frear*, 146 Wis 302, 131 NW 834.

**eligible to an office.** A person legally qualified and capable of holding the office at the commencement of the term for which he may be elected or appointed. *Demaree v Scates*, 50 Kan 275, 32 P 1123.

**elimination.** The act of removing, getting rid of, or leaving out of consideration.

**elinguation.** An ancient punishment for crime by cutting out the tongue of the offender.

**elisor.** A person appointed to perform certain duties pertaining to certain officers, when the latter are disqualified. More specifically, a person who is appointed to perform functions of a sheriff or coroner in cases where they are disqualified or unable to act. *Bruner v Superior Court*, 92 Cal 239, 245, 28 P 341.

**Elizabeth I.** Queen of England from November 17th, 1558, to March 24th, 1603.

**Elizabeth II.** The present Queen of the United Kingdom and Northern Ireland, and Head of the Commonwealth, having reigned since Feb. 6, 1952, and having been crowned on June 2, 1953.

**Elkins Act.** A federal statute making it a criminal offense for one knowingly to accept a rebate from a railroad common carrier subject to the provisions of the Interstate Commerce Act. *Lehigh Coal & Navigation Co. v United States*, 250 US 556, 63 L Ed 1138, 40 S Ct 24.

**ell.** A lineal cloth measure equal to about one yard.

**elogium.** A will, a testament.

**eloign.** To take beyond the jurisdiction of the court, particularly to avoid seizure. To take personal property subject to a lien out of the county. *Garneau v Port Blakeley Mill Co.* 8 Wash 467, 36 P 463. A return to a writ of replevin where the property has been put out of reach.

**eloigner.** One who eloigns.

See **eloign.**

**eloignment.** See **eloign.**

**eloin.** Same as **eloign.**

**eloinate.** To eloign.

See **eloign.**

**eloinment.** Same as **eloignment.**

**elongare.** To eloin.

**elongata.** Eloigned,—a sheriff's return on a writ of replevin if the goods are carried out of the county, or concealed; that is, eloigned. See 3 Bl Comm 148.

**elongatus.** Eloigned.  
See **eloin**.

**elongavit.** He has eloigned.

**elope.** To engage in an elopement.  
See **elopement**.

**elopement.** The abandonment of a husband by a wife who leaves his home and goes to live with an adulterer. *Cogswell v Tibbets*, 3 NH 41, 42. The innocent act of lovers, both unwed, in going away secretly to be married.

**elsewhere.** In any other place. In another place suggested by the context. *Commonwealth v Bowser*, 61 Pa Super 107.

**eluviones.** Spring tides.

**emanare.** To spring from; to issue.

**emanavit.** It issued.

**emancipate.** To release; to set free, as to release a minor from parental control.  
See **emancipation; emancipation of minor**.

**emancipation.** Liberation from slavery or bondage; release of a minor from parental control.  
See **emancipation of minor**.

**emancipation by marriage.** That emancipation from a parent's control of the time and earnings of his minor child, which necessarily results from the marriage of the child, whether with or without the parent's consent. See 39 Am J1st P & C § 65.

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**emancipation of minor.** The relinquishment by a parent of control and authority over his minor child, conferring on him the right to his earnings, and terminating the parent's legal duty to support the child. *Swenson v Swenson* (Mo App) 227 SW2d 103, 20 ALR2d 1409.

See **express emancipation; implied emancipation; partial emancipation; statutory emancipation**.

**emasculate.** To castrate; to remove the testicles. To deprive of virility or strength.  
See **eunuch**.

**embalmer.** A person trained and skilled in the process of treating and preserving a dead body against decay. *State ex rel. Kempinger v White*, 177 Wis 541, 188 NW 607, 23 ALR 67, 70.  
See **undertaker**.

**embalmer's license.** A license required of an embalmer by the state under its police power. 54 Am J1st Und & E § 5.

**embankment.** A bank of earth, usually produced artificially for flood control.

See **dike; levee.**

**embargo.** The exclusion of an article from interstate or foreign commerce. 15 Am J2d Corn §§ 73-75. An edict or order of a government forbidding the entry or departure of ships at ports within the dominions of the government, sometimes imposed in carrying on war, at other times imposed merely in the control of trade and the advancement of commerce, in which case it may be total or partial, as when imposed on domestic ships to prevent trade with a particular country. *Gibbons v Ogden* (US) 9 Wheat 1, 6 L Ed 23. The refusal of a common carrier to accept certain kinds of freight on its line, or freight to be carried between certain points, for a limited or indefinite period of time. *Froehling Supply Co. v United States* (CA7 Ill) 194 F2d 637.

See **disembargo; hostile embargo.**

**embarrassed.** Ill at ease. Impeded.

See **financially embarrassed.**

**embassy.** The trust, charge, or mission of the ambassador of a foreign nation; the residence of the ambassador of a foreign nation.

See **diplomatic officers; legation.**

**embedded property.** See **imbedded property.**

**embezzlement.** A statutory offense, not a common law crime; the fraudulent appropriation or conversion by an agent, an employee, a corporate officer, a trustee, a public officer, or other person acting in a fiduciary capacity or character, of money or property, the possession of which has been entrusted to him by another. 18 Am J1st Embez § 2. The word includes misappropriation of trifling sums, made with intent to restore in due time, and with ample present and prospective ability to restore. *United States v Summers* (DC Va) 19 F 627. In statutes imposing a double liability in damages for the "embezzlement" of property of a decedent prior to the granting of letters testamentary or letters of administration, the term means the fraudulent appropriation or concealment to one's own use of estate property in one's possession. Anno: 29 ALR2d 256.

**embezzlement by agent.** The crime of embezzlement committed by one in possession of the converted or misappropriated property by virtue of his employment by a principal and the delegation of authority to do something in the name and stead of such principal. 26 Am J2d Embez § 26.

**embezzlement by bailee.** The offense of embezzlement committed by one in possession of the converted or misappropriated property as bailee. Although the hirer of property has been held not to be within a statute of embezzlement which includes "any bailee or other agent," it has also been held that a statute making it a crime for any carrier, bailee, or other person to embezzle or convert to his own use property delivered to him, is not confined to bailments for the sole benefit of the bailor, but extends to the bailee of an automobile under a hiring agreement, who fails to return the automobile. 26 Am J2d Embez § 24.

**embezzlement by employee.** The criminal offense of embezzlement committed by a person who is in the employ of another and who, in the discharge of his duties, is subject to the immediate control and direction of his employer. 26 Am J2d Embez § 25.

**embezzlement by fiduciary.** The crime of embezzlement committed by an executor, administrator, guardian, or broker. 26 Am J2d Embez § 31. A statute defining embezzlement by a "trustee or factor, carrier or bailee," applies to trustees, factors, carriers, or bailees for artificial persons as well as private persons. Anno: 41 ALR 474.

**emblavence de bled.** Profits of the crop, that is, emblements.

**emblems.** Corn, wheat, rye, potatoes, garden vegetables, and other crops, which are produced annually, not spontaneously, but by labor and industry; a classification which is important in reference to the doctrine of a tenant's rights in crops after the termination of the tenancy, which has come to be known as the doctrine of emblems. 21 Am J2d Crops § 2.

**embler.** To sow; to steal.

**embody.** To include or incorporate as a part of something; to include in a written instrument or statute.

**embolism.** The plugging of a blood vessel by a blood clot. Anno: 20 ALR 81.

See **cerebral embolism; pulmonary embolism.**

**embowel.** A rare, if not obsolete, word meaning disembowel.

**embrace.** To hug a person in demonstrating or expressing affection; to encircle; to encompass, to surround or inclose; to include as parts of a whole, or as subordinate divisions of a part; to accept; to use to advantage.

**embraceor.** Same as **embracer.**

**embracer.** A person who has committed the crime of embracery.

See **embracery.**

**embracery.** The criminal offense of attempting to corrupt, influence, instruct, or induce a jury in any way, except by the strength of evidence and the arguments of counsel in open court, to be more favorable to one side of the case than the other. 26 Am J2d Embr § 1.

**embrothel.** To place or harbor a person in a brothel.

See **brothel.**

**emenda.** Amends; that which is given to mend or satisfy an injured party.

**emendare.** To make amends; to compensate for an injury.

**emendatio.** An amendment; a rectification; a correction; amends; compensation for injury.

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**e mera gratia.** Of mere grace, favor, or indulgence.

**emergency.** Confrontation by sudden peril. 38 Am J1st Negl § 41. A pressing necessity; an exigency; an event or occasional combination of circumstances calling for immediate action or remedy. 38 Am J1st Mun Corp § 450. An unforeseen occurrence or condition calling for immediate action to avert imminent danger to life, health, or property. 43 Am J1st Pub Wks § 136.

The term in the Hours of Service Act is used in its ordinary or popular sense, not synonymous with accident, casualty, or act of God. While unexpected sickness of an employee or the delay of a train caused by a wreck is an emergency, such is not true of an ordinary accident incidental to the operation of a railroad. 31 Am J Rev ed Lab § 803.

See **financial emergency; sudden emergency.**

**emergency appointment.** A temporary or provisional appointment to a civil service position. 15 Am J2d Civ S § 25.

**emergency brakes.** Hand brakes on a motor vehicle, required and regulated by statute in many jurisdictions. 7 Am J2d Auto § 151.

**emergency call.** A call by telephone for a physician, police, firemen, ambulance, etc. A call of nature requiring immediate attention.

**emergency employment doctrine.** The rule that an employee under regular employment possesses implied authority to employ an assistant to aid him in performing a task or tasks within the scope of his employment in case of emergency which renders the engaging of such assistance absolutely necessary, it being impossible for the employee working by himself or with the aid of other employees in regular service to overcome the emergency conditions. *Standard Oil Co. v Adams*, 271 Ky 221, 111 SW2d 668.

**emergency fund.** A fund of an insurance company or mutual benefit society provided for use in the event of the occurrence of losses in excess of common experience.

**emergency landing.** The landing of an aircraft in a place or at a time not within the flight plan.

**emergency measures.** Acts performed in an emergency. 38 Am J1st Negl § 41. Legislation enacted in an emergency; laws necessary for the immediate preservation of the public peace, health, or safety. 28 Am J Rev ed Init & R § 10. Statutes which, because of the existence of an emergency as declared in the legislation, do by their terms take effect immediately, or from or after their passage, or from or after their approval by the governor. 50 Am J1st Stat §§ 491-493. A municipal ordinance relating to the preservation of public peace, property, health, safety, or morals, taking effect, according to its terms, immediately upon passage. 37 Am J1st Mun Corp § 152.

**emergency operation.** Surgery required immediately. An abortion necessary for saving the life of the woman. *State v Unosawa*, 48 Wash 2d 616, 296 P2d 315.

**emergency ordinance.** See **emergency measures**.

**emergency price control.** The regulation of prices in an emergency, such as the country being at war, which otherwise might result in the inflation of prices of goods most in demand, especially food and clothing, to the disadvantage, discomfort, and suffering of many people. 56 Am J1st War § 39.

**emergency relief.** Appropriations for relief of distress after a disaster caused by a tornado, hurricane, flood, earthquake, drought, pestilence, unemployment resulting from a sudden shut-down of industries, etc. 41 Am J1st Poor L § 22.

**emergency rent laws.** Statutes, the primary purpose of which is to limit rents for a period when an unexpected demand for, or a shortage in, housing inflates rentals to an unrealistic amount.

**emergency statutes.** See **emergency measures**.

**emergency vehicles.** Fire trucks, police cars, ambulances, utility repair cars, etc. 7 Am J2d Auto § 206.

**emeritus.** Retired from service but retaining the title of office.

**e.m.f.** Abbreviation of electromotive force.

**emigrant.** A native or national of a country who is leaving the country to take up permanent residence elsewhere. 3 Am J2d Aliens § 48.

**emigrant agent.** A person engaged in employing laborers for work outside the state. 31 Am J Rev ed Lab § 762.

**emigration.** The act of foreigners in leaving their former country for purposes of permanent residence in another country. The term is the correlative of immigration, denoting their coming into a country. That is, a person is an emigrant as to the country which he leaves, and he is an immigrant as to the country to which he comes. 3 Am J2d Aliens § 48.

**eminent domain.** The power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon the payment of a just compensation. 26 Am J2d Em D § 1. The theory of such power, otherwise known as compulsory purchase or expropriation, is that all lands are held mediately or immediately from the state, upon the implied condition that the eminent domain, the superior dominion, remains in the state, authorizing it to take the same for public uses, when necessity requires it, by paying therefor an equivalent in money. It resembles the ancient prerogative of purveyance whereby the crown enjoyed the right of buying up provisions and other necessaries 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, 30 A 109.

See **condemnation; just compensation; public use.**

**emisset.** He bought.

**emission.** The act of sending forth or issuing, such as issuing bills of credit to circulate as currency. 36 Am J1st Money § 17. The discharge of seminal fluid from the male organ. 2 Am J2d Adult § 1; 44 Am J1st Rape § 4.

**emit.** To send forth; to issue.

See **emission.**

**emmenagogue.** Medicine or drugs administered to a woman to produce menstruation, or to cause an abortion.

**emoluments.** The profit arising from office or employment; that which is received as compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites; advantage; gain, public or private. State ex rel. Todd v Reeves, 196 Wash 145, 82 P2d 173, 118 ALR 177. Indirect or contingent remunerations which may or may not

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be earned; remunerations in the nature of compensation or in the nature of reimbursement. Waller v United States, 86 App DC 93, 180 F2d 194, 16 ALR2d 1328.

**emotional insanity.** Passion or frenzy produced by anger, jealousy, or other emotion, sometimes of overwhelming force. 21 Am J2d Crim L § 37. The state of mind of one who, while in possession of his ordinary faculties and unaffected by any mental disease, gives way to his passions to such an extent as to become a temporary maniac. 29 Am J Rev ed Ins Per § 3.

**empalement.** Same as **impalement.**

**empannel.** Same as **impanel.**

**emparlance.** Same as **imparlance.**

**emparler.** Same as **imparl.**

**emphyteusis.** (Roman law.) A kind of lease of real property, the term of which was usually forever or for a very long period, and which provided for the improvement of the property, reserving an annual rent.

**emphyteuta.** (Roman law.) A tenant who held land by emphyteusis.

**empire.** See **American Empire.**

**empiricism.** Searching for knowledge by experiment. A practice of medicine founded on mere experience without the aid of science or the knowledge of scientific principles. *Nelson v State Board of Health*, 22 Ky LR 438, 57 SW 501.

**emplazamiento.** (Spanish.) A summons or citation to appear before a court.

**emplead.** Same as **implead.**

**employ.** To engage the services of another, usually by contract or agreement for the performance of the services and the payment of a compensation therefor. *Pinkerton Nat. Detective Agency v Walker*, 157 Ga 548, 122 SE 202, 35 ALR 557, 560. One may employ a person without paying him compensation, for example, making use of a minor in a place of entertainment (31 Am J Rev ed Lab § 768) or in a place where intoxicating liquors are dispensed. *Lutkevicz v Brennan*, 128 Conn 651, 25 A2d 66.

**employed.** Being engaged in rendering services or being under contract for the rendition of services. *United States v Morris* (US) 14 Pet 464, 475, 10 L Ed 543, 548. The services may be intellectual or physical. 31 Am J Rev ed Lab § 783.

**employed in agriculture.** See **farm laborer.**

**employed in manufacture.** Made use of in manufacture. *Hamilton Mfg. Co. v Lowell*, 274 Mass 477, 175 NE 73, 74 ALR 1213.

**employed in trade.** Made use of in business or commerce. Working in a commercial enterprise.

**employee.** An expression more euphonious than "servant" but ordinarily meaning the same. 35 Am J1st M & S § 2. One who is in such a relation to another person that the latter may control the work of the former and direct the manner in which it shall be done. 35 Am J1st M & S § 2.

One is an "employee" for the purposes of Social Security and Unemployment Compensation where in rendering services for another he acts under the control and direction of the latter, not only as to the result to be accomplished, but as to the means and details by which the result is accomplished. *United States v Silk*, 331 US 704, 91 L Ed 1757, 67 S Ct 1463; *Schwing v United States* (CA3 Pa) 165 F2d 518, 1 ALR2d 548. Only persons who perform menial services, manual labor, or work which is subordinate in its nature, and immediately subject to the directions and orders of the superior, are within the contemplation of statutes imposing liability upon corporate stockholders for debts of the corporation owing to laborers, servants, "employees", etc. Anno: 104 ALR 765. In other contexts, the term has a broader meaning, for example, in exemption statutes, where, under the rule of liberal construction, persons engaged in positions requiring services far above those of a menial character, such as sales manager, auditor, comptroller, etc., are deemed "employees." 31 Am J2d Exemp § 20. An officer of a corporation may be an "employee" for the purposes of Social Security. 48 Am J1st Soc Sec § 16.

See **public employee; servant.**

**employee of the United States.** Broadly, any person in the employ of the government. For the purposes of the Federal Tort Claims Act, one acting under the control of the government, unaffected from the standpoint of control by any intervening sovereignty, independent agency, or independent contractor. Anno: 57 ALR2d 1449-1453.

**Employees' Pay Act.** A federal statute providing a method for the division of time and computation of pay for services rendered by persons employed by the United States. 5 USC § 84.

**employee stock option.** A plan whereby a corporation gives to its employees, or employees who qualify under conditions imposed by the plan, an option to purchase stock of the corporation at a certain price, often the market price on a certain day, sometimes somewhat less than the market price on a certain day, to run for a period prescribed by the plan, irrespective of the market price during the period.

**employer.** One, formerly known as "master," who is in such relation to another person that he may control the work of that other person and direct the manner in which it is to be done. 35 Am J1st M & S § 2. The person by and for whom an independent contractor is engaged. 27 Am J1st Ind Conti § 27.

The concept of the term in labor legislation is broader than the common law or usual statutory concept. Anno: 1 L Ed 2d 2078. As defined by the National Labor Relations Act, an employer includes any person acting as an agent of an employer, directly or indirectly. 29 USC § 152(2). Expressly excluded from the definition of "employer" in the National Labor Relations Act are the United States, any wholly owned government corporation, any federal reserve bank, or any state or political subdivision of a state; national banks are not excluded. 31 Am J Rev ed Lab § 185.

**employers' association.** An association of employers, normally of employers engaged in the same industry.

**employers' liability acts.** Statutes in reference to an employer's liability for negligence resulting in injury to an employee, the most of which abrogate the fellow servant doctrine and limit the defenses of contributory negligence and the doctrine of assumption of risk (35 Am J1st M & S §§ 395 et seq.), including the Federal Employers' Liability Act relative to common carriers by railroad engaged in

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interstate commerce and their employees. 35 Am J1st M & S §§ 398 et seq.

See **workmen's compensation acts.**

**employers' liability insurance.** Insurance which protects an employer against liability for the death or injury of an employee occurring within the scope of the employment. 29A Am J Rev ed Ins § 1351.

See **workmen's compensation insurance.**

**employing unit.** An employer.

For the purpose of determining the right to a reduced compensation contribution rating as a "qualified employer" under the unemployment compensation act, an "employer" and "employing unit" are synonymous, and are not intended to include a part or department of a going business or to embrace a unit which has no legal entity even though isolated from other units owned, managed, and controlled by the employer. *Canada Dry Bottling Co. v Board of Review*, 118 Utah 619, 223 P2d 586, 22 ALR2d 664.

**employment.** The act of employing or being employed. The occupation, business, or profession to which one devotes his services, time, and attention, and which he depends upon for livelihood or profit. *Lyons-Thomas Hardware Co. v Perry Stove Mfg. Co.* 86 Tex 143, 24 SW 16. The scope of an employee's duties and authority. 26 Am J2d Embez § 15. For the purposes of Social Security, any service, of whatever nature, performed within the United States by an employee for the person employing him, irrespective of the citizenship or residence of either. 48 Am J1st Soc Sec § 15. This comprehends, not only

work actually done, but the entire employer-employee relationship for which compensation is paid to the employee by the employer. *Social Secur. Board v Nierotko*, 327 US 359, 90 L Ed 718, 66 S Ct 637, 162 ALR 1445. In some jurisdictions, for the purposes of workmen's compensation statutes, the term "employment" includes only occupations carried on by the employer for pecuniary gain, excluding employment in public or governmental service and service for charitable institutions. 58 Am J1st Workm Comp § 80.

See **casual employment; permanent employment; scope of employment.**

**employment agency.** A business having the purpose of obtaining employment for persons who make application to it for employment, the agency being compensated by the applicants, usually in the form of a percentage of wages or salaries obtained in the employments in which the applicants are placed by the agency. *Adams v Tanner*, 244 US 590, 61 L Ed 1336, 37 S Ct 662.

**employment at will.** A hiring for an indefinite period of time. 35 Am J1st M & S § 19.

**employment contract.** A contract between employer and employee; a collective labor agreement.

See **collective labor agreement; contract of hire.**

**employment security.** The protection given by labor laws. Another term for **unemployment insurance.**

**empower.** To authorize; to commission; to delegate; to depute.

**emprestido.** (Spanish.) A loan.

**emptio.** A buying; a purchase.

**emptio bonorum.** The purchase of goods.

**emptio et venditio.** Purchase and sale.

**emptionis venditionis contractae argumentum.** An earnest or token of a buying and selling contract; an arra. See 2 Bl Comm 447.

**empto.** See **ex empto.**

**emptor.** A buyer; a purchaser.

See **bona fidei emptor; caveat emptor.**

**Emptor emit quam minimo potest, venditor vendit quam maximo potest.** The purchaser buys for the least he can, the vendor sells for the most he can. *Michoud v Girod* (US) 4 How 503, 554, 11 L Ed 1076, 1099.

**emptio.** Same as **emptio.**

**emptor.** Same as **emptor.**

**emtrix.** A female purchaser or buyer.

**en.** In; into; on.

**enabling act.** An act of emancipation. A statute which removes a disability, for example, the disability of a married woman at common law. 26 Am J1st H & W § 20. A statute which grants new powers or authority to a person or a corporation; the statute 32 Henry VIII, c. 28 (1540) which enabled three classes of persons to make leases which would last for three lives or twenty-one years. See 2 Bl Comm 319. A statute authorizing a particular act, such as the sale of land of a person under disability. 16 Am J2d Const L § 236.

See **curative act**.

**enabling power.** The power of approving or licensing something which the law undertakes to regulate. 1 Am J2d Admin L § 140.

**enabling statute.** See **enabling act**.

**enact.** To establish by law; to perform or effect; to decree. Re Senate File 31, 25 Neb 864, 876.

**enacting clause.** An orderly, and in some jurisdictions a mandatory, part of a statute, proclaiming the authority by which the statute was enacted, usually in some such form as "Be it enacted by the legislature [general assembly] of the State of [name of state], as follows." 50 Am J1st Stat §§ 153-155.

**enactment.** The process by which a legislative bill becomes law. Creating a law, that is, giving it an existence, or, as in some jurisdictions, giving it effectiveness. Anno: 132 ALR 1060.

**enagenacion.** A word encountered in Spanish-American grants, which in its ordinary sense means a transfer of the title, the fee, but in a more enlarged sense it may include the transfer of every estate known to the law, from a fee simple to an estate at will or sufferance; and in this enlarged sense it is equivalent to the English word "alienation." Mulford v Le Franc, 26 Cal 88, 103, 104.

**enajenacion.** Same as **enagenacion**.

**en après.** In the future; hereafter; henceforth.

**en ariere.** In the past.

**en autre droit.** In the right of another person.

**en autre soile.** On the land of another person.

**en avant.** In the future; for the future.

**en banc.** (French.) On the bench.

See **full bench**.

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**en barre.** In bar.

**en bloc.** In a mass; as a whole; as a unit.

**en bonne foy.** In good faith.

**en ce.** In this.

**enceinte.** Pregnant; with child.

**encephalogram.** See **electroencephalogram.**

**en chemin.** On the way.

**encheson.** A cause or reason for anything.

**en chiefe.** In chief.

**enclave.** A territory or area foreign to, or apart from, that by which it is surrounded completely.

See **federal enclave.**

**enclose.** Same as **inclose.**

**enclosure.** See **inclosure.**

**en coste.** On the side; collateral.

**encourage.** To give hope and impart courage. To incite; to induce; to abet.

**en court.** In court.

**encroach.** To effect an encroachment.

See **encroachment.**

**encroachment.** A movement upon the property, authority, or rights of another; a gradual movement upon and occupancy of the land of another. In the broad sense, a trespass upon real estate, but in the legal sense, usually confined to an intrusion upon a highway by occupying it, fencing or walling in a portion of it, or erecting a structure which protrudes into it. *State v Pomeroy*, 73 Wis 664, 665; *Chase v Oshkosh*, 81 Wis 313, 51 NW 560.

See **trespass.**

**encumber.** To effect or suffer an encumbrance.

See **encumbrance.**

**encumbrance.** Literally a hindrance, impediment, or obstruction, such as an object in a highway. 25 Am J1st High § 272. The significance in the law is that of any right to, or interest in land conveyed, which may subsist in a third party, to the diminution of the value of the land, but at the same time consistent with the passage of the fee thereto. 20 Am J2d Cov § 81; 55 Am J1st V & P § 225. Including whatever charges, burdens, obstructs, or impairs the use of the land, depreciates it in value, or impedes its transfer, such as a lien, a mortgage, deed of trust, or an easement. Anno: 57 ALR 1376; 55 Am J1st V & P § 225. "Encumbrances" fall into two general classes: (1) Those which affect or relate to the title or the record thereof, and (2) those which affect or relate to the actual physical conditions upon the realty such as a path or roadway indicating a servitude. Anno: 64 ALR 1480.

The application of the term "encumbrance" is almost invariably made to real estate, although it would seem entirely proper to speak of a chattel mortgage or lien upon personal property as an "encumbrance."

See **covenant against encumbrances.**

**encumbrancer.** The holder of an incumbrance; as a person who holds a mortgage. A person who has a legal claim upon an estate. *Warden v Sabins*, 36 Kan 165, 169.

**end.** Finish; terminus; termination. An objective or purpose.

See **duration; end of will; end on.**

**endangering life.** Acting so as to imperil the life of a human. Not necessarily by acts of physical violence. Anno; 5 ALR 712.

**endeavor.** To attempt; to try; to experiment. Success is not an attribute of endeavor. Experimental approach toward the commission of a crime is an endeavor. Guilt is incurred by the trial, -success may aggravate, it is not a condition of it. *United States v Russell*, 255 US 138, 143, 65 L Ed 553, 555, 41 S Ct 260.

**en declaration de simulation.** A form of action in France and Louisiana, the object of which is to have an unbelievable act declared to have been feigned. *Erwin v Bank of Kentucky*, 5 La Ann 1, 4.

**en demeure.** In default.

**en demeyne.** In demesne.

See **demesne; demesne, as of fee.**

**endenizen.** Same as **denize.**

**endless chain contract.** A contract, ostensibly for the sale of the right to vend an article in a designated territory, but in reality cloaking an undertaking by the purchaser to enter into similar contracts with others. 46 Am J1st Sales § 122.

**end lines.** The boundary lines of a mining claim which cross the lode or vein. 36 Am J1st Min & M § 111.

The legal end lines of the original or discovery vein of a mining claim are the end lines of all veins within the surface boundary with respect to extralateral rights. *Jefferson Mining Co. v Anchoria-Leland Min. & Mill. Co.* 32 Colo 176, 75 F 1070.

**end of war.** See **duration of the war.**

**end of will.** An expression clothed with pertinency by statutory requirements that a will be signed at the foot or end. Two variant definitions have evolved from the application of such statutes: (1) the physical end of the writing, the point spatially the farthest removed from the beginning; (2) the logical end, the end of the disposition of property wherever that end may appear in the paper, the sequential end, the end as determined by the unmistakable sequence which the testator intended to give to the writing as revealed upon the face of the instrument. 57 Am J1st Wills § 268.

**end on.** Ships approaching each other from opposite directions, or on such parallel lines as to involve risk of collision on account of their proximity. *Brown v Slanson (US)* 7 Wall 656, 19 L Ed 157.

See **head on.**

**endorse.** Same as **indorse.**

**endorsement.** Same as **indorsement.**

**endow.** In a narrow sense, to give one's wife an estate of dower upon taking the marital vows or entering into the marriage with her. In a broader sense, to bestow property upon a person or an institution, such as a college. *Gupton v Gupton*, 40 Tenn (3 Head) 487, 489.

**endowment.** The assignment to a widow of her dower upon the death of her husband. The provision made for the maintenance of officiating ministers by setting apart a glebe or land and by appointing tithes. Such endowments were established when lords of manors first built churches on their own demesnes. See 2 Bl Comm 21. The endowment of an institution, such as a college, is commonly understood as including all property, both real and personal, given to the institution for

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its permanent support. *Millsaps College v Jackson*, 275 US 129, 72 L Ed 196, 48 S Ct 94, 95.

See **assignment of dower; fine for endowment.**

**endowment insurance.** In modern terminology, a life insurance policy which provides for the payment of the proceeds of the policy at a stated time after the date of the instrument, sometimes 20, sometimes 30 or more years, but upon the death of the insured if it occurs prior to the expiration of the stated period. 29 Am J1st Ins § 6. In former times, endowment policies appear to have had features of the tontine policy, one of which was that the insurer came under no liability to an insured who did not survive the endowment or tontine period. Such policies have been referred to at times as "pure endowment insurance."

See **tontine policy.**

**en droit.** In right; in point of law.

See **defense en droit.**

**ends of justice.** In furtherance of justice.

**end-use factor.** A test of practicability employed before issuance of a certificate of public convenience and necessity. Anno: 5 L Ed 2d 1004. The ultimate use of the product to be supplied by a utility seeking a certificate of public convenience and necessity required as a condition of lawful operation. Anno: 5 L Ed 2d 1004.

**enecius.** Same as **anecius.**

**enemy.** Another nation with which the country is in a state of war; more broadly defined for the purposes of some statutes, as including the individuals and corporations of a nation with which the country is at war. 56 Am J1st War § 83. Narrowly interpreted, an "enemy" is always the subject of a foreign power, who owes no allegiance to our government or country. *United States v Greathouse* (CC Cal) 4 Sawy 457, 466, F Cas No 15254. Reasonably, a person engaged against the United States in a rebellion or civil war is an "enemy." 56 Am J1st War § 62. The status of a person as an "enemy" for the purposes of the application of the Trading with the Enemy Act is determined with reference to domicile or residence in the territory of the nation which is a belligerent against the United States rather than according to nationality. 56 Am J1st War § 83. For the purposes of such statute, an "enemy" may be a partnership, corporation, or other body of individuals. 56 Am J1st War § 83.

See **alien enemy; public enemy.**

**enemy alien.** See **alien enemy.**

**enemy property.** All property within enemy territory. If suffered to remain in the hostile country after the war breaks out, it becomes impressed with the national character of the belligerent where it is situated without regard to the owner's sentiments or political opinions, or whether he is an enemy or a friend. *The Peterhoff* (US) 5 Wall 28, 18 L Ed 564. Under the Trading with the Enemy Act, money and all kinds of property of enemies, both tangible and intangible, including patents, copyrights,

applications therefor, trademarks, choses in action, and claims of every character and description, owing to, belonging to, or held for, by, or on account of, or for the benefit of, the enemy may be sequestered. 56 Am J1st War § 85.

**enemy waters.** Storm, freshet and flood waters of a river, as distinguished from its ordinary and usual flow. *Herminghaus v Southern California Edison Co.* 200 Cal 81, 252 P 607. Surface waters referred to as the common enemy in supporting the common-law rule that the owner of the lower tenement or estate may at his option lawfully obstruct or hinder the flow of surface water thereon, and in so doing may turn it back or away from his own lands, and onto and over the lands of other proprietors without liability for such obstruction or diversion. 56 Am J1st Wat § 69.

**En eschange il covient que les estates soient egales.** Same as **anecius**.

**en fait.** In fact.

**enfeoff.** To vest a person, the feoffee, with a fee.

See **feoffee; feoffment; feoffor**.

**enfeoffment.** Same as **feoffment**.

**enforceable legal right.** A right recognized by law and executed by the law, executed by force within the law where force is necessary. *Shaw v Proffitt*, 57 Or 192, 109 P 584.

**enforceable trust.** A trust in which some person or class of persons have a right to all or a part of a designated fund, and can demand its transfer to them, and in case such demand is refused, may sue the trustee in a court of equity, and compel compliance with the demand. *Tilden v Green*, 130 NY 29, 28 NE 880. In a broader sense, a trust recognized in equity as valid and subsisting. 54 Am J1st Trusts §§ 570 et seq.

