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**t.** Abbreviation of ton, of teste, of termino.

**taberna.** A tavern.

**tabernaculum.** A tavern.

**table.** A compilation of information, particularly scientific information, such as it mortality table, a remarriage table, a table of weights, etc. 29 Am 12d Ev § 889. A piece of household furniture or of furnishing of an office or place of work, consisting of a flat top supported by legs.

See **experience table; gaming table; mortality table; tax table.**

**table of surrender values.** A tabulated list in a life insurance policy showing the increasing cash-surrender value from year to year or from one period of years to another period of years.

**table rents.** (Ecclesiastical.) Rents which were collected to supply the bishop's table.

**tables of life expectancy.** See **mortality table.**

**tablet.** Sheets of writing paper bound together.

**table top.** Literally, the top of a table. A device employed in loading and unloading ships. "The defendants provided a wooden platform, called a 'table top,' between the ship and the quay, which was fastened at one end to the ship's gunwale by ropes, the other end unfixed upon the quay. In the course of their duty, the stevedores would have to go upon this 'table top.'" *Loader v London & India Docks Joint Committee* (Eng) 8 LT 5.

**tabula in naufragio.** Literally a plank in a shipwreck. A graphic expression applied to the saving of a junior equity by acquiring the legal title. 27 Am J2d Equity § 151.

**tabularius.** A notary.

**tachograph.** The record of the speed of an object as registered by a tachometer. 8 Am J2d Auto § 949.

**tachometer.** A device for measuring speed, whether it be a vehicle, the current of a stream, the blood in a human vessel, etc.

**tacit.** Silent; not expressed; implied.

**Tacita quaedam habentur pro expressis.** Certain things which are tacit are regarded as expressed.

**tacite.** Tacitly; silently; impliedly.

**tacit hypothecation.** A hypothecation which is implied by law for the security of a creditor.

**tacit law.** That law which arises out of the silent consent and the customs and usages of the people.

**tacit mortgage.** The security for the performance by a parent of his duty and obligation as guardian of his child, his entire estate being bound in effect for the proper discharge of the trust. 25 Am J1st G & W § 47.

**tacito et illiterato hominum consensu et moribus expressum.** Expressed by the silent and unwritten consent and customs of men. 1 Bl Comm 64.

**tacking.** Changing the course of direction of a sailboat by changing the position of the sails. Adding. A doctrine which permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous possession for the period prescribed by statute for the ripening of adverse possession into title. *Fagan v Grady*, 101 NH 18, 131 A2d 441. An attempt on the part of a creditor having two liens of different priorities to join them so as to perfect priority over the lien of a third person intervening between the two liens. 30A Am J Rev ed Judgm § 529. A long established rule of the English court of chancery that where property is subject to successive mortgages, and the third mortgagee had advanced his money without notice of the second mortgage, he may take an assignment of the first mortgage and require the second mortgagee to redeem from both of the other mortgages before the property can be subjected to the second mortgage. 36 Am J1st Mtg § 203.

**tacking disabilities.** Adding the period of time within which a plaintiff was under one disability, for example, infancy, to the period of a succeeding disability suffered by him, for example, insanity, for the purpose of determining whether or not the statute of limitations has run against his cause of action. 3 Am J2d Adverse Possession § 132; 34 Am J1st Lim Ac § 210.

**tackle.** The rigging and pulleys employed on a vessel in operating the sails; a part of the ship as a going concern. 48 Am 32d Ship § 36. Equipment for an expedition or outing, such as a fishing trip.

See **block and tackle**.

**Taft-Hartley Act.** See **Labor Relations Acts**.

**tag.** See **dog tag; label**.

**tailage.** Burdens, charges, or impositions, put or set upon persons or property for public uses. Anno: 17 ALR 1059.

**tail estate.** See **fee tail**.

**tail female.** See **fee tail female**.

**tailgate.** Noun: The door at the rear end of a truck, to be opened or entirely removed in unloading cargo at the rear. *Inter-Southern Life Ins. Co. v Bowyer*, 90 Ind App 494, 169 NE 65. Verb: To drive a motor vehicle closely behind another vehicle. 8 Am J2d Auto § 773.

**tail general.** See **fee tail general**.

**tailings.** Refuse, particularly from mining operations. Ore which has been taken out of a mine and from which all of the valuable mineral content has not been extracted. *Commissioner of Internal Revenue v Kennedy Mining & Milling Co.* (CA9 Cal) 125 F2d 399.

**taillight.** A light, required by statute, to be carried at the back of a vehicle on a public highway, as a warning to vehicles approaching in darkness or at a time when natural light is deficient. 8 Am J2d Auto § 153.

**tail male.** See **fee tail male**.

**tailor's suit club.** See **suit club**.

**tail special.** See **fee tail special; special estate tail**.

**tailzie.** A term of the Scottish law comparable to the English "entail." *Hubbell v Hubbell*, 135 Iowa 637, 113 NW 512.

**taini.** Freeholders.

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**taint.** See **attainder**; **taint of usury**.

**taint of usury.** The illegality in a usurious transaction attaching to all consecutive obligations or securities growing out of the transaction. 55 Am J1st Usury § 96.

**take.** To lay hold of, to seize or grasp in some manner. 32 Am J1st Larc § 12. To receive either by descent or by purchase. *Re Billings' Estate v Hauver*, 65 Cal 593, 4 P 639. To acquire; to obtain; to procure. *Hallenbeck v Getz*, 63 Conn 385, 388.

There may be a taking of property although there is no actual entry within its bounds and no artificial structure erected upon it. *Milhous v State Highway Dept.* 194 SC 33, 8 SE2d 852, 128 ALR 1186.

Conditions so burdensome may be imposed that they constitute an outright "taking" of property, within the meaning of the Fourteenth Amendment to the Federal Constitution, although the title to the property and some vestiges of its uses remain in the owner. *East Coast Lumber Terminal, Inc. v Babylon (CA2 NY)* 174 F2d 106, 8 ALR2d 1219.

**take an exception.** Same as **note an exception**.

**take effect.** To become effective. Anno; 76 ALR 646.

See **effective date**.

**take his own life.** To commit suicide; to destroy one's own life voluntarily and intentionally. *Dickerson v North Western Mot. L. Ins. Co.* 200 111 270, 65 NE 694, affg 102 Ill App 280.

Defined as it pertains to the applicability of a suicide clause in a life insurance policy in Anno: 35 ALR 160.

**take-home pay.** The weekly wages or salary of an employee less deductions byway of withholding for taxes, payment made into pension fund, Social Security tax, group insurance premium, etc.

**taken for public use.** Possessed, occupied, used, and enjoyed by a public body or public agency for public purposes. *Pontiac Improv. Co. v Cleveland Metropolitan Park Dist.* 104 Ohio St 447, 135 NE 635, 23 ALR 866. A term broad enough to include cases in which access to the abutting premises is obstructed by a change of grade of a highway, or where there is such physical injury to property as results in destruction or substantial impairment of its usefulness. *White v Southern R. Co.* 142 SC 284 140 SE 560, 57 ALR 634.

See **taking for public use**.

**take-nothing judgment.** A judgment that plaintiff take nothing; a judgment that plaintiff take nothing under a designated count or counts of his declaration or complaint. *Goldfarb v Bronston*, 154 Fla 180, 17 So 2d 300.

**take-off.** The amount taken out of money in play by the person conducting the game. 24 Am J1st Gaming § 20. The movement of an aircraft in leaving the ground and becoming air-borne. Air imitation of a public character for comic effect.

**take testimony.** To receive the evidence of sworn witnesses either in a court or before air officer or body authorized to receive it.

**take-up statute.** A state tax statute enacted for the purpose of absorbing the credit given in computing the federal estate tax for death taxes paid to a state or territory. Anno: 63 ALR 1096, s. 147 ALR 467.

**taking.** See **take.**

**taking abstract.** Making an abstract or summary of an article or instrument, e.g., noting the important features, such as date, description of property, time of recording, etc. from the public record of a deed, conveyance, or mortgage. Anno; 80 ALR 772.

**taking bill pro confesso.** See **decree pro confesso.**

**taking by eminent domain.** See **eminent domain; taking for public use.**

**taking by moieties.** Taking as tenants in common.

**taking by right of representation.** See **per stirpes.**

**taking case from jury.** Directing a verdict. The result of various motions testing the sufficiency of the evidence to sustain a judgment in favor of the party against whom the motion is made, where the court grants the motion. 53 Am J1st Trial §§ 293 et seq.

**taking effect.** See **take effect.**

**taking for public use.** Entering upon private property for more than a momentary period and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially to oust the owner and deprive him of all beneficial enjoyment thereof. 26 Am J2d Ent D § 157. Air actual interference with, or disturbance of, property rights, as distinguished from injuries and interferences which are merely consequential, incidental, trivial, insignificant. Noble State Bank v Haskell, 219 US 104, 55 L Ed 112, 31 S Ct 186; Bonnett v Vallier, 136 Wis 193, 116 NW 885.

Within the meaning of a constitutional provision that private property shall not be taken for public use without just compensation, the term includes any action, the effect of which is to deprive the owner of all or most of his interest in the subject matter, such as destroying or damaging it. United States v General Motors Corp. 323 US 373, 89 L Ed 311, 65 S Ct 357, 156 ALR 390.

Diminution in value of a business made less prosperous as a result of regulation does not constitute a "taking" of property within the due process clause of the constitution. California State Auto. Asso. Inter-Insurance Bureau v Maloney, 341 US 105, 95 L Ed 788, 71 S Ct 601.

See **taken for public use.**

**taking from the person.** An element of robbery.

In robbery, taking from the person does not mean that the property must be in contact with the person, or even that it must be in his actual or immediate presence, but that it must be so in the possession or under his control that violence or putting him in fear was the means used by the robber to take it. See 46 Am J1st Rob § 7.

See **larceny from the person.**

**taking off.** See **take-off.**

**taking per capita.** See **per capita.**

**taking per stirpes.** See **per stirpes.**

**taking poison.** See **poison.**

**taking, stealing, and carrying away.** Allegation of the asportation in an indictment for larceny. State v Donahue, 75 Or 409, 144 P 755, 147 P 548, 5 ALR 1121.

**taking-unconscionable advantage.** Taking advantage of the condition, circumstances, or necessities of the other party in making a contract with him that no honest man would accept and that no sane person in the position of tire other patty would make. 37 Am J2d Fraud § 23.

**taking without compensation.** See **taking for public use.**

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**tale.** Something related. A story. A tally, count, or enumeration. Pickering v Moore, 67 NH 533, 32 A 828. An ancient term for a plaintiff's declaration, narratio or count, the pleading in which he sets forth his cause of action. See 3 Bl Comm 293.

**talent scout.** One who finds a person of possible talent as an actor or entertainer and introduces him to a producer, usually under agreement to receive a percentage of earnings. 27 Am J2d Employ Ag § 9. A person who, having found a person with possible talent as an actor or entertainer, introduces the latter to an employment agency under agreement to receive a percentage of all commissions received by the agency on the earnings of the person thus introduced. Warner v Marchetti, 52 Cal App 2d 172, 125 P2d s38.

**tales.** Same as **talesmen.**

**tales de circumstantibus.** Jurors from the bystanders, that is, jurors empaneled from bystanders in the court room to form a jury, where a sufficient number of qualified jurors are not available for the trial of a case. 31 Am J Rev ed Jury § 3. For so many of the bystanders,--an old writ for directing the addition of a sufficient number of persons from those present in the court room to make up the jury of twelve. See 3 Bl Comm 365.

**tales-juror.** Same as **talesmen.**

See **talesmen.**

**talesmen.** Jurors. sometimes called tales-jurors, returned, often from bystanders, to complete a jury panel when because of challenge or other cause, there is not a petit jury to determine a civil or criminal case. 31 Am J Rev ed Jury § 3. In occasional usage, a synonym of jurors. 31 Am J Rev ed Jury § 3.

When talesmen are summoned for use in particular case after the regular panel has been exhausted, it is not necessary that the talesmen be actually in the courtroom when summoned. They are no less bystanders because they were summoned in advance to be there for use when needed. Morgan v Sun Oil Co. (CA5 Tex) 109 F2d 179.

**talio.** (Civil law.) A punishment in kind, on the principle, "an eye for an eye, a tooth for a tooth," etc.

**Talis interpretatio semper fienda est, ut evitetur absurdum, et inconveniens, et ne judicium sit illusorium.** Such an interpretation should always be made that absurdity and inconvenience may be avoided, and lest the judgment be illusory.

**talisman.** A good luck charm, often constituting the subject matter of schemes to defraud. Anno: 34 ALR 1292.

**Talis non est eadem, nam nullum simile est idem.** That which is like is not the same, for nothing which is merely similar is the same.

**talis qualis.** As much as; Such as.

**taliter.** Thus; in such a manner; so.

**Taliter processum est.** In such manner it proceeds.

**talking machine.** A phonograph or other device by which the human voice is reproduced by mechanical means. *Edmunds v Duff*, 280 Pa 355, 124 A 489, 33 ALR 7, 19.

**tallagium.** Same as **talliage**.

**talliage.** A tax of the same nature as scutage, but levied upon the inhabitants of cities and burghs.

^The tax was not imposed upon property, but upon persons, according to the value of their estates. Aliens were assessed at a double rate. See 1 Bl Comm 310.

**talliatum.** See **feudum talliatum**.

**tallies of loan.** Bills of credit which were issued by the officers of the English exchequer when a temporary loan was necessary to meet the exigencies of government.

They were first termed "tallies of loans and orders of repayment," charged on the credit of the exchequer in general, and made assignable from one person to another. *Baldwin's Views on Cases (US)* 11 Pet 120; *Views on Brisco v Commonwealth Bank of Kentucky*, 9 L Ed 931.

**tally.** Verb: To count. Noun: A count or reckoning, particularly of the number of votes cast for a candidate in an election. 26 Am J2d Elect § 291.

**Taltarum's Case.** An ancient English case out of which common recoveries arose. *Yearb*, 12 Edw IV 19-21; 28 Am J2d Est § 47.

**talweg.** Same as **thalweg**.

**talzie.** Same as **tailzie**.

**tam.** So, to such extent or degree; so much.

**tame animal.** A domestic animal; an animal associated with family life or accustomed to live in or near the habitations of men. *Commonwealth v Flynn*, 285 Mass 136, 188 NE 627, 92 ALR 206.

**tamen.** However; yet; nevertheless; notwithstanding.

**tam facti quam animi.** As much in deed as in intent

**tam immensus aliarum super alias aseervatarum legum cumulus.** Such an immense accumulation of laws heaped one upon the other. 1 Bl Comm 81.

**tamper.** See **tampering**.

**tampering.** Meddling; interfering. Making Corrupting or perverting changes. Foolish or trifling experimentation. *United States v Tomicich (DC Pa)* 41 F Supp 33.

The word does not necessarily imply the commission of a criminal act. *Keefe v Donnell*, 92 Me 151, 159, 42 A 345.

**tampering with jury.** Contacting a member or members of a jury for the purpose of influencing their action as jurors, sometimes including bribery or corruption. 39 Am J1st New Tr § 105.

**tampering with motor vehicle.** Meddling with a motor vehicle, particularly with controls or equipment. *State v Ridinger (Mo)* 206 SW2d 626, 42 ALR2d 617.

As to what constitutes offense of “tampering” with motor vehicle or contents, see Anno: 42 ALR2d 624.

**tamping.** Pressing or pounding upon material put in as filling to give it solidity. *Leo F. Piazza Paving Co. v Bebeck & Brkich*, 141 Cal App 2d 226, 296 P2d 368, 369, footnote.

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**tam quam.** As much as; as well as.

**tangible.** Capable of being possessed or realized; readily apprehensible by the mind; real; substantial; evident. *Williams v Board of Comrs.* 84 Kan 508, 114 P 858.

**tangible property.** Property of material substance. Property which can be possessed physically, such as goods, wares and merchandise. *Re Arbib's Estate*, 127 Misc 820, 216 NYS 522.

**tango.** An intricate ball-room dance of South American origin. A game of chance. Anno: 60 ALR 347.

**tanistry.** An ancient Irish land tenure wherein the land descended to the oldest and most worthy man of the blood and name of the deceased ancestor.

**tank bottoms.** A term of the trade for the sediment which is deposited in crude oil tanks during their use for oil storage. *Insurance Co. v Crude Oil Contracting Co.* (DC Okla) 32 F Supp 116.

**tank car.** A railroad car the body of which consists of a large tank for the transportation of liquids, such as oil, gasoline, syrup, etc.

**tank-car company.** A company which owns and holds for leasing to others tank cars for the transportation of liquid substances, such as oil, gasoline, syrup etc. *General American Tank Car Corp. v El Dorado Terminal Co.* 308 US 422, 84 L Ed 361, 60 S Ct 325, reh den 309 US 694, 84 L Ed 1035, 60 S Ct 465.

**tannery.** A place where raw hides or skins are tanned. Anno: 32 ALR 1358.

**Tanquam prescriptum quod possessum.** Prescription extends only so far as possession.

**tanquam testamentum inofficiosum.** As an improvident will, i.e., a will in which the nearest relatives of the testator have been overlooked. See 1 Bl Comm 448.

**tantrum.** An unrestrained display of anger by act and word.

**tantum.** See **in tantum**.

**Tantum bona valent, quantum vendi possunt.** Goods are worth as much as they can be sold for.

**Tantum habent de lege, quantum habent de justitia.** Matters are important in law in so far as they possess justice.

**tantus.** As much; so much; so great.

**tape.** A tape measure. A narrow strip of cloth or paper. A magnetized strip upon which sounds are recorded and from which they are reproduced.

**tape measure.** A narrow strip, graduated in inches, feet, yards, rods, meters, etc., used in making linear measurements.

**tape record.** A record of the speed of a vehicle as recorded on a tachograph. Sound recorded upon a narrow band of metal for reproduction.

**tap line.** A service line supplying electric current to a household, place of business, or factory. Anno: 40 ALR2d 1322, § 8.

**tapping wire.** See **wire tapping.**

**tarde.** The return of a sheriff or other officer stating that he received the process too late for service.

**tardiness.** Arriving late at school. 47 Am J1st Sch § 173. The matter of being late for any event or appointment for which a definite time has been set.

**tardy objection.** An objection to a pleading delayed in the making until after issues are joined, or after the introduction of evidence, or after judgment. 41 Am J1st Pl § 67.

**tare.** An allowance made in determining weight for the outside or covering of an article, whether it is a box, barrel, bag, bale, crate, or other form of covering or container. Napier v Barney (CC NY) 5 Blatchf 191 (allowance in imposing customs duties).

**target.** The object of an attack. The object shot at in rifle practice. In modern usage, a definite goal, an objective, as such an amount of machines to be produced in a month.

See **switch target.**

**tariff.** A customs duty upon an imported article. A table or catalog containing the names of several kinds of merchandise with the duties or customs to be paid thereon upon importation. 21 Am J2d Cust D § 1. A schedule or tabulated list of railroad or public-utility rates.

See **protective tariff.**

**tariff preference.** A concession made to a foreign country in permitting an article shipped from such country to be received in this country upon the payment of a customs duty less than that charged upon the same article from another country or to be received duty free where the same article coming from another country is dutiable.

**tariff schedule.** A schedule contained in 19 USC § 1202, effective August 31, 1963, presenting tariff classifications in detail, with co-ordinating provisions. 21 Am J2d Cust D § 32. A schedule of the rates of a carrier. 13 Am J2d Car § 107. A schedule of the charges of a public service company.

**tart.** A prostitute, particularly one who solicits on the street.

**tauri liberi libertas.** A bull for the free and common use of the tenants of the manor.

**Taurus.** A bull.

**tautology.** The quality of excessiveness in wording. 27 Am J1st Indict § 51.

**tavern.** A public place where accommodations of food and lodging are furnished to the traveling public for compensation. Anno: 19 ALR 519, s. 53 ALR 988. A place where intoxicating liquor is sold in small quantities to be drunk on the spot. 30 Am J Rev ed Intox L § 20.

**taverner.** The proprietor or keeper of a tavern.

**tavern keeper.** The proprietor or keeper of a tavern. A publican.

**tax.** A forced burden, charge, exaction, imposition, or contribution assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction to provide public revenue for the support of the government, the administration of the law, or the payment of public expenses. 51 Am J1st Tax § 3. Any payment exacted by the state or its municipal subdivisions as a contribution to

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ward the cost of maintaining governmental functions, where the special benefit derived from their performance is merged in the general benefit. State ex rel. Fargo v Wetz, 40 ND 299, 168 NW 835, 5 ALR 731. A charge upon persons or property imposed by or under authority of the legislature for public purposes. Yosemite Lumber Co. v Industrial Acci. Com. 187 Cal 774, 204 P 226, 20 ALR 994.