**Enforcement of Foreign Judgments Act.** One of the uniform laws. Anno: 72 ALR2d 1259, § 3. A uniform law, the purpose of which is to give to holders of foreign judgments, with respect to claims on the judgment debtor's property and the remedies of levy and garnishment thereon, the same rights and remedies as the holder of a domestic judgment. *Sullivan v Sullivan*, 168 Neb 850, 97 NW2d 348, 72 ALR2d 1251.

**enfranchise.** To confer a franchise upon; to free; to permit a person to vote.

See **franchise**.

**enfranchisement.** The act of enfranchising.

See **enfranchise; franchise**.

**enfranchisement of copyhold.** The act of the lord of the manor in conveying a fee simple title to a copyholder, thus changing the tenure of the land from copyhold to freehold.

**engage.** In the oldest sense of the term, to give as a gage or pledge; to pledge property as security. To take part in; to be employed in, however the employment may arise. Anno: 15 ALR 1283. To cooperate actively or take part in an enterprise. *Benefit Assn. of R. Employees v Hayden*, 175 Ark 565, 299 SW 995, 57 ALR 622. To embark; to bind by appointment or by contract; to bind by promise of marriage. To enter into conflict with an enemy or test of strength and athletic ability with an opponent.

**engaged.** Taking an active part.

See **engage**.

**engaged in aviation operations.** Taking part in the operation of an airplane in some direct way other than merely being a passenger in an airplane. *Price v Prudential Ins. Co.* 98 Fla 1044, 124 So 817.

See **participating in aeronautics**.

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**engaged in business.** Occupied or employed in business as a sustained, progressive, and continuous activity. *Lewellyn v Pittsburg, B. & L. E. R. Co.* (CA3 Pa) 222 F 177.

See **carrying on business; doing business; doing business in state; engaging in or transacting business**.

**engaged in interstate commerce.** In the meaning of the term as it appears in the Fair Labor Standards Act, engaged in activities so closely related to interstate commerce as to be for all practical purposes and in legal contemplation a part of it. *Mitchell v C. Vollmer & Co.* 349 US 427, 99 L Ed 1196, 75 S Ct 860. Similarly defined for the purposes of the Federal Employers' Liability Act. *Southern Pacific Co. v Industrial Corn. of Utah*, 71 Utah, 248, 264 P 965, 968.

See **commerce; interstate commerce**.

**engaged in manufacturing.** Working with machinery to produce a finished product from raw materials or to convert manufactured articles into a different product. *Hotchkiss v District of Columbia*, 44 App DC 73.

**engaged in military service.** Being in the military service. *Bradshaw v Farmers' & Bankers' Life Ins. Co.* 107 Kan 681, 193 P 332, 11 ALR 1091, 1096. Having passed the examination or examinations, having taken the oath, having been enrolled, and having become subject to the orders of the military authorities. 29A Am J Rev ed Ins § 1204.

**engaged in or about.** A phrase used in workmen's compensation statutes to emphasize the necessity for a causal relationship between the employment and a compensable injury. 58 Am J1st Workm Comp § 209.

**engage in practice.** To pursue a profession such as law, medicine, architecture, etc. or a skilled occupation by a course of professional or business activities, not by single isolated acts. *Dane v Brown* (CA1 Mass) 70 F2d 164.

**engagement.** An agreement; a contract; an agreement consisting of mutual promises to marry.

**engagements of bank.** All pecuniary liabilities and obligations of a bank. *Oppenheimer v Harriman Nat. Bank & Trust Co.* 300 US 206, 81 L Ed 142, 57 S Ct 719.

**engagement to marry.** An agreement or contract to marry arising out of the mutual promises of the parties. 12 Am J2d Breach P §§ 2, 3.

**engaging in business.** See **engaged in business**.

**engaging in or transacting business.** To constitute "engaging in or transacting business" in a state, so as to be found or be present there for purposes of personal service of process, a nonresident corporation's activities must be substantial, continuous, and regular, as distinguished from casual, single, or isolated acts. *Steinway v Majestic Amusement Co.* (CA10 Okla) 179 F2d 681, 18 ALR2d 179.

**engine.** A skilfully contrived mechanism or machine, the parts of which concur in producing an intended effect; a machine for applying any of the mechanical or physical powers to effect a particular purpose; especially a self-contained mechanism for the conversion of energy into useful work; as a hydraulic engine for utilizing the pressure of water; a steam, gas, or air engine, in

which the elastic force of steam, gas, or air is utilized. *Haddad v Commercial Motor Truck Co.*, 146 La 897, 84 So 197, 9 ALR 1380.

See **road engine; switch engine; wild-cat engine.**

**engineer.** A graduate of an engineering college. One in charge of the running of an engine, especially a locomotive. One certified as an engineer in charge of the engines of a ship, but not one engaged to perform purely mechanical work on the engines of a ship. *Baggaley v Aetna Ins. Co.* (CA7 Ill) 111 F2d 134. As the term appears in a clause of an automobile liability insurance policy permitting use of the car in certain occupations, including that of engineers, a person who is not a graduate of an engineering school and has never been licensed as an engineer, but being a general superintendent of a steel company has practical knowledge of the processes involved in the manufacture of steel, and, at the time of the accident in question, is travelling to inspect mechanical equipment for possible use in the steel industry, is an engineer. *Employers Liability Assur. Corp. v Accident & C. Ins. Co.* (CA6 Ohio) 134 F2d 566, 146 ALR 1186.

**engineering work.** Any work of construction, alteration, or repair. 58 Am J1st Workm Comp § 108.

**engineer's certificate.** See **certificate of architect or engineer.**

**England.** The mother country and the source of our common law. 15 Am J2d Comm L § 5.

**englecery.** Same as **engleschire.**

**englescherie.** Same as **engleschire.**

**engleschire.** A word originating in the time of King Canute, meaning proof, in an action to amerce the inhabitants of a town or hundred for the death of a man occurring by homicide committed in the town or hundred, that the victim was an Englishman.

**English.** Our language. The people of England.

**English church.** The established Church of England.

See **Church of England.**

**English consols.** See **consols.**

**English institutions.** See the particular institution under concrete title or popular name, such as Church of England; Parliament, etc.

**Englishman.** A native of England; a citizen of England. One of English ancestry.

See **Once an Englishman always an Englishman.**

**English mile.** See **mile.**

**English rule or doctrine.** See the specific rule or doctrine under concrete title or popular name, such as fifty per cent rule; market overt, etc.

**English rulers.** The kings and queens of England.

See **regnal years.**

**English Ruling Cases.** A publication in the form of a set of books of leading cases decided by the courts of England.

**englishry.** Same as **engleschire.**

See **presentment of englishry.**

**English statutes.** Acts of Parliament.

For particular statute, see the concrete title or popular name, such as **corn laws; mortmain statutes,** etc.

**English tables.** Mortality tables accepted by the courts of England. The Carlisle and Northampton tables.

See **mortality tables.**

**en gross.** In gross.

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**engross.** To prepare a document; to express in legal form; to prepare a legislative bill for enrollment; to demand close attention. To gain a monopoly.

**engrossed bill.** A legislative bill which has been engrossed or copied for enrollment and is ready to be passed or enacted into a statute.

**engrossing.** The common-law and sometimes statutory offense of buying up large quantities of a commodity, such as grain, in order to control the market. 36 Am J1st Monop Etc. § 20. Demanding close attention. Making a clear copy of a rough draft of an instrument or writing.

**Eng. Rul. Cas.** An abbreviation of English Ruling Cases.

**enhanced.** Increased, especially in value. *Thornburn v Doscher*, (CC Or) 32 F 810, 812.

**enhancement of damages.** See **aggravation of damages; exemplary damages.**

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

**enjoin.** To forbid; to restrain by injunction; to command; to order. Ordinarily an imperative, but may be given less than mandatory force in the light of the entire context in which it appears. *Good v Fichthorn*, 144 Pa 287, 22 A 1032. Imperative in legal parlance, except as the mandatory character gives way to the entire context in which the word appears or to common parlance. *Clifford v Stewart*, 95 Me 38, 49 A 52; *Good v Fichthorn*, 144 Pa 287, 22 A 1032.

See **injunction.**

**enjoy.** See **enjoyment.**

**enjoyment.** Receiving the benefit of something; receiving substantial economic benefit rather than a technical vesting of title or estate. 28 Am J Rev ed Inher T § 193. Something less than consumption. 33 Am J1st Life Est § 241. That which gives value to property, including the beneficial use, interest, and purpose to which the property may be put. *Pollock v Farmers' Loan Trust Co.* 157 US 581, 39 L Ed 759, 15 S Ct 673.

See **beneficial enjoyment; covenant of quiet enjoyment; occupation; possession.**

**enlarge.** To free or set at large, as cattle within an enclosure. To increase in size; to expand. To grant to a party to an action an extension of time within which he may comply with a requirement of law or an order of court, as to enlarge his time to plead.

**Enlarged Homesteads Act.** A federal statute providing for entry of 320 acres or less of public lands in certain states, of a character which is nonmineral, nonirrigable, unreserved, and unappropriated, and for additional entries under certain circumstances. 43 USC § 218.

**enlarged liability.** An increased liability; a liability to which an obligation has been added or annexed. *Buck v Davenport Sav. Bank*, 29 Neb 407.

See **indorsement with enlarged liability**.

**enlargement of estate.** Adding to an estate in property, thereby increasing the estate in importance and in value, as where the remainderman conveys or releases his interest to the life tenant or tenant for years.

**enlarger l'estate.** Enlargement of estate.

**enlarging statute.** A statute is a remedial statute, according to Blackstone (1 Bl Comm 86), which supplies defects, and abridges superfluities, in the former law. This is done by enlarging or restraining the former law, and these remedial statutes are therefore called enlarging or restraining statutes, depending on whether they supply or abridge. 50 Am J1st Stat § 15.

**en le mercie.** In mercy, liable to amercement.

**enlist.** To enter one of the armed services other than as a commissioned officer. In the popular sense, to enter the service voluntarily.

**enlistment.** Entry into one of the armed services other than as a commissioned officer. In the popular sense, entering the service voluntarily. The contract of service which one other than a commissioned officer enters into with the government. 36 Am J1st Mil § 26. Constituting either an original undertaking or a renewal of an original undertaking known as a reenlistment. 10 USC § 3251.

**enlistment service.** See **recruiting and enlistment service**.

**en masse.** In one piece.

See **execution sale en masse**.

**en mort meyne.** In mortmain.

See **mortmain**.

**ennoyer.** Same as **anoyer**.

**Enoch Arden Statutes.** Legislation which facilitates proof of death from absence, particularly for the benefit of the spouse of the absentee.

**enormia.** Wrongs; crimes; any acts of an unlawful character.

**enormis.** Excessive; enormous; wicked.

**en outre.** Furthermore; besides.

**en owel main.** In equal hand.

**en pais.** Same as **in pais.**

**enparler.** Same as **imparl.**

**en passant.** In passing; incidentally.

**enpleet.** Same as **implead.**

**en plein vie.** In full life; that is in life in fact as well as in law.

**en poigne.** Same as **en poin.**

**en poin.** In the hand.

**en primes.** In the first place.

**enquest.** Same as **inquest.**

**enquet.** Same as **inquest.**

**enrichment.** Receiving something of value; being enriched. A thing that enriches.

See **unjust enrichment.**

**enroll.** To enter upon a roll or record; to record.

**enrolled bill.** A legislative bill in its final form as enacted and deposited with the official custodian of the statutory laws. 50 Am J1st Stat § 148.

**enrolled bill rule.** The rule that an enrolled bill imports absolute verity, so that the courts will not look beyond it to ascertain whether it has been regularly enacted or whether it expresses the terms of the statute as enacted. 50 Am J1st Stat § 149.

**enrolled order.** An order prepared for the signature of the judge and to be entered as the judgment of the court, once his signature has been appended.

**enrolled ship.** See **enrollment of vessel.**

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**enrollment.** The act of entering something upon a roll or record. The recording of a deed.

See **clerk of enrollments; Statute of Enrolments.**

**enrollment for military service.** The listing in a register of the names of persons subject to military service; not a draft or an actual calling of the men. 36 Am J1st Mil § 7. Sometimes used as the equivalent of enlistment.

**enrollment of judgment.** The ministerial act in entering a judgment upon the record of the court to stand as a perpetual memorial of the court's action and to afford a means of proving the judgment. 30A Am J Rev ed Judgm § 92. The act of making up the judgment roll.

See **judgment roll.**

**enrollment of vessel.** The listing of a vessel of 20 tons or over in the office of the collector of the revenue of that district which includes the port to which she belongs at the time, the purpose being to evidence the national character of the vessel and enable her to obtain a coasting license. 48 Am J1st Ship § 48.

See **registration of vessel.**

**enrollment of voters.** The registration of voters. The listing of voters by party affiliation, by which eligibility to vote in a primary election is determined.

**enrolment.** Same as **enrollment.**

**en route.** On the journey; during the journey.

**ens.** Existence; a being; a creature.

**enschedule.** To place or incorporate in a schedule.

**enseal.** To seal; to affix a seal.

**enseint.** Same as **enceinte.**

**ensemble.** All together.

**ensement.** Also; likewise; similarly.

**enserver.** To subject to a service; to subject to servitude.

**ensi.** Thus; so; likewise.

**ensign.** A flag. A commissioned officer of the United States Navy, being the lowest in rank of the commissioned officers.

**ensilage.** Corn in the stalk, clover, alfalfa, or other feed and roughage for livestock, stored while green or partly green in a silo, and allowed to cure therein.

**ens legis.** A creature or being of the law.

**en son damage.** In his damage; while doing damage; damage feasant.

**en son demeyne come de fee.** In his demesne as of fee.

**ensue.** To follow or come after, sometimes importing a connection with that which precedes, as where a statute provides that one who administers a drug to a woman pregnant with a quick child, with intent to destroy the child, is guilty of manslaughter if the death of such woman "ensues." 26 Am J1st Homi § 196.

**ensure.** Same as **insure.**

**en suspense.** In suspense; in abeyance; in statu quo.

**ensy.** Same as **ensi.**

**entail.** To settle property upon a person with limitations in respect of the succession. Precisely, to create an estate in tail, that is, a fee tail, in conveying or devising real property. To involve, e. g., the trial of a law suit "involves" much preparation.

See **fee tail**.

**entailed-money.** Money to be applied on account of the purchase of an estate-tail.

**entencion.** {Old French.) A plaintiff's declaration or first pleading in an action; a count or cause of action set forth in a declaration.

**entendment.** Understanding.

**entente.** An understanding or agreement, especially an agreement between nations.

**enter.** To go into; to pass in or upon; as to enter a house or a close, sometimes for the purpose of taking possession. To list by name in a competition, as to "enter" a horse for a race. To make note of a fact by way of making a record thereof to be preserved. To make an entry of any kind.

See **entry**.

**entering.** See **enter**; **entry**.

**entering the common rule.** In the old common-law action of ejectment, the entry by the clerk of an order of court requiring the casual ejector, if he was a stranger, to give notice to the tenant in possession that he had been sued and would make no defense, and that unless the tenant in possession should defend, he would be turned out. 25 Am J2d Eject § 2.

**enter into.** To join with another or with others; as, to enter into a contract, to enter into a conspiracy.

**enterlesse.** Omitted; left out.

**enterprise.** An undertaking, a project, especially an undertaking or project involving hazard. United States v Ybanez (CC Tex) 53 F 536, 538. Initiative; readiness to engage.

See **business enterprise**; **gift enterprise**; **joint enterprise**; **military enterprise**.

**entertainer.** One who entertains, particularly one in the profession of entertainment, such as a comedian, an acrobat, a clown, etc.

**entertainment.** Diversion; amusement; something of interest. Hospitality.

See **house of entertainment**.

**entertainment expense.** A deduction in an income tax return where an ordinary and necessary business expense by way of entertainment, amusement, or recreation furnished a customer, client, or prospective customer or client. IRC § 274(a).

**entertainment of suit.** Taking jurisdiction, especially for the purpose of a trial or hearing on the merits. Denholm & McKay Co. v Commissioner (CAI) 132 F2d 243; Fernandez v Carrasquillo (CAI Puerto Rico) 146 F2d 204.

**entertainment tax.** See **admissions tax**.

**en tesmoignance.** In testimony; in witness.

**entice.** To allure or tempt by artifice, the word importing an initial, active and wrongful effort. *State v Norris*, 82 Or 680, 162 P 859. To lure animals onto one's premises by putting out food by way of bait. 4 Am J2d Ani § 139.

It is true that the word "entice" may be used in a good sense, but that is not its natural meaning, and when so used it is but figurative. *Mooney v State*, 8 Ala 328, 331.

See **induce; inveigle; procure; solicitation.**

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**enticement of child.** The abduction or wrongful taking of a minor child from the custody of the parents for which the parent may have an action for damages based upon loss of the child's services. 39 Am J1st P & C § 72. A possible method of kidnapping. 1 Am J2d Abduct § 13.

**enticement of servant.** A form of tortious interference, consisting in maliciously inducing an employee in the actual service of his employer to desert and leave his service, to the injury of the employer. 30 Am J Rev ed Interf § 6.

**entire.** Whole; undivided; not participated in with others. *Heathman v Hall*, 38 NC (3 Ired Eq) 414, 421. Indivisible. 46 Am J1st Sales § 140.

**entire compensation.** As used in a statute providing for the recovery of "entire compensation" for the unlicensed use by the government of a patented invention, the term includes interest upon the damages found to have been suffered. *Waite v United States*, 282 US 508, 75 L Ed 494, 51 S Ct 227.

**entire contract.** The whole of the contract to be considered in construction. 17 Am J2d Contr § 258.

See **entirety of contract.**

**entire day.** A day of twenty-four hours, beginning and ending at midnight. To assure the intervention of a certain number of "entire days" between two specified days, both the first and last days are excluded. 52 Am J1st Time § 17.

**entire interest.** See **all title and interest.**

**entire loss of hands or feet.** Amputation, severance, or complete destruction of use of a member, as by paralysis. *Fuller v Locomotive Engineers' Mut. Life & Acci. Ins. Asso.* 122 Mich 548, 81 NW 326.

**entire loss of sight.** The loss of ability to see or perceive objects with the eye or the loss which leaves no sight left for practical use, notwithstanding the ability to distinguish between light and dark, but not a condition where there is limited or partial vision, although not sufficient for the pursuit of the victim's occupation or profession. 29A Am J Rev ed Ins § 1513.

**entire output.** A term designating the subject matter of a sale of manufactured goods, binding the seller, if he makes any of the product, to sell it to the buyer at the agreed price, and binding the buyer, to take all the product made by the seller at the time the buyer may choose to terminate the agreement. 46 Am J1st Sales § 65.

**entire property and assets.** Necessarily including cash, notes, accounts, and leases of personal property. *Krell v Krell Piano Co.* 23 Ohio NP NS 193.

**entire tenancy.** Sole ownership; ownership which is neither joint nor in common.

**entirety.** A whole of anything, as distinguished from a part of it; an undivided whole. The joint estate of husband and wife. 26 Am J1st H & W § 66.

See **estate by entirety**.

**entirety of cause of action.** A quality to be tested according to the identity of the essential facts; if the same evidence will support both actions, there is deemed to be but one cause of action, although the mere fact that the same evidence may be admissible under the pleadings in each action is not necessarily controlling. 1 Am J2d Actions § 128.

**entirety of contract.** A confusing term, sometimes meaning that there is but one, rather than several, contracts; at other times meaning that a contract is not divisible or severable. 17 Am J2d Contr § 324.

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

**entirety of statute.** The quality of a statute which renders it impossible to give effect to one part where another part is invalid. 16 Am J2d Const L §§ 181 et seq.

**entitle.** To vest the title to anything in a person; to furnish a right or claim to a thing. *Barron Estate Co. v Waterman*, 32 Cal App 171, 162 P 410. To give a name; to give a title; to supply a heading for a document or pleading.

See **beneficially entitled**.

**entitled.** See **entitle; vested interest; vested estate**.

**entity.** An existence; a being, actual or artificial.

**entity of corporation.** See **corporate entity**.

**entity of partnership.** See **partnership**.

**entrance.** The means or place of entering, as a door or gate. *Renfo Drug Co. v Lewis*, 149 Tex 507, 235 SW2d 609, 23 ALR2d 1114.

**entrance fee.** A payment made for admission to a place of entertainment; the charge made for obtaining membership in a labor union.

**entrap.** To catch; to ensnare; hence to catch by artifice; to involve in difficulties or distresses; to catch or involve in contradistinctions. *Roane v State*, 55 Okla Crim 332, 29 P2d 990.

See **entrapment**.

**entrapment.** The inducement of one to commit a crime not contemplated by him, for the mere purpose of instituting a criminal prosecution against him. *People v Makovsky*, 3 Cal 2d 366, 44 P2d 536; *State v Marquardt*, 139 Conn 1, 89 A2d 219, 31 ALR2d 1206. Measures used to entrap a person into crime in order, by making him a criminal, to aid the instigator in the accomplishment of some corrupt private purpose of his own. *Woo Wai v United States (CA9 Cal)* 223 F 412.

**entre.** In; within; between; entry.

**entreat.** An intruder; a stranger; an interloper.

**entrega.** (Spanish.) A delivery.

**entrepot.** A warehouse; a storehouse; a freight depot; a place where goods are temporarily stored awaiting shipment. *Coe v Errol*, 116 US 517, 525, 29 L Ed 715, 718, 6 S Ct 475.

**entruster.** Same as **truster.**

**entry.** The act of one who enters. In burglary, the act of going into a place; it may consist of the insertion, for the purpose of committing a felony, of any part of the body or of any instrument connected with the body, such as a hook or a gun. 13 Am J2d Burgl § 10. Going upon land. The act of making something of record by noting it in a book or upon a paper.

See **book of original entry; breaking and entering; right of entry; writ of entry.**

**entry ad communem legem.** Entry at common law,-a writ under which the holder of a reversion could secure the possession of the land, upon the death of the particular tenant.

**entry ad terminum qui praeteriit.** An entry at the end of a term which has expired,-a writ of entry for the landlord at the expiration of the tenant's lease.

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**entry at customhouse.** The exhibition or depositing by a ship's officer of the papers required by law, at the customhouse, or the giving of information to customs authorities with respect to the ship's cargo, for the purpose of securing permission to land or to discharge such cargo. 48 Am J1st Ship § 19. A written statement by the consignee of imported merchandise or his agent which gives such facts in regard to the importation as is required for the purpose of assessing duties and of securing a proper examination, inspection, appraisalment, and liquidation. 21 Am J2d Cust D § 75. The listing by a person entering the United States of merchandise or other articles brought into the country by him. 21 Am J2d Cust D § 74.

For the purposes of tariff schedules, the term "entered" means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States; the term "entered for consumption" does not include withdrawals from warehouse for consumption. 21 Am J2d Cust D § 33.

**entry book.** The record in the office of a recorder or register of titles where the filing or recording of an instrument is noted, usually under the names of both grantor and grantee, mortgagor or mortgagee. 15 Am J2d Chat Mtg § 92.

See **book of original entry.**

**entry cui ante divortium.** A writ which lay for a woman who had secured a divorce from her husband to secure lands which had been alienated by him. See 3 B1 Comm 183.

**entry in casu consimili.** Entry in a similar case,-a writ of entry which lay to recover a reversion in land which had been alienated by a tenant.

**entry into automobile.** Stepping into the vehicle or at least making some move in reference to the vehicle other than merely approaching it for the purpose of entering it. *New Amsterdam Casualty Co. v Fromer* (Mun Ct App Dist Col) 75 A2d 645, 19 ALR2d 509.

**entryman.** A person who makes an entry of public lands under the homestead laws.

**entry of alien.** The physical act of coming into the geographical territory of the United States, a coming from outside, from some foreign port or place. 3 Am J2d Aliens § 54.

**entry of amendment to state constitution.** Entry of the full text of a proposed amendment to the constitution on the journal of each house of the legislature; an entry on the journal of each house sufficient to identify the resolution proposing the amendment, the resolution itself being in the possession of each house when it is passed by the house. 16 Am J2d Const L § 33.

**entry of appearance.** Indicating the appearance of the defendant in an action by the filing or service of a formal appearance or the announcement in open court that the defendant appears, in both of which methods the name of the attorney appearing for the defendant is given, unless the appearance is pro se.

**entry of court order.** The placing of an order of court of record by the clerk, after the court has made the order by announcing it or signing it. 37 Am J1st Motions § 29.

See **entry of judgment.**

**entry of decree.** Same as **entry of judgment.**

**entry of homestead.** See **entry on public land.**

**entry of imports.** See **entry at customhouse.**

**entry of judgment.** Recording a judgment in judgment book. 30A Am J Rev ed Judgm § 93. Spreading the judgment in full length upon the records of the trial court. 30A Am J Rev ed Judgm § 104. The enrolling of a judgment on the records of the court; a ministerial rather than a judicial act. 30A Am J Rev ed Judgm § 94.

See **docketing judgment.**

**entry on public land.** See **entry under homestead law.**

**entry-taker.** A state officer whose functions correspond closely with those of registers of United States land offices under Federal statutes. *Chotard v Pope* (US) 12 Wheat 587, 6 L Ed 737.

**entry under homestead law.** The act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the public domain, consisting in the filing of a claim in the proper land office of the United States or, in case of the public domain of a state, in the office of an entry-taker or other officer with similar authority. 42 Am J1st Pub L §§ 19 et seq.

See **contest of land entry; original entry; preemption entry.**

**enumerate.** To count; to specify; to mention in detail; to enumerate property is to specify with precision its amount, quality or number. *San Francisco v Pennie*, 93 Cal 465, 29 P 66.

To place articles among those designated as "enumerated" in the Tariff Act, it is not necessary that they should be specifically mentioned. It is sufficient that they are designated in any way to distinguish them from other articles. *Junge v Hedden*, 146 US 233, 36 L Ed 953, 13 S Ct 88.

**Enumeratio infirmat regulam in casibus non enumeratis.** Enumeration or specification disaffirms the rule in cases which are not specified or enumerated.

**Enumeratio unius est exclusio alterius.** The enumeration or inclusion of one is in effect the exclusion of another. *Re Washburn* (NY) 4 Johns Ch 106.

**enure.** Same as **inure.**

**en ventre sa mere.** (French.) In the womb of the mother. Same as the Latin **in utero matris.**

**envers.** Against.

**en vie.** In life; while alive.

**envoy.** A messenger sent by one government to another for the purpose of transacting some business of an international character.

See **diplomatic officers.**

**eoath.** An oath.

**eodem delicto.** In the same wrong; equally guilty of the offense. *Conant v Conant*, 10 Cal 239, 245.

**eodem fiatu.** In the same breath. *Green v Biddle (US)* 8 Wheat 1, 103, 5 L Ed 547, 572.

**Eodem ligamine quo ligatum est dissolvitur.** A band

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is released by the same means by which it was made binding.

**Eodem modo quo oritur, eodem modo dissolvitur.** Anything is dissolved or discharged in the same manner in which it was created.

**Eodem modo quo quid constituitur, eodem modo destruitur.** Anything is released in the same manner in which it is made binding.

**eo instante or eo instanti.** At that moment; instantly; immediately. 1 Bl Comm 196.

**eo intuitu.** With that intention; with that intent.

**eo ipso.** By the thing itself; by the very thing.

**eo loci.** In that place; in that state, condition, or situation.

**eo nomine.** By or in that name or designation.

**eo quod plerumque fit.** See **ex eo quod plerumque fit.**

**eorl.** Same as **earl.**

**epidemic disease.** A disease prevalent and spreading in the community.

See **contagious disease; infectious disease.**

**epilepsy.** A chronic disease of the nervous system characterized by paroxysms or convulsions, such seizures at times resulting in unconsciousness. *Gould v Gould*, 78 Conn 242, 61 A 604. *Corbit v Smith*, 7 Iowa 60. The older view that the inevitable course of epilepsy was to insanity has vanished in the light of better medical knowledge of the subject and improvement in medical treatment. It is also negated by the fact that some great figures in history were afflicted with epilepsy.

**epiqueya.** (Spanish.) The word is practically the equivalent of our word "equity."

**episcopacy.** The rule or government of the church by bishops.

**episcopal.** Administered and governed by bishops.

See **archiepiscopal.**

**Episcopal Church.** The Protestant Episcopal Church of the United States; the Church of England.

**episcopalia.** Certain dues which were paid by the clergy to the bishops.

**episcopus.** A Roman overseer or manager; a bishop of the church of England.

See **archiepiscopus.**

**Episcopus alterius mandato quam regis non tenetur obtemperare.** A bishop is not bound to obey any other command than that of the king.

**epistola.** A written communication; a letter.

**epistolae.** Opinions of the Roman emperors on matters and questions which were propounded to them.

**e pluribus unum.** One out of many; one composed of many,—the motto of the United States government.

**equal.** Adjective: Impartial; not discriminating; unbiased; uniform. Verb: To make equivalent to, to recompense fully, to answer in full proportion. *Fry v Hawley*, 4 Fla 258, 279.

**equal election.** An election in which every elector has the right to have his vote counted for all it is worth in proportion to the whole number of qualified electors desiring to exercise their privilege. *McKinney v Barker*, 180 Ky 526, 203 SW 303. An election where the vote of every elector is equal in its influence upon the result to the vote of every other elector; where each ballot is as effective as every other ballot. *Blue v State*, 206 Ind 98, 188 NE 583, 91 ALR 334.

**equal equities.** The equity of one party shown to be equal to the equity of the other; one party as well situated as the other to foresee and prevent the prejudicial consequence. 27 Am J2d Eq § 145.

**equal guilt.** See **recrimination.**

**equality.** The state or condition of being equal; uniformity. A state not exclusive of distinctions, provided the distinctions are based upon reason. *State v Finch*, 78 Minn 118, 80 NW 856. The absence of arbitrary distinctions.

**equality clause.** A clause which anciently was commonly inserted in charters of common carriers, requiring the carrier to furnish transportation to its patrons on equal terms. *Hilton Lumber Co. v Atlantic Coast Line Railroad Co.* 141 NC 171, 53 SE 823.

**equality is equity.** A maxim of equity. 27 Am J2d Eq § 125. The basis of the doctrine of advancements. 3 Am J2d Advancem § 3.

**equalization.** The act or process of making things equal, of producing uniformity.

**equalization board.** See **board of equalization.**

**equalization of assessments.** A proceeding the general purpose of which is to bring the assessments of different parts of a taxing district to the same relative standard so that no one of the parts may be compelled to pay a disproportionate part of the tax. *Huidekoper v Hadley* (CA8 Mo) 177 F 1. Used with less precision to designate the process of raising or lowering the amount of a tax assessment upon an individual piece of property to render it equal to the assessments on other individual pieces of property of the same class in the taxing district. 51 Am J1st Tax § 741.

**equalization of taxes.** A process necessary properly to fulfil constitutional requirements of equality and uniformity in taxation. The process of adjusting the aggregate values of property as between different taxing districts, so that the value of the whole tax imposed on each taxing district shall be justly proportioned to the value of the taxable property within its limits, in order that one county or taxing district shall not pay a higher tax in proportion to the value of its taxable property than another. *People ex rel. Bracher v Orvis*, 301 111350, 133 NE 787, 24 ALR 325. The process of raising or lowering the total assessments on all the property in a taxing district to equalize them with the total assessments in other taxing districts of the same kind in the state, or of raising or lowering the entire assessment on a given class of property, such, for example, as mining rights, in order to equalize it with the total assessment made with respect to other classes of property in the taxing district in question, or other taxing districts, or with the total assessment on the same class of property in other taxing districts. 51 Am J1st Tax § 741.

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**equalize.** To make equal; to produce uniformity.

See **equalization**.

**equally.** In an equal degree or quantity. *Gulf, Colorado & Santa Fe Railroad Co. v Warlick*, 1 Indian Terr 10, 16, 35 SW 235. Importing a division per capita when used to indicate an equal division among a class, but not necessarily requiring a per capita equality of division, being satisfied at times by an equality between a class and a legatee named, and always subject to control by a context which calls for a per stirpes distribution. 57 Am J1st Wills § 1297.

See **share and share alike**.

**equally between.** Appearing in a legacy or devise, usually, but not necessarily, indicating a bequest to individuals rather than to a class. 57 Am J1st Wills § 1265.

**equally divided court.** The number of justices holding for affirmance equalling the number holding for reversal, so that the judgment of the lower court must stand. 5 Am J2d A & E § 902.

**equal protection of the laws.** A phrase not susceptible of exact definition; generally, a guaranty under the Fourteenth Amendment to the United States Constitution that no person or class of persons shall be denied the same protection of the law which is enjoyed by the other persons or other classes under like circumstances, in their lives, liberty, property, and in pursuit of happiness. *Truax v Corrigan*, 257 US 312, 66 L Ed 254, 42 S Ct 124, 27 ALR 375. Concisely stated, the guaranty of equal protection means that the rights of all persons must rest upon the same rule under the same circumstances, both in privileges conferred and in liabilities imposed. *Hartford Steam Boiler Inspection & Ins. Co. v Harrison*, 301 US 459, 81 L Ed 1223, 57 S Ct 838.

**equal rights statutes.** The designation sometimes given to those statutes enacted since the civil war and the abolition of slavery which exemplify the changed feeling of the people towards the African race and are intended to place the colored man upon a perfect equality with all others before the law. *Ferguson v Geis*, 82 Mich 358. The modern terminology is "civil rights acts." But statutes removing the disabilities of married women and forbidding discrimination against women are sometimes referred to as "equal rights laws" or "equal rights statutes."

See **civil rights acts**.

**equal watches.** Successive and continuous watches of sailors on a vessel at sea. To be constituted in numbers as nearly equal as the sum of the whole number will permit. *New York & Cuba Mail S. S. Co. v Continental Ins. Co.* (CA2 NY) 117 F2d 404.

**eques.** A knight.

**equip.** To furnish for service, or against a need or exigency; to fit out; to supply with whatever is necessary to efficient action in any way; to furnish with means for the prosecution of a purpose. Anno: 24 ALR 743.

**equipage.** An outfit or equipment for a particular purpose, such as a trip or expedition. Anno: 24 ALR 743.

See **equipment**.

**equipment.** The means with which a task can be accomplished; an outfit. The personal luggage of a traveler or passenger. *Metz v California Southern Railroad Co.* 85 Cal 329, 24 P 610. As the word is used in construction contracts, it means the outfit necessary to enable the contractor to perform the agreed service, the tools, implements, and appliances which might have been previously used, or might be subsequently used by the contractor in carrying on other work of like character. *United States Rubber Co. v Washington Engineering Co.* 86 Wash 180, 149 P 706. As used in the Federal Employers' Liability Act, the term "equipment" has reference more to personal and movable property than to fixed real property. 35 Am J1st M & S § 426.

See **railroad equipment**.

**equitable.** Just. 27 Am J2d Eq § 23. The characterization of a right which should be recognized, even though it is not a legal right or title. 27 Am J2d Eq § 63.

**equitable action.** An expression that has lost much of its significance because of the enactment of statutes and the promulgation of rules of procedure abolishing the distinction between an action in equity and an action at law. Where the distinction still prevails, an "equitable action" is one to be prosecuted and tried in accordance with the modes of procedure known to courts of equity. 27 Am J2d Eq § 177. Although the distinction between an action in equity and an action at law may have been abolished in a particular jurisdiction, an action in equity in such jurisdiction still has a distinctive character in respect of the relief sought, relief which historically has been obtainable only in equity, relief demanded, not only on account of the substantive character of the right sought to be enforced, but also on account of the inadequacy of the legal remedy. 27 Am J2d Eq § 5. An "equitable action" is an action which is not only remedial in its nature, but which may be brought for the purpose of restraining the infliction of contemplated wrongs or injuries, and the prevention of threatened illegal action, which may be the occasion of serious injury to others. *Thomas v Musical Mut. Protective Union*, 121 NY 45, 24 NE 24.

**equitable adoption.** The principle that a contract or agreement to adopt a child, clear and complete in its terms, and entered into by persons capable of contracting, which has been fully and faithfully performed on the part of the child so that relief for him is required as a matter of justice and equity, will be enforced in equity to the extent of decreeing that the child occupy in equity the status of an adopted child, and be entitled to the same rights of inheritance in intestate property of the promisor to which he would have otherwise been entitled had the intended adoption proceedings been legally consummated. 2 Am J2d Adopt § 16.

**equitable approximation doctrine.** The principle applied in a few cases whereby a testamentary gift is saved from defeat by the rule against perpetuities by the contrived reasoning that the intent of the testator was that the donee should have the property and that the time of vesting of the property in the donee was a matter of subordinate consequence. Anno: 95 ALR2d 808.

See **cy pres**.

**equitable assets.** Rights or interests, which may be either real or personal, but require the aid of the court of equity for their subjection. *Agee v Saunders*, 127 Tenn 680, 157 SW 64. Lands or personalty in which a debtor has an equitable estate or interest, so that they may be reached by a creditor's bill, notwithstanding the legal title is in another. 21 Am J2d Cred B § 33.

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**equitable assignment.** An order, writing, or act by the assignor which makes an absolute appropriation of a chose in action or fund to the use of the assignee with the intent of transferring a present interest, but not amounting to a legal assignment. An executory agreement or declaration of trust, not enforceable as an assignment by a court of law, which a court of equity, exercising a sound discretion will enforce. 6 Am J2d Assign § 1.

**equitable chattel mortgage.** Any contract so convincingly established as to show that there was a clear intention to give a lien on specified chattels of, and in the possession of, the lienee, and that the contract ought, in good conscience and equity, to be enforced according to that intention. An agreement founded on a valuable consideration to give a mortgage on a chattel, an instrument inartificially drawn, a mortgage defectively executed, or an imperfect attempt to create a mortgage, or to appropriate specific property to the discharge of a debt. 15 Am J2d Chat Mtg § 3.

**equitable chose in action.** A personal right of which equity will take cognizance for the purpose of granting relief, such, for example, as a right against a trustee to enforce the execution of a trust. *McIlvaine v Smith*, 42 Mo 45.

**equitable claim.** A claim of which equity will take cognizance for the purpose of granting relief, especially a claim for breach of duty by a fiduciary. *Seminole Nation v United States*, 316 US 286, 86 L Ed 1480, 62 S Ct 1049.

**equitable construction.** The construction of a statute by either restraining or enlarging the letter of the statute. *Riggs v Palmer*, 115 NY 506, 22 NE 188. The interpretation of instruments agreeably to and in conformity with the principles and rules of equity. By and large, the rules for the construction of a contract are the same in equity as in law. Neither a court of law nor a court of equity can interpolate in a contract what the contract does not contain either in words or by necessary implication. 17 Am J2d Contr §§ 241, 242.

**equitable conversion.** That constructive alteration in the nature or character of property whereby, in equity, real is for certain purposes considered as personalty, or whereby personalty for similar considerations, is regarded as real estate, and in either instance, it is deemed to be transmissible and descendible in its converted form. 27 Am J2d Eq Conv § 1.

**equitable defense.** A defense which recognized by courts of equity acting solely upon the inherent rules and principles of equity, altogether outside and independent of those rules and defenses which obtain in a court of law. *Kelly v Hurt*, 74 Mo 561, 565, 569. A concept of little significance in most jurisdictions, modern rules of practice permitting the pleading in an action of defenses either legal or equitable. 27 Am J2d Eq § 19.

**equitable easements.** A term frequently applied to covenants running with the land. *Werner v Graham*, 181 Cal 174, 183 P 945. Restrictive covenants as to the use of land or the location or character of buildings or other structures thereon are primary examples. 20 Am J2d Cov § 166.

equitable ejectment. A paradoxical expression, since ejectment is a legal, not an equitable remedy, but nevertheless applied to an equitable remedy employed in obtaining the specific performance of contracts for the sale of real estate and in some other instances. *McKendry v McKendry*, 131 Pa 24, 18 A 1078.

**equitable election.** Essentially, the principle of election.

See **election**.

**equitable estate.** An equity; an estate or interest in property recognized only in equity, especially a trust. *McIlvaine v Smith*, 42 Mo 45.

See **equitable title**.

**equitable estate of wife.** See **separate estate of wife.**

**equitable estoppel.** A term which, for all practicable purposes, is the same as estoppel in pais; an estoppel of a party to plead or prove an otherwise important fact, because of something which he has done or omitted to do. 28 Am J2d Estop § 27.

See **estoppel in pais.**

**equitable execution.** Any one of the procedures whereby equity enforces its decrees; writ of assistance; sequestration; distringas, receivership, etc. 27 Am J2d Eq § 252.

**equitable foreclosure.** See **foreclosure.**

**equitable garnishment.** A form of judgment creditor's action, statutory proceeding under which, when an execution has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action against the judgment debtor and any other person to compel the discovery of any property belonging to the judgment debtor, and of any money, thing in action, or other property due him, or held in trust for him, and to procure satisfaction of the judgment out of such property. *Giest v St. Louis*, 156 Mo 643, 57 SW 766.

**equitable interest.** See **equitable right; equitable title.**

**equitable jointure.** The satisfaction of a wife's right to dower made by a settlement before marriage, enforceable in equity where it consists of a competent livelihood to take effect upon the husband's death and to continue at least for the life of the wife, and was accepted by her in lieu of, or as the equivalent of, dower. 25 Am J2d Dow § 114.

**equitable lien.** A right, not recognized at law, to have a fund or specific property, or its proceeds, applied in whole or in part to the payment of a particular debt or class of debts. 33 Am J1st Liens § 18.

**equitable maxim.** See **maxim.**

**equitable mortgage.** An instrument not effective as a mortgage at law but regarded as a mortgage and given the effect of a mortgage in equity, the same as if a mortgage in due form had been executed, under various circumstances, such as the reservation of alien on property which is conveyed, an appropriation of specific property to secure the performance of an obligation, an attempt to create a mortgage, and an agreement to give a mortgage, provided the instrument does not merely assume that a lien has been or will be created, but purports through its own terms and efficacy to create the lien. 36 Am J1st Mtg § 13. Another term for vendor's lien. *Gessner v Palmater*, 89 Cal 89, 26 P 789.

See **equitable chattel mortgage; imperfect mortgage.**

**equitable owner.** See **equitable title.**

**equitable partition.** See **partition.**

**equitable plaintiff.** Broadly, the plaintiff in an action or suit in equity. Precisely, the holder of the beneficial interest where a suit has been instituted by or

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in the name of the holder of the legal title as nominal plaintiff for the benefit of the owner of the beneficial interest. 39 Am J1st Parties § 15.

**equitable plea.** A plea in an action at law which presents an equitable defense.

See **equitable defense**.

**equitable rate of interest.** A rate of interest chargeable against a fiduciary, as fixed by a court of equity, usually lower than the statutory rate. 30 Am J Rev ed Int § 35.

**equitable recoupment.** A reduction of the claim affirmatively urged in an action so far as in reason and action it ought to be reduced. *Gooch Mill & Elevator Co. v Commissioner* (CA8) 133 F2d 131, revd on other grounds 320 US 418, 88 L Ed 139, 64 S Ct 184. The doctrine of recoupment exists in equity as well as at law, and has been said to be equitable in nature. 20 Am J2d Count § 6.

See **recoupment**.

**equitable rescission.** Relief by way of rescission had in a court of equity without restoration by the plaintiff, prior to the commencement of the action, of that which he received from the defendant under the contract which he seeks to have rescinded. *Morgan Munitions Supply Co. v Studebaker Corp.* 226 NY 94, 123 NE 146.

**equitable right.** A right which equity will protect, even though it is not a legal right or title. 27 Am J2d Eq § 63. A right recognized by a court of equity and enforceable only by a court of equity, except as statutes or modern rules of practice have wiped out the distinction between an action at law and a suit in equity. *Brown v Circuit Judge of Kalamazoo County*, 75 Mich 274, 42 NW 831; *Estate of Folwell*, 68 NJ Eq 728, 62 A 414.

See **equitable title**.

**equitable rule.** Literally, the rule followed by equity courts. A rule which is just.

**equitable seisin.** By analogy to legal seisin, the possession of land coupled with the right to possess it by virtue of a freehold estate therein which equity will recognize and protect.

**equitable servitude.** See **equitable easements**.

**equitable setoff.** A remedy open to the defendant where, from the nature of the claim or the situation of the parties, it is impossible to obtain justice by plea or cross action—in other words, in those cases where, through no fault of the defendant, he has no adequate remedy at law. 20 Am J2d Countcl § 24.

**equitable title.** A title which is recognized as ownership in equity, whatever cognizance may be taken of it at law, for example, the title of the vendee under a contract for the sale of real estate. 56 Am J1st V & P § 356. A title which is not a legal title and is enforceable only in a court of equity, except as statutes or modern rules of practice have wiped out the distinction between an action at law or a suit in equity. A title derived through a valid contract or relation, and based on recognized equitable principles; the right in the party, to whom it belongs, to have the legal title transferred to him. *Harris v Mason*, 120 Tenn 668, 115 SW 1146; *Estate of Folwell*, 68 NJ Eq 728, 62 A 414.

**equitable trust fund doctrine.** See **trust fund doctrine**.

**equitable waste.** Acts which at law would not be deemed waste under the circumstances of the case, but which, in the view of a court of equity are regarded as waste from their manifest injury to the inheritance, although such acts are not inconsistent with the legal rights of the party who commits them. 56 Am J1st Waste § 5.

**equitas.** A corruption of **aequitas**.

**equitatura.** The equipment of a traveler.

**equites aurati.** Knights were called "aurati" from the gilt spurs which they wore, and "equites" because they always served on horseback. See 1 Bl Comm 404.

**equities being equal, the law prevails.** A maxim of equity, meaning that where two persons have equal equitable claims upon, or interests in, the same subject matter, or, in other words, if each is equally entitled to the protection and aid of a court of equity with respect to his equitable interest, and one of them in addition to his equity has obtained also the legal estate in the subject matter, he who thus has the legal estate will prevail. 27 Am J2d Eq § 150.

**equity.** A term having a variety of meanings. The mitigating principles, by the application of which substantial justice may be attained in particular cases wherein the prescribed or customary forms of ordinary law seem to be inadequate. A complex system of established law and jurisprudence. The standing of a party to claim relief. An interest in property which a court of equity will protect. 27 Am J2d Eq § 1.

See **at law and in equity; bill in equity; court of equity; decree; equity term; in equity; strong arm of equity.**

**equity acts in personam.** A maxim in equity. The Latin form, **aequitas agit in personam.** *Schmaltz v York Mfg. Co.* 204 Pa 1, 53 A 522.

Equity deals primarily with the person, and usually only through him with the res. *Atlantic Seaboard Natural Gas Co. v Whitten*, 315 Pa 529, 173 A 305, 93 ALR 615. The operation of the maxim has been greatly modified by statute. Although an equity court still has the power to act in personam, by force of statute, its judgment or decree also operates in rein to establish a title or right. 27 Am J2d Eq § 122.

**equity aids no man to the injury of another.** A maxim of equity. The Latin form is *aequitas neminem juvat cum injuria alterius.*

**equity aids the vigilant and diligent.** A maxim of equity, sometimes stated as "equity aids the vigilant, not the sluggards." The Latin form is *aequitas subvenit vigilantibus non dormientibus.* In application, the maxim is essentially the equivalent of the doctrine of estoppel. Equity will not take rights acquired by one who has been vigilant and give their benefit to one who has lost them through inaction. 27 Am J2d Eq § 130.

**equity assists ignorance, but not carelessness.** A maxim of equity. The Latin form is *aequitas ignorantia opitulatur, oscitantiae non item.* The meaning is that equity should deny relief to those who do not take care of themselves, and who thereby suffer losses which ordinary care would have prevented. *Tackett v Bolling*, 172 Va 326, 1 SE2d 285.

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**equity corrects a law which is too broad in that particular in which it is defective.** A principle or maxim of equity. The Latin form is *aequitas est correctio legis generaliter latae, qua parte deficit.* *Riggs v Palmer*, 115 NY 506, 22 NE 188.

See **equitable construction.**

**equity corrects errors.** A familiar function of equity. 27 Am J2d Eq § 28. The Latin form is *aequitas erroribus medetur.*

**equity court.** See **court of equity.**

**equity credits.** The credits to which a member of a co-operative association is entitled in the revolving capital fund accumulated by the association from operating profits or a portion of the operating profits. 18 Am J2d Co-op Asso § 15.

**equity delights in amicable adjustments.** A maxim of equity; a maxim addressed to the judicial conscience and intended to govern the court in the determination of disputes between litigants. *Troll v Spencer*, 238 Mo 81, 141 SW 855.

**equity dislikes superfluity.** The Latin form is *aequitas supervacua odit*.

See **equity regards substance and intent rather than form.**

**equity does justice completely, not by halves.** A maxim of equity. 27 Am J2d Eq § 119.

**equity does not change the nature of a thing.** The Latin form is *aequitas naturam rei non mutat*.

**equity does not confuse jurisdiction.** The Latin form is *aequitas jurisdictiones non confundit*.

**equity does not cure defects in positive requirements of the law.** The Latin form is *aequitas non medetur defectu eorum quae jure positivo requisita alium*. 27 Am J2d Eq § 124.

**equity does not make the law, but assists the law.** A maxim of equity. The Latin form is *aequitas non facit jus, sed juri auxiliatur*.

**equity does not permit a person to get double satisfaction for the same grievance.** The Latin form of the principle is *aequitas non sinit ut eandem rem duplici via simul quis persequatur*.

**equity does not suffer him who holds a true right to prosecute it to extremes.** The Latin form of the principle is *aequitas non sinit eum qui jus verum tenuit, extremum jus persequi*.

**equity does not supply those things which may be in the hands of the complainant.** The Latin form of the principle is *aequitas non supplet ea quae in manu orantis esse possunt*.

**equity favors the redemption of a pledge.** An undoubted principle of equity. 41 Am J1st Pldg & Col § 105. The Latin form is *aequitas rei oppignoratae redemptionibus favet*.

**equity follows the law.** The Latin form is *aequitas sequitur legem*. A maxim of equity which is subject to various interpretations, but the main purpose seems to be to keep judicial action within the boundaries which have been established by the prior course of adjudication, in line with the precepts that equity will follow established rules and precedents and will not change or unsettle rights which are defined and established by existing legal principles. 27 Am J2d Eq § 123. Assuredly, equity is bound by statutes. 49 Am J1st Stat of F § 535.

**equity for a settlement.** A married woman's right, recognized and enforced by courts of equity, for a suitable allowance or a settlement out of her choses in action, interest in a decedent's estate, and other personalty which at common law became the property of her husband when he reduced them into his possession. 26 Am J1st H & W § 48.

**equity for marshaling.** See **equity to marshal assets.**

**equity gives the power of the law to him who wishes to observe it.** The Latin form of the principle is *aequitas in eum qui vult summo jure agere summum jus intendit*.

**equity imputes an intention to fulfil an obligation.** The maxim embodies a statement of a general presumption upon which a court of equity acts. It is commonly applied in cases involving the performance and satisfaction of covenants, the rule being that wherever a deceased person has covenanted to do an act and has done that which may pro tanto be considered as a

performance of his covenant, he will be presumed to have done the act with that intention and his estate will be treated as if he had been a trustee to complete the performance. 27 Am 12d Eq § 128.

**equity is a certain perfect reasoning which interprets and amends the written law; not embraced in any writing, but consisting simply in true reason.** The Latin form is *aequitas est perfecta quaedam ratio quae jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in vera ratione consistens*.

**equity is a relaxing or alleviation of the law.** It is a mitigating principle by the application of which substantial justice may be attained in particular cases wherein the prescribed or customary forms of law seem to be inadequate. 27 Am J2d Eq § 1. The Latin form of the principle is *aequitas est laximentum juris*. Pomeroy's Equity Jurisprudence, § 46.

**equity is equality, and equality is equity.** A maxim of equity. The Latin forms are *aequitas est aequalitas* and *aequitas est quasi aequalitas*. As sometimes stated, equity delights in equality. Equity treats all members of a class on an equal footing, and imposes burdens and distributes rights without preference, either equally or in proportion to the several interests. 27 Am J2d Eq § 125.

**equity is not vague and uncertain but has fixed boundaries and limits.** The Latin form of the statement is *aequitas non vaga atque incerta est, sed terminos habet atque limites praefinitas*. But a want of equity

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jurisdiction is not inferred from the novelty of the question. The fact that there is no precedent for the precise relief sought is not fatal to equity jurisdiction. 27 Am J2d Eq § 13.

**equity jurisdiction.** A broad and flexible jurisdiction to grant remedial relief where justice and good conscience demands it, but without purporting to create rights, being limited to determining what rights the parties have and whether or in what manner it is just and proper to enforce them. A jurisdiction in two categories, the one dependent upon the substantive character of the right sought to be enforced, the other dependent upon the inadequacy of the legal remedy. 27 Am J2d Eq § 5.

equity jurisprudence. That portion of our system of jurisprudence traditionally expounded and administered by courts of equity. 27 Am J2d Eq § 1. It remains a distinct part of the system, notwithstanding in many jurisdictions legal and equitable remedies have been commingled in one form of civil action and a court of general jurisdiction may hear both law and equity cases. 27 Am J2d Eq § 4.

**equity never aids contention where it can give a remedy.** The Latin form of the principle is *aequitas nunquam liti ancillatur ubi remedium potest dare*.

**equity never contravenes the law.** The Latin form of the principle is *aequitas nunquam contravenit legis*. The principle is a corollary of the principle that equity follows the law.

**equity of partner.** The right to have the partnership assets applied in liquidation of the partnership debts before any one of the partners or his creditors can claim any right or title to them, and to have the surplus assets divided among the members of the firm. 40 Am J1st Partn § 404.

**equity of redemption.** The right, recognized by courts of equity from early times, of a mortgagor, following a breach of the condition of the mortgage, to redeem property from the forfeiture by discharging the obligation secured within a reasonable period; such right is a real and beneficial estate in the land under the concept of a court of equity that despite its terms, a mortgage is a transaction of security, not of purchase. 36 Am J1st Mtg § 180.

See **foreclosure**.

**equity of statute.** The reason and spirit underlying a statute as aids to its interpretation. 50 Am J1st Stat § 304.

**equity pleading.** A pleading in a suit in equity, whether bill, complaint, petition, answer, plea, or cross bill, etc., governed by traditional equity practice. In most jurisdictions today, distinctive rules of equity pleading have been largely, if not entirely, supplanted by statutory provisions or rules of court which prescribe rules of pleading, especially in those jurisdictions where law and equity courts have been combined or in which there is but one form or kind of action in a civil case, known as a "civil action." 27 Am J2d Eq § 179.

**equity prevents mischief.** A maxim of equity, a maxim addressed to the judicial conscience. Funk v Voneida (Pa) 11 Serg & R 109.

**equity receiver.** A receiver appointed by a court by virtue of its equity jurisdiction and without reference to statutory authority. 45 Am J1st Rec § 3.

**equity receivership.** A remedy for the dissolution or reorganization of a corporation in financial distress.

**equity regards as done that which ought to be done.** A maxim of equity which means that a court of equity, in determining a dispute between litigants, regards and treats as done that which, in fairness and good conscience ought to be or should have been done. 27 Am J2d Eq § 126.

**equity regards substance and intent, rather than form.** A maxim of equity sometimes stated as "equity regards form and circumstance as of less consequence than the subject matter itself." The Latin form is *aequitas rem ipsam intuetur de forma et circumstantiis minus anxia*. The meaning of the maxim is that the rights of the parties are not to be sacrificed to the mere letter, but that the intent or spirit of a contract, agreement, or transaction will in equity at least be the paramount consideration. 27 Am J2d Eq § 127.

**equity relieves against accidents.** An undoubted principle of equity. 27 Am J2d Eq § 44. The Latin form of the principle is *aequitas casibus medetur*.

**equity rules of practice.** A set of rules supplanted by the Federal Rules of Civil Procedure, effective September 16, 1938. *Schlaefler v Schlaefler*, 71 App DC 350, 112 F2d 177.

**equity seeks to do justice.** A maxim of equity reflecting the principle that the first principle of equity is justice. *Tompers v Bank of America*, 217 App Div 691, 217 NYS 67.

**equity side.** The sitting of a court having jurisdiction in both law and equity but sitting for the time as a court of equity.

**equity supplies defects.** A maxim or principle of equity. 27 Am J2d Eq § 2. The Latin form is *aequitas defectus supplet*.

**equity term.** A term or session of court without a jury, such being the term at which equity cases are tried.

**equity to a settlement.** See **equity for a settlement**.

**equity to marshal assets.** The equity to marshal the assets, securities and funds of a debtor is the right of a creditor who has a junior lien on or interest in only a part of the assets, securities, or funds of the debtor to have a creditor who has a prior lien on or interest in the same assets, securities or funds, before resorting to the assets, securities and funds thus charged, to exhaust

other assets, securities or funds of the debtor on which the prior creditor has a lien or in which he has an interest, but on which or in which the junior creditor has no lien or interest. 35 Am J1st Marsh A § 2.

**equity which is prior in time is better in right.** A principle or maxim of equity. The Latin form is *qui prior est tempore potior est jure*. The meaning is that where opposing equities are otherwise equal, the one which is prior in time is entitled to precedence or preference. 27 Am J2d Eq § 149.

**equity will not do or require the doing of a vain or useless thing.** A maxim of equity, meaning that a court of equity must look to the practicalities of the situation and the relief sought to be had. 27 Am J2d Eq § 119.

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**equity will not suffer a wrong to be without a remedy.** A maxim of equity. The legal maxim is: Where there is a right, there is a remedy. 27 Am J2d Eq § 120.

**equivalent.** Adjective: Of equal value, weight, force, etc. Noun: A thing of equal value, weight, force, etc. In patent law, a device which accomplishes the same result as that achieved by a patent alleged to have been infringed. 40 Am J1st Pat § 156.

See **seller's option**.

**equivocal.** Possessing a double or doubtful meaning.

**equivocum.** A double meaning.

**equuleus.** A kind of rack which was employed by the Romans for the purpose of extorting the confessions of persons accused of crime.

**era.** A period of time characterized by outstanding events, such as Christian era, machine era, and atomic era.

**eradication.** The annihilation of something, for example, the suppression and prevention of animal diseases. 4 Am J2d Ani § 34.

**Erant in Anglia quodammodo tot reges vel potius tyranni quot domini castellorum.** There were in England as many kings or rather tyrants as there were lords of castles. See 1 Bl Comm 263.

**Erant omnia communia et indivisa omnibus, veluti unum cunctis patrimonium esset.** All things were common and undivided, as if there were a single patrimony for all. See 2 Bl Comm 3.

**erase.** To rub, scrape, or wipe out.

**erasure.** A rubbing, scraping, or wiping out; a method of alteration of an instrument. 4 Am J2d Alt Inst § 36. Sometimes an effective revocation of a will or a portion of a will. 57 Am J1st Wills §§ 502 et seq.

See **obliteration**.

**erection.** The construction of a building or structure complete from the ground up or of some part of the building or structure, such as the foundation, a pillar, or support, even a driveway serving the building or structure. *Red Lake Falls Milling Co. v Thief River Falls*, 109 Minn 52, 122 NW 872. A building or structure. *Strauss v Ginzberg*, 218 Minn 57, 15 NW2d 130, 155 ALR 1000.

**erer.** To plough.

**ergo.** Therefore; consequently; accordingly.

**ergo hic.** Therefore here.

**ergot.** A drug sometimes used in abortions, the tendency of which is to contract the uterus and throw out the foetus. *State v Alcorn*, 7 Idaho 599, 64 P 1014.

**Erie R. Co. v Tompkins.** A landmark case, overruling a doctrine theretofore followed for many years, and establishing the doctrine that, under the Federal Judiciary Act, except as to matters governed by the United States Constitution, Acts of Congress, or treaties, the law to be applied in any case in the federal court is the law of the state, and that the phrase "the laws of the several states" refers, not only to state law as enacted by the state legislature, but to the law of a state as declared by its highest court, whether the law thus declared is local in nature or is general, common, or commercial. The case is reported in 304 US 64, 82 L Ed 1188, 58 S Ct 817, 114 ALR 1487, and the case long cited as authority for the principle which was overruled is *Swift v Tyson* (US) 16 Pet 1, 10 L Ed 865.

**erigimus.** We establish; we erect.

**erosion.** The gradual eating away of the soil by the operation of currents or tides, so that the portion of land which is eaten away is lost to the riparian or littoral owner, except and until it be restored to him by accretion. *Mulry v Norton*, 100 NY 426, 3 NE 581. A gradual wearing away or disintegration from any cause.

**erotic mania.** A form of mental disease better known in modern times as nymphomania.

See **nymphomania**.

**errant.** Wandering; itinerant; traveling from place to place.

See **bailiff errant**.

**erraticum.** Same as **estray**.

**erroneous.** Wrong, mistaken. Particularly, in reference to a determination made by a court. Deviating from, or contrary to, the law, as an erroneous ruling. It means or imports the power to act, but error in its exercise. The word does not appear to be used either by courts or text writers as applying to a corrupt or evil act. *Mitchell v Bowers* (CA9 Cal) 15 F2d 285.

**erroneous judgment.** A judgment rendered according to the course and practice of the courts, but contrary to law; that is, based upon an erroneous application of legal principles. *Stafford v Gallops*, 123 NC 19, 21.

**erroneously or illegally charged.** As used in a statute providing for a refund of taxes so exacted, the phrase is held to refer to a jurisdictional defect as distinguished from a mere error of judgment, and it is generally held that no recovery of taxes paid under protest can be had under such statutes on the theory that there has been a mistake in the valuation of the property, which resulted in an excessive assessment. Anno: 110 ALR 670.

**erronice.** Erroneously; through error or mistake.

**error.** A mistake of law or fact; a mistake of the court in the trial of an action; a writ to review a judgment of an inferior court in a higher court for errors appearing on the face of the record. A proceeding under a writ of error, distinct, under the older practice, from an appeal, in respect primarily of the scope of review, the typical error proceeding calling for a trial de novo. 4 Am J2d A & E § 2.

See **appeal and error; assignable error; assignment of errors; clerical error; common error; confession of error; cross errors; favorable error; fundamental error; harmless error; invited error; judicial error; palpable; prejudicial error; proceeding in error; reversible error; substantial error; technical error; writ of error.**

**error apparent.** A manifest, plain, or obvious error. An error on the face of a proceeding, in the pleadings, judgment, or decree, as distinguished from an error in the evidence discoverable only upon the examination of the record. *Milliken v McKenzie* (Tex Civ App) 285 SW 1110, 1111.

**error coram nobis.** See **coram nobis.**

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**error coram vobis.** See **coram vobis.**

**Errores ad sua principia referre, est refellere.** To refer errors to their source is to refute them.

**Error fucatus nuda veritate in multis est probabilior, et saepenumero rationibus vincit veritatem error.** Error disguised is in many instances more probable than naked truth, and error very often overcomes truth in argument.

**error in extremis.** A mistake committed in good faith while in great danger, so that it must be weighed according to a standard different from that applied to an error committed under less distressing and distracting circumstances. 48 Am J1st Ship § 233.

**error juris.** An error or mistake of law; ignorance of law.

**Error juris nocet.** An error of law works an injury.

**error lapsus.** An error by mistake or slip, as distinguished from an error through ignorance, as by ignorance of law.

**Error nominis nunquam nocet, si de identitate rei constat.** A mistake or error in a name is never prejudicial, if the identity of the thing is clear.

**error of fact.** A mistake of fact as distinguished from a mistake of law. A finding of fact by the trial court contrary to the weight of the evidence. *Southern Surety Co. v United States* (CA8 NM) 23 F2d 55, 59.

See **ignorance of fact; mistake of fact.**

**error of judgment.** A mistaken conclusion. Not negligence if committed in good faith in the observance of the standard or ordinary or reasonable care. 38 Am J2d Negl § 33.

If one, assuming to act as an expert, has knowledge of the facts and circumstances connected with the duty he is about to perform, and, bringing to bear all his experience and skill, weighs those facts and circumstances, and decides upon a course of action which he faithfully attempts to carry out, his want of success would be due to error of judgment, and not to negligence. *Luka v Lowrie*, 171 Mich 122, 136 NW 1106.

Although a druggist is not necessarily responsible for the results of an error of judgment which is reconcilable and consistent with the exercise of ordinary skill and care, a presumption or an inference sufficient to require the druggist to disprove negligence arises upon proof of mistake or inadvertence on his part. 25 Am J2d Drugs § 56.