Taxes are the enforced proportional contribution of persons and property, levied by the authority of the state for the support of the government and for all public needs, and so long as there exist public needs just so long exists the liability of the individual to contribute thereto. The obligation of the individual to the state is continuous and proportioned to the extent of the public wants. Patton v Brady, 184 US 608, 619, 46 L Ed 713, 719, 22 S Ct 493.

A tax is not regarded as a debt in the ordinary sense of the term, for the reason that a tax does not depend upon the consent of the taxpayer, and there is no express or implied contract to pay taxes. Taxes are not contracts between party and party, either express or implied; they are the positive acts of the government, through its various agents, binding upon the inhabitants and enforceable against them without reference to their personal or individual consent to be bound. Tax Com. v National Malleable Casting Co. 1 I I Ohio St 117, 144 NE 604, 35 ALR 1448.

The word "taxes," as used in the priority provision of the Bankruptcy Act, is not to be construed in a limited sense, but as including all obligations imposed by the state or political subdivisions under their respective powers for governmental or public purposes. It includes any pecuniary burden laid upon individuals or property for the purpose of supporting the government or undertakings authorized by it, irrespective of the name given the imposition, or the method of collection. No distinction is observed between impositions under the police power and impositions under the taxing power. 9 Am J2d Bankr § 543.

The difference between a tax and a penalty is sometimes difficult to define, and yet the consequences of the distinction in the required method of their collection often are important. Where the sovereign enacting the law has power to impose both tax and penalty, the difference between revenue production and mere regulation maybe immaterial, but not so when one sovereign can impose a tax only, and the power of regulation rests in another. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalizing features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment. Bailey v Drexel Furniture Co. 259 US 20, 66 L Ed 817, 42 S Ct 449.

See **special assessment**.

**taxable.** Subject to a tax; liable to taxation.

**taxable costs.** Those costs and expenses of the party prevailing in an action or suit which may properly be included in the judgment of the court. American Nat. Bank v Cooper, 44 Idaho 288, 256 P 372.

**taxable credit.** Any obligation or contract which creates an enforceable indebtedness on the part of the obligor or promisor.

A contract to pay money is such an obligation, but a mere option is not, since it creates no indebtedness. Re Assessment of Shields, 134 Iowa 559, 111 NW 963.

**taxable estate.** The net estate of a decedent for the assessment of an estate, inheritance, or succession tax. The estate less the deductions allowed by law. 26 USC §§ 2051 et seq.; United States v Kombst, 286 US 424, 76 L Ed 1201, 52 S Ct 616; Hampton v Hampton, 188 Ky 199, 221 SW 496, 10 ALR 515.

**taxable gain.** See **capital gain**.

**taxable gifts.** Broadly, gifts subject to statutory gift taxes. Precisely, completed gifts by conveyance, assignment or transfer of money, property or property rights vesting legal or equitable title in the donee, a relinquishment of dominion and control over the property by the donor, the absence of a full and adequate consideration, the absence of a disclaimer or renunciation by the donee, and competence on the part of the donor to make the gift. Internal Revenue Code § 2501 (a).

**taxable income.** Adjusted gross income less deductions, whether itemized deductions or the standard deduction, plus the personal and dependency exemptions. Internal Revenue Code § 63. In another distinct sense, income which is not tax-exempt.

**taxable property.** Property which is liable to taxation; property which is not exempt from taxation.

**taxable transfer.** A transfer of property subject to gift tax.

See **taxable gifts**.

**taxable value.** The value at which property is assessed for taxation which is usually only a percentage of its actual or real value. 51 Am J1st Tax § 696.

For taxable value of taxpayer's capital or capital stock, see 51 Am J1st Tax § 834.

**tax anticipation note.** A note issued by a public body, payable only out of a special fund, in anticipation of tax collections creating or replenishing the fund. 43 Am J1st Pub Sec § 13.

**tax anticipation warrant.** A warrant issued by a public body payable only out of a special fund in anticipation of tax collections creating or replenishing the fund. 43 Am J1st Pub Sec § 13.

**taxatio.** (Civil law.) An order made by the judge reducing the amount of damages claimed by the plaintiff in an action.

**taxatio expensarum.** The **taxation of costs**.

**taxation.** The assessment and collection of taxes, a power and process by which the sovereign raises revenue to defray the necessary expenses of government, apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. *Messer v Lang*, 129 Fla 546, 176, 113 ALR 1073. An act of sovereignty to be performed, so far as it conveniently can be, with justice and equality to all. *Union Pass. R. Co. v Philadelphia*, 101 US 528, 25 L Ed 912. Graphically, but realistically stated, obtaining the greatest amount of feathers with the least squawking.

See **tax**.

**taxation and representation.** Concomitants under the American system of government. The rallying cry of the framers of the Federal Constitution.

The principle was that the consent of those who were expected to pay the tax was essential to its validity. Hence, the Constitution provided that representatives and direct taxes should be apportioned among the states according to numbers, Article 1, Section 2, and that all duties, imports, and excises should be uniform throughout the United States,

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Article I, Section 8. *Pollock v Farmers' Loan & Trust Co.* 157 US 429, 158 US 601, 39 L Ed 759, 1108, 15 S Ct 673, 912.

**taxation of costs.** The act of entering the various costs and the amounts thereof against the party or parties against whom costs have been awarded or allowed by the court. A ministerial function to be performed in a court of record by the clerk of the court, except as the court may be called upon to determine an objection to the manner in which the function has been performed by the clerk. 20 Am J2d Costs § 89.

**tax avoidance.** A legal method of lessening the tax burden, as by taking advantage of legal deductions in calculating net income for taxation.

See **tax evasion.**

**tax benefit rule.** The rule that the recovery by a taxpayer of any item previously deducted on his income tax return is taxable in the year of recovery to the extent that the original deduction or credit reduced his income tax liability in a prior year or years. Internal Revenue Code § 111.

**tax bracket.** The category in which a taxpayer appears in a tax computation table, such depending upon the amount of his taxable income.

**tax calendar.** A series of dates noted throughout an entire calendar year upon each of which dates the taxpayer shall take the action indicated by the calendar opposite such date.

**tax certificate of sale.** A certificate evidencing the sale of real property for unpaid delinquent taxes. *Nelson v Central Land Co.* 35 Minn 408, 410, 29 NW 121.

**tax clause.** A clause in a will intended to alleviate the burden of estate or inheritance taxes.

**tax collector.** A public officer, elected or appointed, acting in a ministerial capacity in the collection of taxes. 51 Am J1st Tax § 996.

**tax commission.** An administrative agency engaged in the administration of tax laws.

**tax compromise.** An agreement whereby the United States Government agrees to accept payment of less than the determined liability for federal tax.

**tax computation table.** A table prepared by the Internal Revenue Service for the use of taxpayers, the tabulation showing the amount of income tax to be paid on taxable income according to the amount of the income and the type of return as a single return, joint return of husband and wife, or a return made by a taxpayer as head of a household.

**Tax Court.** A special federal court taking the place of the body formerly known as the Board of Tax Appeals, available to a taxpayer against whom the Treasury Department claims a deficiency upon compliance with the prescribed procedure. Internal Revenue Code § 6213.

**tax credit.** A credit against income tax itself, as distinguished from a deduction which applies only to reduce the income. The sum owing a taxpayer for overpayment. Internal Revenue Code § 6402(a).

**tax deduction.** See **deduction.**

**tax deed.** A deed evidencing the conveyance of title to premises sold at a sale for the nonpayment of taxes assessed thereon, which is ordinarily executed by the tax collector and by him delivered to the purchaser at the sale.

In some jurisdictions the deed is executed and delivered immediately after the sale and the title conveyed is subject to defeasance by the redemption of the property; in others the deed is not delivered until the period of redemption has expired. 51 Am J1st Tax § 1082.

**tax district.** Same as **taxing district.**

**taxes.** See **tax; taxation.**

**tax evasion.** Fraud in representation or concealment in attempting to avoid payment of a tax legally due, as in the case of an income tax, the filing of a return fraudulently understated in a willful attempt to evade payment. *Willingham v United States* (CA5 Tex) 289 F2d 283; *Swallow v United States* (CA10 Colo) 307 F2d 81, cert den 371 US 950, 9 L Ed 2d 499, 83 S Ct 504, reh den 372 US 925, 9 L Ed 2d 731, 83 S Ct 718. A felony punishable by a fine of not more than \$10,000 or up to five years imprisonment, or both. Internal Revenue Code § 7201.

**tax exempt income.** Income exempt from income tax; nontaxable income, such as interest on state and municipal bonds, compensation for injuries or sickness, proceeds of life insurance, etc. Funds accruing as income in the broad sense of the term, but not taxable as income.

**tax exemption.** A personal exemption of a fixed amount, as determined by statute, to be deducted from gross income in determining the taxable income of a person. Internal Revenue Code § 151. A dependent constituting a personal exemption in computation of taxable income.

See **exemption from taxation; tax exempt income; tax-exempt organization.**

**tax-exempt organization.** An organization which, because of its character, particularly as religious, charitable, or educational, is exempt from taxation.

**tax ferret.** A public employee of a taxing body, usually a county, directed to ascertain property or other source of taxation omitted from assessment or levy and place it upon the rolls for assessment, levy, and the collection of taxes thereon. *Ingram v Chappell*, 127 Okla 135, 260 P 20.

**tax-free income.** See **tax exempt income.**

**tax-free property.** Property exempt from taxation.

See **exemption from taxation.**

**taxi.** Noun: Same as **taxicab**. Verb: To control the movement of an aircraft upon the ground under its own power.

**taxicab.** An automobile used in the transportation of passengers for hire. A motor-driven passenger conveyance held for public hire at certain places where the driver may be reached by telephone or radio communication, charging upon a time or distance basis, and carrying passengers to destinations without following a fixed route. *Columbia v Alexander*, 125 SC 530, 119 SE 241, 32 ALR 746; *Memphis v State*, 133 Tenn 83, 179 SW 631; *Anderson v Yellow Cab Co.* 179 Wis 300, 191 NW 748, 31 ALR 1197, 1200.

**taxicab company.** A company operating taxicabs, furnishing automobiles for transportation with driver on order, and, as such, a common carrier. *Terminal Taxicab Co. v Kutz*, 241 US 252, 60 L Ed 984, 36 S Ct 583.

**taxicab service.** The continuous or intermittent service, as required, provided by taxicab companies at airports, railroad stations, and bus stations.

**taxing district.** The political division or subdivision throughout which a particular tax is levied and col-

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lected. An incorporated governmental agency of the state. 37 Am J1st Mun Corp § 6.

See **special taxing district.**

**taxing power.** A power inherent in sovereignty and unlimited in the absence of constitutional restrictions, but subject in its exercise to the discretion of the authorities in whom it is reposed, the principal check against its abuse resting in the responsibility of the members of the legislature to their constituents. 51 Am J1st Tax § 39. A power of the state which is one of the attributes

of sovereignty inherent in every form of government whether or not it is authorized by a constitution. *People ex rel. Scott v Pitt*, 169 NY 521, 62 NE 662.

See **the power to tax is the power to destroy**.

**taxing unit.** A public body assessing, levying, and collecting taxes, such as the state, the county, or a city.

See **tax district**.

**tax levy.** See **levy**.

**tax lien.** A lien imposed by constitution or statute as security for the payment of a tax. A security established by statute of which the collecting body may avail itself in default of payment of taxes, being against the property itself, not on the interest of the person assessed, its primary purpose being to allow the property to be taken or sold for nonpayment of taxes. 51 Am J1st Tax § 1010.

See **personal property tax lien**.

**tax limit.** Provisions of state constitutions expressly limiting the rate at which taxes may be levied. A limit usually, if not invariably, based upon the valuation of the taxable property within the taxing unit, sometimes restricting taxes to a certain percentage of the valuation, at other times restricting them to a designated amount of taxes per stated amount of valuation. 51 Am J1st Tax § 138.

**tax list.** A list of a taxpayer's property as given by him to the assessor or as made by the assessor. A listing of all the taxable property in the taxing unit. The official list or book containing the descriptions of property and the names of persons who are liable to assessment. A schedule of the polls and ratable estate of the inhabitants upon which taxes are to be assessed. *Wilson v Wheeler*, 55 Vt 446, 452.

See **tax rolls**.

**tax on income.** See **income tax**.

**tax on property.** See **property tax**.

**taxpayer.** One who has paid a tax. One who pays taxes regularly.

One who pays under protest an income tax due from another with the view to minimizing possible liability is a taxpayer and as such entitled to the benefit of a statute authorizing the recovery back of any sum in any manner wrongfully collected. *Parsons v Anglim* (Ca9 Cal) 143 F2d 534, 154 ALR 153.

**taxpayer's action.** An action supported by the financial interest of the plaintiff as a taxpayer in a municipality or other public body receiving a tax, not in his individual right, but as the representative of the municipality or other public body whose interests are alleged to be jeopardized by the inefficiency or maladministration of its officers. 52 Am J1st Taxp Act § 1. An action maintained by a taxpayer singly or in a class suit to restrain unlawful municipal action which leads, directly or indirectly, to taxation. 52 Am J1st Taxp Act §§ 2, 3. A remedy granted by a court of equity or a court exercising equity powers to prevent the consummation of an act on the part of a public body or agency or of public officers involving an illegal expenditure of public money or the creation of an illegal debt. 43 Am J1st Pub Wks § 220.

**taxpayer's remedy.** See **taxpayer's action**.

**tax power.** See **taxing power**.

**tax purpose.** The ultimate use and object for which a fund is raised by taxation, which, as a support for the imposition, can be nothing other than a constitutionally valid public purpose. 51 Am J1st Tax § 321.

**tax rate.** The rate of levy; the fraction or decimal of the assessed value to be paid as a tax. The graduated rate at which an income, estate, or gift tax is imposed.

The provision that state taxation of national bank shares shall not be at a greater rate than that assessed on other moneyed capital has reference to the entire process of assessment, and includes the valuation of the shares as well as the percentage charged on the valuation. Anno: 59 ALR 19.

See **tax limit**.

**tax receipt.** A receipt given by tax collector for payment of taxes. 51 Am J1st Tax § 959.

**tax return.** A written statement of one's income for the taxable year, accepted by the taxing authority as verified under oath, showing income from all sources, such as dividends, interest, rents, earnings, etc. and the amount of income taxable as calculated, taking account of deductions and exemptions. A sworn list required of a taxpayer, showing his personal property subject to taxation, such to be presented to the assessor in time for the making up of the tax list. 51 Am J1st Tax § 667. In a broader sense, any statement or report made to the taxing authority of property, income, gift, estate, or inheritance subject to taxation.

**tax rolls.** The original extensions of the levies made by the proper authorities, including state, county, township, and school taxes. *Smith v Scully*, 66 Kan 139, 71 P 249.

See **tax list**.

**tax sale.** See **sale for taxes**.

**tax table.** A simplified method of computing income tax available to taxpayers having less than \$5000 of adjusted gross income who choose to take the standard deduction. Internal Revenue Code § 3. A table prepared by the Internal Revenue Service or taxing authority wherein the amount of the income tax due on taxable income as reported in a return is calculated for the taxpayer in brackets established according to the nature of the return as joint or single, the number of personal exemptions, the amount of taxable income, etc.

**tax title.** The title acquired by the purchaser at a tax sale. 51 Am J1st Tax §§ 1055, 1060 et seq. A title dependent alone upon the validity of a tax sale. 51 Am J1st Tax § 1078. A title dependent in some jurisdictions upon the title of the person assessed. 51 Am J1st Tax § 1081.

**tax warrant.** A compulsory process for the collection of taxes, authorizing sale of the delinquent taxpayer's property.

**tax year.** The calendar year or the fiscal year of the taxpayer, in either event a period of 12 months. The annual accounting period of the taxpayer; such accounting period being the annual period (including a 52-53 week year) on the basis of which the tax

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payer regularly computes his income in keeping his books. Internal Revenue Code § 44(c).

**tb.** Abbreviation of tuberculosis.

**tb hospital.** A hospital caring for patients afflicted with tuberculosis.

See **sanatorium**.

**teach.** To give instruction. To give lessons. To impart knowledge.

The word as used in the standard form of teacher's contract prescribed by the school law, refers to general instruction within the fields embraced by the teacher's certificate, including all incidents and subdivisions thereof. *Ganaposki's Case*, 332 Pa 550, 2 A2d 742, 119 ALR 815.

**teacher.** A person who is employed to teach in a public or private school. One in the special occupation or profession of teaching in schools. 47 Am J1st Sch § 108. An employee rather than a public officer in connection with the public schools. 47 Am J1st Sch § 108.

**teacher's certificate.** A revocable personal privilege granted by a board or officer under legislative authority to a person qualified to teach in the public schools and under such restrictions as may be reasonably imposed. 47 Am J1st Sch § 110.

**teachers' college.** An educational institution of college rank, established by constitutional provision or statute for the education and training of school teachers. 15 Am J2d Colleges § 4.

**teachers' institute.** A meeting of teachers for the purpose of receiving professional instruction. 47 Am J1st Sch § 123.

**teacher's license.** Same as **teacher's certificate**.

**teacher's pension.** A pension provided by way of retirement pay for schoolteachers, usually from a fund accumulated by contributions made by the school district and the teacher. 40 Am J1st Pens § 17.

**teachers' retirement fund.** A fund provided and accumulated in accordance with statute, usually by contributions made thereto by teachers and the school district or unit, for the payment of pensions to retired teachers. 40 Am J1st Pens § 17.

**teachers' tenure.** See **tenure statutes**.

**team.** A number of persons constituting one side in a game, as a football team. A number of persons who work in harmony to accomplish a task.

**team and wagon.** A team of horses and a wagon such as was formerly in common use as a vehicle for hauling goods, merchandise, harvested crops, etc.

See **team of horses; wagon**.

**team of horses.** In common usage, a pair of horses worked together. Broadly, as in an exemption statute, a pair of horses worked together or one horse worked by himself. 31 Am J2d Exemp § 71.

As used in a statute exempting from execution the team of a householder used in and about his business, the word was held to include any team of animals which might or could be so used, whether the number of animals composing the team consisted of one, two, three, four, or more. See *Wilcox v Hawley*, 31 NY 648, 655.

**teamster.** One who drives a team. In a more limited sense, one who drives a team in hauling goods for others. 31 Am J2d Exemp § 22. Inclusive for some purposes of a driver of a truck.

**team work.** The performance of work by two or more persons with good co-ordination of their respective efforts.

As the term is used in an exemption statute exempting from execution horses used in team work, it means work done by a team as a substantial part of a man's business, as in farming, staging, express carrying, drawing of freight, peddling, the transportation of material used or dealt in as a business. *Tishomingo Sav. Institution v Young*, 87 Miss 473, 40 So 9.

**tear.** To render assunder. A colloquial expression for moving with haste. *State v Helgerson*, 247 Iowa 651, 75 NW2d 227, 231.

Tearing is inclusive of "cutting," for the purposes of the revocation of a will. Anno: 115 ALR 717.

**tear gas.** A gas which irritates the eyes, even to the extent of causing temporary blindness. Sometimes employed by police to quell a riot or subdue a person resisting arrest with force.

**tear gas gun.** A weapon wherein tear gas is employed as the offensive or defensive charge. Anno: 92 ALR 1098.

**tearing.** See **tear**.

**tea room.** A restaurant, especially one where light lunches are served.

**teazer.** A railroad operated at a loss. *Reagan v Mercantile Trust Co.* 154 US 418, 38 L Ed 1030, 14 S Ct 1062 (Texas terminology.)

**technical.** Pertaining, relating or belonging to some particular art or science. Pertaining to mechanical arts or applied sciences. Involved in a detail rather than a principle.

**technical agreed case.** The submission of facts to the court for the determination of a controversy without the institution of an action. 3 Am J2d Agr C § 2.

**technical conversion.** Such a conversion as takes place where one sells the personal property of another innocently, in good faith, and with no intent to ignore the rights of the owner.

The term is synonymous with "innocent conversion." *Plack v Baumer* (CA3 Pa) 121 F2d 676.

**technical error.** Immaterial error. An error committed in the course of a trial, but without prejudice to a party. 5 Am J2d A & E § 780. An error committed in the trial of a case which is purely abstract and harmless for practical purposes. *Epps v State*, 102 Ind 539, 556.

**technical estoppel.** An estoppel by record or by deed. 28 Am J2d Estop § 2.

**technical malice.** The intentional doing of a harmful or injurious act without justification or excuse, although without ill will or spite. 30 Am J Rev ed Interf § 45.