**error proceeding.** See **proceeding in error.**

**Error qui non resistitur approbatur.** An error which is not objected to is waived.

**Error scribentis nocere non debet.** An error or mistake of a scrivener ought not to prejudice.

**Erubescit lex filios castigare parentes.** The law blushes at reproofs which children administer to their parents.

**erysipelas.** A painful affection of the skin, or mucous membrane, characterized by local inflammation and fever. Owing's Case (Md) 1 Bland Ch 370. An affliction of the body, but not a mental or bodily infirmity within the meaning of a warranty in an insurance policy. 29 Am J Rev ed Ins § 749.

**esartum.** Same as **assart**.

**escaeta.** Same as **escheat**.

**escaetor.** Same as **escheator**.

**escalator.** A power-driven moving stairway, used in department stores, airports, underground parking places, banks, office buildings, etc., made up of interconnected platforms and risers, usually of grooved metal, normally inclined at an angle of about 45 degrees, so constructed that it can be moved either up or down, at speeds which may be varied within limits, and having the distinguishing characteristics of being in constant motion, operating under the control of neither attendant nor passenger, and available to passengers so that they enter and leave the conveyance at any floor by merely stepping on and off. 26 Am J2d Elev § 78. An elevator within the meaning of the double indemnity provision of an accident insurance policy. 29A Am J Rev ed Ins § 1235.

**escalator clause.** A clause in a contract of sale or lease, made during a period when prices and rentals are limited in amount by law, which gives the vendor or landlord the benefit of such increases in the price or rent as may be made by law during the life of the contract or lease.

**escaldare.** To scald.

**escambio.** Exchange; a writ to authorize the drawing of bills of exchange on persons who are in a foreign country.

**escambio monetae.** See de **escambio monetae**.

**escambium.** Exchange.

**escape.** A criminal offense at common law, and by statute in most jurisdictions, consisting in the unlawful departure of a legally confined prisoner from custody or the act of a prisoner in regaining his liberty before being released in due course of law. The criminal offense committed by a jailer, warden, or other custodian of a prisoner in permitting him to depart from custody unlawfully. 27 Am J2d Escape § 1. In common usage, the flight of a person seeking to avoid arrest, also any act or movement by a person to avoid a peril. An animal's departing the custody of its owner, the effects of which, in the case of an animal *ferae naturae*, is to deprive the owner of his rights as such. 4 Am J2d Ani § 19.

See **prison breaking; rescue**.

**escape clause.** A clause in the lease of a tenant-stockholder in a cooperative apartment which permits him to assign his stock and lease to the cooperative association without receiving compensation therefor but enabling him to escape continuing liability to the association for payments otherwise coming due under the lease. 15 Am J2d Con Apt § 27. A clause in a contract relieving a promisor of liability for nonperformance in the event of contingent developments rendering performance impossible. 17 Am J2d Contr § 404.

**escape warrant.** A warrant which directed any sheriff in England to arrest a person who had escaped from an imprisonment on civil process.

**escaping fire.** A fire which has spread out of the place where it is ordinarily maintained, thereby becoming a "hostile fire." 29A Am J Rev ed Ins § 1287.

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**escaping substances.** The doctrine, often called the doctrine of Rylands v Fletcher, or Fletcher v Rylands (LR 1 Exch 265, LR 3 HL 330, 4 Hurlst & C 263, 1 Eng Rul Cas 236), that a person who, for his own purposes, brings on his lands and collects and keeps there anything likely to do mischief if it escapes must keep it in at his peril; and if he does not do so, he is prima facie liable for all the damage which is the natural consequence of its escape. 38 Am J1st Negl § 139.

**escapium.** An escape; an accident; that which happened by chance.

**eschaeta.** See **de eschaeta.**

**Eschaetae vulgo discuntur quae decidentibus its quae de rege tenent, cum non existit ratione sanguinis haeres, ad fiscum relabuntur.** They are commonly called escheats which, upon the dying out of those who hold of the king when there is no heir by consanguinity, revert to the treasury.

**Esch Car Service Act.** See **car service.**

**escheat.** An obstruction of the course of descent by chance or accident. 27 Am J2d Esch § 1. The preferable right of the state to an estate left vacant because of the absence of persons legally entitled to make claim thereto. University of North Carolina v High Point, 203 NC 558, 166 SE 511. The reversion of property to the state when the title fails. Delaney v State, 42 ND 630, 174 NW 290. The state does not take as an heir; escheat is not succession. 27 Am J2d Esch § 1.

A word deriving from the French or Norman French which, in its most comprehensive scope, means the reversion or forfeiture of property to the government upon the happening of some chance event or default. 27 Am J2d Esch § 1. In England, real estate escheats, but the Crown takes personal property, where there is no owner, that is bona vacantia. 27 Am J2d Esch § 1.

**escheat grant.** See **escheat patent.**

**escheator.** An English county officer who looked into and made report of escheats reverting to the king. A public officer or public body upon whom rests the duty of bringing actions for escheat or for a sale or conveyance of escheated lands. 27 Am J2d Esch § 32.

**escheat patent.** The formal deed or conveyance by which escheated lands are regranted by the state. 27 Am J2d Esch § 43.

**escheat propter defectum sanguinis.** Escheat for failure of blood relations.

**escheat propter delictum tenentis.** Escheat for the fault of the tenant; as through the attainder of the tenant.

**escheat warrant.** Same as **escheat patent.**

**escheceum.** A jury; an inquisition.

**eschoir.** To escheat.

**escippare.** To ship. Same as **eskipper**.

**escribano.** A term encountered in Spanish-American grants, being the name of an officer whose functions are quite similar to those of a notary public under our law. *Panaud v Jones*, 1 Cal 488, 502.

**escrier.** To proclaim.

**escript.** A writing; a written instrument.

**escrit.** Same as **escript**.

**escritura.** (Spanish.) A deed; a writing; a written instrument.

**escrow.** A written instrument which by its terms imports a legal obligation and which is deposited by the grantor, promisor, or obligor, or his agent, with a stranger or third party to be kept by the depository until the performance of a condition or the happening of a certain event, and to be delivered over to the grantee, promisee, or obligee. 28 Am J2d Escr § 1.

In its origin, the doctrine of escrow applied only to deeds of grant or conveyances of land, but it was soon extended to other sealed instruments and has come to apply to a variety of instruments, including bonds, contracts for the sale of land, contracts for the purchase of personal property, corporate stocks, deeds, discontinuances and releases of cause of action, contracts for the settlement of will contests, commercial paper, applications for insurance, and subscription papers. 28 Am J2d Escr § 2.

See **delivery as an escrow**.

**escrow account.** A bank account created by a special deposit to be held in escrow and returned to the depositor upon the occurrence of a specified contingency. 10 Am J2d Banks § 366.

**escrow holder.** The third party to an escrow.

See **escrow**.

**escrowl.** Same as **escrow**.

**escuage.** Also called "scutagium," or "servitium scuti," derived from "scutum," which was at one time a common word for money, and meaning the pecuniary satisfaction which a tenant paid to his lord for a release from the troublesome and inconvenient personal attendance of knightservice. At first the tenant was permitted to send a substitute and later escuage developed. See 2 Bl Comm 74.

See **king-geld**.

**esketoires.** Robbers; pillagers.

**Eskimos.** Native inhabitants of Alaska, so similar in features to Orientals, especially Orientals in Siberia across the Bering Sea from Alaska, as to suggest what many anthropologists state after scientific observations, that they emigrated from Siberia some thousands of years ago. Classified as Indians by statute. *United States v First Nat. Bank*, 234 US 245, 58 L Ed 1298, 34 S Ct 846.

**eskippamentum.** The tackle of a ship; skippage.

**eskippare.** To ship.

**eslier.** To choose; to select.

**eslisor.** Same as **elisor**, a person who chose or selected a jury.

**esloigner.** Same as **eloign**.

**esne.** A person in a condition of servitude.

**esnecy.** The right or privilege of seniority. The privilege or prerogative given to the eldest among coparceners, to have the first choice after the inheritance is divided.

**espera.** The time which a court has fixed for the performance of an act.

**esperons.** Spurs.

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**espionage.** Spying, especially for military purposes; a criminal offense where the activity is employed against the United States. 47 Am J1st Sedit Etc. § 5. The obtaining of national defense information and communicating it to a foreign nation in time of war. *Rosenberg v United States*, 346 US 273, 97 L Ed 1607, 73 S Ct 1152.

**Espionage Act.** The federal statute which denounces and provides for the punishment of actual espionage and deals in addition with a wide variety of matters relating to and connected with the national defense and war activities of the United States. 50 USC §§ 31 et seq.

**esplees.** The products and profits of land which it yields, such as the hay of the meadows, the herbage of the pasture land, the corn of the arable land, rents, services, etc. *Fosgate v Herkimer Mfg. & Hydraulic Co.* (NY) 9 Barb 287, 293.

**espousals.** The mutual promises of a man and a woman to marry each other.

**espouse.** To engage to marry; to give or bestow in marriage; to engage in the defense of another; as, to espouse his cause.

**espurio.** (Spanish.) A spurious offspring; a bastard.

**esq.** An abbreviation of **esquire**.

**esquire.** The term is applied to barristers-at-law, and in the United States it is customary to append the title to attorneys at law in addressing them by letter.

Blackstone has said it is a matter somewhat unsettled what constitutes the distinction between a gentleman and an esquire, or who is a real esquire. See 1 Bl Comm 406.

**essart.** Wooded land which has been cleared and cultivated.

**essartum.** Same as **essart**.

**esse.** To be; being; to appear.

See **in esse**.

**essence.** The gist or substance of anything; the vital constituent of a thing.

See **time is of the essence.**

**essence of the contract.** The gist or substance or vital constituent of the contract; an important part of a contract.

**essendi quietam de thelonia.** An exemption from the payment of tolls.

**essendo quietum de thelonio.** See **de essendo, etc.**

**essentialia negotii.** The essentials of the transaction or business.

**Esse optime constitutam republicam quae ex tribus generibus illis, regali, optimo, et populari, sit modice confusa.**

That the best constituted republic is that which is moderately composed of three elements, royalty, aristocracy and democracy.

1 Bl Comm 50.

**essoign.** An excuse made to the court by a defendant who failed to appear according to the summons of a writ. See 3 Bl Comm 278.

**essoign day.** That day of a term of court, which was called the essoign day of the term, upon which the court sat to take or hear essoigns. See 3 Bl Comm 278.

**essoign roll.** The record of essoigns.

**essoin.** Same as **essoign.**

**essoin day.** Same as **essoign day.**

**essoin de infirmitate.** An essoign of illness or infirmity.

**essoin de mal de lit.** Same as **essoin de malo lecti.**

**essoin de mal de venue.** Same as **essoin de malo veniendi.**

**essoin de malo lecti.** An essoign that the defendant was sick in his bed.

**essoin de malo veniendi.** An essoign that the defendant met with an accident on his journey to court.

**essoin de outre mer.** Same as **essoin de ultra mer.**

**essoin de servitio regis.** An essoign that the defendant was away in the service of the king.

**essoin de terra sancta.** An essoign that the defendant was absent in the holy land.

**essoin de terre seynte.** Same as **essoin de terra sancta.**

**essoin de ultra mer.** An essoign that the defendant was beyond seas.

**essoineour.** Same as **essoiniator.**

**essoiniator.** The person who presented an essoign to the court in behalf of the defendant who failed to appear.

**essoin service del roy.** Same as **essoin de servitio regis**.

**est.** It is; he is; there is.

**establish.** To originate, to create; to found and set up; to put or fix on a firm basis; to put in a settled or efficient state or condition. *State, ex rel. Bragg v Rogers*, 107 Ala 444, 19 So 909.

As used in an instruction requiring a party to clearly "establish" a fact by evidence, it means to settle certainly or fix permanently what was before uncertain, doubtful, or disputed, and is therefore improper as applied to the party having the burden of proof in a civil case, in that it requires too high a degree of proof, that is, it requires a higher degree than is reached by a mere preponderance, which is sufficient. *Fisher v Travelers' Ins. Co.* 124 Tenn 450, 138 SW 316.

To establish may mean to settle or fix unalterably, but that is not its necessary meaning. As used in a statute authorizing the establishment of water rates, the word does not convey the idea of permanency and it has no such meaning. The power of the board is not exhausted by one exercise nor has its result unalterable fixity. *Knowlton v Moore*, 178 US 22, 38, 44 L Ed 961, 969, 20 S Ct 860.

**established business.** A business which has an element of fixity and permanence. A doctor's office or a farm of a farmer, which is the locally established center from which he distributes what he has to sell may be said to be a place where he has an established business. *Allen v Commonwealth*, 188 Mass 59, 74 NE 287.

**established highway.** A highway which has been located, created by dedication, prescription, or by the direct action of the public authorities, and opened for use by the people of the state at their

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pleasure for the purpose of travel. *Palatka & Indian River Railroad Co. v State*, 23 Fla 546.

**establishing a market.** Nothing more than designating a space within a city or town where goods of a certain character may be bought and sold. 35 Am J1st Mark & M § 4.

**establishing credit.** See **opening a credit**.

**establishment.** The fixing of something on a firm basis; making certain that which before was uncertain. The place in which one is permanently fixed for residence or business; residence with grounds, furniture, equipage, etc., with which one is fitted out; also, any office or place of business, with its fixtures. *Trustees of Academy v Bohler*, 80 Ga 159, 162. An industrial plant or other place of employment. *Matson Terminals v California Employment Com.* 24 Cal 2d 695, 151 P2d 202.

**establishment clause.** The provision of the First Amendment to the Constitution of the United States concerning establishment of religion, the meaning of which is that neither a state nor the federal government can set up a church; neither can pass laws which aid one religion, aid all religions, or prefer one religion over another; neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. *Illinois ex rel. McCollum v Board of Education*, 33 US 203, 92 L Ed 649, 68 S Ct 461, 2 ALR2d 1338; *Everson v Board of Education*, 330 US 1, 91 L Ed 711, 67 S Ct 504, 168 ALR 392, reh den 330 US 855, 91 L Ed 1297, 67 S Ct 962.

**establishment of dower.** Same as **assignment of dower**.

**establishment of grade.** The fixing of the grade of a street or highway at an official grade, either by a direct act of the legislature or under authority delegated by the legislature to municipalities, or to private corporations or individuals. *Nicholsen v New York, N. H. R. Co.* 22 Conn 74. Required in some jurisdictions as a condition precedent to improvement. 25 Am J1st High § 59.

**establishment of heirship.** A part of the ordinary administration of an estate, either by one claiming the right under the statute to administer, or by one claiming a distributive share. An incident of some action in which the court has general jurisdiction. 23 Am J2d Desc & D § 104.

See **heirship proceeding**.

**establishment of religion.** See **establishment clause**.

**estadal.** A Spanish lineal measure equivalent to about eleven English feet.

**estadia.** (Spanish.) The time for which demurrage is chargeable for the delay of the charterer or the consignee in unloading the cargo of a vessel.

**Est aliquid quod non oportet, etiam si licet; quicquid vero non licet certe non oportet.** A thing may not be proper, although it is lawful, but certainly anything which is not lawful is not proper.

**est ascavoir.** It is understood; that is to say; to wit; viz. For practical purposes, synonymous with *scilicet*.

**estate.** In the pristine technical sense, the degree, quantity, nature, and extent of interest which a person has in real property. 28 Am J2d Est § 1.

Otherwise, a word of several meanings, neither of which imports a legal entity: the property left by a decedent, the property of a ward, a mentally incompetent person, or a bankrupt; in its most popular sense including both real and personal property. *Re Glassford's Estate*, 114 Cal App 2d 908, 34 ALR2d 1259. Including every vested right and interest attached to and growing out of property. *Lee v Hill*, 87 Va 497, 12 SE 1052. Including tangible and intangible property. Anno: 34 ALR2d 1271. Including even a contract of employment for personal services. *Lee v Hill*, 87 Va 497, 12 SE 1052. When used in a will, usually, but not necessarily, comprehending all property of the testator whether real or personal in character. 57 Am J1st Wills § 1337. It includes both real and personal property, and is sufficient to pass a fee in land, unless restricted by words expressing a different intention. It has long been held that the devise of all a man's "estate," where there are no words to restrain or control its operation, should be construed not merely to mean his lands, but the quantity of interest which he has in them. The word may likewise include an equitable interest. However, the word "estate" in a will is not to be understood as a word of art, but of interpretation, and its meaning may be affected by other clauses and disposition in the will. 57 Am J1st Wills § 1337.

A person's degree or rank in life.

**estate at sufferance.** Same as **estate by sufferance**.

**estate at will.** A lease of lands or tenements to be held at the will of the lessor but actually determinable at the will of either party. 28 Am J2d Est §§ 130, 131. The estate of a tenant who has entered upon the premises under a lease to hold during the joint wills of the parties. *Public Service Co. v Voudomas*, 84 NH 387, 151 A 81, 70 ALR 480.

**estate by elegit.** The interest of a creditor in land of which he is in possession by virtue of a writ of *elegit*. 2 Bl Comm 160.

**estate by entirety.** An estate predicated on the legal unity of husband and wife, being taken, upon a conveyance or devise to them, to hold as a single person with the right of survivorship as an incident, so that when one dies, the entire estate belongs to the other by virtue of the title originally vested. 26 Am J1st H & W § 66.

**estate by new acquisition.** Same as **estate by purchase**.

**estate by purchase.** An estate acquired by sale or gift, or by any other method, except only that of descent, there being no distinction known to the law between a gift or devise by a stranger, and a gift or devise by an ancestor. See *Hall v Jacobs* (Md) 4 Harr & J 245, 254, wherein the question was as to whether an estate became vested in the deceased by descent or by purchase so as to admit the half blood.

**estate by statute merchant.** The interest or estate of the creditor in land conveyed to him under the statute 13 Edward I, *De Mercatoribus*, and therefore called a statute merchant. This conveyance was by way of security to be held by the creditor as "tenant by statute merchant" until the income and profits from the land conveyed should discharge the debt, which was an ascertained and definite sum. This transaction was entered into between the parties before the chief magistrate of some trading town. See 2 Bl Comm 160.

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**estate by statute staple.** The interest or estate of the creditor in land conveyed to him under the statute 27 Edward III. c. 9, before the mayor of the staple, that is the grand mart for the principal commodities or manufactures of the kingdom in certain trading towns, and therefore called a statute staple. This conveyance was by way of security to be held by the creditor as "tenant by statute staple" until the income and profits from the land thus held by him should discharge the debt which was an ascertained and definite sum. See 2 Bl Comm 160.

**estate by sufferance.** A holding by one who came into possession rightfully, after the termination of the interest under which he came into possession, for example, the continuance in possession after the termination of a life estate by a person who had entered under a lease from the life tenant. 28 Am J2d Est §§ 130, 131.

See **tenancy at sufferance**.

**estate by the curtesy.** See **curtesy**.

**estate duty.** See **estate tax**.

**estate for years.** An estate which must expire at a period certain, fixed in advance. *United States v First Nat. Bank* (CA5 Ala) 74 F2d 360. An interest arising from an agreement or contract for the possession of lands or tenements for some definite period, such estate being regarded at common law as a chattel. 28 Am J2d Est § 136. A chattel real rather than real estate, except as a contrary definition is provided by statute or a reasonable construction of a will in which the term appears demands that it be deemed inclusive of a leasehold. Anno: 103 ALR 826; 57 Am J1st Wills § 1337.

**estate from year to year.** An estate for an uncertain term for which an annual rent is reserved. See 2 Bl Comm 147.

See **tenancy from year to year**.

**estate in bankruptcy.** Assets which vest in the trustee in bankruptcy. 9 Am J2d Bankr § 847.

**estate in common.** The common estate of persons holding as tenants in common. 20 Am J2d Coten § 2.

**estate in coparcenary.** An estate known to the common law but virtually obsolete under modern statutes, whereby joint heirs hold as tenants in common. 20 Am J2d Coten § 1.

**estate in dead pledge.** See **dead pledge**.

**estate in expectancy.** See **expectant estate.**

**estate in fee.** See **fee simple.**

**estate in fee conditional.** See **fee conditional.**

**estate in fee simple.** See **fee simple.**

**estate in fee tail.** See **fee tail.**

**estate in gage.** See **dead pledge; living pledge; mortgage; pledge.**

**estate in joint tenancy.** An estate held by two or more persons jointly, with equal rights to share in its enjoyment during their lives, and having as its distinguishing feature the right of survivorship, by virtue of which the entire estate goes to the survivor (or in case of more than two joint tenants, to the survivors, and so on to the last survivor), free and exempt from all charges made by his deceased cotenant or cotenants. 20 Am J2d Coten § 3.

**estate in land.** The degree, quantity, nature, or extent of interest which a person has in land. Robertson v Vancleave, 129 Ind 217, 29 NE 781.

See **estate; landed estate.**

**estate in mortuo vadio.** Estate in dead pledge.

See **dead pledge; mortgage.**

**estate in pledge.** See **dead pledge; living pledge; mortgage; pledge.**

**estate in plurality.** An estate in which there is always a plurality of tenants, that is, more than one. Such estates are of three varieties, estates in joint tenancy, estates in coparcenary and estates in common. See 2 Bl Comm 179.

**estate in possession.** An estate under which the owner has an immediate right to the possession of the land. Sage v Wheeler, 3 AD 38, 37 NYS 1107.

See **vested estate.**

**estate in remainder.** See **remainder.**

**estate in reversion.** See **reversion.**

**estate in severalty.** An estate held by a person as the sole tenant thereof in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein. This is the most common and usual way of holding an estate, and all estates are supposed to be of this sort unless expressly declared to be otherwise. See 2 Bl Comm 179.

**estate in vadio.** Estate in pledge.

See **dead pledge; living pledge; mortgage; pledge.**

**estate in vivo vadio.** Estate in living pledge.

See **living pledge.**

**estate jure uxoris.** See **jure uxoris estate.**

**estate less than freehold.** Any estate the duration of which is regarded in law as being less than that of a life estate, in real property either corporeal or incorporeal. An estate for years, an estate at will, or an estate at sufferance. *Decatur Coal Co. v Clokey*, 332 Ill 253, 163 NE 702.

**estate not of inheritance.** A freehold estate for life. See 2 Bl Comm 104. Broadly, any interest, whether in real or personal property, which passes to the executor or administrator rather than directly to the heir or heirs. 23 Am J2d Desc & D § 18.

**estate of cestui que trust.** See **trust estate**.

**estate of deceased person.** Broadly speaking, such an estate may be deemed to exist only from the death of the decedent until it is finally wound up by an order of the court having jurisdiction of it. After the property of the decedent's estate has been paid out or otherwise distributed to those entitled thereto in accordance with the court's orders, and thereupon the estate has been declared closed, it can no longer be said to exist. *State ex rel. Petters & Co. v District Court*, 76 Mont 143, 245 P 529.

See **administration; administrator; descent; executor; heirs, probate; residuary estate**.

**estate of freehold.** See **freehold**.

**estate of freehold not of inheritance.** A freehold estate which does not pass to the heirs of the holder but is only for his lifetime or that of another person. Such estates are conventional, that is, expressly created by the acts of the parties; or they are legal, that is, they are created by construction and operation of law. See 2 Bl Comm 119.

**estate of inheritance.** A freehold interest in land, otherwise called a fee, where the tenant is not only entitled to enjoy the land for his own life, but

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where, after his death, it is passed by the law upon the person or persons who successfully represent him in perpetuum in right of blood, according to a certain established order of descent. 28 Am J2d Est § 8.

**estate of tenant by the curtesy initiate.** See **tenant by the curtesy initiate**.

**estate of trustee.** See **trust estate**.

**estate on condition.** An estate in real property with a qualification annexed by which it may, on the happening of a particular event, be created, enlarged, or destroyed. *Munro v Syracuse L. S. & N. R. R. Co.* 200 NY 224, 93 NE 516. The conditions annexed to estates are those implied by law and those expressed in the grant or devise which creates the estate. Express conditions are those declared or set forth in the instrument creating an estate or superimposed by a collateral agreement. Conditions implied in law are those which the law itself annexes to either certain estates or estates held under certain circumstances. 28 Am J2d Est § 132.

See **fee conditional**.

**estate on condition precedent.** See **condition precedent**.

**estate on condition subsequent.** See **condition subsequent**.

**estate pur autre vie.** An estate which is to endure for the life of a person other than the grantee or devisee. 33 Am J1st Life Est § 3.

**estates of the realm.** One of the two constituent parts of parliament, consisting of the lords spiritual, the lords temporal and the commons, the other part being the king. The king and these three estates form the great corporation or body politic of the kingdom, of which the king is the head. See 1 Bl Comm 153.

**estate tail.** See **fee tail.**

**estate tail after possibility of issue extinct.** See **fee tail after possibility of issue extinct.**

**estate tail female.** See **fee tail female.**

**estate tail general.** See **fee tail general.**

**estate tail male.** See **fee tail male.**

**estate tail special.** See **fee tail special.**

**estate tax.** A tax upon the transmission of property by a deceased person, that is, upon the privilege of transmitting property. 28 Am J Rev ed Inher T § 5. A tax imposed upon the net or taxable estate of a decedent without reference to the relationship of the recipients to the decedent or to the amount which a recipient takes. 28 Am J Rev ed Inher T § 5. A tax upon the transfer of property at death by a decedent, as distinguished from a succession tax, which, in its essence, is a tax upon the right to receive property from the estate of a decedent. *McLaughlin v Grenn*, 136 Conn 138, 69 A2d 289, 15 ALR2d 1210.

See **Federal estate tax.**

**estate upon condition.** Same as **estate on condition.**

**estate upon condition expressed in grant or devise.** See **estate on condition.**

**estate upon condition implied in law.** See **estate on condition.**

**estate upon limitation.** See **estate on condition; words of limitation.**

**estate vested in interest.** See **vested estate.**

**estate vested in possession.** An estate whereof there is a right of present enjoyment. 28 Am J2d Est § 2.

See **vested estate.**

**estate vested subject to defeasance.** An estate subject to a condition subsequent. Anno: 131 ALR 712.

See **condition subsequent.**

**Est autem jus publicum et privatum, quod ex naturalibus praeceptis aut gentium, aut civilibus est collectum; et quod in jure scripto jus appellatur id in lege Angliae rectum esse dicitur.** Public and private law is that which is collected from natural precepts or from nations or from citizens; and that which in the written law is called "jus," in the law of England is called "right."

**Est autem vis legem simulans.** Violence may also be masquerading as law.

**Est boni judicis ampliare jurisdictionem.** It is the duty of a good judge to interpret his jurisdiction liberally.

**este.** Been.

**ester in judgment.** To enter an appearance as a party to a pending action.

**esthetic.** See **aesthetic.**

**estimate.** Verb: To form an opinion from data as to the weight, value, etc. of something. *Duncan v National Mut. Fire Ins. Co.* 44 Colo 472, 98 P 634. Noun: An approximation or rough calculation of the size, weight, etc. of something.

**estimated.** The equivalent of more or less. *Jeffreys v Weekly*, 81 Or 140, 158 P 522. Appearing in a written contract, an indication that the quantity or amount of the subject matter is not attempted to be stated with mathematical exactness, and that the instrument must not be interpreted as if it contained an exact statement of the quantity or amount. 17 Am J2d Contr § 282. In connection with the designation of the amount of goods to be delivered under a contract of sale, it is an indefinite term comparable to the terms "about" or "more or less," and does not require or constitute a guaranty that the amount so estimated will be delivered. 46 Am J1st Sales § 156. A word of precaution in describing an area of land, intended to cover slight and unimportant inaccuracies. 55 Am J1st V & P § 131.

**estimated cost.** The reasonable cost of a building erected in accordance with certain plans and specifications, not necessarily the amount of some actual estimate made by a builder, an estimate agreed upon by the parties, or an estimate or bid duly accepted. *Lambert v Sanford*, 55 Conn 437, 12 A 519.

**estimated tax.** An income tax estimated as to amount, prior to the actual accrual of the entire income, as a basis for payment in instalments during the year and, if the taxpayer is employed, for withholding of a certain amount by the employer from each salary or wage payment, to be turned over to the government and credited to the employee in his income tax return for the year in which withheld.

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**estimation.** See **by estimation; estimate; estimated.**

**Est ipsorum legislatorum tanquam viva vox; rebus et non verbis legem imponimus.** The voice of the lawmakers is like the living voice; we impose law upon things and not upon words. The meaning of the maxim is that legislative acts should be interpreted as ordinary language is understood.

**esto.** Be it; let it be.

**estop.** To bar; to stop; to prevent; to operate as an estoppel.

See **estoppel.**

**esto perpetua.** Be it perpetual or everlasting.

**estopped.** See **estoppel.**

**estoppel.** A bar which stoppeth a person or closes up his mouth to allege or plead what actually may be the truth. 2 Coke, Littleton 352a. A bar which precludes a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers or by his own deed or representations, express or implied. 28 Am J2d Estop § 1.

A waiver, being the intentional relinquishment of a known right, is consensual in nature and is distinguished from an estoppel which is not consensual, but is given effect to defeat the inequitable intent of the party estopped. *Seavey v Erickson*, 244 Minn 232, 69 NW2d 889, 52 ALR2d 1144.

The elements of estoppel by acts or representations are reliance by a person entitled to rely on the acts and representations, the misleading of such person, and, in consequence, a change of position to his detriment, so that the person responsible for the misleading will not be permitted to deny the truth of his own statements, express or implied. 29A Am J Rev ed Ins § 1009. Although the terms "waiver" and "estoppel" are not convertible, the distinction between the two terms is not entirely clear in insurance cases. *Grantham v State Farm Mut. Auto. Ins. Co.* 126 Cal App 2d Supp 855, 272 P2d 959, 48 ALR2d 1088.

See **judicial estoppel; promissory estoppel; waiver.**

**estoppel by bond.** The preclusion of a party to a bond to deny the truth of the recitals in the instrument, the estoppel operating similarly to estoppel by deed. 28 Am J2d Estop § 25.

**estoppel by conduct.** An equitable estoppel or estoppel in pais. 28 Am J2d Estop § 27.

See **estoppel in pais.**

**estoppel by contract.** A bar against denying the truth of facts agreed upon and settled by force of entering into a contract. *Gress v Gress* (Tex Civ App) 209 SW2d 1003, 15 ALR2d 700; a bar arising from acts done under or in performance of the contract. *Re Schofield's Estate*, 101 Colo 443, 73 P2d 1381.

**estoppel by deed.** A bar which precludes one party to a deed and his privies from asserting as against the other party and his privies any right or title in derogation of the deed or from denying the truth of any material facts asserted in it. 28 Am J2d Estop §§ 4, 5, 8.

**estoppel by inaction.** See **estoppel by silence; estoppel by standing.**

**estoppel by judgment.** Technically, the bar of a judgment against the relitigation of particular facts and issues, but used sometimes to indicate a bar against the relitigation of particular causes of action. 30A Am J Rev ed Judgm § 328.

See **res judicata.**

**estoppel by mortgage.** An estoppel operating from the recitals in the bond or the mortgage, similar to estoppel by deed.

See **estoppel by bond; estoppel by deed.**

**estoppel by oath.** The bar of a party to deny in subsequent litigation that which he has previously stated on oath in a former litigation, in a pleading, deposition, or oral testimony. Such bar is limited in most jurisdictions to persons who were parties to the former suit. 28 Am J2d Estop § 71.

**estoppel by record.** The preclusion to deny the truth set forth in a record, whether legislative or judicial, and also to deny the facts adjudicated by a court of competent jurisdiction. 28 Am J2d Estop § 2.

**estoppel by silence.** An estoppel in pais. An estoppel which arises where a person who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance upon which he acts to his prejudice. *Engelhardt v Gravens* (Mo) 281 SW 715, 719. An estoppel by standing by. 28 Am J2d Estop §§ 43, 53.

**estoppel by standing by.** See **estoppel by silence.**

**estoppel by verdict.** A bar to the relitigation of particular facts and issues. 30A Am J Rev ed Judgm § 328.

**estoppel in pais.** Otherwise known as equitable estoppel. 28 Am J2d Estop § 33. A term applied to a situation where, because of something which he has done or omitted to do, a party is denied the right to plead or prove an otherwise important fact. 28 Am J2d Estop § 27. It arises out of the acts and conduct of the party estopped, such being the characteristic which distinguishes it from a technical estoppel by deed, record, or judgment. *Sequin v Maloney*, 198 Or 272, 253 P2d 252, 256 P2d 514, 35 ALR2d 1412.

**Estoveria sunt ardendi, arundi, construendi, et claudendi.** Estovers are of burning, ploughing, building, and fencing.