**technical release.** An instrument under seal, or some other form of satisfaction which legally imports full payment.

As a technical release was always under seal, and the consideration could not be inquired into, it was regarded as conclusive, even though given without consideration in fact. The difference between a technical release and satisfaction in fact was that in the one case the law regarded the claim as paid, and would not allow the party to deny by proof, while in the other, the claim was in fact paid. *Ryan v Becker*, 136 Iowa 273, 111 NW 426.

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**technical total loss.** See **constructive total loss**.

**technical trust.** The legal relationship existing where the legal title is in one person and the equitable ownership in another, or where there are rights, titles, and interests in property distinct from the legal ownership. 54 Am J1st Trusts § 4.

**teeter-totter.** An amusement device for children, often found in public parks or on playgrounds, consisting of a plank mounted upon a bar for support and alternately rising and falling at each end when used in play. 39 Am J1st P & S § 41.

**teinds.** An ancient Scotch word for tithes.

**telecast.** A broadcast by television. *Norman v Century Athletic Club, Inc.* 193 Md 584, 69 A2d 466, 15 ALR2d 777.

See **television**.

**Telechron.** A trademark. *Telechron, Inc. v Telechron Corp.* (CA3 Del) 198 F2d 903.

**telegram.** A message or dispatch transmitted by telegraph. *Western Union Tel. Co. v Hill*, 163 Ala 18, 50 So 248. A message transmitted by radio, teletype, telegraph wire, cable, or any mechanical method of transmission, or the like. UCC § 1201(41).

A received telegram is a writing within the meaning of the Statute of Frauds; a writing may be made with a steel pen an inch long or with a copper wire a thousand miles long. *Walton v Mandeville*, 56 Iowa 588, 9 NW 894.

**telegraph.** Noun: An apparatus used to transmit intelligence to a distant point by means of electricity. 52 Am J1st Teleg & T § 4. Verb: To send a telegram.

"Without this section making the provisions of the chapter relating to telegraph companies expressly applicable to telephone companies, we think the term 'telegraph,' as a mode of transmitting messages or other communications, is sufficiently comprehensive to embrace the telephone." *Cincinnati Inclined Plane Railway Co. v Telegraph Assn.* 48 Ohio St 390, 27 NE 890.

**telegraph company.** A company, almost invariably a corporation, engaged in the business of sending communications by telegram and furnishing services allied to such communication business. A company exercising a quasi public employment, chartered for public purposes, clothed with the power of eminent domain, bound to serve the people impartially, carefully and in good faith and in several of the states of the Union held to be a common carrier and subject to liability as such. *Strong v Western Union Tel. Co.* 18 Idaho 389, 109 P 910.

**telegraphing money.** The transmission of money or credit to a person at a distance by an order upon a bank in the place where he is at the time, sent by telegram, directing the bank to furnish him with funds or credit in the amount stated in the order. 10 Am J2d Banks § 308.

See **cable transfer of exchange.**

**telephone.** An instrument for transmitting or receiving articulate speech electrically. *Richmond v Southern Bell Tel. & Tel. Co.* 174 US 761, 43 L Ed 1162, 19 S Ct 778. An apparatus for the transmission of human speech or other sounds over distances greater than the ordinary limits of audibility. 52 Am J1st Teleg & T § 4.

telephone answering service. A service on behalf of business and professional men, especially physicians, whereby calls are answered at such times as the client is absent from his office and relayed to him at a fixed or appropriate time and place.

**telephone business.** The furnishing of telephone service, even by a mutual company to subscribers who pay assessments in lieu of fixed charges. *Anne*: 21 ALR 1167.

**telephone company.** A company, usually a corporation, engaged in the business of furnishing for compensation the means of communication by telephone and rendering services allied with such communication business.

The term embraces all corporations, associations, and individuals owning or operating any telephone line or exchange in the state. *Anne*: 21 ALR 1171.

**telephone connection.** A connection of telephone wires, particularly the wires of different telephone companies or telephone systems, necessary for communication other than local.

As used in a statute requiring telephone companies to supply all applicants for telephone connection, the words obviously mean that for which patrons of the telephone customarily apply. No such persons can be excluded, provided they are willing to comply with reasonable regulations, but the words do not confer any right upon one telephone company to insist upon a physical connection of its system with that of another company. *Oklahoma-Arkansas Tel. Co. v Southwestern Bell Tel. Co.* (CA8 Ark) 45 F2d 995; 76 ALR 944.

See **telephone exchange.**

**telephone directory.** A listing in print of all subscribers to telephone service in a particular city, village, town, metropolitan area, or other locality by names, telephone numbers, and street addresses. A facility within the meaning of a regulation that

telephone subscribers shall not use any mechanical apparatus or device in connection with the facilities furnished by the company, without the consent of the company. Anno: 63 ALR2d 1098.

**telephone exchange.** A building or part of building equipped with instrumentalities for connecting telephone lines so that a call made on one will be transmitted over such line and a connecting line so as to reach a phone on the latter. State ex rel. Synod of Ohio v Joseph, 139 Ohio St 229, 39 NE2d 515, 138 ALR 1274.

**telephone line.** A wire, carried overhead on poles or underground in a conduit, over which articulate speech is transmitted and received.

A statute defines the term as including every sort of property used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication. State ex rel. Buffum Tel. Co. v Public Service Com. 272 Mo 627, 199 SW 962.

**telephone token.** A small flat piece of metal placed in a slot in a public telephone to activate the instrument for use.

**telephonic system.** A system for the transmission of intelligence and news.

It is, perhaps, in a limited sense, and yet in a strict sense, a common carrier, and it must be equal in its dealings with all citizens in every department of business. Commercial Union Tel. Co. v New England Tel. & Tel. Co. 61 Vt 241, 17 A 1071.

**telephony.** The art or process of reproducing sounds at a distance, as by telephone. Dunbar v Spratt-Snyder Co. 208 Iowa 490, 226 NW 22, 63 ALR 1016.

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**televise.** To broadcast by television. Norman v Century Athletic Club, Inc. 193 Md 584, 69 A2d 466, 15 ALR2d 777.

**television.** An electronic process whereby scenes or views are transmitted by radio, wire, or cable, through the conversion of light rays into radio waves by a transmitting instrument and the reconversion of such waves by a receiving instrument into beams which produce pictures upon projection onto a screen, such operation normally being accompanied by radio communication in sound.

**television station.** A place equipped and manned for the transmission of scenes or views and accompanying sounds by the process known as television.

**teller.** A clerk in a bank who transacts business with customers by way of receiving and paying out money. 10 Am J2d Banks § 154. An election officer, engaged particularly in the counting of votes. Wheeler v Carter, 120 Mass 382, 62 NE 471. One who counts or assists in counting the votes at a corporate election.

**telltale.** A tale bearer. A gossip. A series of strips, usually of leather, hung above a railroad track for the purpose of warning a trainman on top of a car of a bridge or other instrumentality having a structure over the tracks so low as to strike the trainman if he remains standing on top of a car, the warning being necessary in hours of darkness and given by the harmless brushing of the strips against the face or head of the trainman. 35 Am J1st M & S § 224.

**temere.** Rashly; by chance; accidentally.

**temperance.** The quality or condition of being temperate. The movement toward the prohibition or control of the traffic in intoxicating liquors.

See **temperate.**

**temperance union.** A society organized for the purpose of teaching and promoting temperance, particularly temperance in the use of alcoholic beverages.

See **Women's Christian Temperance Union.**

**temperate.** Moderate. Self-restrained. Habitual moderation in regard to the indulgence of the natural appetites and passions. *People v Dashaway Asso.* 84 Cal 114, 123, 24 P 277. Restrained in the use of intoxicating liquors, although not necessarily totally abstaining. 29 Am J Rev ed Ins § 774.

**temperate damages.** Damages allowed in cases of a certain class, without proof of actual or special damage, where the wrong done must in fact have caused actual damage to the plaintiff, though, from the nature of the case, he cannot furnish independent, distinct proof thereof. 22 Am J2d Damg § 16.

**tempest.** A violent wind, especially one accompanied by rain; an act of God. 1 Am J2d Act of God § 5.

**Templars.** An order of religious knights which was organized in England in the twelfth century. A modern Masonic order, called the Knight Templars.

**temporalis actio.** (Civil law.) An action which had to be brought within a certain limited time, if it was brought at all.

**temporalities.** The revenues of a parish of the Roman Catholic Church which are derived from pew rents, Sunday and other collections, graveyard charges, school fees and donations.

The pastor of the parish as the administrator and agent of the archbishop, who is considered as the owner of the church property, is in charge of the temporalities. *Barabasz v Kabat*, 86 Md 23, 30, 37 A 720.

**temporal lords.** See **lords temporal.**

**Tempora mutantur et leges mutantur in illis.** Times change and laws change with them. *State v Soward*, 83 Ark 264, 103 SW 741.

**temporarily.** Not permanently; for a time only. *Worthington v McDonald*, 246 Iowa 466, 68 NW2d 89, 47 ALR2d 135.

**temporary.** Lasting for a short time only. *United States ex rel. Lesto v Day* (CA2 NY) 21 F2d 307. Lasting for a time only; existing or continuing for a limited time; not of long duration; not permanent; transitory; changing. *Young v Povich*, 121 Me 141, 116 A 26, 29 ALR 48.

**temporary administrator.** An administrator of a decedent's estate appointed for some cause, such as the pendency of a will contest, whereby regular administration is delayed, the property being exposed in the meantime to waste and loss in the absence of an authorized agent to collect the debts and preserve the assets. 31 Am J2d Ex & Ad § 649.

**temporary ailment.** A disability or sickness of such short duration as not to negative the existence of sound health or sound physical condition. *French v Fidelity & Casualty Co.* 135 Wis 259, 115 NW 869.

**temporary alimony.** An allowance made by the court, otherwise known as alimony pendente lite or alimony ad interim, to be paid by the husband for the maintenance of the wife during the pendency of a matrimonial action either by or against her. *Richardson v Richardson*, 218 Minn 42, 15 NW2d 127, 154 ALR 526; *Davis v Davis*, 15 Wash 2d 297, 130 P2d 3, 55.

**temporary allowance.** An award by the court to be paid by the party against whom it is directed during the pendency and before final determination of the action, as in the case of an award of temporary alimony or of child support.

**temporary appropriation.** A temporary taking of property for a public purpose. 27 Am J2d Em D § 351.

**temporary child support.** An award against the husband as a party to an action for divorce, directing payment for the support of a child of the union sought to be severed by the divorce. 24 Am J2d Div & S § 836.

**temporary commitment.** The temporary restraint of an insane person without an adjudication of his insanity, properly to prevent either self-destruction or injury to other persons by his acts. 29 Am J Rev ed Ins Per § 39.

**temporary condemnation.** Same as **temporary appropriation.**

**temporary court.** A court created to exist for a specified period of time or for the duration of a certain situation, usually an emergency. 20 Am J2d Cts § 1.

**temporary custody.** A disposition made by the court of the custody of a child to continue pending trial of a divorce suit between the parents. 24 Am J2d Div & S § 809.

See **temporary commitment.**

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**temporary damages.** Damages for injury to, or trespass on, real property, otherwise known as continuing damages, awarded on the basis that the wrong is continuing in character and that successive actions may be required to make the plaintiff whole, the amount of the recovery being limited to those damages which have accrued to date of suit. 22 Am J2d Damg § 28.

**temporary disability.** A disability of the person from which he has or will recover. A disability which is not permanent and which is to last for a limited time only, as distinguished from a disability which is perpetual or indefinite in its duration. See *Lawrence v State Industrial Com.* 120 Okla 197, 251 P 40. A physical disability which although it may be total for the time, is not such a disability as is reasonably probable to continue for an indefinite period of time. 29A Am J Rev ed Ins § 1529. For the purpose of workmen's compensation, a condition that exists until the injured workman is as far restored as the permanent character of the injuries will permit. 58 Am J1st Workm Comp § 283.

**temporary employee.** See **casual employee.**

**temporary injunction.** An injunction pendente lite or provisional injunction which is to operate pending a hearing of the suit on its merits, or until the final decree of the court shall have been entered. An order issued, not in pursuance of the final determination of any controverted right, but merely to prevent a threatened wrong, or any further perpetration of injury, or the doing of any act thereafter whereby the right to a thing may be embarrassed or endangered, or whereby its value may be materially lessened or the thing itself totally lost, and by such prevention to maintain things in the condition in which they are at the time, and protect the property or rights involved from further injury until the issues and equities can be determined after a full examination and hearing. 28 Am J Rev ed Inj § 12.

See **restraining order.**

**temporary insanity.** A temporary derangement of the mind which may result from any transient condition, as, for example, intoxication. 29 Am J Rev ed Ins Per § 3.

**temporary insurance.** Insurance according to the terms and conditions of a standard form of policy commencing upon application being made for a policy and continuing, subject to a limitation of reasonable time, until either the policy can be written or its issuance approved or disapproved by authorized representatives of the insurer, or some other temporary impediment to the complete and formal contract of insurance may be removed. 29 Am J Rev ed Ins § 205.

A temporary contract of life insurance is usually in writing. It may take the form of a provisional policy, a rider attached to a policy, or a binding slip or receipt. It may also be made orally by an authorized agent or officer of the insurer. Anno: 2 ALR2d 952.

**temporary judge.** A special or substitute judge. 30A Am J Rev ed Judges § 237.

**temporary loan.** A loan to a municipal corporation which is to be paid with and by the taxes of a current fiscal year. People ex rel. Peene v Carpenter, 31 App Div 603, 608, 52 NYS 781.

**temporary nuisance.** A nuisance resulting from a condition which is not fixed and indeterminable, lasting for a limited time only. 39 Am J1st Nuis § 131. A nuisance arising from negligence in the maintenance of a structure or the operation of a business or industry. Shelley v Ozark Pipe Line Co. 327 Mo 238, 75 ALR 1316, 37 SW2d 518.

**temporary obstruction.** The obstruction of a highway for a limited period of time, incidental to a lawful use of the way, or to serve some public purpose, such as the repair of the way itself or the construction of other public improvements, excavations for installation of public utility pipes and wires, etc. 25 Am J1st High § 302.

**temporary order.** A provisional or interim order by an administrative agency. 2 Am J2d Admin L § 466.

See **restraining order; temporary injunction.**

**Temporary Organic Act.** An Act of Congress of June 20, 1874 in reference to municipal government of the District of Columbia. 24 Am J2d D C § 3.

**temporary receiver.** A receiver appointed to take custody of property and hold it pending the appointment of a permanent receiver. 45 Am J1st Rec §3.

**temporary restraining order.** A restraining order which in terms indicates or contemplates that a further hearing on the application is to be had before the application is finally acted on. State v Baker, 62 Neb 840, 847, 88 NW 124.

See **restraining order.**

**temporary severance.** Detaching a fixture from the real estate for a temporary purpose, not involving a change in the character of the article. 35 Am J2d Fixt § 26.

**temporary statute.** A statute which, by its terms, is to remain in force for a limited time only or a statute operative only during the continuance of the emergency which prompted enactment. 50 Am J1st Stat § 514.

**temporary suit money.** An interim or preliminary allowance of counsel fees to the wife made during the pendency of an action for divorce. 24 Am J2d Div & S § 576.

**temporary support.** See **temporary alimony; temporary child support.**

**tempore.** (Latin) At the right time. Seasonably.

See **ex tempore.**

**tempore et loco.** In time and place.

**temporis.** See **exceptio temporis.**

**temporis exceptio.** (Civil law.) A plea which set up lapse of time as a defense to the action.

**temptation.** Allurement or inducement.

Temptation is not always invitation. As the common law is understood by the most competent authorities, it does not excuse a trespasser because there is a temptation to commit, or hold property owners bound to contemplate the infraction of property rights because the temptation to untrained minds to infringe them might have been foreseen. Wilmot v McPadden, 79 Conn 367, 65 A 157.

**tempus.** Time.

**tempus continuum.** (Civil law.) A continuous time; a period of time which was uninterrupted by holidays, absences, or other causes. See Mackeldey's Roman Law § 195.

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**Tempus enim modus tollendi obligationes et actiones, quia tempus currit contra desides et sui juris contemptores.** For time is a means of dissipating actions and obligations, because time runs against the slothful and those who are careless of their own right.

**tempus exceptio.** Same as **temporis exceptio.**

**tempus regis Edwardi.** In the time of King Edward; that is, of Edward the Confessor who was king of the West Saxons from 1042 until 1066.

**tempus utile.** (Civil law.) A time of advantage, a time which only begins to run against him who is affected by it after his knowledge thereof. See Mackeldey's Roman Law § 195.

**tenancy.** The occupancy of a tenant. Possession under right or title.

A tenancy exists where one has let real estate to another, to hold of him as landlord. When duly created and the tenant put into possession, he is the owner of an estate for the time being, and has all the usual rights and remedies to defend his possession. But a tenancy does not necessarily imply a right to complete and exclusive possession; it may be created with implied or express permission of a right to possession on the part of the landlord, for all purposes not inconsistent with the privileges granted to the tenant. *Morrill v Mackman*, 24 Mich 279.

See **cotenancy; entire tenancy; general tenancy; joint tenancy; privy; re-entry; tenant; use and occupation.**

**tenancy at sufferance.** The tenancy of one who continues in possession after his right to possession has terminated, his original entry having been lawful. 32 Am J1st L & T § 75. The tenancy of a lessee holding over the term of his lease without objection on the part of the landlord. 32 Am J1st L & T § 938.

A tenancy at sufferance is of such a nature as necessarily implies an absence of any agreement between the owner and the tenant, and if express assent is given by the owner to such possession, the tenancy is thereby instantaneously converted into a tenancy at will, or from year to year, according to the circumstances. *Willis v Moore*, 59 Tex 628.

See **estate by sufferance.**

**tenancy at will.** A tenancy to continue for so long as continuation is in accord with the wishes and desires of both parties. An estate which confers a right to the possession of the premises demised for an indefinite period of time, its duration and ultimate termination depending upon the joint wills of the parties, either being able to effect a termination without incurring liability to the other. 32 Am J1st L & T § 66. According to some authorities, the tenancy which arises where a lessee holds over the term of his lease with the express or implied consent of the landlord. 32 Am J1st L & T § 939.

**tenancy by elegit.** See **estate by elegit.**

**tenancy by entireties.** See **estate by entireties.**

**tenancy by sufferance.** See **tenancy at sufferance.**

**tenancy for life.** See **life estate; life tenant.**

**tenancy for years.** An interest arising from a lease, contract, or agreement for the possession of lands or tenements for a definite period of time. A tenancy under a lease whereby the landlord contracts to grant the possession and enjoyment of land, or hereditaments of a demisable nature, for a period of years certain; and in most cases the tenant agrees to render to the landlord a rent in money, or any other kind of payment, at the end of stated periods of a year or more during the term. 32 Am J1st L & T § 61.

**tenancy from month to month.** A tenancy where no definite time is agreed upon and the rate is fixed at so much per month. *Thompson v Baxter*, 107 Minn 122, 119 NW 979. A tenancy created by a holding over after the expiration of a lease for months. 32 Am J1st L & T § 941. An estate less than freehold. 28 Am J2d Est § 130.

**tenancy from quarter to quarter.** A tenancy under a lease which does not prescribe the duration but fixes the rental at a certain sum per quarter or three months period. 32 Am J1st L & T § 71. A tenancy created by a holding over after the expiration of a lease for one or more quarters of a year. 32 Am J1st L&T§941.

**tenancy from week to week.** A tenancy where no definite time is agreed upon and the rent is fixed at so much per week. 32 Am J1st L & T § 71. A tenancy created by a holding over after the expiration of a lease for weeks. 32 Am J1st L & T § 941.

**tenancy from year to year.** A tenancy where no definite time is agreed upon and the rent is fixed at so much per year. *Thompson v Baxter*, 107 Minn 122, 119 NW 797. A tenancy created by a holding over after the expiration of a term for years and the continued payment of the yearly rent reserved. 32 Am J1st L & T § 940. An estate evolving from an estate at will, being one of the estates from period to period, an estate less than a freehold. 28 Am J2d Est § 130.

**tenancy in common.** That tenancy whereby two or more persons are entitled to land in such manner that they have an undivided possession, but several freeholds or interest. 20 Am J2d Coten § 22. A tenancy characterized by a single essential unity that of possession, or of the right to possession, of the common property. 20 Am J2d Coten § 23.

A tenancy in common of personal property is essentially similar to such a tenancy of real property, each tenant in common owning and possessing an undivided interest in the whole property. *Re Engel's Estate*, 413 Pa 475, 198 A2d 505.