**estoveriis habendis.** See **de estoveriis habendis**.

**estoverium.** Same as **estovers**.

**estovers.** The right of a tenant of farm land, whether for life or for years, to take from the leased premises such amount of wood or timber as is sufficient or necessary for fuel, the repair of buildings, the repair of implements of husbandry, the repair of fences, and other agricultural needs. 32 Am J1st L & T § 219. Another sense of the term is that of support.

**Est quiddam perfectius in rebus licitis.** There is something more perfect in things which are permitted.

**Est quidem alia praestatio quae nominator herietum; obi tenens, liber vel servos, in morte sua, dominum suum, de quo tenuerit, respicit de meliori averio suo, vel de secundo meliori, secundum diversam locorum consuetudinem.**

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There is a certain other sort of prestation which is called a heriot; where a tenant, whether a freeman or a slave, at his death provides the lord of whom he held with his best beast or with the second best, according to the custom of the place. See 2 Bl Comm 424.

**estrapamento.** See **de estrapamento**.

**estray.** A beast, by nature tame or reclaimable, in which there is a valuable property, such as a cow, pig, or horse, found wandering at large or lost, its owner being unknown. 4 Am J2d Ani § 46.

**estreat.** To extract; to take out. Where a bond or recognizance to keep the peace was broken, the bond became forfeited and was "estreated," that is, it was taken out from among the other records and it was sent up to the exchequer, whereupon the sureties on the bond became the absolute debtors of the king. See 4 Bl Comm 253.

**estrepamentum.** Same as **estrepement**.

**estrepe.** To strip; to lay bare; to lay waste; to commit waste.

**estrepement.** Waste; extirpation; a common-law writ which lay after judgment in any real action, and before the sheriff delivered possession, to stop any waste which the losing party might be tempted to commit in lands which were determined to be no longer his. See 3 Bl Comm 225.

**estrepement pendente placito.** Estrepement pending suit; a writ given by the statute of Gloucester to prevent waste pending the outcome of any real action. See 3 Bl Comm 226.

**estrepment.** Same as **estrepement**.

**estuary.** The wide mouth of a tidal stream; a bay or inlet.

**et.** And; also.

**et ad huc detinet.** And he still detains.

**et adjournatur.** And it is adjourned.

**et al.** An abbreviation of the Latin "et alius," meaning and another, and also of "et alii," meaning and others. Re McGovern's Estate, 77 Mont 182, 250 P 812.

**et alii.** And others.

**et alai a contra.** And others to the contrary.

**et alios.** And others.

**et alios.** And another.

**et allocatur.** And it is allowed.

**et als.** An abbreviation of "et alios," –and others.

**etc.** Abbreviation of et cetera, and so forth, sometimes written "&c." 1 Am J2d Abbr § 8. And others; other things of alike kind. 57 Am J1st Wills § 1335.

**et cetera.** And so forth, and others, and other things, and the rest, and so on. 1 Am J2d Abbr § 8.

The meaning of the term depends so much upon the context of the instrument, the description and enumeration of matters and things preceding it and the subject matter to which it is applied that in one instance it may mean one thing and a different thing in another. Muir v Kay, 66 Utah 550, 244 P 901.

See **etc.**

**et curia consentiente.** And the court consenting.

**Et de ceo se mettent en le pays.** And as to this matter, they put themselves on the country; that is, they leave it to the jury to decide.

**Et de hoc ponit se super patriam.** And of this he puts himself on the country. That is, he leaves it for the jury to decide.

**et ei legitur in haec verba.** And it is read to him in these words.

**eternal law.** The moral law; the law of nature. The law which God in the creation of man infused into him for his direction and preservation. Calvin's Case (Eng) 7 Co Rep 1a.

**et habeas ibi tunc hoc breve.** And have you then there this writ.

**et habit.** And he had it.

**ethical.** In accord with ethics.

See **ethics**.

**ethics.** A code, system, or body of moral principles or good conduct, particularly a system for a group of people or a profession, such as law or medicine. In a profession, the sum of professional experience as to standards of professional behavior. *Abelson's, Inc. v New Jersey State Board of Optometry*, 5 NJ 412, 75 A2d 867, 22 ALR2d 929.

See **judicial ethics; legal ethics**.

**Ethiopian.** A native of Ethiopia. Used loosely, any African of the black race.

**ethling.** Same as **atheling**.

**et hoc paratus est verificare.** And this he is ready to verify; that is, to prove.

**et hoc petit quod inquiratur per patriam.** And this he prays may be inquired of by the country; that is, by the jury.

**et hoc ponit se super patriam.** And of this he puts himself upon the country. This was the formal conclusion of a defendant's traverse or denial of the plaintiff's allegations, whereby he-the defendant-tendered the issue and thus submitted himself to the judgment of his peers, that is, to the verdict of the jury. See 3 Bl Comm 313.

**ethyl alcohol.** Ordinary or common alcohol.

**et inde petit iudicium.** And thereof he prays judgment.

**et inde producit sectam.** And thereupon he brings suit. The formal conclusion of a common-law declaration was always in these words. Originally, they meant that the plaintiff came with his witnesses or followers. He was then required to use them to make out at least a prima facie case by their testimony before the defendant was put to the trouble of answering the charge. This latter practice was discontinued in the reign of Edward the Third, but the form of it survived. See 3 Bl Comm 295.

**et issint.** And so.

**et modo ad hunc diem.** And now, at this day.

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**et non.** And not.

**et non allocatur.** And it is not allowed.

**et petit auxilium.** And he prays aid.

**et praedictus X similiter.** And the said X likewise.

**Et quod non habet principium, non habet finem.** And that which has no beginning, has no end.

**et semble.** And it seems

**et seq.** An abbreviation of **et sequitur**.

**et sequitur.** And as follows.

**et sic.** And so.

**et sic ad iudicium.** And so to judgment.

**et sic ad patriam.** And so to the country; that is, to the jury.

**et sic fecit.** And he did so.

**et sic pendet.** And so the matter hangs or rests.

**et sic ulterius.** And so further; and so forth.

**et sim.** An abbreviation of **et similis**, meaning and the like. *Penas v Chicago, Milwaukee & St. Paul Ry. Co.* 112 Minn 203, 127 NW 926.

**et similis.** And the like.

See **et sim.**

**Et stet nomen universitatis.** And the name of the corporation may remain. See 1 Bl Comm 469.

**et ux.** An abbreviation of **et uxor**.

**et uxor.** And his wife.

**eugenics.** The improvement of the race by scientific controls, based on study of hereditary factors.

**eugenics laws.** Statutes having a background in eugenics, for example, a statute which requires a medical examination and certificate of freedom from venereal disease before issuance of a marriage license. *Peterson v Widule*, 157 Wis 641, 647.

**Eum qui nocentem infamat, non est aequum et bonum ob eam rem condemnari; delicta enim nocentium nota esse oportet et expedit.** If anyone defames a bad man, it is not just and right that he should on that account be condemned, for it is proper and expedient that the crimes of wicked men should be made known.

**eundo, redeundo et morando.** In going, in returning and in remaining.

**eonuch.** A castrated male of the human species. *Eckert v Van Pelt*, 69 Kan 357, 76 P 909.

**EURATOM.** Abbreviation for European Atomic Energy Community. This community is composed of the governments of France, West Germany, Italy, Belgium, Holland and Luxemburg. 6 Am J2d Atomic E § 41.

**EURATOM Co-operation Act.** A federal statute providing for a joint nuclear power program between the United States and the European Atomic Energy Community. 42 USC § 2291 (c); 6 Am J2d Atomic E § 41.

**European plan.** A system of hotel operation under which a guest engages a room for a charge which does not include meals, although a dining room is operated by the hotel, such being available to the guest if he desires, he to pay for such meals as he may order there. *New Galt House v Louisville*, 129 Ky 341, 111 SW 351; *Wellsboro Hotel Co's Appeal*, 336 Pa 171, 7 A2d 334, 122 ALR 1396.

**evade.** To escape; to slip away; to take refuge in flight or artifice. *Keegan v United States*, 325 US 478, 89 L Ed 1745, 65 S Ct 1203.

**evangelist.** A minister of the gospel who, traveling from church to church or city to city, preaches sermons intended and usually effective to obtain conversions to the religion espoused.

**Evangelists.** The four writers of the gospels, the first four books of the New Testament.

**evaporation.** Changing into vapor; a problem in conducting water through irrigation ditches. 30 Am J Rev ed Irrig § 24.

**evasio.** An escape.

**evasion.** Avoiding something by flight or artifice, especially a penalty or obligation. *Keegan v United States*, 325 US 478, 89 L Ed 1745, 65 S Ct 1203.

**evasion marriage.** A marriage entered into for the purpose of avoiding military service under the Selective Training and Service Act. *United States v Baird* (DC NY) 39 F Supp 388.

**evasion of tax.** See **tax evasion**.

**event.** The consequence of anything; the issue, end, conclusion; that in which an action, operation, or series of operations, terminates. *Fitch v Bates* (NY) 11 Barb 471, 473. The culmination or end that the means may have produced or brought about. *Continental Casualty Co. v Willis*, 28 F2d 707, 61 ALR 1069.

**event causing injury.** As the expression is used in an accident insurance policy covering disability immediately following the event causing the injury, the "event" is not the injury itself but it is the accidental means by which the effect on the body -the injury-is caused. *Hatch v United States Casualty Co.* 197 Mass 101, 83 NE 398.

**eventual waste.** Waste done by an admitted particular tenant after the institution of a suit involving the title or a partition suit. 56 Am J1st Waste § 6.

**Eventus est qui ex causa sequitur; et dicitur eventus quia ex causis evenit.** An event is that which follows from the cause; and it is called an event because it comes out of the causes.

**Eventus varios res nova semper habet.** A new circumstance always holds possibility of a different result.

**everlasting.** See **perpetual**.

**every.** All of a whole collection or aggregate number, considered separately, one by one; each, considered as a unitary part of an aggregate number. *Salo v Pacific Coast Casualty Co.* 95 Wash 109, 163 P 384. Appearing in a statute, generally regarded as a word of inclusion. 50 Am J1st Stat § 286.

**every corporation.** A term broad enough to include foreign, as well as domestic, corporations. 36 Am

J2d For Corp § 152. Not including municipal corporations, where it appears in a statute, the obvious intent of which is against the inclusion of such corporations. *Phillips v Baltimore*, 110 Md 431, 72 A 902.

**everyone.** All of a group or body, considered separately, one by one. For some purposes, as in a statutory definition of a crime, including a corporation. 19 Am J2d Corp § 1436.

**every other reasonable hypothesis.** A conventional term in an instruction to the jury in a criminal case on circumstantial evidence, the admonition being to "exclude every other reasonable hypothesis." *Jones v State*, 34 Tex Crim 490, 30 SW 1059, 31 SW 664.

**everything.** All of a group or collection of things, considered separately, one by one. A term subject to limitation in scope by the application of the rule of *eiusdem generis*. 57 Am J1st Wills § 1362.

**evesche.** The diocese of a bishop.

**evesque.** A bishop.

**eviction.** Dispossession, actual or constructive. A term with peculiar reference to a tenant, being the disturbance of his possession, his expulsion or amotion, depriving him of the enjoyment of the demised premises, or any portion thereof, by title paramount or by entry and act of the landlord. 32 Am J1st L & T § 245. A breach of covenant of quiet enjoyment. 20 Am J2d Cov § 101. A breach of a covenant of warranty. 20 Am J2d Cov § 54.

See **constructive eviction; eviction by title paramount.**

**eviction by title paramount.** The eviction of a tenant by one whose title is superior to that of the landlord. 32 Am J1st L & T § 245. A breach of a title covenant of quiet enjoyment. 20 Am J2d Cov § 101; a breach of a title covenant of warranty. 20 Am J2d Cov § 54.

Within the meaning of a covenant in a deed against eviction by "paramount right," the term includes any right which commencing before the deed is not passed by it, but exists independently of it, and can be asserted with the effect of rightfully evicting the tenant under the deed. *Davis v Logan's Heirs*, 44 Ky (5 B Mon) 341, 342.

**evidence.** The means by which any matter of fact, the truth of which is submitted to investigation, may be established or disproved. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or the other. *Lynch v Rosenberger*, 121 Kan 601, 249 P 682, 60 ALR 376.

The law of evidence embraces those rules which determine what testimony is to be admitted or rejected in the trial of a civil action or a criminal prosecution and what weight is to be given to evidence which is admitted. 29 Am J2d Ev § 1.

**evidence aliunde.** Same as **extrinsic evidence.**

**evidence by comparison.** Evidence admitted to prove the quality of a thing by comparing one thing with another under such circumstances that the similarity of the subjects of comparison is reasonably sufficient to give the result of the comparison sound probative force. 46 Am J1st Sales § 310.

See **comparison of handwriting.**

**evidence in mitigation.** Proof of facts tending to show that the conceded or assumed cause of action does not entitle the plaintiff to as large an amount of damages as might otherwise be recoverable. 22 Am J2d Damg § 291.

**evidence introduced.** See **introduced evidence.**

**evidence of debt.** Any written instrument for the payment of money.

**evidence offered.** See **offered evidence.**

**evidence of title.** A deed or other instrument establishing title to property, particularly real estate.

**evident.** Plainly seen or understood; manifest; obvious.

Under a constitutional provision guaranteeing the right to bail except in capital cases when the proof is "evident," the word has been viewed as meaning manifest, plain, clear, obvious, apparent, and notorious. 8 Am J2d Bail § 50. In a more technical and precise sense, such probative facts as are requisite to prove ultimate facts. Ultimate facts are the facts which are pleaded and probative and evidentiary facts are those which supply the proof of the ultimate facts. 41 Am J1st Pl § 8.

**evidentiary facts.** The facts admissible in evidence.

**evidently.** In an evident manner.

See **evident.**

**evil.** That which is wicked, morally bad. evil spirits. See conjuration; witchcraft.

**ew.** Marriage.

**ewage.** A toll paid for passage over water.

**ewbrice.** Breach of marriage; adultery.

**ewe.** A female sheep.

**ex.** From; out of; in; of; in accord with; because of; by reason of.

**ex.** Sometimes used as an abbreviation of "exhibit." (Latin.) Out of, from.

**ex abundanti cautela.** From or out of abundance of caution.

**Ex abuso non arguitur ad usum.** The utility of anything cannot be argued from the abuse of it.

**exaction.** The excessive or unauthorized taking or collecting of moneys as fees or dues by an officer or by a person pretending to be an officer. An excessive demand. An amount demanded and taken without right.

See **extortion.**

**exactissima diligentia.** Extraordinary diligence.

**exactor.** One who makes an exaction. (Latin.) Collector, especially of taxes and duties.

**exactor regis.** An officer who collected taxes and other moneys for the royal treasury. A sheriff.

**exact science.** Mathematics.

See **books of exact science**.

**ex adverso**. On the other side.

**ex aequitate**. According to equity.

**ex aequo et bono**. In equity and good conscience. *Scott v Ford*, 45 Or 531, 80 P 899.

**exaltare**. To raise; to lift; to elevate.

**exaltare stagnum**. To raise the water in a pond or pool.

**ex altera parte**. Of the other part.

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**examen**. A trial.

**examination**. Inspection, close observation; investigation, usually by questioning a person or persons.

In connection with legal proceedings, commonly understood to mean an examination under oath or affirmation. *Edelstein v United States* (CA8 Minn) 149 F 636.

The right of the insurer to "examine" the body of the insured, conferred by a clause in an accident policy, does not include the right to make an autopsy, dissection, or exhumation. *Suddath v Travelers' Ins. Co.* (CC Ky) 106 F 822.

See **investigation**.

**examination before trial**. See **deposition; discovery**.

**examination in chief**. The first or direct examination of a witness by the party who has called him to testify. *Webber v Barry*, 66 Mich 127, 33 NW 289.

**examination of bankrupt**. An examination provided by the Bankruptcy Act at which the bankrupt is required to submit, under oath, to questioning concerning the conduct of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may effect the administration and settlement of his estate or the granting of his discharge. Bankruptcy Act § 7(x)(10); 11 USC § 25(a)(10); 9 Am J2d Bankr §§ 606, 611.

**examination of juror**. An examination of a juror called for a particular case to ascertain by questioning him whether or not he is subject to a challenge for cause, and, if not, whether he should be kept off the jury by a peremptory challenge. 31 Am J Rev ed Jur § 136. The court is not bound by the answers of the juror, but may take such other means as may be necessary to determine his competency. 31 Am J Rev ed Jur § 145.

**examination of witness**. The obtaining of the testimony of a witness by oral questions and answers made under oath in open court. 58 Am J1st Witn § 553.

See **cross examination; depositions; direct examination; leading questions**.

**examined copy**. A copy proved by oral evidence to have been examined with the original document and to correspond therewith. 29 Am J2d Ev § 910.

**examiner.** An officer or other person who is authorized to conduct an examination. A person appointed in a corporate reorganization proceeding, where the debtor is continued in possession, to prepare and file a plan of reorganization and to perform other duties prescribed for trustees in corporate reorganization proceedings. 9 Am J2d Bankr § 1540.

See **bank examiner; bar examiner; medical examiner; trial examiner.**

**examiners in chancery.** Officers appointed by the English court of chancery to take the testimony of witnesses and to return the same to the court. examining court. A committing magistrate; a magistrate authorized to act, and presiding as, a magistrate inquiring into an accusation of the commission of a crime, preferred against a person by complaint, information, or affidavit, for the purpose of binding the accused over to await the action of the grand jury upon finding that there is probable cause to believe that an offense has been committed and that the accused committed it. State v Rogers, 31 NM 485, 247 P 828; Childers v State, 30 Tex App 160.

**examining trial.** A trial or hearing held before a magistrate while presiding as such in an examining court for the purpose of inquiring into a criminal accusation which has been preferred against a person. Childers v State, 30 Tex App 160.

**ex animo.** From the mind; arising from one's conscience.

**ex antecedentibus et consequentibus.** From those matters which precede and those which follow that is, from the whole instrument. Brannan v Mesick, 10 Cal 95, 101.

**Ex antecedentibus et consequentibus fit optima interpretatio.** The best interpretation is made from those matters which precede and those which follow. State ex rel. Patton v Marron, 22 NM 632, 167 P 9.

**ex arbitrio iudicis.** At the will or discretion of the judge. See 4 Bl Comm 394.

**ex assensu curiae.** With the consent of the court.

**ex assensu patris.** With the consent of the father.

**ex assensu suo.** With his own consent.

**ex audito.** From what has been heard; from hearsay.

**ex bonis.** From or of the goods.

**ex bonis maternis.** From maternal goods; from the goods inherited from the mother.

**ex bonis paternis.** From paternal goods,—from the goods inherited from the father.

**excambia.** See **excambium.**

**excambiator.** One who exchanges; a broker; an agent employed to effect an exchange of real property.

**excambion.** Same as **excambium.**

**excambium.** Exchange; an exchange of property; a place where merchants met; a contract for an exchange of lands.

See **billa excambia.**

**ex capite doli.** On the ground of deceit.

**ex capite fraudis.** On the ground of fraud.

**ex cathedra.** From the chair; from authority.

**ex causa.** From or with cause; by title.

**ex causa lucrativa.** From voluntary consideration; by gratuity; gratuitously.

**except.** Verb: To object; to take or reserve an exception to a ruling or order of the court in a judicial proceeding. Preposition: Other than.

**excepta dignitate regali.** With the exception of royal dignity. See 1 Bl Comm 205.

**exceptant.** A party to an action who causes an exception to be entered.

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**except by accident.** An occurrence which is unexpected, not according to the usual course of events. *Hutcherson v Sovereign Camp, W. W.* 112 Tex 551, 251 SW 491, 28 ALR 832.

**excepted.** Excluded; taken out. Occasionally confused with "accepted."

Where the word has been written across the face of a draft with the signature of the party, courts have admitted parol evidence to show that the word "accepted" was intended. "The law is not a system of quirks and quibbles upon which courts may seize to defeat rights, but a system of rules and principles. and it is the duty of a court to disregard mere pretexts." *Cortelyou v Maben*, 22 Neb 697.

**excepted risk.** See **exception in insurance policy.**

**excepting.** Leaving out. Making an exception.

See **exception.**

**exceptio.** An exception; a plea; a defense; an objection. A Roman law pleading corresponding to the "plea" of the common law. See 3 Bl Comm 310.

**exceptio ad breve prosternendum.** A plea in abatement.

**exceptio dilatoria.** (Roman law.) A plea which was interposed for delay.

**exceptio doli mali.** (Roman law.) A plea of fraud.

**Exceptio ejus rei cujus petitur dissolutio nulla est.** A plea of the same transaction of which a dissolution or discharge is sought, is a nullity.

**Exceptio falsi omnium ultima.** A false plea is the worst of all.

**Exceptio firmat regulam in casibus non exceptis.** An exception confirms the rule in cases not excepted.

**Exceptio firmat regulam in contrarium.** The exception affirms the rule to be the contrary.

**exceptio juris iurandi.** (Roman law.) A plea of an oath,—a plea that the defendant had, at the instance of the plaintiff, sworn that he owed the plaintiff nothing.

**exceptio metus.** (Roman law.) A plea of fear, compulsion or duress.

**exception.** Someone or something excluded. A protest against the ruling of the trial court upon a question of law, designed for the protection of the court so that it may reconsider its action and of the opposing counsel so that he may consent to a change by the court in its ruling, but primarily designed to bring upon the record on appeal, by a bill of exceptions, the ruling objected to, which otherwise would not constitute a part of the record. 5 Am J2d A & E § 558; 53 Am J1st Trial § 132.

In Louisiana the word is a comprehensive term referring to defenses. *Buty v Goldfinch*, 74 Wash 532, 133 P 1057.

See **bill of exceptions; objection; peremptory exception; reservation.**

**exceptional.** The rare—the unusual or extraordinary case or circumstance. *Re Irving-Austin Bldg. Corp.* (CA7 Ill) 100 F2d 574.

**exceptional and extremely unusual hardship.** A matter of suspension of the deportation of an alien, for determination by the Attorney General acting with a sound discretion, according to whether deportation will result in exceptional and extremely unusual hardship to the alien or to his spouse, parent or child, who is a citizen or an alien lawfully admitted for permanent residence. 8 USC § 1254 (a); *Jay v Boyd*, 351 US 345, 100 L Ed 1242, 76 S Ct 919.

**exceptional bailment.** A bailment which affects the public interest in such a way that the law imposes on the bailee a somewhat different liability from that of the ordinary bailee for hire, for example, a bailment to a carrier or innkeeper. 8 Am J2d Bailm § 6.

**exception in admiralty.** A plea filed in a suit in admiralty corresponding to a plea in abatement or a special plea in bar in an ordinary civil action. *United States Shipping Board Emergency Fleet Corp. v Rosenberg Bros. & Co.* 276 US 202, 72 L Ed 531, 48 S Ct 256. An objection to the sufficiency, fullness, distinctness, relevancy, or competency of any pleading or interrogatory. Rules of Practice in Admiralty and Maritime Cases, Rule 27.

**exception in an equity suit.** Written objections to a pleading, filed in the suit.

**exception in contract.** Something omitted from the operation of the contract in reference to the subject matter.

As the word is frequently used in contracts, it usually indicates that something is taken out from the principal matter provided for in the clause or paragraph in which the word is found, and not that something is taken out of or changed from other provisions in other clauses of the entire contract. *Anvil Mining Co. v Humble*, 153 US 540, 548, 38 L Ed 814, 817, 14 S Ct 876.

**exception in deed.** A withdrawal of some part of the thing granted by the general description which otherwise would pass to the grantee, which was in esse at the time of the conveyance, and which until such conveyance and the severance thereby was comprised in the thing granted. 23 Am J2d Deeds § 262. Although distinguishable, the terms "exception" and "reservation" are quite commonly used as interchangeable. 23 Am J2d Deeds § 262.

See **reservation.**

**exception in insurance policy.** A provision of a contract of insurance which withdraws a certain risk or risks from the coverage of the contract. 29A Am J Rev ed Ins §§ 1132 et seq.

**exception in lease.** The exclusion of some part of the demised premises from the operation of the lease by the terms thereof. 32 Am J1st L & T § 185.

**exception in statute.** A clause in a statute which takes away from the operation of the measure that which, but for it, would be included. State ex rel. Crow v St. Louis, 174 Mo 125, 73 SW 623.

An "exception" is similar to a "proviso," although undoubtedly there is a technical distinction between them.

See **proviso in statute.**

**exception taken on trial.** See **exception.**

**exception to bail.** A formal objection to the sureties on a bail bond, or to the amount of the bond.

**exception to hearsay rule.** Hearsay evidence taken out of the general rule against the admissibility of hearsay in the interest of justice, and in accord with sound policy, so as to be admissible notwithstanding the rule, for example, a dying declaration, a

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declaration against interest, etc. 29 Am J2d Ev §§ 495, 496.

**Exceptio nulla est versus actionem quae exceptionem perimit.** There is no plea against an action which destroys the plea.

**exceptio pacti conventi.** (Roman law.) A plea that the plaintiff had agreed with the defendant that he would not sue.

**exceptio pecuniae non numeratae.** (Roman law.) A plea that the money had not been paid to the defendant.

**exceptio peremptoria.** (Roman law.) A peremptory plea,—a plea which denied the right of the plaintiff to sue.

**Exceptio probat regulam.** The exception proves the rule. Where the rule is stated and the exceptions are stated and the matter is not within the exceptions, the rule governs. Lamkin & Foster v Ledoux, 101 Me 581, 64 A 1048.

**Exceptio probat regulam de rebus non exceptis.** The exception proves the rule in matters not excepted. He who asserts the right to an exclusive privilege in any department of business must bring himself under the protection of some recognized exception to the rule of unrestricted liberty in the practice of all arts and trades. P. C. Wiest Co. v Weeks, 177 Pa 412, 35 A 693.

**Exceptio quae firmat legem, exponit legem.** An exception which confirms the law, expounds it. Neary v Philadelphia, Wilmington & Baltimore Railroad Co. 12 Del (7 Houst) 419, 438.

**Exceptio quoque regulam declarat.** An exception also declares or affirms the rule.

**exceptio rei adjudicatae.** (Roman law.) A plea of res adjudicata, that the same matter had been previously determined by a judgment in an action between the same parties.

**exceptio rei venditae et traditae.** (Roman law.) A plea that the thing was sold and delivered.

**Exceptio semper ultima ponenda est.** An exception should always be placed last.

**exceptio temporis.** (Roman law.) A plea that the plaintiff's cause of action has expired by lapse of time.

**exceptor.** A party to an action who makes or reserves an exception to a ruling of the court.

**excerpta.** Extracts; excerpts.

**excerpts.** Extracts.

**ex certa scientia.** Of or from certain knowledge.

**excess.** Surplus; indulgence to an extreme.

See **corporate excess; overtime; surplus.**

**excess baggage.** The weight of baggage in excess of the maximum weight of baggage of a passenger which will be carried free of charge. 14 Am J2d Car § 1221.

**excess insurance.** Insurance which, by a provision in the policy, is relieved from contributing to other insurers of the same risk; such a policy renders the insurer liable only for the amount of loss or damage in excess of the coverage provided by another policy or policies covering the same risk. 29A Am J Rev ed Ins § 1715.

A liability insurance policy issued to a lessor of automobiles and covering liability of the lessee, which expressly provides for its inapplicability to liability "for such loss as is covered on a primary, contributory, excess, or any other basis by insurance in another insurance company," does not constitute "other valid and collectible insurance" within the meaning of a liability insurance policy issued with respect to the lessee's own automobile, but covering the insured while driving another car, subject to the proviso that such insurance "shall be excess insurance over any other valid and collectible insurance available to the insurance . . .". Continental Casualty Co. v Weeks (Fla) 74 So 2d 367, 46 ALR2d 1159.

**excessive.** Running or operating to excess; extreme.

**excessive award.** An award by arbitrators which embraces matters not contained in the submission. 5 Am J2d Arb & A § 150.

See **excessive damages.**

**excessive bail.** An imposition prohibited by both the United States Constitution and state constitutions, being bail set at an amount higher than reasonably calculated to insure that the accused will appear to stand trial, considering the factors of the ability of the accused to give bail, the nature of the offense charged, the penalty for the offense charged, the character and reputation of the accused, the health of the accused, the kind and strength of the evidence, the probability of the accused appearing at trial, the forfeiture of other bonds, and whether the accused was a fugitive from justice when arrested. 8 Am J2d Bail § 71.

**excessive damages.** An award of damages by verdict which appears to have been given under the influence of passion or prejudice; an award so large as to shock the judicial conscience; an award so out of proportion to the damages proved as to indicate an abuse of the jury's discretion. 22 Am J2d Damg § 366. See also 5 Am J2d A & E § 896.

**excessive deposit.** A deposit or account in excess of the amount which a savings bank is authorized to receive or carry. 10 Am J2d Banks § 275.

**excessive fine.** An imposition prohibited by the Constitution of the United States and many of the state constitutions; a relative matter, dependent upon many factors, including the financial status of the person penalized. An imposition so disproportionate to the offense as to present a plain conflict between the constitutional prohibition and those of the statute prescribing the punishment. 21 Am J2d Crim L § 601.

A fine imposed in a criminal case is excessive, even though within the maximum provided by statute, if it is apparently beyond the power of the defendant to pay it forthwith, or even during a lifetime of effort. *State v Ross*, 55 Or 450, 104 P 596.

**excessive force.** Force which is unnecessary and unreasonable in the performance of an act otherwise lawful, such as the use of force in self-defense so far beyond a necessity of the case as to appear vindictive. 6 Am J2d Asslt & B § 162. Force used

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in making an arrest in excess of the force reasonably necessary to apprehend the offender or effect the arrest. 5 Am J2d Arr § 80. *Ham v Santa Rosa Bank*, 62 Cal 125.

**excessive homestead.** A selected homestead exemption which exceeds in value the amount fixed by the statute which creates the exemption. 26 Am J1st Home § 43. Not a selection which creditors can attack successfully as illegal, their remedy being to reach the excess in value.

**excessive levy.** A levy upon more property of the defendant than in the opinion of a reasonably prudent man is necessary to satisfy the debt, interest, and costs, considering various factors, such as encumbrances upon the property, the fact that a forced sale usually results in a sacrifice, and the convenience of division or separation of the property for purposes of levy and sale. 6 Am J2d Attach § 294; 30 Am J2d Exec §§ 96, 97. A form of abuse of process. 1 Am J2d Abuse P § 10.

**excessive loan.** A loan in an amount in excess of the amount which the lender, a bank, is authorized by statutory or charter provision to make. 10 Am J2d Banks § 684.

**excessive or unusual noise.** Appearing in a statute which requires a muffler as equipment on a motor vehicle to prevent "excessive or unusual noise," the expression means any noise from the operation of a motor vehicle in excess of what is usual when a muffler in sound condition is used. *Smith v Peterson*, 131 Cal App 2d 241, 280 P2d 522, 49 ALR2d 1194.

**excessive sentence.** A sentence for a term in excess of what the law permits as punishment for the particular offense. 21 Am J2d Crim L § 536. A sentence which should be reduced in the exercise of a sound discretion by the court, notwithstanding it is not in excess of the maximum penalty prescribed for the offense of which the defendant was convicted. *State v Ross*, 55 Or 450, 104 P 596.

**excessive speed.** Motor vehicle: Speed in excess of the limit fixed by law or the rate which is reasonable and prudent under the circumstances. 8 Am J2d Auto §§ 717, 718. Vessel: A speed such as will not permit the vessel seasonably and effectually to avoid collision by slackening speed, or by stopping and reversing, within the distance at which an approaching vessel can be seen. *Macham v New York* (CC NY) 35 F 604, 609.

**excessive use of intoxicating liquors.** Such an indulgence in intoxicants as tends to impair the health or mental faculties of the insured, or to render the insurance risk more hazardous. 29 Am J Rev ed Ins § 775.

**excessive verdict.** See **excessive damages**.

**Excessivum in jure reprobatur; excessus in re qualibet jure reprobatur communi.** Excess is reprehended in the law; any kind of excess is reprehended in the common law.

**excess of jurisdiction.** An act which, although within the general power of the judge, is not authorized and therefore void with respect to the particular case, because the conditions which alone authorize the exercise of his general power in that particular case are wanting, and hence the judicial power is not lawfully invoked. 30A Am J Rev ed Judges § 78.

**excess of privilege.** A basis of liability for defamation, notwithstanding the subject matter of the communication lies within the field of privilege, where the statement goes beyond the duty or interest of the publisher or utterer, is irrelevant or extraneous to the field of privilege, is defamatory to a person outside the privilege, is violent or intemperate, or goes beyond the duty to publish or communicate which supports the privilege. 33 Am J1st L & S §§ 183 et seq.

**excess profits tax.** A type of income tax based on net income in excess of a certain percentage of the taxpayer's invested capital and imposed at progressive rates. *Greenport Basin & Constr. Co. v United States*, 260 US 512, 67 L Ed 370, 43 S Ct 183.

See **invested capital**.

**excess waters.** The waters of a stream subject to appropriation for beneficial use over and above what may reasonably be subjected to a beneficial use on the lands bordering the stream. *Rindge v Crags Land Co.* 56 Cal App 247, 205 P 36.

**exch.** An abbreviation of "exchange," "exchequer."

**exchange.** A voluntary association or corporation organized for the purpose of furnishing its members a convenient and suitable place to transact their business, of promoting uniformity in the customs and usages of merchants, of inculcating principles of justice and equity in trade, of facilitating the speedy adjustment of business disputes, of acquiring and disseminating valuable commercial and economic information, and generally of securing to its members the benefits of co-operation in the furtherance of their legitimate pursuits. 50 Am J1st Stock Ex § 2. An organized and established place of business wherein the marketing of securities is conducted and accomplished. *Fratt v Robinson (CA9 Wash)* 203 F2d 627, 37 ALR2d 636. A stock exchange, a place where securities are bought and sold; a commodity exchange, a place where grain, cotton, wool, etc. is bought and sold. 50 Am J1st Stock Ex § 2. An association acting in the mutual exchange of insurance contracts by the subscribers thereto under a system of reciprocal or interinsurance. 29 Am J Rev ed Ins § 102. An exchange of the money of one country for the money of another at a rate which depends upon the respective values of the two currencies in the money markets of the world. 36 Am J1st Money § 26. A transfer of money from one person to another at a distant place at an agreed or customary rate of exchange. A word indicating negotiability where it appears on the face of an instrument calling for the payment of money to a named payee. UCC § 3-110(1).

A reciprocal transfer of property for property, in other words a trade, barter, or swap. 30 Am J2d Ex P § 1. An executed contract which operates per se as a reciprocal conveyance of the thing given and of the thing received in exchange, each of the parties being individually considered in the double light of vendor and vendee. *Preston v Keene (US)* 14 Pet 133, 10 L Ed 387. For tax purposes, a bona fide transfer of property for property other than money or a cash equivalent.

See **arbitration of exchange; barter; bill of exchange; dry exchange; first of exchange; loan for exchange; par of exchange; rate of exchange; sale and exchange; second of exchange; set of exchange; stipulation for exchange; trade.**

**Exchange Act.** See **Securities Exchange Act.**

**exchange broker.** A broker who makes and concludes bargains for others in matters of money or

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merchandise; learns the rate of exchange, and notifies his employers. *Portland v O'Neill*, 1 Or 218, 219. A broker who negotiates bills of exchange drawn on foreign countries or on other places in the United States. *Little Rock v Barton*, 33 Ark 436, 446. A broker who transacts business on a stock or commodity exchange. 50 Am J1st Stock Ex § 20.

**exchange certificate.** A certificate of membership in a stock or commodity exchange. Anno: 44 ALR2d 947, § 16.

**Exchange Commission.** See **Securities and Exchange Commission.**

**exchange of goods.** See **barter; exchange; trade.**

**exchange of judges.** A practice expedient in relieving a crowded trial calendar in a court circuit or district, whereby a judge of another circuit or district is brought in temporarily to assist the regular judges. *York v State*, 91 Ark 582, 121 SW 1070.

**exchange of policy.** The substitution of one policy for another accomplished by the agreement of the insurer and insured or pursuant to a policy provision. *Baine v Continental Assur. Co.* 21 Cal 2d 1, 129 P2d 396, 142 ALR 1253.

See **conversion of insurance policy.**

**exchanges.** See **exchange.**

**exchanging work.** Practice of farmers in helping one another, in which case, they do not work as employees. 7 Am J2d Auto Ins § 132.

**exchequer.** The English department of revenue. A very ancient court of record, set up by William the Conqueror, as a part of the aula regia, and intended principally to order the revenues of the crown, and to recover the king's debts and duties. It was called exchequer, "scaccharium," from the checked cloth, resembling a chessboard, which covers the table.

See **barons of the exchequer; Black Book of the Exchequer; chancellor of the exchequer; court of exchequer; exchequer bills; information in the exchequer; receipt of the exchequer.**

**exchequer bills.** English bills of credit issued by the government under the authority of parliament.

**exchequer chamber.** See **court of exchequer chamber.**

**excisable.** Subject to or liable for excise taxes.

**excise.** Same as **excise tax.**

**excise tax.** A tax which does not fall within the classification of a poll tax or a property tax, and embraces every form of tax burdens not laid directly upon persons or property. *Idaho Gold Dredging Co. v Balderston*, 58 Idaho 692, 78 P2d 105. A tax imposed on the sale, even the use, of a certain article and on certain transactions and occupations.

Sums assessed as meals taxes and paid, on the claim of the commissioner of taxation, under protest and duress to avoid imposition of penalties, are received "as excise on account of the Commonwealth" within the meaning of constitutional and statutory provisions requiring the tax collector to pay money so collected into the treasury of the commonwealth, even though they were illegally exacted. *Oakley Country Club v Long*, 325 Mass 109, 89 NE2d 260, 14 ALR 377.

See **corporation excise tax; duties; income excise tax; license tax; privilege tax.**

**excitement.** Impulsion; agitation. The act of exciting, or the state of having increased action. That which excites or rouses; that which moves, stirs or induces action; a motive. *Morris v Territory*, 1 Okla Crim 617, 99 P 760.

**excluding.** Taking out; keeping out; excepting. Often used as synonymous with "reserving." 23 Am J2d Deeds § 262.

See **excepting; reserving.**

**exclusive.** Pertaining to the subject alone; not including, admitting, or pertaining to any other or others; undivided; sole; as, an exclusive right or privilege; exclusive jurisdiction. *Vicksburg v Vicksburg Waterworks Co.* 202 US 453, 471, 50 L Ed 1102, 1112, 26 S Ct 660. Restrictive, as in the case of a club with membership restricted to a distinct class.

A computation of time by including one terminal day and excluding the other has been applied in a case where a statute required the performance of acts a certain number of days, "exclusive," before a known future date. Anno: 98 ALR 1372.

**exclusive agency.** A term embracing three classes of situations: (1) where the contract does not prevent the principal from making direct sales but deprives him of the right to appoint other agents; (2) where the agent is the only one with any right to sell; and (3) where the exclusive agency is accompanied with a stipulated right to commissions on all sales whether made through the agent or not. 3 Am J2d Ag § 259.

The use of the terms "exclusive agency," or "exclusive sale" in a contract giving one the right to sell for another is not conclusive that the right given is an exclusive one, but all the circumstances must be considered. Navy Gas & Supply Co. v Schoech, 105 Colo 374, 98 P2d 860, 126 ALR 1225.

An exclusive agency to sell having been granted, the owner may still sell the property without incurring liability to the broker for commission, unless the broker has procured a purchaser able and willing to buy prior to the time that the owner makes the sale. Anno: 64 ALR 395; 12 Am J2d Brok § 226.

See **exclusive right of sale**.

**exclusive agency to sell.** See **exclusive agency**.

**exclusive control.** A control which is limited in respect of the person by whom exercised, but not necessarily limited to one person. Mack v Reading Co. 377 Pa 135, 103 A2d 749, 41 ALR2d 927.

The word "exclusive" when used to define the nature of the control necessary to invoke the doctrine of res ipsa loquitur does not connote that such control must be in a single person, and the fact that a collapsing scaffold causing the injury was in control of both defendants, a general contractor and his subcontractor, does not preclude operation of the doctrine. Meny v Carlson, 6 NJ 82, 77 A2d 245, 22 ALR2d 1160.

**exclusive fishery.** An exclusive right to fish in a given place, either with or without the property in the soil at such place, no person other than the owner of the fishery being lawfully entitled to take fish at such place. 35 Am J2d Fish § 6.

**exclusive lease.** In loose usage, an exclusive license.

See **exclusive license**.

**exclusive license.** A license to pursue a calling or occupation which in effect creates a monopoly in the licensee. 33 Am J1st Lic § 23. A grant by the proprietor of a patent to another person of the right to make, use, or sell the patented article, including

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the condition that the grantor will grant no further license of the kind in respect of such article to any other person. 40 Am J1st Pat § 146.

The mere grant by a state of an "exclusive ferry lease" for a specified distance along a river does not prevent the state from erecting a bridge within the prescribed limits. Larson v South Dakota, 278 US 429, 73 L Ed 441, 49 S Ct 196.

**exclusively.** With the exclusion of all others; without admission of others to participation.

Under a statute exempting from taxation property used "exclusively" for a public purpose, the word has been held to mean "substantially all" or "for the greater part." Anoka County v St. Paul, 194 Minn 554, 99 ALR 1137, 261 NW 588.

**exclusive possession.** An exclusive dominion over land and an appropriation of it to one's own use and benefit. 3 Am J2d Adv P § 50. Possession of land by a claimant for himself, as his own, and not for another. 3 Am J2d Adv P § 50.

**exclusive power of appointment.** A power of appointment under which there is granted to the donee the right to exclude from the distribution any of the designated objects of the power. Anno: 100 ALR 343.

**exclusive representative.** An exclusive agent. For the purpose of collective bargaining under the National Labor Relations Act, the sole and exclusive bargaining agency of all the employees it represents for the purpose of bargaining as to rates of pay, wages, hours of employment or other conditions of employment. *International Union, U. A. A.A.I.W. v J. I. Case Co.* 250 Wis 63, 26 NW2d 305, 170 ALR 933.

See **exclusive agency**.

**exclusive right.** A sole and undivided right or privilege. *Vicksburg v Vicksburg Waterworks Co.* 202 US 453, 471, 50 L Ed 1102, 1112, 26 S Ct 660.

See **exclusive right of sale**.

**exclusive right of sale.** The right of an agent to be the sole sale's agent appointed by his principal and to be free from competition by the principal personally. 3 Am J2d Ag § 259. Not the same exactly as an exclusive agency.

An exclusive agency to sell having been granted to a broker, the owner may still sell the property without incurring liability to the broker for a commission, unless the broker has procured a purchaser able and willing to pay prior to the time that the owner makes the sale. But where a broker is given an exclusive right to sell property, as distinguished from an exclusive agency, he is held entitled to the agreed commission, or at least damages, where a sale is made by the owner, and it is immaterial that he was not the procuring cause thereof, provided, however, that the employment contract is supported by consideration and is not a mere unilateral offer, and provided also, according to some cases, that the broker has produced a ready, able, and willing purchaser or can show damage. 12 Am J2d Brok § 226.

**exclusive sale.** See **exclusive agency; exclusive right of sale**.

**exclusive sales contract.** A contract by which a manufacturer or wholesale dealer agrees to sell his commodities exclusively to a dealer in a particular locality, or the dealer agrees to purchase exclusively from the manufacturer or wholesaler. Such a contract is valid where not monopolistic in tendency, and where there is no combination to control prices or to stifle competition. 36 Am J1st Monop etc. § 32.

See **exclusive agency; exclusive right of sale**.

**exclusive use.** A use which gives rise to a prescriptive right, not because it excludes the holder of the legal title or other persons from the premises, but because it is not dependent upon a similar right in another person. *Marta v Trincia*, 26 Dei Ch 94, 22 A2d 519; *Jurgensen v Ainscow*, 155 Neb 701, 53 NW2d 196.

**ex colore.** Under color of; by the pretence of.

**ex comitate.** By comity; by courtesy; by public policy.

**excommengement.** Same as **excommunication**.

**ex commodato.** From a loan.

**ex commodo.** At one's convenience; leisurely.

**excommunicate.** To impose a sentence or order of excommunication.

See **excommunication**.

**excommunication.** Expulsion from membership in a church. *Nance v Busby*, 91 Tenn 303, 333. A sentence of excommunication, by an ecclesiastical court. This sentence was of two grades. The lesser excluded the person from partaking of the sacraments the greater excluded him from the company of all Christians. See 3 Bl Comm 101.

**excommunicato capiendo.** See **de excommunicato capiendo.**

**excommunicato deliberando.** See **de excommunicato deliberando.**

**Excommunicato interdicitur omnis actus legitimus, its quod agere non potest, nec aliquem convenire, licet ipse ab aliis possit conveniri.** Every legal act is forbidden a person who has been excommunicated, so that he cannot act, nor can he sue anyone, but he himself can be sued by others.

**excommunicato recapiendo.** See **de excommunicato recapiendo.**

**ex comparatione scriptorum.** By comparison of handwritings.

**ex concessione.** By or out of grant.

**ex concessis.** From or out of the things which have been granted.

**ex concessio.** From what has been conceded or granted.

See **argumentum ex concessio.**

**ex concessu.** Same as **ex concessio.**

**ex consulto.** With or from consultation or deliberation.

**ex continenti.** At once; forthwith; immediately.

**ex contractu.** Arising out of a contract; founded upon contract, as an obligation *ex contractu*, or an action *ex contractu*. See 3 Bl Comm 117.

See **action ex contractu; quasi ex-contractu.**

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**ex culpa levissima.** From the least fault or negligence.

**exculpatory clause.** A clause in a trust instrument relieving the trustee from liability for any act performed by him under the trust instrument in good faith. Anno: 78 ALR2d 36.

**ex curia.** Out of court; elsewhere than in court.

**excursion.** A round trip taken for pleasure or health, usually at a reduced rate. 14 Am J2d Car § 845.

**excursion permit.** A permit issued to authorize a vessel certified for the carriage of passengers to carry additional passengers or to go out of the waters over which it is authorized by its certificate to ply. 48 Am J1st Ship § 360.

**excursion rate.** A round trip and reduced rate for passengers on an excursion. 14 Am J2d Car § 845.

**excursion river boat.** A place of amusement and entertainment. *Shannon v Streckfus Steamers, Inc.* 279 Ky 649, 131 SW2d 833.

**excursus.** A running out; a departure; a deviation a frolic of one's own. *Bugge v Brown (Austr)* 26 deviation; 26 CLR 110.

**excusable.** Deserving excuse or pardon; that which is forgiven or condoned; that which is not wholly free from fault, but for which there is no liability.

**excusable homicide.** A homicide committed in doing a lawful act, without any intention to hurt, as by accident or misadventure, or a homicide committed in self-defense. 26 Am J1st Homi § 102.

**excusable neglect.** See **excusable negligence.**

**excusable negligence.** A paradoxical phrase, since if the failure to exercise reasonable care under the circumstances is excusable, there is no negligence. 38 Am J1st Negl § 12.

As the term is used in statutes authorizing the opening of a default and allowing a party to defend on the merits, the courts appear to be in irreconcilable conflict as to what constitutes "excusable neglect," but well considered cases have seemed to agree that a reasonable excuse is sufficient, where it appears that the defense is meritorious and no substantial prejudice will result from setting aside the default. *Citizens' Nat. Bank v Branden*, 19 ND 489, 126 NW 102.

**excusable trespass.** A trespass for which no action will lie because the law forgives or pardons it. A trespass for which there is justification.

Generally speaking, justification as a defense to an action of trespass must be specially pleaded. 52 Am J1st Tresp § 68.

**Excusat aut extenuat delictum in capitalibus, quod non operator idem in civilibus.** That excuses or extenuates fault in capital cases which would not operate similarly in civil cases.

**excusatio.** An excuse.

**Excusatur quis quod clameum non opposuerit, ut si toto tempore litigii fuit ultra mare quacunq[ue] occasione.** A person is excused for not resisting a claim if during the whole period of the litigation, he is for some reason, beyond seas.

**excuse.** Verb: To relieve from liability; to relieve from a duty or obligation. Noun: A grant of relief from duty or obligation. A reason for being relieved from duty or obligation. A reason for relieving a person from jury duty. 31 Am J Rev ed Jur § 70.

See **justification.**

**excused.** Relieved from duty or liability.

See **excuse.**

**excuss.** To seize goods under process of a court.

**excussio.** (Civil law.) The exhaustion by a creditor of his remedies against the principal debtor before resorting to the surety.

**ex damno absque injuria non oritur actio.** From loss or damage, without the violation of a legal right, no action arises.

See **damnum absque injuria.**

**ex debito justitiae.** From a debt of justice; from that which is owing; from one's right as of right. *Thompson v Jackson*, 24 Va (3 Rand) 504.

**ex debito naturali.** From natural obligation.

**ex defectu juris.** From or because of a defect or failure of right.

**ex defectu natalium.** From failure of lawful birth; because of being born out of wedlock. A phrase that loses meaning with the mitigation by statute of the rigors of the common law concerning the status and rights of an illegitimate child. 10 Am J2d Bast § 8.

**ex defectu sanguinis.** From or because of failure of blood; for want of issue.

**ex delicto.** From or out of a wrongful act; tortious; tortiously.

See **action ex delicto**; **chase ex delicto**.

**ex delicto quasi ex contractu.** An action wherein there is combined a cause or ground of action for breach of a special contract with a cause or ground of action for a tort in violation of a common-law duty. *Nelson v Great Northern Railroad Co.* 28 Mont 297, 72 P 642.

**ex dem.** An abbreviation of **ex demissione**.

**ex demissione.** From or on the demise of.

**ex dicto majoris partis.** By the order or command of the larger side; by the voice of the majority.

**ex directo.** Directly; forthwith; immediately.

**Ex diuturnitate temporis, omnia praesumuntur solemniter esse acta.** From length or lapse of time, all things are presumed to have been duly performed.

**ex dividend.** An expression familiar to corporate officers and directors, stockbrokers, and persons who deal in stocks, meaning that a quotation of a price for a stock is for a sale not including a dividend previously declared by the corporation. This is in accord with the modern corporate practice according to which corporations declare dividends payable to stockholders of record on a specified date, after which date the stock is said to be "ex dividend." 19 Am J2d Corp § 891.

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**ex dolo malo.** From or out of fraud.

**Ex dolo malo non oritur actio.** No action can arise out of fraud; no court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. *Hill v Walker*, 41 Ga 449.

**Ex donationibus autem feoda militaria vel magnum serjeantium non continentibus oritur nobis quoddam nomen generale, quod est socagium.** From grants containing neither military fees nor grand serjeanty, a certain general name has sprung up among us which is "socage." See 2 Bl Comm 79.

**ex donatio regis.** By the gift of the king.

**exeat.** See **ne exeat.**

**exec.** An abbreviation of executor.

**execration.** A form of trial by purgation, consisting in feeding the accused a small bit of consecrated cheese or bread, and at the same time praying for his ability to swallow it if innocent and to choke to death on it if guilty; the morsel given the accused in the purgation. 4 Bl Comm 345.

**execute.** To complete; to sign; to sign, seal, and deliver. *Perko v Rock Springs Commercial Co.* 37 Wyo 98, 259 P 520. To perform or carry out a mission, a command, a duty, or obligation. To put a man to death pursuant to a sentence of death.

**executed.** Signed. Signed, sealed, and delivered, that is, the completion of the transaction. *Bensimer v Fell*, 35 W Va 15, 12 SE 1078. See also *Worthley v Worthley*, 33 Cal App 473, 165 P 714. Equivalent of "signed, sealed, and delivered," for the purpose of a certificate of acknowledgment. 1 Am J2d Ack § 75.

Put to death pursuant to a sentence of death.

**executed agreement.** See **executed contract.**

**executed and recorded.** As an allegation in a pleading, the equivalent of executed and delivered. *McReynolds v Grubb*, 150 Mo 352, 51 SW 822.

**executed compromise.** The full and complete performance of a compromise agreement, whether the agreement is an executory accord or a substituted contract, such performance often involving a surrender and release of rights. 15 Am J2d Compr § 24.

**executed consideration.** A past consideration; something given and received before the making of a promise. 17 Am J2d Contr § 125.

See **past consideration.**

**executed contract.** A contract, the terms of which have been fully performed. *Henehan v Hart*, 127 Cal 656, 60 P 426. A contract performed in fulfillment of the object of the contract and the accomplishment of everything required to be done under it. 17 Am J2d Contr § 6.

**executed contract of sale.** A present conveyance, that is a contract sufficient in itself to convey title to real estate. 55 Am J1st V & P § 100. A land contract which has been performed by both vendor and purchaser, the purchase price having been paid and the deed executed and delivered. *Miller v Kemp*, 157 Va 178, 160 SE 203, 84 ALR 980. A contract of sale of personal property so fully performed that nothing remains to be done under it, title having passed to the buyer and the risk of loss or destruction of the chattel having been shifted from the seller to him. 46 Am J1st Sales § 412.

**executed deed.** A deed completely prepared for delivery; more appropriately, a deed which has been signed, also sealed, acknowledged, and attested, as may be required by statute, and delivered to the grantee or someone in his behalf. *Turlington v Neighbors*, 222 NC 694, 24 SE2d 648.

**executed estate.** Same as **estate in possession.**

**executed insurance policy.** A policy of insurance that has been signed by or on behalf of the insurer and, if the instrument so provides as conditions of effectiveness, countersigned and delivered. 29 Am J Rev ed Ins §§ 214, 215.

**executed gift.** A gift which has been delivered by the donor with the intent to transfer title and accepted by the donee. 24 Am J1st Gifts § 22.

**executed license.** An irrevocable license in real property. 33 Am J1st Lic § 99. A license in return for which the licensee has paid a consideration to the licensor, or upon the faith and in consequence of which the licensee has made valuable improvements or expended money or invested capital. *Flickinger v Shaw*, 87 Cal 126, 25 P 268.

**executed remainder.** An old term for vested remainder. See 2 Bl Comm 168.

**executed trust.** In one sense, an intention to create a trust, executed by a definite and unequivocal disposition of property in accordance with the intention; in another, and more familiar sense, a trust that is final and definite in respect of the limitations of the equitable interest, so that no aid by an equity court is required to settle and model the limitations in accordance with the intention of the creator of the trust. 54 Am J1st Trusts § 7.

**executed unilateral contract.** An offer fully performed in accordance with the conditions of the offer, including a limitation of time. *Bethlehem Silk Co. v Commissioner* (CA3) 124 F2d 649. An offer accepted by part performance to the extent that the offer can not be revoked or withdrawn. 17 Am J2d Contr § 37.

**executed use.** A use which has become a legal interest under the Statute of Uses or its equivalent in American jurisdictions. 28 Am J2d Est § 344.

**executed will.** Broadly, a will which has been signed by the testator and attested in accord with statutory requirements. More narrowly defined in the terms of what the testator must do, that is, a will signed by the testator. *Re Johnson* (ND) 75 NW2d 313, 55 ALR2d 1049.

**executed writ.** A writ, the command of which has been fully executed or complied with by the officer to whom the writ was directed.

**executio.** Execution; administration; management; full performance; full compliance; fulfillment.

**executio bonorum.** The administration or management of goods.

**Executio est executio juris secundum iudicium.** Execution is the fulfillment of the law in accordance with the judgment.

**Executio est finis et fructus legis.** Execution is the end and the fruit of the law.

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**Executio juris non habet injuriam.** The fulfillment or carrying out of the law cannot operate as an injury.

**execution.** A writ or process for the enforcement of a judgment. A remedy afforded by law for the enforcement of a judgment, which is not an action but is included in the phrase "process in an action." 30 Am J2d Exec § 1.

The signing of an instrument; signing, coupled with sealing, acknowledgment, and attestation, as such may be required by statute, and the delivery of the instrument. 23 Am J2d Deeds § 18. The signing and delivery of a negotiable instrument. *Re Tynans Estate*, 142 Neb 671, 7 NW2d 628.

The performance of a duty, assignment, or obligation. The acts of a sheriff in serving the writ or process of execution. 30 Am J2d Exec § 207. The performance of a promisor's obligation under a contract. 17 Am J2d Contr § 355. The imprisonment of a person pursuant to a sentence; putting a man to death by hanging, electrocution, or gas pursuant to a death sentence. 21 Am J2d Crim L §§ 590 et seq.

See **fieri facias; ground writ; levy of execution; pluries writs; supplementary proceedings.**

**execution against the person.** A writ or process for the enforcement of a judgment, usually a judgment of a particular nature in reference to the obligation adjudicated, by arresting and detaining the judgment debtor until he be legally discharged. 30 Am J2d Exec § 865. A form of execution well known at common law and effected by the writ of *capias ad satisfaciendum*, which was directed to the sheriff or coroner, and commanded him to take the person therein named and him safely keep so that he might have the body in court on the return day of the writ, to satisfy the party who had recovered judgment against him. 30 Am J2d Exec § 873.

**execution creditor.** A person who, having recovered a judgment against one obligated to him, has caused an execution to be issued on such judgment. Anno: 61 ALR 984.

**executione judicii.** See **de executione judicii.**

**executioner.** A person who executes a death sentence; a headsman; a gangman.

**execution in duplicate.** The signing and putting into effect of two or more instruments identical in content, each instrument being made thereby an original. 17 Am J2d Contr § 284.

**execution lien.** A lien created by or as an inseparable incident of the levy of an execution. 30A Am J Rev ed Judgm § 479. A constructive lien insofar as the levy is upon real estate without a manual seizure or taking possession. 30A Am J Rev ed Judgm § 480.

**execution of instrument.** See **executed; executed deed; executed insurance policy; executed will.**

**execution patee.** A proceeding under the law of France under which a creditor can seize and sell the property of his debtor to satisfy a judgment by confession.

**execution sale.** A sale, usually at public auction, by a sheriff or other ministerial officer of property seized by him in levying an execution, pursuant to and under the authority of the writ or process of execution, for the purpose of obtaining from the proceeds of the sale an amount sufficient to satisfy the execution and the judgment whereunder it was issued. Sometimes the term "judicial sale" is used in the reported cases to include a sale under execution, and sometimes, judicial sales are referred to as "special execution sales." 30 Am J2d Exec § 304.

See **certificate of sale; redemption; sale en masse; sheriffs deed.**

**execution sale en masse.** See **sale en masse.**

**executive.** Noun: One who manages or administers. One who enforces the law as distinguished from one who makes the law or one who interprets the law. Adjective: Pertaining to the administration or enforcement of the law. State ex ref. Jameson v Denny, 118 Ind 382, 21 NE 252.

**executive agencies.** See **administrative agencies.**

**executive agreement.** An agreement made by the President of the United States, acting within his exclusive powers as the executive, with the authorized representative of a foreign government. *Russia v National City Bank* (CA2) 69 F2d 44.

**executive capacity.** An administrative capacity. The status of one in business or industry who manages the business or a department thereof or directs operations of the industry. Anno: 40 ALR2d 332.

See **executive employee**.

**executive committee.** A committee of a voluntary association or club, the authority of which is determined by the constitution or bylaws. 6 Am J2d Asso & C § 44. A committee chosen from among the directors of a corporation, authorized to act for the board, during intervals between meetings of the board, in respect of the ordinary business of the corporation. 19 Am J2d Corp § 1160.

**executive department.** The department of government, headed by the President in the case of the United States Government and by the governor in the case of a state government, in whom the executive, as distinguished from the legislative or judicial, power is vested. 16 Am J2d Const L § 216. One of the major administrative or executive agencies of the federal or a state government, such as the State Department, War Department, Department of Justice, etc.

**executive employee.** An employee who may have administrative duties but has at least some managerial authority. 31 Am J Rev ed Lab § 668.

**executive officer.** Any officer in whom executive power of a state or other government is vested. The President is the chief executive officer of the United States. The respective governors are the chief executive officers in the several states. 42 Am J1st Pub Of § 25.

An officer of a corporation having at least some degree of managerial responsibility for the affairs of the corporation generally, and having a close connection with the board of directors and high officers of the company. *Bruce v Travelers Ins. Co.* (CA5 La) 266 F2d 781; *Flight Equipment & Engineering Corp. v Shelton* (Fla) 103 So 2d 615.

The cashier of a bank is an executive officer. *First Nat. Bank v Mee*, 126 Okla 265, 259 P 523.

See **cashier**.

**executive order.** An order promulgated by the President of the United States or the governor of a state.

**executive ordinance.** A municipal ordinance passed in the exercise of administrative or executive, rather than legislative power, and accordingly not subject to referendum. 37 Am J1st Mun Corp § 209.

**executive power.** The power vested in the executive department of the United States Government or the government of a state; the power vested in executive

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officers of a county, town, municipality, or other political subdivision; the power to administer and enforce the laws. *State ex rel. Jameson v Denny*, 118 Ind 382, 21 NE 252.

See **executive department; executive officer; supreme executive power**.

**executive proceeding.** Action taken by an executive officer or executive department without invoking the jurisdiction or aid of a court, for example, the summary collection of taxes by distraint and seizure of property of a person liable for payment of the taxes. 34 Am J2d Fed Tax ¶ 9403.

**executive warrant.** See **extradition warrant**.

**executor.** The person nominated by a testator to carry out the directions and requests in his will and to dispose of the property according to his testamentary provisions after his decease. One to whom a testator has given his goods, chattels, and personal estate for the purpose of paying all his debts. 21 Am J2d Ex & Ad § 3.

It is not to be implied that in order to name an executor by will, the will must dispose of property. There is an abundance of authority for the proposition that an instrument properly executed as a will may be probated as a will if it names or nominates

an executor, notwithstanding it does not purport to dispose of any property further than to provide for the payment of debts which the law would require the personal representative to pay if the estate was intestate. *Reeves v Duke*, 192 Okla 519, 137 P2d 897, 147 ALR 634.

See **domiciliary executor; foreign executor; independent executor; instituted executor; joint executor; renunciation of executorship; substituted executor; substitutionary executor.**

**executor de son tort.** Literally, executor of his own wrong. A person who, without authority granted by the decedent or a court of probate, assumes, by interference with the estate of a decedent, to act as executor or administrator and performs such acts with respect to the personal property of that estate as can legally be done only by a properly appointed executor or administrator; one who intrudes himself into the office of personal representative of a decedent without legal authority, and of his own authority enters into the possession or assumes the management of, or intermeddles with, the property of the decedent. 31 Am J2d Ex & Ad § 661. A quasi executor for the purpose only of being sued or made liable for the assets with which he has intermeddled. *Grace v Seibert*, 235 Ill 190, 85 NE 308.

**executorial trustee.** A person who is executor of a decedent's estate but is given powers and duties as a trustee, in reference to a testamentary trust created by the will, beyond the powers and duties of an executor. 31 Am J2d Ex & Ad § 163.

**executor's bond.** The bond required of an executor as a condition of his right to act as personal representative of the decedent, the amount, form, and conditions of which are usually prescribed by statute. 31 Am J2d Ex & Ad § 126.

**executorship.** The office of executor in relation to a particular estate of a decedent.

See **executor.**

**executor's right of retainer.** See **retainer.**

**executor to the tenor.** A person who, without any appointment as executor, performs certain of the functions of an executor.

See **executor de son tort.**

**executory.** Not yet executed; not yet fully performed, completed, fulfilled or carried out; to be performed either wholly or in part.

**executory accord.** An accord which has not been fully performed. 1 Am J2d Accord § 52. A compromise agreement which provides for the acceptance in the future of a stated performance in satisfaction of the antecedent claim. 15 Am J2d Compr § 24.

**executory bequest.** A testamentary gift of personal property on a contingency after an absolute gift to another. *Robinson v Harris*, 73 SC 469, 53 SE 755.

**executory consideration.** A consideration for a promise or an act, which consideration has not yet been performed and which the party who is to perform is either bound by contract to perform or not.

If a promissory note is given for future services of the payee, his rendition of the services furnishes a consideration to uphold the note which is equally valid whether or not he made a binding promise to render them. *Miller v McKenzie*, 95 NY 575.

**executory contract.** A contract to be performed, each party having bound himself to do or not to do a particular thing. 17 Am J2d Contr § 6.

**executory contract of sale.** A contract, the terms and conditions of which must be performed before title passes. 46 Am J1st Sales § 412. A land contract under which the execution and delivery of a further instrument is necessary for the passing of title to the purchaser. 55 Am J1st V & P § 100. A contract which gives the purchaser an interest in the land involved as the subject matter of the contract. 29A Am J Rev ed Ins § 832.

**executory devises.** Estates in futuro consisting of executory interests created by devises, recognized in equity and validated by the Statute of Uses and the Statute of Wills, but invalid under the early common law as in contravention of the rigid rules against a limitation of a fee on a fee or the taking effect of a future estate by the cutting short of a prior estate. 28 Am J2d Est §§ 333, 334.