**tenancy in fee.** A tenancy under a lease for a term, renewable forever, but subject to termination for nonpayment of the rent reserved, the interest of the lessee being that of a base, qualified, or determinable fee. *Smith v Improvement Dist.* 108 Ark 141, 156 SW 455.

See **fee simple**.

**tenancy in tail.** See **fee tail**.

**tenancy in tail after possibility of issue extinct.** See **fee tail after possibility of issue extinct**.

**tenant.** One who occupies the premises of another in subordination to that other person's title and with his assent express or implied. 32 Am J1st L & T § 2. Broadly, any person having a tenancy.

A tenant, although having exclusive possession, charge, and control, is not an owner of the land within a statute making it unlawful for any person to hunt on the land of another without first having obtained permission of the owner. *Anno*: 2 ALR 799, s. 95 ALR 1099.

See **sole tenant; tenancy; untenant**.

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**tenantable premises.** Premises which are habitable, fit to be lived in. 32 Am J1st L & T § 654.

For meaning of the phrase "good tenantable condition," as such appears in a covenant by a tenant to make repairs, see *Anno*: 45 ALR 12.

**tenant at sufferance.** See **tenancy at sufferance**.

**tenant at will.** See **tenancy at will.**

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

**tenant by entirety.** See **estate by entireties.**

**tenant by statute merchant.** See **estate by statute merchant.**

**tenant by statute staple.** See **estate by statute staple.**

**tenant by the curtesy.** See **curtesy; curtesy consummate; curtesy initiate.**

**tenant for life.** See **life tenant.**

**tenant for years.** See **tenancy for years.**

**tenant from month to month.** See **tenancy from month to month.**

**tenant from week to week.** See **tenancy from week to week.**

**tenant from year to year.** See **tenancy from year to year.**

**tenant in bordage.** See **bordage.**

**tenant in capite.** See **in capite.**

**tenant in chivalry.** See **knight service.**

**tenant in common.** One of two or more owners of property who hold under a tenancy in common. See **tenancy in common.**

**tenant in dower.** A widow who holds land by virtue of her dower.  
See **dower.**

**tenant in fee.** See **fee simple.**

**tenant in fee simple.** See **fee simple.**

**tenant in fee tail.** See **fee tail.**

**tenant in free socage.** See **free socage.**

**tenant in mortgage.** The feoffee in a common-law mortgage or mortuum vadium, as it was called, which consisted of a feoffment on the condition that the feoffer might re-enter if he paid to the feoffee a certain sum of money at a certain date. 36 Am J1st Mtg § 12.

**tenant in possession.** A lessee in possession under the terms of the lease. In a broader sense, one who maintains possession legally by himself or through another under title, estate, or interest of any kind.

The definition of the term embraces, within the natural and usual meaning of the words, a judgment debtor as well as his lessee. The owner in fee is no less, in legal contemplation, a tenant, than the man who occupies under him, since the definition of

tenant is one that holds or possesses lands or tenements by any kind of title, either in fee, for life, years, or at will. *Whithed v St. Anthony & Dakota Elevator Co.* 9 ND 224, 83 NW 238.

**tenant in severalty.** A sole tenant; a person who holds lands or tenements in his own right only, without any other person being joined or connected with him in point of interest, during his estate therein. 2 Bl Comm 953.

**tenant-like manner.** Characterizing the occupation by a tenant as reasonable and proper in reference to the care and treatment of the premises. 32 Am J1st L & T § 779.

**tenant paravail.** The tenant of a tenant.

Under the feudal system, if the king granted a manor to A, and A granted a portion of the land to B, then B was said to hold of A, and A, of the king. In other words, B held his lands immediately of A, but mediately of the king. The king was therefore styled lord paramount; A was both tenant and lord, or was mesne lord; and B was called tenant paravail, or the lowest tenant; being he who was supposed to make avail, or profit of the land. See 2 Bl Comm 60.

**tenant pur auter vie.** A tenant holding for the life of another; a tenant having an estate for the life of another. See 2 Bl Comm 120, 124.

**tenant right.** A word of art for the lessee's right to a renewal of the tenancy.

**tenant without impeachment of waste.** See **without impeachment of waste.**

**tender.** Noun: The small car attached to a locomotive, wherein fuel and water are carried. 35 Am J1st M & S § 229. A boat or small vessel carrying freight, passengers, or supplies to or from a larger vessel. An unconditional offer of payment, consisting in the actual production, in current coin of the realm or other lawful money, of a sum not less than the amount due on a specific debt or obligation. 52 Am J1st Ten § 2. An offering of that which a person received under a contract made as a condition of the right to rescind. 17 Am J2d Contr § 512. Verb: To offer to pay or perform an obligation.

In a literal sense, the word is equivalent to the word "offer". 6 Eng Rul Cas 589.

See **legal tender.**

**tender of amends.** An offer to settle a claim arising out of tort or contract.

**tender of issue.** The concluding phrase of a plea offering to submit the controversy to the court or to the jury. For practical purposes, the raising of an issue by a pleading responsive to the pleading of the adverse party.

**tender of payment.** See **tender.**

**tender of performance.** An offer by the obligor to perform a contract according to its terms and conditions. An offer of performance, one of the effects of which is to place the other party unjustifiably refusing it in default, and to permit the party making the tender to exercise his remedies for breach of contract. *Walker v Houstin*, 215 Cal 742, 12 P2d 952, 87 ALR 937. An offer by the vendor in a contract to sell real estate to convey in full compliance with the terms of the contract. 55 Am J1st V & P § 324. A presentation of goods by the seller to the purchaser under a contract of sale in the course of a delivery or attempted delivery of the goods.

The word "tender," as used in connection with mutual and concurrent promises, does not mean the same kind of offer as when it is used in reference to the payment or offer to pay an ordinary debt due in money; it means only a readiness and willingness, accompanied with an ability on the part of one of the parties, to do the acts which the agreement requires him to perform, provided the other party will concurrently do the things which he is required by the contract to do, and a notice by the former to the latter of such readiness. *Robins v Mack International Motor Truck Corp.* 113 NJL 377, 174 A 551.

**tender years.** The years of infancy, particularly the earlier years.

**tending bar.** See **bartender.**

**tenement.** A house. *Polson v Parsons*, 23 Okla 778, 104 P 336. Real property; inclusive of any incorporeal hereditament which issues out of corporeal property or which is annexed thereto. *Hertz v Abrahams*, 110 Ga 707, 36 SE 409.

In its most extensive signification, the word comprehends everything which may be holden, provided it be of a permanent nature. In a more restricted sense, it is a house or building. *Oskaloosa Water Co. v Board of Equalization*, 84 Iowa 407, 51 NW 18.

Within the meaning of a statute authorizing proceedings to try questions concerning unlawful detention of lands or "tenements" and providing that if the same is held unlawfully, restitution shall be had, a house upon land to which its owner has no title, but in which he claims and enjoys the right of peaceable possession, which house is occupied by one leasing from such owner, is a "tenement." 32 Am J1st L & T § 1017.

**tenemental lands.** Lands which were distributed by the lords among their tenants.

These tenemental lands included both bookland, or charterland, and folkland. See 2 Bl Comm 90.

**tenement house.** A multiple dwelling, ordinarily housing people of very limited means or persons on welfare, usually several stories high, and containing many separate apartments or tenements, usually involving the use of bath and toilet facilities in common by the tenants of several tenements. *Lignot v Jeakle*, 72 NJ Eq 233, 65 A 221. A building, the different rooms or parts of which are let for residence purposes by the possessor to others, its distinct tenements, so that each tenant, as to the room or rooms occupied by him, would sustain to the common landlord the same relation that the tenant occupying a whole house would sustain to his landlord. See *Rose v King*, 49 Ohio St 213, 30 NE 267.

A building continuing three separate apartments on separate floors, each rented by the owner to a separate family, is a "tenement house" within the meaning of a statute providing that the owner of every tenement house shall provide for the lighting of all public halls at night. *Gibson v Hoppman*, 108 Conn 401, 143 A 635, 75 ALR 148.

**tenementum.** A tenement; an estate held by a tenant.

**tenendum.** A clause formerly appearing in deeds, setting forth the tenure of the grantee, that is, the kind of tenure on which the land was to be held. 2 Bl Comm § 408.

**tenendum per servitium militare, in burgagio, in libero socagio.** To hold by military service, in burgage, in free socage. See 2 Bl Comm 299.

**tenens.** A tenant.

**tener.** To hold; to keep.

**tenere.** To hold; to keep; to understand; to grasp.

**teneri.** That part of a bond in which the maker states that he is held and firmly bound, etc.

**tenet.** Something held or possessed. A principle, especially one pertaining to religious faith.

**tenir in socage.** To hold in socage.

**Tennessee Valley Authority.** An agency of the United States Government, employing almost 18,000 persons, established to develop the Tennessee river for the production of electric power and for other purposes connected with flood control, the improvement of navigation, chemical engineering research, aiding regional development, conservation of natural resources, and

to construct other facilities for the production of electric power. United States ex ref. Tennessee Valley Authority v An Easement & Right-of-Way (DC Ky) 246 F Supp 263.

**tenor.** The exact words. A copy of an instrument setting forth the very words and figures. 36 Am J2d Forg § 37. The general meaning or purport.

**tenore praesentium.** By the tenor of these presents.

**Tenor est qui legem dat feudo.** It is the true intent or meaning which gives validity to the fee or grant. See 2 Bl Comm 310.

**Tenor investiturae inspiciendus.** The character of the investiture must be regarded. A maxim of the law of feuds resulting from the variety of the prescribed services to be rendered by the tenant.

**tenor of a will.** The purport, rather than the exact words, of the instrument. It is enough to prove the tenor or substance of a lost will, without proving the precise statement of the language terms used in it. Jones v Caller, 139 Ind 382, 38 NE 812.

**tenor of bill of exchange.** The terms of time and manner of payment of a bill of exchange. Lindley v First Nat. Bank of Waterloo, 76 Iowa 629, 41 NW 381.

**ten pins.** A game of skill, akin to bowling. Anno: 60 ALR 352.

**tentative allowance.** A provisional allowance. An allowance not to be accepted as final.

As the term is used with reference to deductions in the Federal income tax law, it means the original allowance proposed by the taxpayer in his return and accepted automatically and without investigation by the Commissioner; and after he has completed his investigation of the claimed deduction and passed upon the question of amortization, his allowance is no longer tentative but becomes final as can any allowance of a deduction. Fifth Ave. Uniform Co. v Commissioner (CA2) 70 F2d 677.

**tentative finding.** A finding by an administrative officer whose function is to hear and report, his recommendation not being binding upon the board or officer having the deciding authority. 2 Am J2d Admin L § 427.

**tentative trust.** See **Totten Trust.**

**Tenterden's Act.** See **Lord Tenterden's Act.**

**tenths.** Temporary aids issuing out of personal property, and granted by parliament to the king.

They were the actual tenth or fifteenth part of all of each subject's movable property. Tenths were first granted under Henry the Second to pay the expense of a Palestine crusade against the Saracen emperor, Saladin; whence this levy was called the Saladin tenth. See 1 Bl Comm 308.

**tent show.** A circus; a dramatic performance produced in a tent.

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**tenure.** A term of extensive significance, meaning the mode by which one holds an estate in land and importing also any kind of holding, from mere possession to the owning of an estate of inheritance. 28 Am J2d Est § 3. The right of certain public officers and public employees to be retained in employment, subject only to removal for certain enumerated causes and in a prescribed manner. 47 Am J1st Sch § 127. Term of public office or public employment. People v Waite (NY) 9 Wend 58.

In its technical sense, the word means the manner whereby lands or tenements are holden, or the service that the tenant owes to his lord. In the latter case, there can be no tenure without some service, because the service makes the tenure. The word is also used as signifying the estate in the land. The most common tenure by which lands are held in the United States is

"fee simple," which is an absolute tenure of land to a man and his heirs forever, without rendering service of any kind. *Bard v Grundy's Devises*, 2 Ky 168, 169.

See **fixed tenure; tenancy**.

**tenure by divine service.** A land tenure in which the tenants were to perform some certain expressly defined and prescribed special divine service; such as to sing so many masses, to distribute a fixed sum in alms.

After the Statute of Quia Emptores (1290) only the king could grant lands to be held by this tenure. See 2 Bl Comm 102.

**tenure by free alms.** Same as **tenure in frankalmoign**.

**tenure in ancient demesne.** A tenure embracing all those lands or manors, which, though subsequently granted out to private subjects, were actually in the hands of the crown in the time of Edward the Confessor, or William the Conqueror, and are recorded as so being in the Domesday Book. See 2 Bl Comm 99.

**tenure in burgage.** See **burgage tenure**.

**tenure in capite.** A land tenure wherein the tenant held his land directly of the crown or chief lord, with no lord intervening.

**tenure in chief.** Same as **tenure in capite**.

**tenure in frankalmoign.** Same as **frankalmoign tenure**.

**tenure in gavelkind.** See **gavelkind**.

**tenure of office.** The right to hold office for a prescribed term. 43 Am J1st Pub Of § 149. The possession of an office. The length of time an office is held.

See **tenure statutes; term of office**.

**tenure of schoolteacher.** See **tenure; tenure statutes**.

**tenure of trustee.** The continuance of one's status as trustee until he resigns, is discharged, dies, becomes incompetent, or the trust terminates. 54 Am J1st Trusts § 127.

**tenure statutes.** Statutes granting to public officers or employees the right to be retained in employment indefinitely, subject only to removal for enumerated causes and in a manner prescribed by law. Statutes wherein specific tenure rights are attached to the position of teaching in the public schools, particularly the right to be retained in employment indefinitely, subject only to removal for certain enumerated causes and in a prescribed manner. 47 Am J1st Sch § 127.

**terce.** The widow's third; dower.

**tercerone.** A person of mixed blood, the issue of a white person and a mulatto. *Daniel v Guy*, 19 Ark 121, 131.

**term.** A portion of an agreement relating to a particular matter. UCC § 1-201(42). An estate for years; an estate the duration of which is limited and determined. *Delaware L. & W. R. Co. v Sanderson*, 109 Pa 583, 1 A 394.

**termagant.** A common scold. 15 Am J2d Com S § 2.

**term annuity.** An annuity the payments of which are terminable by the voluntary act of the annuitant. *Bodine v Commissioner* (CA3) 103 F2d 982.

**term bailment.** A bailment for a prescribed period of time. 8 Am J2d Bailm § 277.

**term bill of exceptions.** A bill of exceptions showing matters which occurred prior to the trial. *Robinson v Field*, 342 Mo 778, 117 SW2d 308.

**term bonds.** Bonds issued at one time and all falling due at one time. *Fales v Multnomah County*, 119 Or 127, 248 P 151.

**term for years.** See estate for years; tenancy for years.

**terminable interest.** For estate tax purposes, an interest which terminated on or before the death of the one whose estate is sought to be taxed. *Goodman v Granger* (CA3 Pa) 243 F2d 264, cert den 355 US 835, 2 L Ed 2d 47, 78 S Ct 57.

As to failure of terminable interest to qualify for marital deduction, see Internal Revenue Code § 2523, subds (b), (d).

**terminal.** A point on a railroad line which is either the beginning or destination of traffic. 44 Am J1st RR § 241. The station or depot of a carrier. An airport. The landing place used by a ferry.

**terminal car.** A railroad car kept at a particular station for use in the yards.

**terminal carrier.** The carrier which makes the final delivery of the goods, either delivering the goods itself to the consignee, or through another carrier acting as its agent. 14 Am J2d Car § 662.

**terminal facilities.** Instrumentalities at the terminal of a railroad provided to implement the handling of traffic. 44 Am J1st RR § 241. Passenger station, freight station, and other facilities rendered available by a carrier for its customers.

**terminal illness.** Last illness.

**terminal railroad.** A railroad which as an instrumentality assists railroad transportation companies in the collection, transfer, and distribution of traffic at a place which is a terminal of different railroad lines. 44 Am J1st RR § 241. A railroad rendering terminal services, switching and delivering railroad cars from one carrier to another or from the carrier to the consignee of the shipment. 13 Am J2d Car § 13.

**terminal railway company.** A company operating a terminal railroad. *Dell R. Co. v United States* (CA7 Ill) 168 F 542, cert dismd 223 US 743, 56 L Ed 638, 32 S Ct 532.

See **terminal railroad.**

**terminal reserve.** A reserve, appearing on the books of a life insurance company, maintained by it against its liability on a life insurance policy or annuity contract issued by it and outstanding.

**terminal services.** Services rendered by a carrier at its station or in its yards in loading and unloading

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freight, switching, elevator service, refrigeration etc. 13 Am J2d Car § 470.

See **terminal railroad.**

**terminating building and loan service.** A building and loan association in which all of the stock matures at the same time.

Upon such maturity, the face value of the stock is paid to the members, and the association comes to an end. *Cook v Equitable Bldg. & Loan Asso.* 104 Ga 814, 821.

**termination.** An end of something in space or time.

See **cancellation**.

**termination in plaintiffs favor.** An end to a criminal prosecution or civil proceeding in favor of he who is the plaintiff in an action for malicious prosecution, however such end is reached, provided the end is such that the prosecutor must institute proceedings anew if he desires to continue further with his purpose of prosecution. 34 Am J1st Mal Pros § 31.

As the word is used in the rule requiring a termination of the prosecution as one of the essential prerequisites of an action for malicious prosecution, a criminal prosecution is "terminated" (1) where there is a verdict of not guilty; (2) where the grand jury ignore a bill; (3) where a nolle prosequi is entered; and (4) where the accused has been discharged from bail or imprisonment. *Graves v Scott*, 104 Va 372, 51 SE 821.

**termination of corporation.** See **dissolution of corporation**.

**termination of criminal prosecution.** See **termination in plaintiffs favor**.

**termination of employment.** A termination of the relationship between employer and employee. *Emerick v Connecticut General L. Ins. Co.* 120 Conn 60, 179 A 335, 105 ALR 413.

**termination of highway.** A discontinuance or vacation of the way.

**termination of lease.** The efflux of the term, the happening of a condition subsequent and re-entry, by way of conditional limitation, by operation of law, as in the case of the merger of the tenancy in the reversion, or by cancellation of the lease. 32 Am J1st L & T § 824.

See **expiration of term**.

**termination of offer.** The expiration of the period of time during which the offer is to remain in effect, whether such be a definite period as fixed by the terms of the offer or by custom or usage of trade, or the reasonable period of time during which an offer remains in effect in the absence of a definite time limit; the withdrawal or revocation of the offer before it has been accepted; the death of the offeror or offeree; or the rejection of the offer by the offeree. 17 Am J2d Contr §§ 35 et seq.

**termination of partnership.** See **dissolution of partnership**.

**termination of risk.** A phrase familiar in the law of insurance, signifying the termination of the coverage provided by the policy by the expiration of the term for which the policy was issued, by breach of warranty or condition, or by the cancellation, rescission, or surrender of the policy to the insurer. 29 Am J Rev ed Ins § 317.

**termination of trust.** The termination of the relationship of trustee and beneficiary in accordance with the limitations or conditions of the trust, although not before the trustee has accounted to the beneficiary and the latter has received all the property and funds due him. 54 Am J1st Trusts § 70.

The expression includes not only the final transfer of a trust estate to the beneficiary, but also the resignation or discharge of the trustee named in the deed and the transfer of the trust fund by it to a new trustee. *Haas v Hudson County Nat. Bank*, 115 NJ Eq 311, 170 A 611, 94 ALR 1099.

**termination of war.** The exchange of peace treaties or the ratification of a peace treaty, or the recognition of the termination of the contest by the branches of government having the war power. 56 Am J1st War § 13.

**terminer.** See **court of oyer and terminer; oyer and terminer**.

**termini.** See **ex vi termini; terminus**.

**terminis terminantibus.** See **in terminis terminantibus**.

**term insurance.** Life insurance under a contract providing protection for a stated number of years, subject to the payment of premiums, sometimes renewable without an additional medical examination, sometimes convertible to other forms of life insurance written by the insurer. A policy of insurance under which the insurance contracted for covers only losses occurring before the expiration of a term stated in the policy. *Aetna Casualty & Surety Co. v Commercial State Bank of Rantoul* (DC Ill) 13 F2d 474.

**terminus.** A term; an estate for years; an estate the duration of which is limited and determined. *Delaware L. & W. R. Co. v Sanderson*, 109 Pa 583, 1 A 394. A boundary; an end; a limit.

See **terminal**.

**Terminus ac foedum non possunt constare simul in una eademque persona.** A term and the fee cannot at the same time vest in one and the same person.

**terminus ad quem.** The termination or end of a private right of way.

See **terminus a quo**.