**executory estate.** An estate which is to vest in possession at a future time.

See **executory interests**.

**executory instrument.** A written instrument which has not been fully executed or made effective by the parties; as a written contract which has been signed by the parties but has not yet been delivered. *Stiebel v Grosberg*, 202 NY 266, 95 NE 692.

**executory interests.** Estates in futuro created by executory devises or by conveyances to uses, recognized in equity and validated by the Statute of Uses, but invalid under the early common law as in contravention of the rigid rules against a limitation of a fee on a fee or the taking effect of a future estate by the cutting short of a prior estate. 28 Am J2d Est 333.

**executory judgment.** A judgment which remains unpaid; a judgment which has not been satisfied by voluntary payment, by an execution, or other method of enforcement. 30A Am J Rev ed Judgm § 119.

**executory limitation.** Same as **executory interest**.

**executory process.** A proceeding under the civil law to enforce a judgment by confession by the seizure and sale of the property of the debtor. The term in French is "execution patee."

**executory trust.** In one sense, a trust not completely achieved in legal effect. In another sense, a trust

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indefinite in limitations of the equitable interest, so that it may be necessary to invoke the jurisdiction of equity to settle the limitations and model the trust in accordance with the intention of the creator of the trust. 54 Am J1st Trusts § 7.

**executory use.** A use which is to come into existence at a future time; a springing use, which arises from the seisin of the grantor with no estate preceding it.

See **executory interest; shifting use; springing use; Statute of Uses**.

**executory warranty.** A promissory warranty.

See **promissory warranty**.

**executress.** Same as **executrix**.

**executrix.** Feminine of executor.

**executry.** That portion of the personal property of a decedent which passes to his executor, as distinguished from that portion which goes to his heirs.

**exegence.** Same as **exigent**.

**Exempla illustrant non restringunt legem.** Examples illustrate the law; they do not restrict it.

**exemplary damages.** Damages given as an enhancement of compensatory damages because of the wanton, reckless, malicious, or oppressive character of the acts complained of, and by way of punishment of the defendant and a deterrent to others. 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.

**exempli causa.** For or by way of example.

**exemplification.** A portrayal by example. The authentication of a copy by attestation or certification under seal.

See **exemplified copy**.

**exemplified copy.** An authenticated copy; a copy of a public document or record verified by the great seal or the seal of the court. 29 Am J2d Ev § 910.

**exempli gratia.** For or by way of example. The expression is commonly abbreviated, "e. g." or "ex. gr."

**exemplum.** An example; a copy; a transcript; a model.

**exempt.** Noun: A person who is free from any charge, burden, or duty. *Re Strawbridge & Mays*, 39 Ala 367, 379. Adjective: Free of an obligation which is binding on others.

**exempt income.** Income exempt from payment of income tax. Income not subject to levy or garnishment.

**exemption.** A privilege, sometimes referred to as a right, granted to a debtor by the grace and favor of the state on the grounds of public policy for a humane and generous purpose, which permits him to retain a portion of his property or earnings free from seizure or sale by his creditors under judicial process. 31 Am J2d Exemp §§ 1, 2. Freedom or release from duty or obligation, such as military service or service on a jury, not granted to others indiscriminately. *Maine Water Co. v Waterville*, 93 Me 586, 45 A 830; *Green v State*, 59 Md 123. An allowance of a deduction in computing net income for tax purposes by way of a personal exemption, an old-age exemption, or a blindness exemption. IRC § 151. The person for whom an exemption may be claimed in an income tax return. IRC § 151.

See **limitation of liability**.

**exemption from arrest.** The privilege, granted by constitutional provision or statute, of being free from arrest in a criminal case or a criminal case of a certain character. The privilege granted by constitutional provision, statute, or the common law of being free from arrest in a civil case. 5 Am J2d Arr § 95.

**exemption from income tax.** A fixed amount allowed by statute to the taxpayer for himself, spouse, and dependents against net income in determining taxable income; income of a certain nature, such as interest on certain bonds, rendered not subject to income tax by statute or common-law principle.

**exemption from jury duty.** The release of a class of persons by force of statute from the general duty of serving as a juror.

Such exemption is to be distinguished from an excuse granted a juror from service in a particular case or at a particular term of court. 31 Am J Rev ed Jur § 70.

**exemption from military service.** A release of a class of persons from compulsory military service or from certain phases of such service. 36 Am J1st Mil § 23.

**exemption from self-incrimination.** See **self-incrimination**.

**exemption from service of process.** A privilege, granted by constitutional provision or statute, or given by the courts upon grounds of public policy, to be free at certain times from the service of process in a civil action or proceeding, examples of which are attorneys at law while in attendance at court, persons in the active military service, members of Congress or of a state legislature while in attendance upon their legislative duties, etc. 42 Am J1st Proc § 135.

**exemption from taxation.** In the broad sense, all property not taxed; in a narrower sense, the grant of immunity, express or implied, to particular persons or corporations, or to persons or corporations of a particular class, from a tax upon property or an excise which persons and corporations generally within the same taxing district are obliged to pay. 51 Am J1st Tax § 495.

See **tax exempt income; tax exemption; tax exempt organization**.

**exemptions.** See **exemption**.

**ex empto.** From purchase; arising from or out of purchase.

**exempt offices.** Offices and employments excluded from the operation of civil service law. 15 Am J2d Civ S § 14.

**ex eo quod plerumque fit.** From that which frequently happens.

**exequatur.** (Latin.) Let it be executed. The formal grant of authority to a foreign consul by the country to which he is sent and by virtue of which he is able to exercise his official functions within its territorial limits. 4 Am J2d Ambss § 12.

**exercise.** To avail or make use of, as to use a peremptory challenge to a juror or to take up an option.

**exercise of judgment.** Acting advisedly; using sound judgment; acting with due care.

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**exercise of judicial discretion.** See **judicial discretion**.

**exercise of power of appointment.** A disposition of property. 28 Am J Rev ed Inher T § 216. A disposition of property made in accord with the mode or manner of execution provided for or designated in the power. 41 Am J1st Pow § 35.

**exercitorial action.** An action against the owner for breach of a contract made by the master of a ship.

**exercitor maris.** (Civil law.) A person who outfits a ship for a voyage; a "ship's husband."

**exercitor navis.** The charterer of a ship.

**ex facie.** On the face; as, on the face of an instrument.

**ex facto.** From the act; from the fact; by reason or in consequence of an act or fact.

**Ex facto jus oritur.** The law springs from the fact; law is born of fact.

**ex fictione juris.** By fiction of law; by legal fiction.

**exfrediare.** To commit a breach of the peace.

**Ex frequenti delicto augetur poena.** Punishment is increased by the frequency of crime.

**ex. gr.** Abbreviation of **exempli gratia**; abbreviation of **ex gratia**.

**ex gratia.** Not a matter of right, but resting in the exercise of a sound discretion to determine the demands of justice. 5 Am J2d A & E § 998.

**ex gravi querela.** From or on the grievous complaint,—an ancient writ for the recovery of land by a devisee from whom it was wrongfully withheld by the heir of the testator.

**exhaeres.** A person who has been disinherited by his ancestor.

**exhaeridatio.** A disinheritance.

**exhausted.** Tired out; drained; used up. The application of all the assets of a debtor to the claims of his creditors, so that further executions on judgments against him will be returned unsatisfied. *Globe Publishing Co. v State Bank of Nebraska*, 41 Neb 175, 59 NW 683.

**exhausting security.** The necessity of a creditor to look to a lien which secures him alone before seeking satisfaction from a lien which secures other creditors as well as him. 35 Am J1st Marsh A § 2.

**exhaustion of remedy.** The doctrine that where an administrative remedy is provided, relief must be sought exhausting such remedy before the courts will act. 2 Am J2d Admin L § 595.

**exheredate.** To disinherit.

**exhibere.** To produce; to produce in a court of justice; to offer as an exhibit.

**exhibit.** A copy of a written instrument on which a pleading is founded, annexed to the pleading and by reference made a part of it. 41 Am J1st Pl § 55. Any paper or thing offered in evidence and marked for identification. Item of real or demonstrative evidence offered in evidence for observation by court or jury. 29 Am J2d Ev § 771. Something on exhibition.

See **exhibition**.

**exhibitant.** A party to an action who offers an exhibit.

**exhibitio billae.** The exhibition of a bill,—the filing of a suit.

**exhibition.** A fair; a show; a presentation of works of art or of trade and commerce for viewing by the public or a class of persons. A suit to compel a person to produce writings. exhumation. The removal of a body from the grave.

**ex hypothesi.** Upon the hypothesis or supposition.

**exidos.** Vacant spaces for exercise, and for threshing corn, or other general uses, which were reserved or set apart for such purposes in the laying out of Spanish-American towns. *Strother v Lucas* (US) 12 Pet 410, 444, note, 9 L Ed 1137, 1150, note.

**exigence.** Same as **exigency**.

**exigency.** An urgency; a demand; a need; a requirement; a condition.

See **public exigency**.

**exigency of a bond.** The condition upon which the enforcement of the bond depends.

**exigendary.** Same as **exigenter**.

**exigent.** A writ which was used in outlawry proceedings when the defendant could not be found. The writ required the sheriff to cause the defendant to be proclaimed, required or exacted in five county courts successively, to render himself, and if he did, to take him. If he did not appear, he was outlawed by the coroners of the county. See 3 Bl Comm 283.

**exigenter.** An officer of the English court of common pleas who issued writs of exigent.

**exigible.** Capable of being demanded or required; as the payment of a debt.

**exigi facias.** Same as **exigent**.

**exile.** To banish, to send a person out of the country as a punishment for crime; banishment; a person who has been banished. See 1 Bl Comm 137.

**Exilium est patriae privatio, natalis soli mutatio, legum nativarum amissio.** Exile or banishment is a deprivation of country, a change of natal soil, a loss of native laws.

**ex improviso.** Without any preparation.

**ex incontinenti.** With incontinence; incontinently; immediately; summarily.

**ex industria.** On purpose; purposely; intentionally. *Martin v Hunter's Lessee* (US) 1 Wheat 304, 334, 4 L Ed 97, 104.

**ex insinuatione.** Upon the information of; upon the suggestion of.

**ex integro.** Anew; over again; afresh.

**ex intervallo.** After an interval.

**exire.** To go out; to come out; to issue forth; to issue.

**exist.** To be; to have being; to come into existence; to have existence.

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**existence.** Life; a state of being; a corporation endowed with the capacity to transact the legal business for which it was created. 18 Am J2d Corp § 43.

See **entity; potential existence**.

**existimatio.** An opinion which one man has of another; estimation; reputation; the award of an arbitrator.

**existing.** Existing; in existence; having being.

**existing creditors.** As the term appears in a statute which provides for the avoidance of a fraudulent transfer or conveyance as to "existing creditors," persons having subsisting obligations against the grantor or donor at the time of the transfer or conveyance, whether or not the obligations had been reduced to judgment at that time, even immature or contingent obligations. Carr v Davis, 64 W Va 522, 63 SE 326; Sallaske v Fletcher, 73 Wash 593, 132 P 648; Uniform Fraudulent Conveyance Act § 1. For some purposes, an "existing indebtedness" is a liquidated demand or a sum of money due by certain and express agreement.

See **existing indebtedness.**

**existing debt.** See **existing indebtedness.**

**existing equity.** An existing right enforceable in equity, if not at law.

The right of a carrier to deny as to the shipper receipt of the goods for which its agent has issued a bill of lading is an "existing equity" within the provision of the Federal Bill of Lading Act that a straight bill cannot be negotiated free from existing equities. Chesapeake & O. R. Co. v State Nat. Bank, 280 Ky 444, 133 SW2d 511, 130 ALR 1306.

See **equitable right.**

**existing indebtedness.** For some purposes, a liquidated demand or a sum of money due by certain and express agreement. Craig v Gaddis, 171 Miss 379, 157 So 684. 95 ALR 1494 (availability of remedy of attachment); Wing v Slater, 19 RI 597, 35 A 302 (personal liability of stockholders for existing debts of corporation). In other connections, one may have the status of an "existing creditor," even though the obligation owing to him is immature or contingent.

See **existing creditors.**

**existing insurance.** Other insurance on the same risk in existence at the time of application for insurance. 29 Am J Rev ed Ins § 778.

Benefit certificates in mutual aid societies have been held not to constitute "existing insurance" as the term is employed in applications for life insurance, but there is respectable authority to the contrary. Penn Mill. Life Ins. Co. v Mechanics' Sav. Bank & Trust Co. (CA6 Tenn) 72 F 413, reh den 73 F 653.

**existing law.** A broad term but, in the particular context in which it appears, it may be limited to statutory law, as distinguished from common law, or to Federal law, as distinguished from state law. Chicago, St. Paul etc. R Co. v Latta, 226 US 519, 57 L Ed 328, 33 S Ct 155; Adams Express Co. v Croninger, 226 US 491, 57 L Ed 314; 33 S Ct 148 (application of provision of Carmack Amendment).

**existing use.** A familiar term in zoning ordinances and regulations, usually employed in characterizing a nonconforming use excepted from the application of the ordinance or regulation, and meaning an actual, as distinguished from a mere contemplated, use, existing at the time of the enactment of the ordinance or the passage of the regulation, but not necessarily a use in actual operation at that time or a use which utilizes the entire tract involved. De Felice v Zoning Board of Appeals, 130 Conn 156, 32 A2d 635, 147 ALR 161.

**exit.** Verb: To go out. (Latin.) To issue something, for example, a writ or process. Noun: A way out, particularly a way out of a building or off a stage in a theater.

**exitu.** See **in exitu.**

**exitus.** An issue. An issue, "exitus," being the end of all the pleadings, is the fourth part or stage of an action, and is either upon matter of law, or matter of fact. See 3 Bl Comm 314.

**exit wound.** A wound made by a sword or other weapon or instrument at the point where it comes out of the body after having passed through it.

**ex jure naturale.** From the law of nature.

See **natural law; natural rights.**

**ex juste causa.** From or with a just or lawful cause; by a just or legal title.

**ex latere.** From the side or flank; collaterally.

**exlegalitas.** Outlawry.

**exlegare.** To cause a felon to be outlawed.

**exlegatus.** Outlawed; an outlaw.

**ex lege.** According to law; by law; as a matter of law.

**ex legibus.** According to the laws; by the laws.

**exlex.** An outlaw, a felon who has been outlawed.

**ex licentia regis.** By leave or license of the king.

**ex locato.** From a lease; from a letting.

**ex majore cautela.** For greater caution.

**Ex mala causa non oritur actio.** From all unlawful transaction, no cause of action arises. Commercial Nat. Bank v First Nat. Bank, 118 NC 783, 24 SE 524.

**ex maleficio.** From or out of wrongdoing; tortious; tortiously.

See **trustee ex maleficio.**

**Ex maleficio non oritur contractus.** A contract cannot be born of wrongdoing.

**Ex malis moribus bonae leges natae sunt.** Good laws are born of bad morals.

**ex malitia.** From or out of malice; maliciously.

See **malice.**

**ex militia sua praecogitata.** With his malice aforethought; with malice aforethought.

**ex merito justitiae.** For the benefit of or in the interest of justice.

**ex mero motu.** On the court's own motion, without application made by either party.

**ex mora.** From or by reason of delay.

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**ex mora debitoris.** From or by reason of the delay of the debtor.

**ex more.** By or according to the custom or usage.

**Ex multitudine signorum, colligitur identitas vera.** From a large number of signs or marks the true identity of anything is gathered or established.

**ex mutuo.** From or out of the loan of a thing.

**ex natura rei.** From the nature of the thing.

**ex necessitate.** From or by reason of necessity.

**ex necessitate legis.** By necessity of law; by legal necessity; as where a woman is capitally convicted and pleads her pregnancy, it is cause to stay execution until her delivery. See 4 Bl Comm 394.

**ex necessitate rei.** From the necessity of the thing; from the exigency or urgency of the matter.

**Ex nihilo nihil fit.** Nothing comes from nothing.

**Ex nudo pacto non oritur actio.** No action can accrue out of a mere naked promise, that is, a promise for which there is no consideration. Cook v Bradley, 7 Conn 57.

**ex officio.** From or by virtue of the office. A right or privilege in an office arising from one's status as the holder of another office, for example, the right of a justice of the peace to membership on a town board.

**ex officio informations.** Informations charging crime filed by the attorney general of England.

**ex officio justice of the peace.** An officer having all the powers of a justice of the peace, without being actually elected or appointed to that office, the powers and duties being attached to some other office, such as that of mayor or magistrate of a municipality. 31 Am J Rev ed J P § 5.

**exonerare.** To exonerate; to discharge; to release from liability; to free.

**exoneration.** Absolving of a charge or imputation of guilt; the lifting of a burden; a discharge; a release from liability; the application of the personal property of an intestate to the payment of his debts and the relief of his real property therefrom. 21 Am J2d Ex & Ad § 391.

See contribution; indemnity.

**exoneratione sectae.** See **de exoneratione sectae.**

**exoneration of bail.** The release from liability of the sureties on a bail bond either by their surrender of their principal to the proper authorities; by his surrender of himself before the day stipulated in the bond; by the acquittal of the principal or the termination of the prosecution by any other means before the forfeiture of the bond or undertaking. 8 Am J2d Bail § 120.

**exoneration of surety.** The discharge of a surety. 50 Am J1st Suret § 40.

See **exoneration of bail.**

**exoneretur.** Let him be discharged, –a notation made on a bail-piece discharging the sureties from liability.

**exor.** An abbreviation of executor.

**ex ordine.** From or according to the order.

**Ex pacto illicito non oritur actio.** From an unlawful agreement, no action can arise.

**ex parte.** Of or from one side or party. Application made to the court without notice to the adverse party.

**ex parte deposition.** A deposition taken without notice in cases of necessity and in cases where all that is sought in the way of testimony is mere formal proof or proof of an isolated fact. Walsh v Rogers (US) 13 How 283, 14 L Ed 147.

**ex parte injunction.** An injunction issued without prior notice to the adverse party. 28 Am J Rev ed Inj § 248.

**ex parte materna.** On the maternal or mother's side.

**ex parte motion.** A motion made to the court without notice to the adverse party. 37 Am J1st Motions § 26.

**ex parte order.** An order made by the court upon the application of one of the parties to an action without notice to the other. 37 Am J1st Motions § 26.

**ex parte paterna.** On the paternal or father's side.

**expatriate.** Verb: To quit one's country, renouncing citizenship in and allegiance to that country and taking residence in and becoming a citizen of another country. 3 Am J2d Aliens § 120. Noun: One who has expatriated himself.

**expatriation.** A voluntary change of allegiance from one country to another, effecting an absolute termination of all civil and political rights as of the date of such act. 3 Am J2d Aliens § 120.

The concept of expatriation has no application to the removal from this country of a native citizen during minority. In such case the voluntary action which is the essence of the right of expatriation is lacking. That right is fittingly recognized where a child born here, who may be, or may become, subject to a dual nationality, elects on attaining majority citizenship in the country to which he has removed. Perkins v Elg, 307 US 325, 83 L Ed 1320, 59 S Ct 884.

See **expatriate.**

**Ex paucis dictis intendere plurima possis.** It is possible to express very much in a few words.

**expect.** To anticipate. A secondary meaning of "to demand". Sillman v Spokane Sav. & Loan Soc. 103 Wash 619, 175 P2d 296.

**expectancies.** Estates in anticipation, not in present possession or enjoyment. 28 Am J2d Est § 2. Reversions, remainders, and estates in the nature of remainders known as executory interests. A mere naked possibility not coupled with an interest. Hart v Gregg, 32 Ohio St 502. The bare hope of succession to the property of another, something so inchoate as to have no attribute of property. Johnson v Breeding, 136 Tenn 528, 190 SW 545.

See **possibility**.

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**expectancy of life.** See **expectation of life**.

**expectancy tables.** See **mortality tables**.

**expectant estates.** Future interests, whether vested or contingent or of an executory nature. 23 Am J2d Desc & D § 30. Reversions, remainders, vested or contingent, and executory interests. But not including the mere possibility of a reverter, which the grantor has after he has conveyed in fee on condition subsequent. Upington v Corrigan, 151 NY 143, 45 NE 359.

**expectant fee.** See **expectant estates; fee-expectant**.

**expectant heir.** See **heir apparent**.

**expectant right.** See **expectancies; expectant estates**.

**expectation.** See **anticipation; expectancies; in expectation**.

**expectation of life.** The presumption of the continuance of life. 22 Am J2d Dth § 294. The expected duration of the life of a man or woman of a particular age, as calculated according to the statistics of mortality and listed in mortality tables.

See **mortality tables**.

**expected return.** The total amount or the estimated amount to be received under an annuity contract. IRC § 72(c) (2).

**expect to pay.** Words importing a desire, a willingness, or an intention to pay, but not a promise. Coe v Rosene, 66 Wash 73, 118 P 881.

**expediency of measure.** The wisdom or propriety of a measure adopted by an administrative agency to which the formulation and execution of policy has been entrusted. 2 Am J2d Admin L § 677.

**expedient.** Advantageous; suitable for the particular purpose.

**expediente.** A complete statement of every step taken in the proceedings to acquire a Mexican grant. Ainsa v United States, 161 US 208, 40 L Ed 673, 16 S Ct 544.

**expeditate.** To cut off the feet.

**expedition of dogs.** Also called the "lawing" of dogs,—the practice of cutting off the claws and ball or pelote of the forefeet of mastiffs, to prevent them from running after deer in the king's forests. See 3 Bl Comm 72.

**expeditio.** Service; execution.

**expeditio brevis.** The execution or service of a writ.

**expeditio contra hostem.** Military service against an enemy, a part of the "tri-noda necessitas" or three-fold burden to which every man's estate was subject under the ancient laws of England. *Butler v Perry*, 240 US 328, 60 L Ed 672, 36 S Ct 258.

**expedition.** A journey by several persons or a body of persons; ordinarily not inclusive of a journey by one person, notwithstanding hazard to the person in making the trip. *King v Equitable Life Assur. Soc.* 232 Iowa 541, 5 NW2d 845, 155 ALR 1022.

See **aeronautic expedition; military expedition.**

**Expedit reipublicae ut sit finis litium.** It is of advantage to the state that litigation should come to an end. *Eastman v Cooper*, 32 Mass (15 Pick) 276.

**Expedit reipublicae ne sua re quis male utatur.** It is for the welfare of the state that no one should make an ill use of his property.

**expel.** To drive out or put out. To terminate the membership of a person in a club, lodge, or association. *Macauley v Tierney*, 19 RI 255, 33 A 1.

See **expulsion.**

**expended.** Actually paid out or disbursed. *School Dist. v Smith*, 82 Or 443, 161 P 706.

**expeditors.** Paymasters.

**expenditure.** A word impossible of precise definition, the meaning of which must be determined from the circumstances under which it is used. *United States v CIO*, 335 US 106, 92 L Ed 1849, 68 S Ct 1349. For some purposes, a necessary outlay of money, that is, an expense. *Natural Gas Pipe Line Co. v State Commission of Revenue*, 155 Kan 416, 125 P2d 397, 140 ALR 1341. For other purposes, a contribution, for example, an expenditure in aid of a candidate for political office. 31 Am J Rev ed Lab § 175.

See **capital expenditures.**

**expensae.** Expenses; charges; costs.

**expensae circa funus.** Expenses at the time of a funeral; funeral expenses.

**expensae litis.** Costs of suit.

**expense.** The cost of a thing or of services; the charge made for something; a paying out for something.

See **expenditure; family expenses; funeral expenses; operating expenses; ordinary and necessary expense; overhead expenses.**

**expense incurred.** An expense for which one has become liable, even though not defrayed. *Brown v Helvering*, 291 US 193, 78 L Ed 724, 54 S Ct 356.

**expense of litigation.** Court costs and attorneys' fees.

As the expression is used in an indemnity insurance policy giving the insurer the right to control the litigation, it embraces all the expenses the assured was put to by the litigation, including costs, damages and interest, although there are decisions which do not include these items in ruling on such policies. *Aetna Life Ins. Co. v Bowling Green Gaslight Co.* 150 Ky 732, 150 SW 994.

**expense ration.** Terminology of insurers; an amount arrived at by measuring expenses incurred, including all expenses incurred in acquiring, writing and servicing business, but excluding loss adjustment expenses, against premiums written.

**expenses of administration.** See **administration expenses.**

**expenses of family.** See **family expenses.**

**expenses of last illness.** See **death-bed expenses; funeral expenses.**

**expensis civium et burgensium.** See **de expensis, etc.**

**experience.** Work, pleasure, any facet of life gone by, as distinguished from that which is only imagined or anticipated. That from which a degree of proficiency in a profession or occupation is expected to result. The proficiency of an employee at his work, including his knowledge of the work, particularly dangers inherent therein. 35 Am J1st M & S § 290. An insurer's record of losses in respect of a particular class of risks carried, such as automobile liability, inland marine, and plate glass. The result of the operation of an unemployment compensation law in the state in reference to all employers and employees engaged under the act. *Broadway v Alabama Dry Dock & Shipbuilding Co.* 246 Ala 201, 20 So 2d 41.

Under a credit insurance policy which permits

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credit to be extended according to the previous "experience" of the insured with the customer, the word thus used denotes closed transactions, that is, indebtedness which has been paid. *Philadelphia Casualty Co. v Cannon & Buyers Millinery Co.* 133 Ky 745, 118 SW 1004.

**experience tables.** See **mortality tables.**

**Experientia per varios actus legem facit. Magistra rerum experientia.** Experience by various acts makes law. Experience is the mistress of things.

**experimental evidence.** Proof of a fact by way of an experiment performed in court, at any rate in the presence of judge and jury, or evidence of experiments performed out of court under similar conditions and like circumstances to those existing in the case at issue. *People v Levine*, 85 Cal 39, 22 P 969, 24 P 631.

**expert.** One who is so qualified, either by actual experience or by careful study, as to enable him to form a definite opinion of his own respecting a division of science, branch of art, or department of trade about which persons having no particular training or special study are incapable of forming accurate opinions or of deducing correct conclusions. *Scott v Astoria & C. River R. Co.* 43 Or 26, 72 P 594.

Accountants, engineers, clerks, and stenographers are properly to be considered experts within the meaning of a statutory provision which authorizes a public service commission to employ experts to assist the members of the commission in obtaining extensive information regarding public utilities. Anno: 10 ALR 1453, s. 18 ALR 946.

See **expert witness.**

**expert opinion.** See **expert testimony; expert witness.**

**expert testimony.** The opinion of an expert witness; the testimony of persons who are particularly skilled, learned, or experienced in a particular art, science, trade, business, profession, or vocation a thorough knowledge of which is not possessed by men in general, in regard to matters connected therewith. 31 Am J2d Exp & Op § 1.

See **expert witness; medical evidence.**

**expert witness.** A person who is so qualified, either by actual experience or by careful study, as to enable him to form a definite opinion of his own respecting a division of science, branch of art, or department of trade about which persons having no particular training or special study are incapable of forming accurate opinions or of deducing correct conclusions. 31 Am J2d Exp & Op § 1. A witness qualified by scientific or specialized knowledge or experience so as to be permitted to testify not only to the facts, but to his opinion respecting the facts, so far as necessary to inform the jury and enable them to understand the issues of fact and arrive at a proper conclusion. 26 Am J1st Homi § 432.

**expilare.** To despoil; to pillage; to plunder; to rob.

**expiration.** Coming to an end; termination by lapse of time.

**expiration of policy.** The termination of an insurance policy by expiration of the period of coverage stated in the instrument.

See **expirations.**

**expiration of term.** An ending of the term of a lease by the lapse of the time provided by the lease for its duration. 32 Am J1st L & T § 138. Any termination of a lease, whether by expiration of the period of the lease or by the occurrence of a condition which calls for a termination. Pringle v Wilson, 156 Cal 313, 104 P 316.

See **option to terminate.**

**expirations.** A technical term in the insurance business; a record kept by an insurance agent of policies issued which contains the dates of issuance, names of the insureds, expiration dates, the amounts of the policies issued, the amounts of the premiums, the properties covered and particular terms of the insurance. Anno: 124 ALR 1356.

**expire.** To exhale. To emit the last breath; to perish; to cease; to come to an end; to conclude; to terminate.

See **expiration.**

**expired.** Having come to an end. Having died.

See **expiration; expire.**

**expiry of the legal.** The expiration of the period of time within which property subjected to a judgment might be redeemed.

**explees.** Same as **esplees.**

**explicatio.** A pleading under the civil law which corresponded to the surrejoinder of the common law.

**exploration expenditure.** The cost of geological or geophysical work in prospecting for oil and gas or other minerals.

See **mine exploration costs.**

**exploratory drilling test.** A test had by way of discovery to ascertain the extent of mineral deposits. 23 Am J2d Dep § 184.

**explosion.** A bursting with violence and loud noise caused by internal pressure; a sudden bursting or breaking up or in pieces from an internal or other force. 31 Am J2d Explos § 1. A violent bursting or expansion, following the production of great pressure, or a certain release of pressure. 29A Am J Rev ed Ins § 1296.

**explosive.** Any substance the decomposition or combustion of which generates gas with such rapidity that it can be used for blasting, in firearms, or for the generation of power. 31 Am J2d Explos § 1. Material from which through nuclear transformation tremendous forms of energy are released. 6 Am J2d Atomic E § 2.

**exportation.** The sending of goods from one country to another country.

**export certificate.** A certificate issued by the keeper of the English Stud Book when a horse entered in the book is exported, by means of which the foreign purchaser is enabled to register the horse in his own country. Halbronn v International Horse Agency & Exchange [1903] 1 King's Bench 270.

**exports.** Articles shipped from a port of the United States to a foreign country. 21 Am J2d Cust D § 5. Goods and merchandise exported to foreign countries. 51 Am J1st Tax § 104.

**export value.** The value of imported goods in the country of export. 21 Am J2d Cust D § 83.

**expose.** To disclose; to make known; to exhibit; to leave unprotected.

**exposed to disease.** Subjected to existing conditions under which a disease may be communicated. Re Smith, 146 NY 68, 40 NE 497.

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**expose for sale.** To exhibit goods to persons solicited to purchase, or to have them in hand in the presence of such persons and to offer to exhibit them without actually doing so. Commonwealth v Hana, 195 Mass 262, 81 NE 149.

**exposing buildings.** A term familiar in insurance; such buildings as tend to increase the risk of loss by fire and naturally may be considered in fixing the rate of premium. Macatawa Transp. Co. v Fireman's Fund Ins. Co. 168 Mich 365, 134 NW 193.

**exposing for sale.** See **expose for sale.**

**expositio.** Exposition; interpretation; explanation.

**Expositio, quae ex visceribus causae nascitur, est aptissima et fortissima in lege.** That interpretation which springs from the essence of a cause is the most apt and the most powerful in law.

**expository statute.** A statute which does not purport or attempt to amend an existing statute, but which provides a rule or manner for its construction or interpretation. Lindsay v United States Sav. & Loan Co. 120 Ala 156, 24 So 171.

**ex post facto.** After the thing is done; after the act is committed. Calder v Bull (US) 3 Dall 386, 1 L Ed 648. Signifying something done after, or arising from or to affect, another thing committed before. State v Masino, 216 La 352, 43 So 2d 685, 14 ALR2d 720.

**ex post facto law.** A law which, in its operation, makes that criminal which was not so at the time of the act, or which increases the punishment, or, in short, which, in relation to the offense or its consequences, alters the situation of a party to his disadvantage. Lindsey v Washington, 301 US 397, 81 L Ed 1182, 57 S Ct 797. A law that deprives a person accused of crime of a substantial right in which he was protected and granted immunity by the law in force at the time of the commission of the offense. Murphy v Commonwealth, 172 Mass 264, 52 NE 505. A law which operates upon a subject not liable to it at the time the law was made. State v Masino, 216 La 352, 43 So 2d 685, 14 ALR2d 720.

**exposure.** The state of being exposed; openness to danger; accessibility to anything that may affect, especially detrimentally. In the business of fire insurance, a source of danger external to the insured property itself. *Davis v Western Home Ins. Co.* 81 Iowa 496, 46 NW 1073.

See **indecent exposure; involuntary exposure; unnecessary exposure.**

**exposure of person.** See **indecent exposure.**

**ex praecogitata malicia.** With malice aforethought.

**ex praemissis.** From the premises.

**express.** Adjective: Stated, explicit, clear; declared; not left to implication. *State ex rel. Holt v Denny*, 118 Ind 447, 21 NE 274. Noun: A method of transportation of property or remittance of money.

**express acceptance.** An acceptance of an offer expressed in words of acceptance, leaving nothing to inference or implication. 17 Am J2d Contr § 44. The acceptance of a dedication by formal ratification by the proper official board of the municipality or other public body concerned, the adoption of a municipal ordinance, the vote of a town council, the signing of a written instrument by the proper authorities, the execution of an official map by a city showing the street offered to be dedicated, or the act of the legislature incorporating a town, or adopting a map showing its limits. 23 Am J2d Ded § 50.

**express agency.** An actual agency created as a result of the oral or written agreement of the parties. 3 Am J2d Ag § 18.

**express aider.** The doctrine that a defect in pleading is aided if the adverse party pleads over to or answers the defective pleading in such a manner that an omission or informality therein is supplied or rendered formal or intelligible. *Cross v Chicago*, 198 Ill App 177.

**Expressa nocent; non expressa non nocent.** That which is expressed may injure; that which is not expressed will not.

**Expressa non prosunt quae non expressa proderunt.** Things which are expressed may be detrimental which if not expressed would be beneficial.

**express assumpsit.** An undertaking supported by an express promise.

**express authority.** Such authority as is directly granted to or conferred upon an agent or employee in express terms. 3 Am J2d Ag § 69.

**express business.** See **express company.**

**express cars.** The cars of an express company carried on railroad trains.

**express color.** A characterization of an evasive plea setting up feigned matter.

**express company.** A common carrier, its business being that of transporting over a regular route and at regular times money, goods in packages of limited size, and other small but valuable parcels for the public generally. 13 Am J2d Car § 15. At one time the most outstanding example of a joint stock company. 30 Am J Rev ed Jnt Stk Co § 8.

A person who carries goods from one city to another, and from one place to another in either city, solely on call and at special request without making regular trips or going over regular routes, is merely a truckman and is not in the express business. *Retzer v Wood*, 109 US 185, 27 L Ed 900.

**express condition.** Literally, a condition stated rather than implied. A qualification annexed to an estate in real property by the terms of the instrument which creates the estate. *Raley v County of Umatilla*, 15 Or 172, 13 P 890.

**express consideration.** A consideration which is expressed in the contract.

**express contract.** A contract, the terms of which are stated by the parties. 17 Am J2d Contr § 3. A contract which expresses the intentions of the parties in words. 58 Am J1st Wk & L § 2.

Where there is an actual promise, a contract is said to be express; where there is no actual promise, a contract is said to be implied. *Damron v Stewart & Weir*, 253 Ky 394, 69 SW2d 683.

**express covenant.** A covenant stated in words more or less distinctly exposing the intent to covenant. 20 Am J2d Cov § 11.

**express dedication.** A dedication made explicitly by

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deed, note, memorandum, or oral declaration. 23 Am J2d Ded § 1.

**express direction.** As the term appears in a statute of frauds which requires a writing signed by the party to the contract sought to be charged or by another at his "express direction": –any word or act intended as a direction to sign, the term not being limited to a direction in words. *Ex parte: Leonard*, 39 SC 302, 18 SE 216.

**express easement.** An easement created by grant, reservation, exception, agreement or covenant. See 25 Am J2d Ease §§ 20-22.

**express emancipation.** That emancipation which takes place when the parent freely and voluntarily agrees with his child, who is able to take care of and provide for himself, that he may leave home, earn his own living, and do as he pleases with his earnings. 39 Am J1st P & C § 64.

**express invitation.** An invitation extended by an owner of property in terms to a person or persons to come upon the premises, to make use of them, or to do something thereon. *Robinson v Leighton*, 122 Me 309, 119 A 809, 30 ALR 1386, 1389.

**Expressio eorum quae tacite insunt nihil operatur.** The statement of those things which are tacitly understood can avail nothing. *Stuart v Easton*, 170 US 383, 395, 42 L Ed 1078, 1082, 18 S Ct 650.

**expressio falsi.** A falsehood; an untrue statement.

**expression of opinion.** See **expert testimony; opinion; opinion evidence.**

**Expressio non prosunt quae non expressa proderunt.** Things which are expressed may be disadvantageous which not expressed would benefit.

**expressio unius est exclusio alterius.** The expression of one thing implies the exclusion of another thing. A maxim applied in a construction of contracts to the effect that the expression in a contract of one or more things of a class implies the exclusion of all not expressed. 17 Am J2d Contr § 255. A principle of statutory construction, but as an aid to construction, not a rule of law, the principle being of limited use and application. 50 Am J1st Stat §§ 244, 245.

**express lien.** A charge upon property for the payment or discharge of a debt or duty created in stated and explicit terms.

**expressly.** Clearly, directly, plainly, distinctly. State ex rel. Holt v Denny, 118 Ind 447, 21 NE 274.

**express malice.** A deliberate or premeditated design to inflict injury or take life. 26 Am J1st Homi § 38. For the purposes of the law of defamation, malice in fact as distinguished from implied malice. 33 Am J1st L & S § 111.

See **malice in fact.**

**express messenger.** An employee of an express company in charge of the express car on a railroad train. Louisville N. O. & T. R. Co. v Douglass, 69 Miss 723, 11 So 933.

**express notice.** Actual notice by direct information. 39 Am J1st Notice § 6.

**express permission.** As the term appears in a statute rendering an automobile owner liable for injury caused by the car in operation by another with "express permission" –prior knowledge of the intended use and an affirmative and active consent to it. 8 Am J2d Auto § 605.

**express ratification.** The ratification of an unauthorized act by spoken or written words. 3 Am J2d Agency § 162.

**express trust.** A trust which arises out of a direct or positive declaration of trust. A trust that comes into existence by the execution of an intention to create it by the person having legal and equitable dominion over the property made subject to it. 54 Am J1st Trusts § 30.

**Expressum facit cessare tacitum.** The express declaration puts to an end anything which silence might signify. Siegel v Herbine, 148 Pa 236, 23 A 996.

**express warranty.** A part of a contract of sale of personalty:—being a statement in so many words that the subject of the sale has a certain quality or condition. 46 Am J1st Sales § 299. In a contract of insurance:—an agreement contained in the policy whereby the insured stipulates that certain facts relating to the risk are or shall be true, or that certain acts relating to the subject of the insurance have been or shall be done. 29 Am J Rev ed Ins § 709.

**expressway.** A superior highway.

See **limited-access highway.**

**Ex procedentibus et consequentibus optima fit interpretatio.** The best interpretation or explanation is made from the matter which precedes and follows.

**ex professo.** By profession; professedly.

**Expromissio.** A kind of novation in the civil law, whereby the creditor accepted a new debtor in the place of the original one and released the latter.

**expromissor.** (Civil law.) A person who assumed the payment of a debtor's obligation, thus releasing the original debtor upon the creditor's acceptance of the new debtor.

**expromittere.** To become bound as an expromissor.

See **expromissor.**

**expropriate.** In modern usage, to condemn for public use; in older usage, a surrender or renunciation of a claim to property.

**expropriation.** The English and Canadian term for eminent domain.

See **eminent domain.**

**ex proprio motu.** Of his own motion; of his own accord.

**ex proprio vigore.** Of its own force; by its own force; automatically.

**ex provisione hominis.** By provision of man; that is, by a man's own act, not by operation of law.

**ex provisione mariti.** By or from the provision of the husband.

**ex provisione viri.** By or from the provision of the husband.

**expulsion.** A driving out with force. An enforced withdrawal from or termination of membership in a lodge or mutual benefit society. 36 Am 12d Frat

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O § 64. The removal of a member of a nonprofit corporation from the list of members and the elimination of his rights as a member. 18 Am J2d Corp § 473. The dismissal of a student from a university or college. 15 Am J2d Colleges § 25. The dismissal of a public school pupil for breach of a rule, regulation or requirement of the school authorities. 47 Am J1st Sch § 177.

See **deportation; excommunication.**

**expurgation.** A purging; a cleansing; a purification.

**ex quasi contractu.** As if from a contract; as if arising out of a contract.

**ex rel.** An abbreviation of ex relatione.

**ex rel. action.** An action in which a relator appears as one beneficially interested, the action being maintained on his behalf.

See **relator.**

**ex relatione.** On the relation of; on the information of.

See **relator.**

**ex rigore juris.** From or according to the rigor or harshness of the law.

**exrogare.** (Roman law.) To adopt a part of an old law in the enactment of a new one.

**exscript.** A copy; a transcript.

**ex scriptis olim visis.** From writings formerly seen.

**ex ship.** In connection with the stipulated price in a contract for the sale of merchandise: all expenses incurred to the time the goods leave the ship's tackle are to be borne by the seller; all expenses incurred after that time are to be borne by the buyer. *Harrison v Fortlage*, 161 US 57, 40 L Ed 616, 16 S Ct 488.

A bill of sale of goods in bulk at the time of the sale in a foreign country, to be delivered "ex vessel" in New York Harbor, means that the merchandise should be delivered at New York, and not at the place where it was when sold. *Tinsley v Weidinger*, 15 Daly 534, 8 NYS 476.

**ex speciali gratia.** From special grace, favor, or indulgence.

**ex speciali gratia, certa scientia, et mero motu regis.** By special favor, certain knowledge, and mere motion of the king: a usual clause in a king's grant. See 2 Bl Comm 347.

**ex statuto.** According to the statute.

**ex tempore.** For the time being; for the occasion; temporarily; from lapse of time.

**extend.** To stretch; to lengthen; to prolong. *Quinn v Valiquet*, 80 Vt 434, 68 A 515. To levy a writ of extent. *Den ex dem. Murray v Hoboken Land & Improv. Co.* (US) 18 How 272, 15 L Ed 372. To make a complete record of a judicial proceeding.

**extended insurance.** Life insurance for the full amount of the policy, less contractual deductions, for the period contemplated by the nonforfeiture table. 29 Am J Rev ed Ins § 619.

**extendi facias.** A form of writ of execution, also known as a writ of extent, against the body, goods, and lands of the judgment debtor. 30 Am J2d Exec § 29. In some jurisdictions, a writ under which lands are seized by the sheriff and delivered to the plaintiff for the purpose of the recovery of the debt out of the rents and profits, but appraised at their full extended value before delivery to the plaintiff. 30 Am J2d Exec § 29.

**Extenditur haec pax et securitas ad quatuordecim dies, convocato regni senatu.** This tranquillity and protection is extended to fourteen days from the assembling of the senate of the kingdom. See 1 Bl Comm 165.

**extension.** A stretching; a lengthening; a prolongation; a continuance; a grant of further time. An addition to the system of lines of a public utility for the purpose of serving new territory. *State ex rel. Mason v Consumers' Power Co.* 119 Minn 225, 137 NW 1104. A railroad running off a main line like a spur but constituting a part of the railroad system to be operated as a common carrier. 44 Am J1st RR § 231.

**extension of building.** An enlargement of a building. An addition to a building. 29 Am J Rev ed Ins § 294.

**extension of charter.** A prolongation of the existence of a corporation by statute or pursuant to statute. 18 Am J2d Corp § 69.

While the term "extension" has frequently been used synonymously with "renewal", it has been held that to "extend" a charter is to give one which now exists greater or longer time to operate in than that to which it was originally limited, while "renewal" of a charter is to give a new existence to one which has been forfeited, or which has lost its vitality by lapse of time. *Moers v Reading*, 21 Pa 188.

**extension of debt.** See **extension of time.**

**extension of lease.** The lengthening of the term of a lease by mutual agreement or by the exercise by the lessee of an option contained in the lease. 32 Am J1st L & T §§ 953 et seq.

In some of the cases, the courts seem to disregard any distinction in meaning between a renewal and an extension. However, generally a distinction is drawn between a provision in a lease for a renewal and a provision for the extension of the

term at the option of the lessee, the courts treating the latter, upon the exercise of the privilege, as a present demise for the full term to which it may be extended and not a demise for the shorter period with a privilege for a new lease for the extended term. 32 Am J1st L & T § 956.

There is a distinction between a stipulation in a lease to renew it for an additional term and one to extend it, in that a stipulation to renew requires the making of a new lease, while a stipulation to extend does not. Grant v Collins, 157 Ky 36, 41, 162 SW 539.

**extension of mortgage.** The extension of the maturity of the obligation secured. 36 Am J1st Mtg § 381. The extension of the security of the mortgage to cover an additional indebtedness or future advances. 36 Am J1st Mtg §§ 67, 68.

**extension of note.** See **extension of time.**

**extension of record.** The preparation of the complete record of an action or proceeding in court from the processes and pleadings on file. 15 Am J2d Clk Ct § 23.

**extension of term.** See **extension of lease.**

**extension of time.** The prolongation of a period previously fixed. Modification of an obligation by giving additional time for performance. 11 Am J2d B & N § 297. Prolonging the time for payment of

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a note to a date beyond the due date stated in the note. Rossville State Bank v Heslet, 84 Kan 315, 113 P 1052. Relief granted to a debtor by a court of bankruptcy in respect of unsecured indebtedness in an arrangement proceeding under the Bankruptcy Act. 9 Am J2d Bankr § 1317.

See **extension of lease.**

**extenso.** See **in extenso.**

**extensores.** Officers appointed to extend or appraise lands.

**extent.** A writ or process usually called an "extent" or "extendi facias," because the sheriff is to cause the property seized to be appraised at its full extended value, before he delivers it to the plaintiff, that it may be known how soon the debt will be satisfied. This writ or process was commonly used upon forfeitures of recognizances on statutes merchant or statutes staple when body, lands and goods of the debtor might all be taken on execution. See 21 Am J2d Exec § 29.

Size, amount, coverage, applicable to time, space, proportion, etc., in fact a word which varies in meaning according to the subject to which it is applied. Wilson v Rousseau (US) 4 How 646, 698, 11 L Ed 1141, 1164. A writ of execution, otherwise known as extendi facias.

See **extendi facias.**

**extent in chief.** A writ of extent sued out at the instance of the king.

**extenuate.** To lessen; to weaken; to palliate; to excuse to some extent.

**extenuating circumstances.** Facts which reduce the damages in a civil case or the penalty in a criminal case.

**extenuation.** The mitigation of damages or of punishment for crime; a fact warranting mitigation.

**extermination.** The abatement of an agricultural nuisance by preventing the spread of insect pests or diseases detrimental to agriculture. 3 Am J2d Agri § 43.

**exterminator.** A substance in powder, liquid, or fumes for use in eliminating insect pests from house or lands. A person whose occupation is that of eliminating pests.

**external administration.** That part of the law which is concerned with the legal relations between administrative authorities and private interests. 1 Am J2d Admin L § 5.

**external and visible signs of injury.** A condition of recovery under many accident insurance policies, the purpose being to protect the insurer against sham claims. 29A Am J Rev ed Ins §§ 1169, 1170.

**external means.** A term limiting the coverage of an accident policy for the purpose of protecting the insurer against hidden or secret diseases where there is no manifestation of harm to the external body. *American Acci. Co. v Reigart*, 94 Ky 547, 23 SW 191. Not limiting recovery to a case where the external means should itself cause injury or death, the limitation being only that the cause be external to the person, although it may act on the insured internally. 29A Am J Rev ed Ins § 1165.

**external or visible evidence.** A familiar term in accident insurance policies covering injury sustained while riding in a motor vehicle, requiring as a condition of the insurer's liability that there be external or visible evidence of a collision or accident on the motor vehicle in which the insured alleges that he was riding when injured. 29A Am J Rev ed Ins § 1246.

**external, violent, and accidental means.** A clause limiting the risk of loss in an accident insurance policy, meaning that in order to support a recovery, it must be shown, not only that the means were external and violent, but also that they were accidental; in other words, all three tests must be met before coverage is afforded. *Schonberg v New York Life Ins. Co.* 235 La 461, 104 So 2d 171.

See **accidental means; violent means.**

**external, violent, or accidental means.** A disjunctive statement of coverage in an accident insurance policy, so that if an injury is external and violent, it need not be accidental in order to be covered. 29A Am J Rev ed Ins § 1165.

See **accidental means; violent means.**

**extritoriality.** See **extraterritoriality.**

**Exterus non habet terras.** An alien cannot hold land.

**ex testamento.** By the will or testament.

**extinct.** Extinguished; having come to an end; discharged; released

**Extincto subjecto, tollitur adjunctum.** The subject having become extinct, the adjunct or incident of it disappears.

**extinguish.** To terminate; to put an end to; to cancel; to discharge.

**extinguishment.** Discharge; destruction; termination; cancellation.

**extinguishment of common.** The termination of a right of common from any cause, for example, the acquisition of title by the person holding the right.

**extinguishment of copyhold.** The conversion of the tenure of a copyhold tenant to a freehold.

**extinguishment of debt.** The extinction or cancellation of a debt; as, by payment, by merging of the debtor and the creditor, by novation, or by the merger of a debt in a judgment. 30A Am J Rev ed Judgm § 321.

**extinguishment of easement.** The termination of an easement, as by abandonment of use, merger of dominant and servient estates, release, etc. 25 Am J2d Ease §§ 101 et seq.

**extinguishment of rent.** The termination of a tenant's liability for rent, as, by his acquisition of title to the land or by a release granted by the landlord.

**extorsively.** With intent to commit the crime of extortion. *Leeman v State*, 35 Ark 438.

**extort.** To commit the offense of extortion.

See **extortion.**

**Extortio est crimen quando quis colore officii extorquet quod non est debitum, vel supra debitum, vel ante tempus quod est debitum.** Extortion is a crime when anyone under color of office extorts that which is not due, or more than is due, or before the time when it is due.

**extortion.** Oppression under color or right; the criminal offense of obtaining money or other valuable thing by compulsion, actual force, or force of motives applied to the will; more technically

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defined as the unlawful taking by an officer of the law, by color of his office, of any money or thing of value that is not due to him, or the taking of more than is due, or the taking of money before it is due. *Bush v State*, 19 Ariz 195, 168 P 508; 31 Am J2d Extort § 1. A method of abuse of process. 1 Am J2d Abuse P § 12.

**Ex tota materia emergat resolutio.** The explanation or solution should arise out of the whole subject matter.

**extra.** Outside of; out of; beyond; better than expected; additional.

**extra allowances.** See **additional allowances.**

**extra baggage.** See **excess baggage.**

**extra compensation.** Compensation over and above that fixed by contract for the work agreed to be done. *Weston v State*, 262 NY 46, 186 NE 197, 88 ALR 1219. Money paid out of public funds to a public officer or servant in excess of his regular salary for the performance of services that are within the scope of his official duties. *Mullane v McKenzie*, 269 NY 369, 199 NE 624.

**extract.** Noun: That which is extracted or taken from something else; a copy of a portion of a record or document; a selection, as from a treatise or a book. Verb: To take something out of something else.

**extraction.** The removal of a tooth. The descent of a person in reference to the nationality of his ancestors.

**extradition.** The surrender by one nation or state to another of an individual accused or convicted of an offense outside of the former's territory and within the territorial jurisdiction of the latter, which, being competent to try and punish him, demands the surrender. *State ex rel. Treseder v Remann*, 165 Wash 92, 4 P2d 866, 78 ALR 412.

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

**extradition treaty.** A treaty between two or more nations which provides for the extradition from each of the countries to any of the others of persons charged with specified offenses.

**extradition warrant.** The formal warrant of arrest issued by the governor or executive of the state or country for the apprehension and detention of the person whose surrender has been demanded of that state or country by another state or country. 31 Am J2d Extrad §§ 61, 62.

**extra dividend.** Sometimes called an "extraordinary dividend;" a dividend, whether cash or stock, paid by a corporation and representing an accumulated excess of earnings over normal return on capital invested and constituting a distribution or a capitalization of surplus profits remaining after distribution of ordinary dividends. 19 Am J2d Corp § 810.

**extradotal property.** Same as **paraphernal property**.

**extra feodum.** Out of the fee; out of the seigniorship.

**extrahazardous.** A descriptive term applicable to articles insured or articles permitted to be kept on insured premises; something beyond hazardous; extra dangerous. 29A Am J Rev ed Ins § 927.

**extra-hazardous employment.** A relative term. An occupation attended by a risk of danger to the person employed greater than in an ordinary employment. 58 Am J1st Workm Comp § 90.

**extrahura.** An estray.

**extrajudicial.** Aside from or without the intervention of a court; outside of the court's jurisdiction.

**extrajudicial confession.** A confession made elsewhere than before a magistrate or in court. *Stewart v State*, 41 Okla Crim 117, 271 P 959.

**extrajudicial identification.** A former identification made out of court; sometimes imbued with such trustworthiness because of the circumstances under which it was made as to be competent evidence. 29 Am J2d Ev §§ 372, 373.

**extrajudicially.** In a manner other than judicial; by means outside of court.

**extrajudicial oath.** An oath which is not administered in the due and regular course of judicial proceedings which is not authorized by law, and which, accordingly, is not binding upon the person making it. *State v Bowman*, 90 Me 363.

**extrajudicial opinion.** An opinion on a question not presented or necessary to a decision in the case; obiter. *Warner v Steamer Uncle Sam*, 9 Cal 697, 732.

See **obiter**; **obiter dictum**.

**extra judicium.** Outside of court; extrajudicial.

**extra jus.** Beyond the law; beyond the requirements of the law.

**extralateral rights.** A doctrine of mining law which refers to that part of a vein which, on the dip, lies outside of the side lines of the location within whose surface lines the apex of the vein appears, and not to any part of such vein, either the outcrop or the segments on the dip thereof, which lie wholly within planes drawn downwards coincident with the surface boundaries of the location.

The extralateral rights of the locator of a lode mining claim do not attach until after, in pursuit of his vein on its dip, he crosses the side lines of his location. *Jefferson Mining Co. v Anchoria-Leland Mining & Milling Co.* 32 Colo 176, 75 P 1070.

**extra legem.** Outside of the law; beyond the protection of the law.

**extra legem positus.** Placed outside the law; subjected to civil death, an accompaniment of attainder of treason or felony whereby the attainted person was disqualified as a witness, as a plaintiff or as having capacity to perform any legal function; legally dead. 21 Am J2d Crim L §§ 626 et seq.

**Extra legem positus est civiliter mortuus.** A person who is placed outside the law (that is, outlawed) is civilly dead.

**extraliminal rights.** Same as **extralateral rights**.

**extraneous.** Not pertinent. Something coming from outside.

**extraneus.** An alien; a foreigner; a stranger.

**Extraneus est subditus qui extra terram, i. e., potestatem regis natus est.** An alien or foreigner is a subject born outside the land; that is, outside the power of the king.

**extraordinary.** Beyond or out of the common order

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or rule; not usual, regular or of a customary kind; not ordinary; remarkable; uncommon; rare. *Ten Eyck v Rector, etc. of Albany* (NY) 65 Hun 194, 197, 20 NYS 157.

**extraordinary care.** A very high degree of care. 14 Am J2d Car § 916. More than ordinary care; great care. 8 Am J2d Bailm § 202.

Even the standard of "due care" varies with the danger involved and is proportionate thereto. 38 Am J1st Negl § 31. What a prudent man will do, and what a very prudent and thoughtful man will do under special circumstances, are questions for the jury. *Wallace v Clayton*, 42 Ga 443, 448.

**extraordinary costs.** See **additional allowances**.

**extraordinary diligence.** See **extraordinary care**.

**extraordinary dividend.** See **extra dividend**.

**extraordinary flood.** A flood of unprecedented magnitude; a flood frequently regarded as an act of God. 56 Am J1st Wat § 91. A flood, the magnitude and destructiveness of which could not have been anticipated or provided against by the exercise of ordinary foresight. *Schweiger v Solbeck*, 191 Or 454, 230 P2d 195, 29 ALR2d 435.

**extraordinary physical effort.** As the term applies in a statute prescribing a maximum and minimum age limit for certain positions in the civil service requiring "extraordinary physical effort," a physical effort of long duration or an effort involving extraordinary exertion at times, but not necessarily an effort beyond the ordinary, in respect of exertion of strength, which is continuous. *Deodati v Kern*, 280 NY 366, 21 NE 355, 122 ALR 1446.

**extraordinary proceedings.** See **extraordinary remedies.**

**extraordinary remedies.** Remedies, developed by the application of common-law or prerogative writs and confirmed with modifications by statute, intended to make available types of relief not obtainable in an ordinary action in law or equity, most notable of which are those employed in reference to the acts and determinations of administrative agencies:—certiorari, mandamus, and prohibition. 2 Am J2d Admin L § 708. Other administrative remedies:—assistance under writ, 6 Am J2d Assist § 1; quo warranto or proceeding in the nature of quo warranto, *Casey v McElrath*, 177 Ga 35, 169 SE 342; and receivership. *Prudential Securities Co. v Three Forks, H.& N.V.R. Co.* 49 Mont 567, 144 P 158.

**extraordinary repairs.** Such repairs as are made necessary by some unusual or unforeseen occurrence which does not destroy the building but merely renders it less suited to the use for which it was intended. *Courtney v Ocean Acci. & G. Corp.* 346 Mo 703, 142 SW2d 858, 130 ALR 234.

**extraordinary risk.** A term of application in reference to the safety of the working place; not a risk which is uncommon or unusual in the sense that it is rare, but one which arises out of unusual conditions resulting from the employer's negligence. *Van Kirk v Butler*, 19 NM 597, 145 P 129.

**extraordinary session.** See **special session.**

**extraparochial.** Some lands, either because they were in the hands of irreligious and careless owners, or were situated in forests and desert places, or for other reasons, were never united to any parish. See 1 Bl Comm 113.

**extra praesentiam mariti.** Outside the presence of the husband.

**extra provincial company.** A Canadian term for foreign corporation.

See **foreign corporation.**

**extra quatuor maria.** Beyond the four seas; that is, outside the kingdom of England. See 1 Bl Comm 457.

**extra regnum.** Outside the kingdom.

**extra services.** Services performed by an agent additional to or beyond the scope of the contract made by him with the principal, 3 Am J2d Agency § 248; services not covered by the contract but performed by a building contractor at the request or without objection on the part of the owner, the other contracting party, 13 Am J2d Bldg Contr § 19; services, by one hired to perform work and labor, beyond the stipulations of the contract, 58 Am J1st Wk & L § 34; services of a public officer incident to his office but for which no compensation is provided by law. *Board of Comrs. v Blake*, 21 Ind 32, 34.

**extra session.** See **special session.**

**extraterritorial.** Outside of the boundaries of the state or country.

**extraterritoriality.** The operation of the laws of a state or country beyond or outside of its physical boundaries. The fiction that a diplomatic officer, although actually in a foreign country, remains in the territory of his sovereign, applied in support of the immunities and privileges of ambassadors and other public ministers serving in a foreign country. 4 Am J2d Ambss § 4.

**extraterritorial wrong.** A wrong according to the law of the place where it occurred rather than the law of the jurisdiction wherein the action is brought. 1 Am J2d Actions § 6.

**extra territorium.** Beyond or outside the territorial boundaries.

**Extra territorium jus dicenti non paretur impune.** A person may not with impunity obey the law laid down by a body exercising jurisdiction outside of its territorial limits.

**extravagance.** Excess, especially in dress, manner of living, or expenditures of public funds.

See **sumptuary laws.**

**Extravagantes Communes.** Common extravagants, the decrees of the popes who followed Pope John XXII. See 1 Bl Comm 82.

**Extravagantes Joannis.** The twenty constitutions of Pope John XXII. See 1 Bl Comm 82.

**extra viam.** Outside the way; off the highway.

**extra viam rights.** The right of a traveler upon the highway to travel over the abutting property where the highway is out of repair and impassable for practical purposes. 25 Am J1st High § 615. The right of one having an easement of way to depart from the regularly traveled way or path and pass over the abutting land of the servient owner where the latter has obstructed the private way or made it impassable. 25 Am J2d Ease § 70.

**extra vires.** Same as **ultra vires.**

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**extra work.** Services additional to that undertaken by a contractor. 58 Am J1st Wk & L § 34.

**extreme.** Outermost; utmost. Sometimes employed as the opposite of moderate, but more often as meaning far advanced or excessive, e. g. "extreme cruelty." Estate of Nelson, 132 Cal 182, 191.

**extreme care.** Such care as a prudent man would exercise in a place of danger. Schlosstein v Bernstein, 293 Pa 245, 142 A 324.

**extreme cruelty.** As a ground of divorce, the same in meaning as "cruel and inhuman treatment" and "intolerable severity." 24 Am J2d Divorce § 32. Not confined to physical violence, but including conduct that wounds the feelings and sensibilities so grievously as to impair physical or mental health. 24 Am J2d Div & S § 35.

**extreme tide.** The tide which occurs when the difference between high tide and low tide is the greatest.

**extremis.** See **in extremis.**

**Extremis probatis, praesumuntur media.** When the extremes have been proved, those things which are between them are presumed.

**extremity.** The outermost; the hands and feet. Danger. The end of life.

See **either extremity**.

**extrinsic.** Outside; from outside; foreign; derived from outside.

**extrinsic evidence.** See **parol evidence**.

**extrinsic fraud.** The character of fraud which will afford a ground for setting aside a judgment, that is, fraud which is collateral to the issues tried in the case wherein the judgment was rendered. 30A Am J Rev ed Judgm § 657. For the purpose of a ground of equitable relief against a judgment, fraud which has prevented a party from having a trial, from presenting all his case to the court, or has so affected the manner in which the judgment was taken that there has not been a fair submission of the controversy to the court. *Farley v Davis*, 10 Wash 2d 62, 116 P2d 263, 155 ALR 1302. For the purpose of serving as a defense to an action on a foreign judgment, any fraudulent conduct of the successful party in the foreign action, practiced directly and affirmatively on the defeated party outside the actual trial of the case, whereby he was prevented from presenting his side of the cause fully and fairly. *Britton v Gannon (Okla)* 285 P2d 407, 55 ALR2d 667. Actual fraud characterized by an evil intent to take undue advantage of another person for the purpose of actually and knowingly defrauding him. *Flood v Templeton*, 152 Cal 148, 92 P 78.

**extum.** Thence.

**ex turpi causa.** A claim, asserted as a cause of action, which arises from the transgression of a positive law. 11 Am J2d B & N § 1001.

**Ex turpi causa non oritur actio.** No cause of action can arise out of an immoral (or illegal) inducement (or consideration). 1 Am J2d Actions § 51.

**Ex turpi contractu actio non oritur.** From an immoral (or illegal) contract no action can arise. *Anheuser-Busch Brewing Asso. v Mason*, 44 Minn 318, 46 NW 558.

**exuere patriam.** To renounce allegiance to the government of one's country; to expatriate one's self.

**exulare.** To exile; to banish.

**ex una parte.** Of or from one part or side.

**Ex uno disces omnes.** From one thing you can find out all.

**ex usu.** From the use; by using.

**ex utraque parte.** From both sides.

**ex utrisque parentibus conjuncti.** Connected with both parents; related by ties of full blood.

**ex vessel.** See **ex ship**.

**ex vi aut metu.** By or from force or fear.

**ex visceribus.** From the bowels; from the vitals.

**ex visceribus testamenti.** From the vitals of the will, that is, from the whole will; a rule of construction. *Homer v Shelton*, 48 Mass (2 Met) 194, 213.

**ex visitatione Dei.** By the visitation of God; by divine dispensation.

**ex visu scriptionis.** From the sight of the writing; from seeing the person write.

**ex vi termini.** By the force of the term; by the intrinsic import of the term or expression.

See **right of way ex vi termini.**

**ex vi terminorum.** By the force of the terms or words used: that is, by their intrinsic import.

**ex voluntate.** Emanating from the will; voluntary; voluntarily; of one's own volition.

**ey.** Water; a place surrounded by water; an island.

**eye.** See **sight.**

**eyesight.** See **sight.**

**eyewitness.** A person who testifies to what he has seen. *Ellis v Interstate Business Men's Acci. Asso.* 183 Iowa 1279, 168 NW 212.

A person may be an eyewitness to his own injury. *Lewis v Brotherhood Acci. Co.* 194 Mass 1, 79 NE 802.

**eyewitness provision.** A clause in an accident insurance policy which requires proof of the accidental character of an injury by eyewitnesses other than the insured or claimant. 29A Am J Rev ed Ins § 1933.

**eyewitness testimony.** Testimony by a witness to what he has seen.

See **eyewitness.**

**eygne.** The eldest.

**eyott.** A small island; an islet.

**eyre.** A journey; the journey of a judge from place to place upon his circuit.

See **justices in eyre.**

**eyrer.** To journey; to travel.