**Terminus annorum certus debet esse et determinatus.** A term for years ought to be certain and determinate.

**terminus a quo.** The end from which, as matter of point, place, or time.

To every private right of way, there are two essential requisites, first, the "terminus a quo," or the point or place from which the grantee is to set out in order to use the way, and the "terminus ad quem," the place where the way is to end; and second, that the grantor has the right, not the mere revocable permission of setting out from the terminus a quo, and proceeding to and entering the terminus ad quem. *Garrison v Rudd*, 19 Ill 558, 563.

**terminus juris.** The time within which an appeal could be determined in the ecclesiastical courts.

**termite.** A wood-boring insect capable of causing much damage to wooden structures and furniture. *Kirkley v Merrimack Mut. Fire Ins. Co.* 232 NC 292. 59 SE2d 629.

**term of court.** The period of time appointed by law during which a court may, and is supposed to, perform its judicial functions. The time in which a court is open for the trial of causes or the transac-

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tion of other official business. 20 Am J2d Cts § 44. Sometimes defined as the space of time during which the court holds a session. *Parrott v Wolcott*, 75 Neb 530, 106 NW 607.

The expression is sometimes used in statutes as synonymous with the term "session of court," and does not necessarily refer to the beginning of the statutory term of the court. See *Nation v Savely*, 127 Okla 117, 260 P 32, 35.

See **adjourned term; appearance term; equity term; special term; trial term; vacation**.

**term of lease.** That period which is granted for the lessee or tenant to occupy and have possession of the premises. The duration of a lease in years, months, weeks, or days. The estate or interest which the lessee has in the premises under and by virtue of the lease. 32 Am J1st L & T §§ 6l et seq.

**term of office.** A fixed and definite period of time during which the incumbent of an office is to hold it. *Collison v State*, 39 Del 460, 2 A2d 97, 119 ALR 1422. The time during which one regularly chosen by election or appointment and inducted into office is entitled to hold the same, perform its functions and enjoy its privileges and emoluments. *State v Knight*, 76 Mont 71, 245 P 267.

See **tenure of office**.

**term of patent.** The duration of the patent and of the rights of the patentee thereunder. *Diamond Match Co. v Adirondack Match Co.* (CC Vt) 65 F 803.

**term of years.** A period of years. As used in a statute providing for increased punishment of any person upon a conviction after a previous conviction for an offense punishable by imprisonment for a "term of years," a minimum of two years. 25 Am J1st Habit Cr § 2.

See **tenancy for years.**

**termor.** The owner of an estate for life or for years.

**term policy.** See **term insurance.**

**terms good firms.** A commercial or mercantile expression.

The acceptance of an offer to purchase a commodity on the condition "terms good firms" was held to mean that the commodity was to be weighed at its destination by responsible business men, and that the seller did not bind himself to accept weights made by unreliable people. Anno: 1 ALR 1509.

**terms net cash.** A condition in a contract of sale requiring the purchaser to pay the price before being entitled to delivery of the goods. 46 Am J1st Sales § 202.

See **net cash; net cash ten days.**

**terra.** Land.

**terra affirmata.** Farmed land; land which let to be farmed.

**terracing.** Changing the contour of a tract of real estate so as to have successive ascending and descending levels.

**terra cults.** Cultivated land.

**terra debilis.** Barren land.

**terrae.** Lands.

See **frustrum terrae.**

**terrae dominicales.** Demesne lands, lands reserved by the lord of the manor for his own use and that of his family. See 2 Bl Comm

**terrae dominicales regis.** The king's demesne lands. See 1 Bl Comm 286.

**terrae tenementales.** Lands which the lord of the manor distributed among his tenants. See 2 Bl Comm 90.

**terra excultabilis.** Land which could be ploughed.

**terra firma.** Firm land; dry land.

**terra frisca.** Fresh land; uncultivated land.

**terra hydata.** Land which was subject to hidage, which was a tax levied on each hide of land.

**terra lucrabilis.** Reclaimed land.

**Terra manens vacua occupanti conceditur.** Land remaining vacant is granted to the occupant.

**terra Normanorum.** Land of the Normans, land which was held under Norman tenure.

**terra nova.** New land, land which had been recently cleared.

**terra putura.** Forest land which was held by the service of victualing the keepers of the forest.

**terra sabulosa.** Sandy land; land covered with gravel.

**terra sancta.** See **essoin de terra sancta.**

**terra testamentalis.** Land which could be transferred by will.

**Terra transit cum onere.** Land passes with its burdens.

**terra vestita.** Planted or seeded land.

**terra wainabilis.** Tillable land.

**Terra Walliae cum incolis suis, prius regi jure foedali subjects, jam in proprietatis dominium totaliter et cum integritate conversa est, et coronae regni Angliae tanquam pars corporis ejusdem annexe et unita.** The country of Wales, with its inhabitants was formerly subject to the king under feudal law; now it is wholly converted into a principality and annexed to and united with the crown of England as a part of the same body. See 1 B1 Comm 94.

**terra warrenata.** Land in which there was free warren or the franchise of hunting and preserving game in a warren.

**terre.** Land.

**terre seynte.** See **essoin de terre seynte.**

**terre-tenant.** A person who is a purchaser, mediately or immediately, from a judgment debtor, while the land purchased is bound by the judgment. An owner of real property which is subject to the lien of a judgment against another person. Not a "debtor" within the meaning of a statute exempting a certain amount out of the proceeds of land. Eberhart's Appeal, 39 Pa 509.

**terrible.** Exciting terror. Frightful or dreadful. *Denver & Rio Grande Railroad Co. v Roller* (CA9 Cal) 100 F 738.

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**territorial.** Pertaining or belonging to a territory of the United States.

**territorial court.** A court in the judicial system of a territory of the United States. 49 Am J1st States §§ 107, 131.

Although the judicial system set up in a territory of the United States is part of the federal jurisdiction, the phrase "court of the United States," when used in a federal statute, is generally construed as not referring to territorial courts. *International Longshoremen's & Warehousemen's Union v Wirtz* (CA9 Hawaii) 170 F2d 183, cert den 336 US 919, 93 L Ed 1082, 69 S Ct 641, reh den 336 US 971, 93 L Ed 1121, 69 S Ct 936.

**territorial governor.** The chief executive of a territory of the United States. *New York ex rel. Kopel v Bingham*, 211 US 468, 53 L Ed 286, 29 S Ct 190.

**territorial judge.** The judge of a court of a territory of the United States. *McAllister v United States*, 141 US 278, 39 L Ed 982, 15 S Ct 889.

See **territorial court**.

**territorial jurisdiction.** The limits of the geographical boundaries of a district within which a judge or other judicial officer has jurisdiction to act judicially, and outside of which his judicial acts are null and void. *Phillips v Thralls*, 26 Kan 780, 781. The jurisdiction of a court in reference to the area in which the process of the court is affective. Jurisdiction subject to territorial limitations.

The jurisdiction of a court cannot extend beyond the territory belonging to the sovereignty on behalf of which it functions, and its jurisdiction may be further limited territorially, by constitutional or statutory provisions, to a part only of the territory of the sovereignty to which it belongs. 20 Am J2d Cts § 153.

**territorial limitation.** A charter limitation in reference to the territorial scope of the operations of the corporation. 36 Am J2d For Corp § 87. A limit upon the exercise of judicial power. *Lynde v Winnebago County (US)* 16 Wall 6, 21 L Ed 272. Limitation of jurisdiction to territory within certain definite boundaries. 20 Am J2d Cts § 153. A limitation on the operation of a statute to territory within the boundaries of a particular district or political division or subdivision. 50 Am J1st Stat § 485.

**territorial possessions.** All lands acquired by the United States by treaty or purchase which have not become an integral part of the United States, in other words, territory that has not been incorporated into the United States. *Rasmussen v United States*, 197 US 516, 49 L Ed 862, 25 S Ct 514.

**territorial waters.** See three mile limit.

**territorium.** See **extra territorium**.

**territory.** An area, especially one of significance from a particular aspect, as in the case of a salesman's territory or of good hunting territory. A region which, although not a state, has an organized system of government. *People of Porto Rico v Rosaly y Castillo*, 227 US 270, 33 S Ct 352, 57 L Ed 507.

As the word is used in the phrase "the United States and all territory subject to the jurisdiction thereof," it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. It refers to areas or districts having fixity of location and recognized boundaries. *Cunard Steamship Co. v Mellon*, 262 US 100, 67 L Ed 894, 43 S Ct 504, 27 ALR 1306, 1315.

See **territorial possessions; unincorporated territory; unorganized territory**.

**territory adjacent.** See **adjacent territory**.

**territory of the United States.** See **territory**.

**terrorem.** See **in terrorem**.

**terrorem populi.** See **in terrorem populi**.

**terroristic act.** Act of vandalism or violence. Anno: 116 ALR 507.

**tertia.** The third part; dower. See 2 Bl Comm 129.

**tesmoignance.** See **entesmoignance**.

**test.** See **performance test; triennial test; tuberculin test; Wasserman test; wild beast test**.

**testable.** The state or condition of a person who is possessed of testamentary capacity.

See **testamentary capacity**.

**Test Act.** An act of parliament of 1672, directing all officers, civil and military to take oaths and make the declaration against transubstantiation in any of the king's courts at Westminster, or at the quarter sessions, within six calendar months after their admission. See 4 Bl Comm 58.

**testacy.** The condition of a deceased person who died leaving a valid will.

**testament.** Historically, a disposition of personal property effective upon the death of the testator, but in modern usage, a will disposing of either real or personal property, or both kinds of property. 57 Am J1st Wills § 2.

In common usage, the words, will, testament, and last will are synonymous. *Occidental L. Ins. Co. v Powers*, 192 Wash 475, 74 P2d 27, 114 ALR 531.

See **adulterinum testamentum; ex testamento**.

**Testamenta latissimam interpretationem habere debent.** Wills ought to have the broadest interpretation or construction.

**testamentary.** See **testamentary character**.

**testamentary arbitrator.** A person appointed by a testator in his will to interpret and settle difficulties between beneficiaries growing out of dispositions made by the will. Anno: 104 ALR 362, 363.

**testamentary capacity.** The capacity to accomplish the purpose of making a valid will as determined objectively from the standpoint of the purpose. The capacity of a person making a will to know the natural objects of his bounty, to comprehend the kind and character of his property, to understand the nature and effect of his act, and to make a disposition of his property according to some plan formed in his mind. *Re Hagan*, 143 Neb 459, 98 NW2d 794, 154 ALR 573.

A testator is of sound and disposing mind and memory, and hence, competent, if at the time of making his will, he has sufficient mental capacity to understand the nature of the act he is doing, to understand and recollect the nature and situation of his property, and to remember and understand his relations to persons who have claims upon his bounty and whose interests are affected by the provisions of the instrument. *In re Smith's Estate*, 200 Cal 152, 252 P 325.

Testamentary capacity includes a recollection of

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the persons related to him by ties of blood and affection, and of the nature of the claims of those who are excluded from participating in his estate. 57 Am J1st Wills § 51.

**testamentary character.** See **testamentary instrument**.

**testamentary class.** Persons included and comprehended under some general description in a will, bearing a certain relation to the testator, having a common relation to each other, sustaining the same relation to the bequest, or included together in a grouping made by the testator. 57 Am J1st Wills § 1259.

**testamentary disposition.** The disposition of property by deed, will, or otherwise, in such a manner that it shall not take effect unless or until the grantor dies. *Chestnut Street Nat. Bank v Fidelity Ins. Trust & Safe Deposit Co.* 186 Pa 333, 40 A 486.

See **testamentary instrument**.

**testamentary expenses.** Expenses of administration. Construed in some instances, although not in others, as inclusive of estate taxes or duties, as the phrase appears in a direction by the testator to the executor for the payment by the latter of "testamentary expenses." Anno: 51 ALR 466.

**testamentary guardian.** A guardian appointed by the deed or the last will of the parent of the ward. 25 Am J1st G & W § 12.

**testamentary heir.** See **heir testamentary.**

**testamentary instrument.** An instrument such that, from the language used, it is apparent that the maker intended to make a disposition of his property or some part thereof, to be effective at his death. 57 Am J1st Wills § 8. An instrument manifesting a donative intent, but neither conferring nor evidencing an intent to confer, upon the donees any property, right, or benefit during the life of the maker, having no binding effect during his life, and remaining revocable by him at his pleasure. 57 Am J1st Wills § 7.

An instrument is testamentary when it is written or made so as not to take effect until after the death of the person making it, and to be revocable and to retain the property under his control during his life, although he may have believed that it would operate as an instrument of a different character. *Benson v Benson*, 125 Okla 151, 256 P 912, 62 ALR 935.

**testamentary power.** The power to make a will existing under the law as a matter of privilege. *Hamilton v Morgan*, 93 Fla 311, 112 So 80.

Convicts may have the capacity and yet be denied the power to make a will. 57 Am J1st Wills § 51.

See **testamentary capacity.**

**testamentary power of sale.** A power of sale of real or personal property of a decedent conferred upon the executor of the estate of the decedent by his will. 31 Am J2d Ex & Ad § 437.

Where a power of sale is given to an executor by virtue of his office, and not to him as an individual, the presumption is that it was given for the purpose of being executed in the interest of the estate and not for his own benefit. *Sweeny v Warren*, 127 NY 426, 28 NE 413.

**testamentary trust.** A trust created by will.

See **precatory trust.**

**testamentary trustee.** A trustee appointed by the court to execute a trust created by a will, either nominated by the will itself or not so nominated. See *Re Hazard* (NY) 51 Hun 201, 4 NYS 701.

**testamento.** A last will or testament.

**testamentum.** A last will or testament.

*Testamentum est voluntatis nostrae justa sententia de eo, quod quis post mortem loam fieri velit.* A will is the legal declaration of a man's intentions, which he wills to be performed after his death. See 2 Bl Comm 499.

**testamentum inofficiosum.** Same as **unofficial will.**

**Testamentum omne morte consummatum.** Every will is consummated or perfected by death.

**testate.** A deceased person who died leaving a will; the condition of a person who dies leaving a will.

**testatio mentis.** A bearing witness of the mind; a testament; a will. See 2 Bl Comm 499.

**testation.** Same as **attestation.**

**testator.** A deceased person who died leaving a valid will.

**Testatoris ultima voluntas est perimplenda secundum veram intentionem suam.** The last will of a testator is to be fulfilled according to his true intention.

**testator's presence.** See **in the presence of the testator.**

**testatrix.** Feminine of testator.

**testatum.** Testified.

**testatum capias.** A writ or process issued in a civil action for the arrest of a defendant when the return of a previously issued process showed that he could not be found within the county. See 3 Bl Comm 283.

**testatum clause.** Same as **testimonium clause.**

**testatum writ.** A writ of fieri facias issued from a court which renders a judgment for the purpose of subjecting property of the judgment debtor in another county to the satisfaction of the judgment. 30 Am J2d Exec § 60.

**testatus.** Testate; a testator.

**test case.** A case involving an actual controversy but brought for the purpose of determining the law upon the point presented. 1 Am J2d Actions § 56.

A "test case" is not necessarily a moot case, and where a case is one of fact or right, there is no principle of law or policy which will deprive a party of a determination, simply because his motive in the assertion of such a right is to secure such a determination. It is a matter of common practice. Indeed, most of the cases of trespass to try title are of this sort. See *Adams v Union Railroad Co.* 21 RI 134, 42 A 515.

**teste.** Verb: To bear witness. *Richbourg v Rose*, 53 Fla 173, 44 So 69. Noun: A formal declaration bearing witness to the official character and time of issuance of a judicial writ. 42 Am J1st Proc § 9.

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**teste clause.** Same as **testimonium clause.**

**tested.** Witnessed; attested; executed in the presence of witnesses who certify to the fact. Given a test; subjected to a test.

**Teste meipso.** I, myself bear witness.

**teste of a deed.** See **testimonium clause.**

**teste of writ.** See **teste.**

**Testes ponderantur, non numerantur.** Witnesses are weighed, not counted.

**test explosion.** A nuclear explosion detonated on an experimental basis. 6 Am J2d Atomic E § 48.

**Testibus deponentibus in pari numero dignioribus est credendum.** Where the witnesses have testified in, equal numbers (on each side), the more worthy of them are to be believed.

**testify.** To give one's testimony under oath as a witness.

In an action by a seller's personal representative against the buyer upon a book account, the representative's offer in evidence of the decedent's books of account is not such a "testifying" by the representative as to constitute a waiver, within the

meaning of a statute relating to testimony as to transactions with the decedent, so as to permit the surviving opponent to take the stand against him. *Johnson v Hoffman*, 7 NJ 123, 80 A2d 624, 26 ALR2d 1001.

**testimonia.** Testimony; evidence.

**testimonial admission.** An informal judicial admission whereby a party may bar his claim or defense by his own testimony. *Rosbottom v Hensley*, 61 Ill App 2d 198, 209 NE2d 655.

**Testimonia ponderanda sunt, non numeranda.** Testimony is to be weighed, not counted (by the number of witnesses).

**testimonio.** A word found in Spanish-American grants and signifying the first copy of the expediente of such a grant.

An expediente is a complete statement of every step taken in the proceedings. A grant of final title papers is attached to the testimonio and delivered to the grantee as evidence of title, and entry is made at the time in a book called the *Toma de Razon*, which identifies the grantee, date of the grant, and property granted. The dictionaries define *tomas razon* as meaning to register; to take a memorandum of; to make a record of a thing, and *toma de razon*, they define as meaning a memorandum book. *Ainsa v United States*, 161 US 208, 219, 40 L Ed 673, 677.

**testimonium.** See **testimonium clause.**

**testimonium clause.** The clause in a written instrument, otherwise known as a *testatum* clause, such as "in witness whereof," by which the act and date of execution is directed to the writing. *Arrington v Arrington*, 122 Ala 510, 26 So 152. An attestation clause. 13 Am J2d Bonds § 12.

In the case of a corporation grantor, the *testatum* clause recites that the corporation has caused its corporate seal to be affixed and its corporate name to be signed by its duly authorized officers. *Kelly v Calhoun*, 95 US 710, 24 L Ed 544.

See **attestation clause.**

**testimony.** The words of a witness upon the stand. 29 Am J2d Ev § 3. In loose usage, the evidence in a case. *Roberts v Carlson*, 142 Neb 851, 8 NW2d 175.

Testimony is one thing and evidence is another; testimony is the words heard from the witnesses in court, and evidence is what the jury considers it worth. *Schultz v Bower*, 57 Minn 493, 59 NW 631.

**testis.** A witness.

**Testis de visu praeponderat aliis.** An eyewitness outweighs other witnesses.

**Testis nemo in sua causa esse potest.** No one can be a witness in his own cause.

**Testis oculatus onus plus valet quam auriti decem.** One eyewitness is worth more than ten ear-witnesses.

**test letter.** A decoy letter, that is, an imitation of a genuine letter, usually marked and directed to a fictitious person, placed in the mails by postal inspectors or officers of the department of justice for the purpose of detecting a post-office employee who is suspected of appropriating letters or their contents; or a letter sent through the mails by such officers to a person suspected of sending prohibited matter through the mails, for purpose of detecting him in such violation of the law. *Montgomery v United States*, 162 US 410, 40 L Ed 1020, 16 S Ct 797; *Goode v United States*, 159 US 663, 40 L Ed 297, 16 S Ct 136.

**Testmognes ne poent testifie le negative mes 1'affirmative.** Witnesses cannot testify to a negative, but they may testify to an affirmative.

**test oath.** An oath required as an assurance of a person's loyalty to the nation and government. 39 Am J1st Oath § 7.

**test of insanity.** The principle applied in determining whether a person is afflicted with such mental infirmity as to be unable to bind himself by contract, as to render him irresponsible for acts otherwise criminal, or as to require his commitment to an institution. 29 Am J Rev ed Ins Per § 2.

See **right and wrong test**.

**test order.** A provisional or temporary order by an administrative agency. 2 Am J2d Admin L § 466.

**test pilot.** A pilot who flies new or repaired aircraft by way of testing the safety and control of the craft.

**test run.** Taking out a ship or smaller watercraft for the purpose of testing its performance. *Gilreath v Silverman*, 245 NC 51, 95 SE2d 107.

**tetanus.** An infectious disease characterized by contractions of muscles, especially the muscles of the jaw, so that the disease is often known as lockjaw. *Pitman v Commercial Travelers' Eastern Acci. Asso.* 284 Mass 467, 188 NE 241.

**Texas fever.** A contagious or infectious disease of cattle. 4 Am J2d Am § 38.

**textbook.** A book of instruction in a particular subject, particularly a book for use in schools, colleges, and universities. 47 Am J1st Sch § 202. A law book covering a particular subject, such as insurance, municipal corporations, admiralty, etc.

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**textile design.** A design of a pattern of color of cloth. *H. M. Kolbe v Armigus Textile Co.* (CA2 NY) 315 F2d 70, 99 ALR2d 390.

**text-writer.** The author of a text book or treatise upon some branch of the law or scientific subject.

**thaini.** Freeholders.

**thalweg.** The deep way or most navigable channel; the middle, deepest, or most navigable channel. *State of Iowa v Illinois*, 147 US 1, 8, 37 L Ed 55, 57, 13 S Ct 239. The name given to the principle of the law of nations that where nations are divided by a navigable river, each should hold for commercial reasons to the center thread of the main channel or current along which vessels in the carrying trade pass, in other words to the channel of commerce, not the shallow water of the stream. 30 Am J Rev ed Internat L § 16.

**Thanksgiving Day.** A holiday as designated by the proclamation of the governor of a state or by the President of the United States. *State v Hirsch*, 125 Ind 207, 24 NE 1062.

**that is to say.** A phrase of art used as a videlicet.

See **videlicet**.

**theater.** A building especially adapted to dramatic, operatic or spectacular representations a playhouse. *Asa G. Candler, Inc. v Georgia Theater Co.* 148 Ga 188, 96 SE 226. A room, hall, or other place so arranged that a body of spectators can have an unobstructed view of the platform where dramatic or musical entertainment is presented. 4 Am J2d Amuse § 2. Literally, as derived from the Greek, a place for seeing. *Asa G. Candler, Inc. v Georgia Theater Co.* 148 Ga 188, 96 SE 226.

**theater license.** A license required by a municipal corporation of one operating a theater.

See **theater ticket**.

**theater ticket.** A ticket entitling to admission to a performance in a theater, ordinarily entitling the holder to a seat reserved for him and noted upon the ticket.

A license issued by the proprietor, pursuant to the contract, as convenient evidence of the right of the holder to admission to the theater at the date named, with the privilege specified, subject, however, to his observance of any reasonable condition appearing on the face thereof. The license, though granted for a consideration, is revocable for a violation of such condition by the holder of the ticket in the manner specified therein. The ticket is not the contract, although to some extent it is evidence thereof. The contract is implied from the circumstances, and is an agreement on the part of the proprietor, for the consideration mentioned, to admit the holder of the ticket, upon presentation thereof, to his theater at the date named, with the right to occupy the seat specified, subject, however, to his observance of any reasonable condition appearing on the face thereof. *Collister v Hayman*, 183 NY 250, 76 NE 20.

**theater ticket speculator.** See **ticket speculator**.

**theatrical agency.** An employment agency specializing in actors and entertainers of stage, screen, radio, and television. 27 Am J2d Employ Ag § 9.

**theatrical exhibition.** See **theatrical performance**.

**theatrical performance.** A dramatic, operatic, or spectacular representation. 4 Am J2d Amuse § 2.

**theatricals.** An unseemly demonstration in court, usually for the purpose of exciting the sympathy of court or jury. *Tom Reed Goldmines Co. v Berd*, 32 Ariz 479, 260 Y 191, 57 ALR 55.

See **theatrical performance**.

**The Bold Buccleugh.** A celebrated English admiralty case decided in 1852 by the judicial committee of the privy council, establishing the rule that the privilege or claim of a maritime lien constitutes a present right of property in the ship, a *jus in re*, to be afterwards enforced in admiralty by process in rem; and that from the moment when the claim or privilege attaches, it is inchoate, and when carried into effect by legal process, by a proceeding in rem, it relates back to the period when it first attached.

This claim or privilege travels with the vessel into whatsoever possession it may come, even that of a bona fide purchaser; and it is not divested by the death or insolvency of the owner. *The John G. Stevens*, 170 US 113, 42 L Ed 969, 18 S Ct 544.

**theft.** Larceny. A broader term than larceny, including other forms of wrongful deprivation of the property of another. 32 Am J1st Larc § 2.

The word is defined as a fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete. Anno: 30 ALR 663.

See **theft insurance**.

**theft bote.** The common law offense of an owner in receiving the property from one who took it by theft, under an agreement not to prosecute or to prosecute but in a fainthearted manner. *State v Hodge*, 142 NC 665, 55 SE 626.

**theft insurance.** Insurance against the risk of loss by theft. 29A Am J Rev ed Ins § 1333. A contract to indemnify against loss by thieves. Anno: 46 LRA (NS) 562; 47 LRA (NS) 296.

Where the word "theft" is used in an insurance policy, without definition, it should be interpreted as liberally as possible to protect the insured. *American Ins. Co. v Burson* (CA5 Fla) 213 F2d 487, 48 ALR2d 1.

The word "theft" in a policy insuring against loss by burglary, larceny, or "theft," is a broader term than "larceny," including wrongful deprivation of property by embezzlement or swindling. *Fidelity & Casualty Co. v Wathen*, 205 Ky 511, 266 SW 4, 41 ALR 844.

The word "theft" is ordinarily synonymous with the word larceny. But even in jurisdictions where the act of the taker constitutes statutory larceny, it is usually held that there is no "theft," as the word is used in policies of insurance against theft, unless there is an intent to deprive the owner, not temporarily but permanently, of his property. Anno: 46 ALR 536.

See **automobile theft insurance**.

**theft loss.** A deduction of loss by theft in computation of taxable income, "theft" being broadly defined in this connection to include larceny, robbery, embezzlement, even a wrongful withholding

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by a trustee. Internal Revenue Code § 165; *Vincent v Commissioner* (CA9) 219 F2d 228. A deduction in determining the taxable estate of a decedent for estate tax purposes of losses incurred by theft during the settlement of the estate. Internal Revenue Code 1954 § 2054; 26 USC § 2054.

**thegn.** A tenant in capite.

See **tenant in capite**.

**Thellusson Act.** An English statute by which all persons are prohibited from settling property by deed or will so that the rents and profits shall be wholly or partially accumulated for a longer term than the life of the settlor, or 21 years after his death, or during the minority of a person or persons living at the time of the death of the settlor, or during the minority or respective minorities only of a person or persons who, if of full age, would have been absolutely entitled under the settlement. Act of 39 and 40 Geo III, Ch 98; 41 Am J1st Perp § 44.

**theme.** The underlying thought of an article or discourse. In the law of copyright, the underlying thought presented in an original way, characterized by novelty or embellishment, so that it becomes the literary property of the author in the exclusive use of which he is entitled to protection. *Roe-Lawton v Hal E. Roach Studios* (DC Cal) 18 F2d 126.

**then.** At that time. Next in the order of events. Accordingly. As used in a will, subject to construction as an adverb of time, having its ordinary grammatical acceptation in meaning, or as a word of reasoning connecting a consequence with a premise, in other words, the equivalent of "in that event." 57 Am J1st Wills § 1332. A word sometimes postponing the ascertainment of a class until the time to which it has reference. 57 Am J1st Wills § 1283. In a limitation of a remainder, ordinarily relating to the time of enjoyment rather than the time of vesting. Anno: 103 ALR 599.

A will providing that, at the expiration of a life estate, the testator "then" gives the remainder to his children "absolutely and forever," uses the word "then" as an adverb of time to be construed as relating solely to the time of enjoyment of the estate, and not to the time of its vesting in interest. *Re Kroos*, 302 NY 424, 99 NE2d 222, 47 ALR2d 894.

In an indictment, where the time when an act was done is alleged as "then," and time is not an issuable fact in the case, the word "then" means any time within the period of the statute of limitations. *State v Archer*, 32 NM 319, 255 P 396, 399.

**then and there.** See **did then and there**.

**then cash value.** The amount of money the property involved would produce, if offered and sold for cash in the open market upon the relevant date. *Re Woolsey*, 109 Neb 138, 190 NW 215, 24 ALR 1038.

**thence.** From a stated place.

The phrase "thence up the river" as used in field notes describing the boundary of a survey of public land, must be read with the declaration that the survey is on the southern bank of the river, in the light of the drawing or plat representing the river as the northern boundary. *Oklahoma v Texas*, 268 US 252, 69 L Ed 937, 45 S Ct 497.

Insurance on a ship to a port, "thence" to another, and "thence" to a third, is the same as from the first to the last with liberty to stop at the intermediate ports. When applied to an intermediate port, the words "thence" or "from" have not the same exclusive sense as when used with regard to the commencement of a voyage. *Bradley v Nashville Ins. Co.* 3 La Ann 708.

**then living.** Characterizing survivorship referred to the termination of a life estate or other intervening estate. 28 Am J2d Est § 269. A phrase in a will operating to preclude application of rule that a class is to be determined as of the time of death of the testator. 57 Am J1st Wills § 1284.

**theocracy.** A government which recognizes God as its ruler.

**Theodoric.** See **Edictum Theodorici.**

**theological seminary.** See **seminary.**

**theolonium.** Toll.

**the ordinary prudent man.** The standard man; the average prudent individual; the reasonable and prudent man or the careful and diligent man. An abstract man of ordinary mental and physical capacity, but an ideal man in the sense that his conduct is in every case the gauge of due care under the circumstances, notwithstanding the precautions attributed to him are not those of usage and custom. 38 Am J1st Negl § 30.

**theoretical inch.** A term referred to in discussions of measurement of water.

In water measurement, the theoretical inch is founded upon the theory that water spouting from the side of a flume with a certain head, say four feet, will have the same velocity as if it fell the same distance through the air, and, as this velocity is fixed and certain, the amount of water referred to in the theoretical inch is fixed and certain. But the theory is not true in actual practice. *Janesville Cotton Mills v Ford*, 82 Wis 416, 52 NW 764.

**theory of case.** The design or principle on which a party maintains his alleged cause of action or defense. A necessary statement in a bill in equity. *O'Brien v People*, 216 Ill 354, 75 NE 108.

The theory of the case should be presented with sufficient allegations of fact to give basis and point to the charges, but if the allegations develop too much theory, the door will be open to the criticism of stating mere conclusions of law or of being too abstract. *O'Brien v People*, 216 Ill 354, 75 NE 108.

As a general rule, a reviewing court considers the case only upon the theory upon which it was tried in the court below. 5 Am J2d A & E § 546.

**theosophy.** A philosophy, perhaps a religion, which teaches the obtaining of insight in divine principle through contemplation and revelation. Anno: 12 ALR2d 872, § 4.

**the parol demur.** An old common-law expression for a stay to await the expiration of time removing the disability of a party.

When the heir was sued upon a specialty obligation of the ancestor chargeable on the inheritance, if he was an infant he might pray that "the parol demur" until he should reach his majority. See 27 Am J1st Inf § 157.

**the people.** Citizens. Anno: 68 L Ed 266, 267.

See **people of the state; people of the United States.**

**The power to tax is the power to destroy.** A famous declaration of Chief Justice Marshall in *McCulloch v State of Maryland*, 4 Wheat (US) 431, 4 L Ed 579.

A striking instance of the truth of this proposition is seen in the fact that the existing tax of ten per cent, imposed by the United States on the circulation of all other banks than national banks, drove

out of existence every state bank of circulation within a year or two after its passage. *Loan Asso. v Topeka* (US) 20 Wall 655, 22 L Ed 455.

**therapy.** The treatment of disease, whether by the administration of drugs or surgery. *Stewart v Raab*, 55 Minn 20, 21, 56 NW 256.

See **drugless therapeutics; physiotherapy.**

**thereafter.** After a certain event. In a limitation of a remainder, ordinarily relating to the time of enjoyment rather than the time of vesting. 28 Am J2d Est § 257.

**thereafter clause.** A term familiar to oilmen, being a clause in an oil or gas lease intended to establish rights in the lessee notwithstanding termination of the primary term of the lease, where production is maintained. Anno: 100 ALR2d 901.

**thereby.** Because of; by reason of. *Hornbrook v Elm Grove*, 40 W Va 543, 21 SE 851.

**there is hereby granted.** Words importing a grant in praesenti and an immediate transfer of interest. *Okanogan County v Cheetham*, 37 Wash 682, 80 P 262.

**theretofore.** Before a certain time or the time of the occurrence of a known event. *Hamilton v State*, 129 Fla 219, 176 So 89, 112 ALR 1013.

**thereunto.** An elliptical form of expression for the phrase "to do that."

Hence, an agent "thereunto authorized in writing" is an agent who must be authorized in writing "to do that;" that is, for example, to execute a written contract for his principal. Anno: 27 ALR 612.

**thereupon.** Without delay or lapse of time. *Putnam v Langley*, 133 Mass 204, 205.

**thesaurus inventus.** Found treasure; treasure-trove.

**Thesaurus regis est vinculum pacis et bellorum nervus.** The treasury of the king is the bond of peace and the sinew of war.

"These maxims, it is said, should apply to the state, and her revenues should be protected with as much solicitude as those of the British king." *State v Foster*, 5 Wyo 199, 38 P 926.

**these presents.** Formal words for "this instrument," "this very instrument."

**thesmothete.** A law giver.

**thief.** A person who has committed the crime of larceny. One guilty of theft.

**thimbleric.** To cheat by means of prestidigitation.

**thimbles and balls.** A game of chance played with thimbles and a ball, success depending on designating the thimble under which the ball has been placed. 24 Am J1st Gaming § 28.

**thing.** See **things.**

**thing appendant.** A thing which is affixed or belongs to some more important thing. thing in action. Same as chose in action.

**thing of value.** Something having a monetary value. 17 Am J2d Contr § 95.

As the term is used in the law of larceny, it includes any tangible thing which the law recognizes as being property. Columbus Railroad Co. v Woolfolk, 128 Ga 631, 58 SE 152.

The term is defined, as it pertains to the subject of gambling, as any thing affording the necessary lure to indulge the gambling instinct. Painter v State, 163 Tenn 627, 45 SW2d 46, 81 ALR 173.

**things.** Inanimate objects. Gayer v Whelan, 59 Cal App 255, 139 P2d 763. As the subject matter of a bequest, effects, goods, assets, or property, dependent upon the intent of the testator as such appears from the will. Arnolds Estate, 240 Pa 261, 87 A 590.

See **rights of things**.

**things personal.** Goods, money, and all other movables, which may attend the owner's person wherever he cares to go. Transcontinental Oil Co. v Emmerson, 298 Ill 394, 131 NE 645, 16 ALR 507, 512.

**things real.** Such things as are permanent, fixed, and immovable, which cannot be carried out of their place, as lands and tenements. Transcontinental Oil Co. v Emmerson, 298 Ill 394, 131 NE 645, 16 ALR 507, 512.

**think.** See **I think**.

**Third Amendment.** An amendment to the Constitution of the United States, one of the Bill of Rights, forbidding the quartering of soldiers in time of peace in any house without the consent of the owner, and in time of war except as in a manner prescribed by law.

**third arbitrator.** An arbitrator called in by two original arbitrators to act in conjunction with them and thus break a deadlock. He is not an umpire, because he does not act alone. 5 Am J2d Arb & A § 85.

**third-class mail.** Circulars and books, and other printed matter not in first or second class; merchandise; seeds, bulbs, and plants. 41 Am J1st P O § 60.

**third cousin.** The child of a second cousin. A relative in the sixth degree according to the civil-law method of computing degrees of kinship which prevails in most American jurisdictions. Anno: 54 ALR2d 1012, § 1(b). Sometimes known as a second cousin once removed.

**third degree.** The employment of coercion, mental or physical, in obtaining a confession. People v Loper, 159 Cal 6, 112 P 720.

**third degree relative.** Under the civil-law method of computing degrees of kinship which prevails in most American jurisdictions, an uncle, aunt, nephew, niece, and great grandparent. Anno: 55 ALR2d 645, § 1[b].

See **degrees of kinship**.

**third house.** A facetious name for that which is nothing more nor less than an organized lobby. Common Council of Detroit v Rentz, 91 Mich 78, 51 NW 787.

**third parties.** All persons who are not parties to the contract, agreement, or instrument of writing, by which their interest in the thing conveyed is sought to be affected. Morrison v Trudeau (La) 1 Mart NS 384, 387. Persons other than original plaintiff or defendant but brought into the action.

See **bystander; third person**.

**third-party action.** A concept and the application thereof in modern practice under statute or rule of practice whereby the defendant in an action brings into the action a third person under allegation in an appropriate pleading that the third person is liable over to the defendant in reference to the cause of action asserted by the plaintiff, so that there may

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be determined in the one action the issues as between the plaintiff and the defendant and the issues as between the defendant and the person thus brought into the action by him.

**third-party beneficiary.** The beneficiary of a contract made between two other persons. 17 Am J2d Contr § 302.

**third-party beneficiary contract.** A contract for the benefit of a third person. 17 Am J2d Contr § 302.

**third-party claim.** A claim to property held under attachment as the property of the defendant in the action, made by a person not a party to the action. 6 Am J2d Attach §§ 572 et seq.

**third-party complaint.** The pleading of the defendant against a third person whom he seeks to bring into the action as a party because of an alleged liability over to the defendant.

See **third-party action.**

**third-party contract.** See **third-party beneficiary contract.**

**third-party plaintiff.** The defendant in an action who assumes the status of a plaintiff in bringing a third person into the action as one liable over him.

See **third-party action.**

**third-party practice.** A principle found in modern practice statutes and rules of practice whereby a defendant is permitted to bring into the action a person or persons who are liable over to the defendant, the efficacy and justice being that the several issues between the plaintiff and the defendant and between the defendant and the third person brought into the action will be determined at one time and by the same jury or trier of the fact.

See **impleader.**

**third-party summons.** A summons or notice by which a person not originally a party to an action is summoned to answer a third-party complaint.

**third-party technique.** Giving propaganda actually circulated by a party in interest the appearance of being spontaneous declarations of independent groups. *Eastern R. Presidents Conference v Noerr Motor Freight, Inc.* 365 US 127, 5 L Ed 2d 464, 81 S Ct 523.

**third person.** One not involved. A bystander. As a depository of an escrow:-a stranger to the instrument, not a party to it; a person so free from personal or legal identity with the parties to the instrument as to leave him free to discharge his duty as a depository to both parties without involving a breach of duty to either. 28 Am J2d Escr § 12.

The dictation of a letter otherwise libelous by the president of a corporation to his stenographer, in the course of the business of the corporation, is not a communication to a third person. *Globe Furniture Co. v Wright*, 49 App DC 315, 265 F 873, 18 ALR 772.

As the expression is used in the generally recognized rule that the acts of a de facto officer are valid as to "third persons," it means those persons having business of an official character with such officer, and not third persons in the usual legal sense in which the term is used. *State ex ref. Brockmeier v Ely*, 16 ND 569.

See **third parties.**

**third possessor.** One who buys mortgaged property without assuming to pay the mortgage.

If one buys real estate, and does not assume the payment of the first mortgage, he is bound only as a third possessor. He must either give up the property, or pay the amount for which it was mortgaged. This is the full extent of his responsibility as a purchaser. See *Thompson v Levy*, 50 La Ann 751, 752, 23 So 913.

**third rail.** An extra rail of an electric railroad, particularly a subway or elevated railroad, through which electric current for the propulsion of the car or train is supplied. *Riedel v West Jersey & S. R. Co.* (CA3 Pa) 177 F 374.

**thirlage.** The servitude of being required to have the grain raised on the land ground at a particular mill for which a certain payment was to be made.

**Thirteenth Amendment.** The Amendment to the United States Constitution which abolished slavery and established universal freedom in the United States. *Civil Rights Cases*, 109 US 3, 27 L Ed 835, 3Sct18.

**tholonium.** Toll.

**thorium.** A radioactive element. 42 USC § 2098(a).

**thorough.** Complete. Painstaking.  
See **toll thorough.**

**thoroughfare.** A passage through; a street or way open at both ends and free from any obstruction. *Mankato v Warren*, 20 Minn 144. A highway.  
See **main thoroughfare.**

**thorough repair.** Sufficient repair; repair sufficient to make the premises tenantable. 32 Am J1st L & T § 789.

**thousand.** Ten hundred; abbreviated "M."

**thousand-year lease.** A lease for a term of 1,000 years, a valid lease, except as terms are restricted by statute. 32 Am J1st L & T § 64.

**thread of stream.** The mean center line of the main channel of a stream or river. *Buttenuh v St. Louis Bridge Co.* 123 Ill 535, 17 NE 439. The middle line between the shores, irrespective of the depth of the channel, taking it in the natural and ordinary stage of the water, at its medium height, neither swollen by freshet nor diminished by drought. 12 Am J2d Bound § 28. Noting, however, that according to some authority, the thread of a non-navigable river is to be ascertained from the measurement of the water at its lowest stage. *Hardt v Orr*, 142 Neb 460, 6 NW2d 589.

**threat.** Words or conduct intended to intimidate. A means of duress. *Allen v Plymouth*, 313 Mass 356, 47 NE2d 284; *Fox v Piercey*, 119 Utah 367, 227 P2d 763.

In law, a threat is a declaration of an intention or determination to injure another person by the commission of some unlawful act. An intimidation is the act of making another person timid or fearful by such a declaration. If the act intended to be done is not unlawful, then the declaration is not a threat in law, and the effect thereof is not intimidation in a legal sense. *Payne v Western & Atlantic Railroad Co.* 81 Tenn (13 Lea) 507.

As to the effect of a threat as a breach of the peace, see 12 Am J2d Breach P § 12.

**threat by mail.** The indictable offense of using the mails for the transmission of threatening matter. 41 Am J1st P O § 111.

**threatened cloud.** An anticipated cloud on the title to property such as equity will take cognizance of in a suit to quiet title. 44 Am J1st Quiet T § 17.

**three days' grace.** See **days of grace.**

**threefold damages.** See **treble damages.**

**three-fourths clause.** A provision in a policy of insurance that the insurer shall not be liable for an amount greater than a stated part or percentage, usually three-fourths, of the actual cash value of the property insured. 29A Am J Rev ed Ins § 1547.

**three-judge court.** Any appellate court sitting with three justices in accordance with law. Any court having three qualified judges or justices, albeit court is actually held in one place and at one time by only one judge. In the most common sense of the term, a federal district court of three judges sitting on one case, as required in certain cases, particularly where an injunction is sought to restrain the enforcement of a statute or administrative order on the ground of unconstitutionality. 28 Am J Rev ed Inj § 252.

**three-judge federal district court.** See **three-judge court.**

**three-mile belt.** Same as **three-mile limit.**

**three-mile limit.** The territorial waters of a state on the sea coast are often so designated since they include a strip three nautical miles wide off shore. The width of the strip had its origin in the ordinary range of an ancient coast-defense cannon, estimated to be a marine league, that is, three nautical miles.

**three-mile zone.** Same as **three-mile limit.**

**thresher's lien.** A statutory lien for the value of services in threshing grain. 3 Am J2d Agri § 14.

**threshing machine.** A machine which separates grain from the straw, often called a separator. A machine, which, in its most complete form, beats the grain from the ears of cereals, separates the grain from the straw, and winnows it from the chaff. Cook v Massey, 38 Idaho 264, 220 Y 1088, 35 ALR 200, 205.

**threshing outfit.** A term familiar in the past but losing significance with the introduction of the combine. Engine, separator, and water wagon.

See **combine.**

**thrift payment.** A payment made to an employee pursuant to a thrift or savings plan. 31 Am J Rev ed Lab § 616.

**thrithing.** A riding.

See **riding.**

**through.** By way of. From end to end.

The word does not always mean from one end or side to the other end or side, but frequently means simply within; as I walked through the wilderness. See Provident Life & Trust Co. v Mercer County, 170 US 593, 602, 42 L Ed 1156, 1160, 18 S Ct 788.

**through an agent.** Acting by another. Anno: 45 ALR2d 587, § 3.

**through bill of lading.** A bill of lading where under a carrier agrees to transport the goods from the point of delivery by the shipper to a designated point of destination, although such transportation extends over the line of a connecting carrier. 13 Am J2d Car § 265.

**through carriage.** See **through route.**

**through error.** By mistake. Application of Byers, 43 Cust & Pat App (Pat) 803, 230 F2d 451, 457.

**through freight.** See **through bill of lading; through freight contract; through train.**

**through freight contract.** A contract between shipper and carrier for the shipment of goods from the initial point to the point of final destination, at a through rate, where such transportation extends over the line of a connecting carrier. Toledo, P. & W. R. Co. v Merriman, 52 Ill 123.

**through highway or street.** A public way at which vehicles approaching on intersecting highways or streets must stop before entering.

**through passenger.** See **through ticket; through train.**

**through passenger train.** See **local through train.**

**through rate.** The rate of a carrier for a shipment from point of receipt by the carrier to the ultimate destination, although the destination may be one which can be reached only by the employment of a connecting carrier. 13 Am J2d Car § 206. The rate from an originating point to the final destination, or to a gateway like Chicago, via a particular point.

Thus, on a shipment of grain from Enid, Oklahoma, to Chicago via Kansas City, the overhead through rate was 38.5 cents per hundred pounds. Board of Trade v United States, 314 US 534, 86 L Ed 331, 62 S Ct 366.

Through carriage implies a "through rate." This "through rate" is not necessarily a joint rate. It may be an aggregation of separate rates fixed independently by the several carriers forming the "through rate," as where the "through rate" is "the sum of the locals" on the several connecting lines, or is the sum of lower rates otherwise separately established by them for through transportation. See St. Louis Southwestern Railway Co. v United States, 245 US 136, 139, note, 62 L Ed 199, 205, note, 38 S Ct 49.

**through route.** The route for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of another. St. Louis Southwestern Railway Co. v United States, 245 US 136, 139, note, 62 L Ed 199, 205, note, 38 S Ct 49.

See **through rate.**

**through ticket.** A railroad ticket which entitles the holder, not only to passage over the line of the company issuing it, but also over other connecting lines over which it is necessary to pass in order to reach his destination. A through ticket does not require the passenger to make a continuous trip over all the lines without stopping. Louisville & Nashville Railroad Co. v Klyman, 108 Tenn 304, 67 SW 472.

See **coupon ticket; stopover privilege.**

**through train.** A train, whether a freight or passenger train, which makes stops at only certain selected and definite stations. Arizona Eastern R. Co. v State, 29 Ariz 446, 242 P 870.

**through transportation.** Transportation undertaken by a common carrier where the destination of the shipment is one to be reached by connecting carrier, being beyond the line of the contracting carrier. 14 Am J2d Car § 689.

See **through ticket.**

**thrown from vehicle.** A method of sustaining personal injury, particularly in reference to the coverage of an accident insurance policy. A hurling of the insured from the car so that thereafter the person and the car are on independent orbits of action and momentum, and the result is that the person is no longer within the vehicle. Jones v Federal Life Ins. Co. 124 Colo 106, 234 P2d 615, 24 ALR2d 1450.

As to scope of clause of insurance policy covering injuries sustained from being "accidentally thrown from" a vehicle, see Anno: 24 ALR2d 1454.

**thrown into bankruptcy.** Adjudicated a bankrupt by a court of competent jurisdiction. *Wilcox v Toledo & Ann Arbor Railroad Co.* 45 Mich 280, 282, 7 NW 892. Adjudicated a bankrupt in an involuntary proceeding. thrown out of vehicle.

See **thrown from vehicle.**

**thru.** Same as **through.**

**thumbing a ride.** See hitchhiker.

**thumbing the nose.** An historic and present-day sign of contempt.

**thumbprint.** A mark in a signature by mark. Anno: 114 ALR 1116.

See **fingerprints.**

**tick.** A blood-sucking insect which prays on cattle and sheep, and sometimes upon man, often responsible for the communication of disease. 4 Am J2d Am § 32.

**ticker.** An instrumentality of a broker's officer upon which market quotations are received. 24 Am J1st Gaming § 36.

**ticker tape.** A tape running out of a recording device, consisting of news items, racing results, box-scores of baseball games, market quotations, local, national, and international news, etc. *National Tel. News Co. v Western U. Tel. Co.* (CA7 Ill) 119 F 294.

**ticket.** The entire list of candidates of a particular political party. 26 Am J2d Elect § 207. The means of admission to a theater or other place of amusement. 4 Am J2d Amuse § 5. A railroad ticket, amounting, according to some authority to a mere receipt or token, but, according to other authority, to a contract between the holder and the carrier. 14 Am J2d Car § 811. A maritime contract for the transportation of a person on a ship. 48 Am J1st Ship § 351. A document evidencing a transaction commonly known in the stock-brokerage business as the "loan" of shares of stock and the return by the borrower to the lender of shares of stock "borrowed." *Provost v United States*, 269 US 443, 449, 70 L Ed 352, 353, 46 S Ct 152.

See **coupon ticket; general ticket; one-way ticket; round-trip ticket; subpoena ticket; theater ticket; through ticket.**

**ticket agency.** A place where tickets to theaters, stadiums, and other places of amusement and recreation may be purchased. An office maintained by two or more carriers wherein tickets for transportation of passengers upon any of their lines may be purchased.

**ticket agent.** An employee of a common carrier, serving primarily in selling tickets to prospective passengers at a station of the carrier. An employee of a ticket agency. ticket broker.

See **ticket agency; ticket scalping.**

**ticket office.** An office maintained by a carrier wherein prospective passengers may purchase tickets. 14 Am J2d Car § 800.

See **ticket agency.**

**ticket of leave.** Probation granted to a person convicted of crime, whereby he is permitted to go at large.

**ticket scalping.** The practice of buying a large number of tickets to a forthcoming athletic or theatrical event, with the purpose, often accomplished, of selling them at a profit. The business of buying and selling the return ends of excursion railroad tickets and tickets which have been partially used. *Ford v East Louisiana Railroad Co.* 110 La 414, 34 So 585. Brokerage in railroad tickets. *Hoffman v Northern Pacific Railroad Co.* 45 Minn 53, 55, 47 NW 312.

Dealing in railway tickets in the manner commonly known as "ticket scalping" is not against public policy, and a ticket so sold and purchased is not thereby rendered invalid, in the absence of a statute or of a rule or regulation, of which the purchaser is chargeable with knowledge, prohibiting such transfer. *Knecht v Cleveland, C. C. & St. L. R. Co.* 18 Ohio Dec 202, 6 Ohio NP NS 13.

**ticket speculator.** A person who sells theater or other tickets at an advance over the price charged by the management.

Speculation of this kind frequently leads to abuse, especially when the seating capacity is filled and but few tickets are left, so that extortionate prices may be exacted. *Collister v Hayman*, 183 NY 250, 76 NE 20.

**tickler.** An appointment book. A pad for memorandums made to aid the memory. Another term for **telltale**.

**tidal test.** A common-law test of navigability, the rule being that only those waters in which the tide ebbs and flows are to be classified as navigable waters. 56 Am J1st Water § 178.

**tidal waters.** Waters in which the tide ebbs and flows. *Chamberlain v Hemingway*, 63 Conn 1, 27 A 239. Perhaps all salt waters. Water coming in from the sea because of the rising-tide. Waters which rise and fall with the tides of the sea.

It is the rise and fall of the water, and not the proportion of salt water to fresh, that determines whether a particular portion of a stream is within tide water. *Atty. Gen. v Woods*, 108 Mass 436, 439.

**tide.** The ebb and flow of the sea upon the shore due to the attraction of the moon and sun.

See **flood-tide; high tide; low tide; mean high tide; mean low tide; neap tide**.

**tidelands.** Lands at the margin of tidal waters which are alternately covered and uncovered by the rise and fall of the tide, between the lines of mean high tide and mean low tide, or, as sometimes provided by statute, extreme low tide. 56 Am J1st Water § 448.

Tidelands are not divested of their classification or character as such by the mere fact that title thereto may have passed from the sovereign to the individual. *State v Van Vlack*, 101 Wash 503, 172 P 563.

**tide water.** See **tidal waters**.

**tideway.** Land between high and low-water mark on the shore where the tide ebbs and flows. *Re New York*, 217 App Div 587, 591, 217 NYS 359, 363.

**tie.** Noun: One of the wooden timbers upon which the rails of a railroad track are laid. Something that binds. A necktie. Verb: To fasten things together, as with a string, cord, or wire. To equal another in a contest in reference to points, scores, etc. To equal another candidate in number of votes received in an election.

As applied to an appointment by election, the word signifies a state of equality between two or more competitors for the same position. A tie is

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that which is tied. It is a knot. Hence, the object of providing for a casting vote, in case of a tie, is to untie the knot. *Wooster v Mullins*, 64 Conn 340, 30 A 144.

**tied-house evil.** A term characterizing the control of retail liquor dealers by manufacturers, wholesalers, and importers. 30 Am J Rev ed Intox L § 38.

**tiel.** Such.

**tiempo inhabit.** (Spanish.) A period of disability; a period of insolvency.

**tiends.** See **annuity of tiends.**

**tierce.** Same as **terce.**

**tiers.** Rows of seats or other objects, particularly at different heights.

See **terce.**

**tie slash.** The tops of trees the bodies of which have been used for making railroad ties. *Caldwell v United States*, 250 US 14, 18, 63 L Ed 816, 817, 39 S Ct 397.

**tie slashing.** See **tie slash.**

**tie vote.** An even vote in a legislative body. The exigency occurring when rival candidates for an elective office receive an equal number of votes. 26 Am J2d Elect § 315.

**tiger.** A large flesh-eating mammal of the cat family, native to Asia, tawny in general color, but having black stripes.

See **blind tiger.**

**tigni immittendi.** (Civil law.) The servitude or easement of projecting the beams of one's building into the wall of a neighbor.

**ignum.** (Civil law.) Building material.

**Tilden Act.** A New York statute passed in 1875 which authorized the bringing of actions by the state to recover unlawful gains made by the holders of state, county and city offices.

**till.** As a limit of time, the same as until. 52 Am J1st Time § 25.

**tillage.** The cultivation of land.

**timber.** A word of varied meanings, the meaning in a particular case to be ascertained from the entire context of the contract. 34 Am J1st Logs § 2. Standing trees. 34 Am J1st Logs § 2. Lumber, such as beams, rafters, planks, and other boards sawed from standing trees. *Alcutt v Lakin*, 33 NH 507. That sort of wood proper and suitable to be used for the construction of buildings, furniture, ships, etc. 34 Am J1st Logs § 2.

See **log timber; saw timber.**

**timber culture entry.** A settlement of an entryman on public lands of the United States under the provisions of an act to encourage the growth of timber on western prairies, approved March 3, 1873, and the various amendments thereto. *Hartman v Warren* (CA8 Minn) 76 F 157, 160.

**timberland.** Land covered with growing timber, especially land in the public domain. 42 Am J1st Pub L §§ 13, 14.

**timber license.** A license to enter upon land and to cut and remove timber. 34 Am J1st Logs §§ 43 et seq.

**timber measure.** A measurement of the circumference of a standing tree, the bark being included in the measurement. 34 Am J2d Logs § 23.

See **board foot.**

**timbering mine.** Placing timbers in a mine to support the roof of a tunnel or chamber.

**timber suitable for turpentine purposes.** Any timber, of whatever size, that is ordinarily used for the taking of turpentine, the size being determined by custom if one is shown to be applicable. *Dorsey v Clements*, 202 Ga 820, 44 SE2d 783, 173 ALR 509.

**time.** A concept related to motion, as one day for the complete rotation of the earth, a year for the complete revolution of the earth around the sun. A period of history. A period within the lifetime of a person, as a term of apprenticeship, even of imprisonment. A matter for computation according to rules of law. 52 Am J1st Time § 15.

See **reasonable time**.

**time and one-half.** Special compensation for extra work, rather than the regular rate of compensation. *State ex rel. Murray v Riley*, 45 Del 192, 70 A2d 712, 14 ALR2d 630.

**time bargains.** Gambling transactions by parties who never intend to buy or sell, but merely to speculate upon the future price of stocks or commodities by compounding for differences. 24 Am J1st Gaming §§ 66 et seq.

**time bill of exchange.** Same as **time draft**. 11 Am J2d B & N § 13.

**time certificate.** A memorandum evidencing wages earned.

**time certificate of deposit.** An instrument issued by a bank reciting that the person named therein has deposited in the bank the sum specified, payable to the order of himself on the return of the certificate properly indorsed, with interest, the sum to be left a stated period of time, usually six months or one year, and not to bear interest after the expiration of such period. 10 Am J2d Banks § 455.

**time draft.** An unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay at a fixed or determinable future time a sum certain in money to order or bearer. Uniform Negotiable Instruments Law § 126; UCC § 3-104(2)(a); 11 Am J2d B & N § 13.

**time immemorial.** Beyond the time of legal memory. An ancient time.

**time is of the essence.** The condition of performance of a contract within the time limited for performance by the terms of the contract. 17 Am J2d Contr § 332.

When it is said that time is of the essence, the proper meaning of the phrase is that performance by one party at the time specified in the contract or within the period specified in the contract is essential in order to enable him to require performance from the other party. It does not mean that delay will not give rise to a right of action against him. A breach of any promise in a contract, whether of vital importance or not will do that; nor does the phrase mean merely that time is a material matter, but that it is so material that exact compliance with the terms of the contract in this respect is essential to the right to require counter performance. *Williams v Shamrock Oil & Gas Co.* 128 Tex 146, 95 SW2d 1292, 107 ALR 269.

**timely.** Within the time required by contract or statute. *Wm. B. Scaife & Sons Co. v Commissioner* (CA3) 117 F2d 572.

**timely amendment.** An amendment of an income tax return filed by the taxpayer within the statutory

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period allowed for filing returns or within such extended time as the Commissioner may grant under the statute. *J. E. Riley Invest. Co. v Commissioner* (CA9) 110 F2d 655. An amendment of a pleading filed or served upon the adverse party within

the time permitted for amendments by statute or rule of court, or, in the case of an amendment by leave of court, within the time fixed by the court. 41 Am J1st PI §§ 289, 296.

**time marine policy.** See **time policy.**

**time of legal memory.** Within the period of recorded history, as distinguished from a remote period the events of which are unrecorded and accordingly unknown. For some purposes, in England, the beginning of the reign of Richard the First in 1189. 21 Am J2d Cost & U § 4 (involving duration of custom.)

**time of memory.** Same as **time of legal memory.**

**time of peace.** The period commencing with the legal end of a war, that is, with the exchange of peace treaties or the ratification of a peace treaty. 56 Am J1st War § 13.

In the United States, following a war, the time of peace begins when the President has by his proclamation announced that hostilities are at an end, and when Congress by its legislation has recognized the same fact. *McElrath v United States*, 102 US 426, 26 L Ed 189.

See **armistice.**

**time of war.** See **war.**

**time option.** An option which is to continue in force for a certain specified time.

**time out of mind.** See **time immemorial.**

**time paper.** An instrument for the payment of money at a time fixed by the instrument.

See **time draft.**

**time policy.** A policy of marine insurance which insures no specific voyage, but covers any voyage within the prescribed time of the policy, and the loss and damage the ship may sustain by the perils insured against within the limited period. *Wilkins v Tobacco Ins. Co.* 30 Ohio St 317.

**time schedule.** See **timetable.**

**time study.** Observing the carrying on of work in an industry with the idea of perfecting plans to perform the same work in a lesser number of man hours.

**timetable.** A time schedule of trains or other vehicles of a carrier, showing the time of arrivals and departures of particular trains, busses, or airplanes.

**time zone.** A belt of the earth's surface running from pole to pole created by an artificial division for the purpose of applying the system of standard time throughout the world, each belt or zone covering one hour of time, the time registered throughout an entire zone to be the same. 52 Am J1st Time § 3.

**timid.** Lack of confidence in one's self. Easily put in fear.

See **cautious.**

**Timores vani sunt aestimandi qui non cadunt constantem virum.** Fears are to be regarded as groundless which do not affect a man of firmness.

**tin.** A metal much used as an alloy. Pots, pans, and other utensils of the kitchen.

**tincture.** A drug in solution, as tincture of iodine.

**tip.** A gratuity given for personal service, as to a porter, table waiter, steward, etc. A part of the earnings of an employee where it is within the contemplation of the parties to the employment that it shall be retained by the employee as part of his compensation. 58 Am J1st Workm Comp § 314. A part of gross income for tax purposes.

It would seem that a tip may range from a pure gift of benevolence or friendship, to a compensation for a service measured by its supposed value but not fixed by an agreement. Most often the term is applied to what is paid a servant in addition to the regular compensation for his service, to secure better service, or in recognition of it. *Williams v Jacksonville Terminal Co.* (CA5 Fla) 118 F2d 324.

**tipple.** Verb: To indulge in alcoholic beverages. Noun: A place where open or gondola type railroad cars may be tipped by a mechanical device so that the contents fall out, the cars being thereby emptied and unloaded. A place where cars of coal brought to the pit mouth of a mine are loaded onto railroad cars or motor trucks. 36 Am J1st Min & M § 178.

**tippling house.** A place where intoxicating liquor is sold in small quantities to be drunk on the premises. 30 Am J Rev ed Intox L § 20. A barroom; a saloon; a grog-shop. *Leesburg v Putnam*, 103 Ga 110, 114.

**tipstaff.** A bailiff.

**tire marks.** The marks made by the tires of a vehicle as it is driven, often material evidence as to the speed or manner of operation of the vehicle. 8 Am J2d Auto § 958.

**tithable.** Subject to being taxed for tithes; liable for tithes; capable of yielding tithes.

**tithe rent-charge.** A rent-charge which was substituted by the Statutes 6 & 7, William IV, c. 71, for tithes.

**tithes.** Tenths; a species of incorporeal hereditaments, being the tenth part of the increase, yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants, due the church for the support of the clergy. See 2 Bl Comm 24.

See **commutation of tithes; composition of tithes; great tithes; infeudation of tithes; jactitation of tithes; mixed tithes; modus decimandi, et seq. ; parsonage tithes; personal tithes; praedial tithes; rate tithes; rectoral tithes; small tithes.**

**tithing.** A tenth of a hundred. A hundred was made up of ten tithings, each of which was composed of ten families, and it constituted a governmental district. See 1 Bl Comm 115.

**tithing-man.** Same as **tithing-reeve.**

**tithing-reeve.** The chief or constable of a tithing.

**title.** The legal estate in fee, clear of all valid claims, liens, and encumbrances whatsoever, or expressed differently, the ownership of land without any rightful participation by any other person in any part of it. *Porter v Noyes*, 2 Me 22. The union of all the elements which constitute ownership, at common law divided into possession, right of possession and right of property, the last two now, however, being considered essentially the same. *Carroll v Newark*, 108 NJ 323, 158 A 485, 79 ALR 509. The foundation of ownership; the basis of a person's right or the extent of his interest. The means whereby an owner is enabled to maintain or

assert his possession and enjoyment. 42 Am J1st Prop § 36. The right of an owner considered with reference either to the manner in which the property has been acquired or its capacity of being effectually transferred. 42 Am J1st Prop § 36.

Under the Uniform Stock Transfer Act, title means legal title and does not include a merely equitable or beneficial ownership or interest. *Lyons v Freshman*, 124 Mont 485, 226 P2d 775, 23 ALR2d 1165.

See **equitable title; legal title; ownership.**

**title bond.** A bond given to the purchaser of real property as security for the transfer to him of a good title to the property. *Goodman v Moore*, 22 Ark 191, 194.

**title by accession.** See **accession.**

**title by adverse possession.** See **adverse possession.**

**title by alluvion.** See **alluvion.**

**title by bankruptcy.** The title of the trustee in bankruptcy to assets of the estate in bankruptcy available for administration in bankruptcy and for distribution by payment of costs and expenses of the proceeding and distribution to creditors. *Re Lesser* (DC NY) 100 F 433, 436.

**title by cession.** The complete and unqualified title to all property possessed by the grantor vested in a nation under a treaty ceding territory to such nation, by which cession all real property passes to the grantee together with all buildings erected thereon by the grantor or by others with the grantor's permission-except such as belong to individuals who have acquired and preserved a right of removal. 30 Am J Rev ed Internal L § 44.

**title by conquest.** Title to territory acquired by one nation from another in open war. *Caldwell v State* (Ala) 1 Stew & P 327, 333.

**title by descent.** Title acquired by succession or inheritance upon the death of an owner.

See **descent.**

**title by discovery and occupation.** The title acquired by a nation when its citizens or subjects, in its name and by its authority or with its assent, take and hold actual, continuous and useful possession of territory unoccupied by any other government or its citizens. 30 Am J Rev ed Internal L § 42.

**title by limitation.** See **adverse possession; title by prescription.**

**title by prescription.** A title which may be acquired by use and time.

The elements of such a title are open, visible, and continuous use under a claim of right, adverse to and with the knowledge of the owner. While a title by prescription does not rest upon statutes of limitation, the courts incline to consider a prescriptive period as analogous to the time fixed by the law of the state as to limitations for commencing actions for the recovery of real property. See *F. C. Ayres Mercantile Co. v Union P. R. Co.*(CA8 Col o) 16 F2d 395, 399.

See **adverse possession; prescription; presumed grant.**

**title by purchase.** A title under any mode of acquiring an estate, except that of inheritance. *Delaney v Salina*, 34 Kan 532, 9 P 271, 276.

**title by record.** A title under judicial or other public record. A land title derived from the state; the title of a patentee of land or the immediate or remote vendee of a patentee. *Shaw v Robinson*, 111 Ky 715, 724, 64 SW 620.

Title by patent from the United States is title by record; and delivery of the instrument to the grantee is not essential to pass the title as in the conveyances by private persons. *Jesse v Chapman*, 68 Okla 199, 173 P 1044.

See **title of record**.

**title covenants.** Covenants ordinarily inserted in conveyances, being required by the purchaser as protection against insufficiency of title obtained by him from the vendor. 20 Am J2d Cov § 43. Covenants for title appearing in a lease.

A lessor's covenant for title must either be an express agreement or words must be used from which such an agreement can be implied; it has been held that the covenant does not arise from the mere relation of landlord and tenant. 32 Am J1st L & T § 268.

See **covenant against encumbrances; covenant for further assurance; covenant of good right to convey; covenant of quiet enjoyment; covenant of seisin; covenant of warranty**.

**title deed.** A deed constituting a part of the chain of title to real estate. 55 Am J1st V & P § 179.

**title document.** See **document of title**.

**title guaranty company.** A company engaged in the business of guaranteeing or insuring titles to real estate.

**title in fee simple.** Full and unconditional ownership.

Real property deeded to a person by warranty deed, but in fact for security only, would not be held by him by title in fee simple. First Nat. Bank v Moon, 102 Kan 334, 170 P 33.

See **fee simple**.

**title insurance.** A contract whereby the insurer for a valuable consideration agrees to indemnify the insured in a specified amount against loss through defect of title to real estate wherein the latter has an interest either as purchaser or otherwise. Fochrenbach v German-American Title & T. Co. 217 Pa 331, 66 A 561.

A policy of title insurance has been said to be a contract in the nature of a covenant against incumbrances. It differs, however, from a covenant of warranty and the rules applicable to such a warranty do not apply to the policy. Ordinarily no liability arises under such a policy except for actual loss sustained, but one already in possession claiming to be the owner when such a policy issues to him may recover thereon though he expends nothing, and hence suffers no loss in reliance on the policy, his loss occurring from a defect in the source of his title. 29A Am J Rev ed Ins § 1372.

**title note.** A promissory note given by the purchaser of personal property, containing a provision whereunder title to the property is reserved to the seller until the note is paid. 11 Am J2d B & N § 202.

**title of record.** Title to real estate appearing from an examination of the records of title and judicial records which have reference to the property or any part thereof. Sufficient in support of a plaintiff in ejectment where consisting of a regular chain of title from the government or some grantor in possession, or of a regular chain of title back to the common source from which both plaintiff and his adversary claim. 25 Am J2d Eject § 24.

It has usually been held that where a purchaser of land contracts for good record title, he will not be required to accept a title which depends upon

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adverse possession not disclosed by record, even though such a title might be otherwise marketable. Anno: 46 ALR2d 570.

See **title by record**.

**title of statute.** A heading in words given a statute for the purpose of calling attention to the subject matter of the act. The first part of a statute, often expressing the name by which it is to be known or cited and usually expressing the subject or object of the statute.

Formerly, the title of a statute was of little consequence, but since the adoption of state constitutional provisions requiring the subject or object of every act to be expressed in the title, the title has become not only a necessary part of the statute, but an important one. 50 Am J1st Stat §§ 159 et seq.

**title paramount.** A superior title. A better title.

See **eviction by title paramount.**

**title reservation contract.** A contract of sale whereby title to the property sold is reserved by the seller as security for the payment of the purchase price or such part of the purchase price as remains unpaid.

**title retaining note.** Same as **title retention note.**

**title retention note.** A note given by the purchaser of property, one of the terms of which provides for the retention of title in the seller until payment of the note. 11 Am J2d B & N § 202.

**title search.** An abstract of title. An examination of the abstract of title to premises and of records of title and judicial records pertinent to the property made by the attorney for a purchaser prior to the closing of the deal.

**title to office.** The right to exercise the functions of a public office and to receive the emoluments of the office.

**title to property.** See **title.**

**titulo.** A word commonly found in Spanish American grants, which is a nomen generalissimum, applied as well to title papers, which convey title, in the usual acceptation of the term, as to those which confer a mere right of occupancy. *De Haro v United States* (US) 5 Wall 599, 18 L Ed 681, 688.

**Titulus est justa cause possidendi id quod nostrum est.** Title is the just cause of possessing that which is ours.

**t-junction.** An intersection at which one of the highways meets the other but does not cross it. Anno: 53 ALR2d 861, § 5(b).

**to.** Toward. Until. 52 Am J1st Time § 25. Either inclusive or exclusive of the date or event which follows it, according to the intention manifest from the entire context. *Conway v Smith Mercantile Co.* 6 Wyo 327, 44 P 940. In describing a boundary, usually but not necessarily exclusive of the thing, such as a stream or highway, to which it has reference. 12 Am J2d Bound §§ 26, 52.

It is generally defined to be a word of exclusion, unless by necessary implication it must be held to be used in an inclusive sense. Thus, the word to, as used in a contract stipulating that deliveries of property were to be made up to a stated date, or in an order extending time to a certain day, is a term of exclusion. 52 Am J1st Time § 25.

**to advance money or materials.** See **advance.**

**to answer damages on another's behalf.** To pay debts of another. *Smolka v James P. Chandler & Son*, 41 Del 255, 20 A2d 131, 134 ALR 629.

**to arrive.** A term inserted in a contract for sale of goods, effective in making the contract conditional or contingent upon arrival. 46 Am J1st Sales § 201.

**to assume.** See **assume.**

**to assume and pay and save harmless.** Two distinct stipulations in a conveyance of mortgaged property, one for assumption of the mortgage by the grantee and the other for the indemnification of the grantor respecting such mortgage. 37 Am J1st Mtg § 999.

**tobacco.** A plant, the leaves of which are used by man, ordinarily after processing, for chewing, smoking, or snuffing. Not a drug. 25 Am J2d Drugs § 1. Not a food. *Gundling v Chicago*, 176 Ill 340, 52 NE 44.

**tobacco market.** A town having one or more tobacco warehouses is known as a market. *Townsend v Yeomans*, 301 US 441, 81 L Ed 1210, 57 S Ct 842.

**to be able.** To have the means, particularly the means of making payment. Anno: 1 ALR 530.

**to be performed.** See **performance**.

**to be the sole judge.** See **sole judge**.

**toboggan.** A sled without runners, coasting or being towed on the boards or other material which makes its bottom. *Illingworth v Madden*, 135 Me 159, 192 A 273, 110 ALR 1090.

**toboggan slide.** A steep hill or artificially constructed slide for toboggans, being put in use only when covered with snow. *Barrett v Lake Ontario Beach Improv. Co.* 174 NY 310, 66 NE 968.

**toft.** A vacant space of ground where a house formerly stood.

**toftum.** Same as **toft**.

**toga virilis.** The gown of manhood of the Romans.

Before the young men acquired this robe they were not permitted to bear arms, but were regarded as part of the father's household. Having acquired the robe, they were regarded as part of the community. See 1 Bl Comm 404.

**together with.** And also.

The expression is commonly used in descriptions of property in a deed, and when so used it imports a close and inseparable union between the preceding description and that which follows the expression. *Mitchell v D'Olier*, 68 NJL 375, 53 A 467.

The use of such words in designating particular property in a residuary clause of a will, generally distinguishes the designated property from the residue so as to make the legacy or devise of such property specific. Anno: 128 ALR 840.

**to have and to hold.** Formal words used in the habendum clause of a deed.

As used in a will, the words were construed to manifest an intention that the legatee named receive the property bequeathed into her custody and retain the same during the period named in the bequest. *Scott v Scott*, 137 Iowa 239, 114 NW 881.

**toilet.** A water closet; a bathroom.

**to indemnify and save harmless.** An engagement of indemnity, also effective in some contexts as an assumption of a mortgage debt. 37 Am J1st Mtg § 999.

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**token.** A symbol that betokens something; that is, that carries within itself that which it signifies. *Shelton v Erie Railroad Co.* 73 NJL 558, 66 A 403. A symbol of value purchased for money and used in place of money in payment of bus fare, telephone call, or charge for parking a motor vehicle.

For definition of the word as it pertains to slot machines played for amusement, see Anno: 148 ALR 894.

See **false token**; **railroad ticket**.

**to knowingly misrepresent.** To represent that which is not true with knowledge that the representation is false and with an intent to cause another to act to his prejudice upon such misrepresentation. *Hyde v United States*, 119 F 610, 119 CCA 493.

**tolerance.** A variation from a prescribed standard permitted by law in certain instances, particularly in reference to weights and measures. 56 Am J1st Wts & M § 49. Giving respect to the views and opinions of others, not so much in accepting them as sound, as in recognition of the right of another person to have views and opinions.

**to lie.** The note on an execution duly issued under signature of the clerk and ready for service, but not delivered to an officer for levy. *Davis v Roller*, 106 Va 46, 55 SE 4.

See **lie**.

**toll.** Verb: To suspend or interrupt the running of the statute of limitations. 21 Am J2d Crim L § 158; 34 Am J1st Lim Ac §§ 186 et seq. To lead away or entice, as to toll a hog with a sack of corn. Noun: A charge, as for milling or telephone service, and particularly for the use of a turnpike, toll road, or toll bridge. 54 Am J1st Turn & T R § 10. The charge of a ferryman. 35 Am J2d Ferr § 1. A charge for services of a public utility. A charge exacted for towage. Compensation for the use of another's property and of improvements thereon. *People ex rel. Curren v Schommer*, 392 Ill 17, 63 NE2d 744, 167 ALR 1347.

See **port toll**.

**tollage.** Toll; the payment of toll; the exaction of toll.

**toll bridge.** A bridge for the use of which a toll is collected. As a private instrumentality, a bridge built and maintained under public authority as a portion of the highway with which it is connected, dedicated to public use, subject only to the right of the proprietors to exact reasonable toll for such use.

Aside from the right of the company to collect tolls, a toll bridge does not differ from the ordinary highway constructed and maintained by the inhabitants of the district through which it passes. *Pittsburgh & West End Passenger Railway v Point Bridge Co.* 165 Pa 37, 41

See **pontage**.

**tollere.** (Civil law.) To raise; to lift up; to elevate; to take away; to carry away; to defeat.

**Tolle voluntatem et erit omnis actus indifferens.** Take away the will and every act will be indifferent.

**toll gate.** A gate erected upon a turnpike or toll road at which toll is collected from passing travelers; so constructed as effectively to bar passage when closed. 54 Am J1st Turn & T R § 6.

**toll house.** A house erected at or near a toll gate for the use and accommodation of the toll gatherer. 54 Am J1st Turn & TR § 6.

**tolling.** See **toll**.

**tolling statute.** The suspension or interruption of the statute of limitations by reason of circumstances such as absence of the defendant from the state, concealment to avoid the service of process, etc. 21 Am J2d Crim L § 158; 34 Am J1st Lim Ac §§ 186 et seq.

**toll road.** A highway for the use of which a toll is collected. 54 Am J1st Turn & T R § 2.

**toll service.** Telephone service in long distance communication for which a toll is charged.

**toll the entry.** To bar or defeat the right of entry.

**toll the statute.** See **tolling statute.**

**toll thorough.** A toll demandable by an express grant, by custom or prescription on a public highway, in a public port, or for the use of public property.

It is so called because the party claiming it is presumed to have had no original right to the place where he demands toll. *Charles River Bridge v Warren Bridge (US) 11 Pet Baldwin's Views 152, 9 L Ed 938, 947.*

**toll traverse.** A toll demanded for passing on or over the private property of the claimant, or using it in any other way. *Charles River Bridge v Warren Bridge (US) 11 Pet Baldwin's Views 152, 9 L Ed 938, 947.*

**toll turn.** A toll charged for bringing back unsold cattle from a market.

**tolnetum.** Toll.

**tolt.** A precept from the sheriff whereby the proceedings on a writ of right might be removed from a court-baron into the county court.

It was called a tolt because it tolled or took away and removed the cause from the court-baron. See 3 Bl Comm 34.

**tolta.** A wrong; an extortion.

**tome de razon.** See **testimonio.**

**to make one's law.** To deny under oath a criminal charge or accusation.

A litigant was anciently said to make his law when he was successful in a trial by compurgation.

**tomar razon.** See **testimonio.**

**tomb.** A chamber or vault, formed wholly or partly in the earth or entirely above ground, for the reception of the dead. *Re Byrne's Estate, 98 NH 300, 100 A2d 157, 47 ALR2d 591.*

**tombstone.** A stone raised at a grave or in a cemetery lot as a memorial to the person or persons buried there. 14 Am J2d Cem § 33.

**to mine.** See **mining.**

**to my use.** A phrase employed in a restrictive endorsement. 11 Am J2d B & N § 362.

**ton.** A unit of avoirdupois weight commonly understood as 2000 pounds, although technically such is a so-called short ton, the long ton being 2240 pounds. 21 Am J2d Cust D § 33.

**ton-mile tax.** A form of tax imposed in some jurisdiction upon contract motor carriers and private motor carriers for hire.

**tonnage.** The capacity of a vessel in respect of the amount of cargo which it can carry. Any measure in tons.

In commercial designation, the word means the

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number of tons burden a ship or vessel will carry, as estimated and ascertained by the official admeasurement and computation prescribed by public authority. The term has long been an official one intended originally to express the burden that a ship would carry, in order that the various dues and customs which are levied upon shipping might be levied according to the size of the

vessel, or rather in proportion to her capability of carrying burden. Hence, the term has become almost synonymous with the word "size." *Mobile Trade Co. v Lott* (US) 12 Wall 221, 20 L Ed 376, 377.

**tonnage duty.** A charge on a vessel, according to its tonnage, as an instrument of commerce, for entering or leaving a port, or navigating the public waters of the country; any tax for the bare privilege of entering a port and navigating the navigable waters of the state. 51 Am J1st Tax § 108. A tax levied upon a railroad at a specified rate per ton of all goods carried. 51 Am J1st Tax § 108. A tax or duty imposed on vessels as such, usually at a specified rate per ton of capacity or weight of registered tonnage, computed according to prescribed rules of admeasurement. 48 Am J1st Ship § 650.

**tonnage tax.** Same as **tonnage duty**.

**tonsillectomy.** The removal of tonsils by surgery. *Carroll v Missouri Power & Light Co.* 231 Mo App 265, 96 SW2d 1074.

**tonsura.** Tonsure.

**tonsure.** The shaving of the hair from the crown of a man's head.

Originally it was the law that no man should be admitted to the privilege of the clergy who had not the clerical habit and tonsure. See 4 Bl Comm 366.

**tontine company.** A company or association the members of which received life rents or annuities for life and the survivors prorated the share of each deceased member among them.

**tontine insurance.** See **tontine policy**.

**tontine policy.** Life insurance with the distinguishing characteristic of a survivorship provision, the policy being based upon an agreement whereby the survivor of a class of persons who contribute to a common fund and persist as paying members become, at the end of a specified period, entitled to divide the "surplus," the funds remaining after the payment of benefits, expenses, and the intermediate apportionment of profits. 29 Am J Rev ed Ins § 16.

The term is said to have come from the name of Tonti, an Italian, who originated tontine insurance in the seventeenth century.

**to occupy.** See **occupy**.

**tool.** A usable article employed as a means to effect a purpose in the execution of a design or the production of some result. Anno: 2 ALR 821. Confined, according to some courts, but not by others, to instruments worked by muscular power. 31 Am J2d Exemp § 51.

As to whether a motor vehicle is exempt from execution as a "tool," see Anno: 37 ALR2d 720.

**tools of trade.** Instruments or implements used in the trade, occupation, business, or profession of the owner. 31 Am J2d Exemp §§ 51 et seq.

As to whether a motor vehicle is exempt from execution as a "tool of a trade, calling, business, or profession," see Anno: 37 ALR2d 720.

**tooth.** A member of the body. *High v State*, 26 Tex App 545.

**top.** The highest part.

In mining law, the "apex" of a vein is sometimes called the "top." It is the top or terminal edge of the vein, on the surface, or the nearest point to the surface; it is the top of the vein proper, rather than of a spur or feeder, just as the highest point in the roof of a house would be taken to be the apex of the house, and not the chimney or flagstaff. Anno: 1 ALR 419.

**topography.** The characteristics of land in respect to surface features such as hills, streams, valleys, etc. 42 Am J1st Pub L § 59.

**to procure a purchaser.** See **procuring cause.**

**to read law.** To prepare for the profession.

"To read law," while not strictly a technical term to which a certain meaning must attach to the exclusion of all others, is yet an expression with a meaning known to lawyers. Among lawyers the expression means to take up the study of the law with the purpose of being admitted to the bar and practicing the profession. Its meaning is not confined to the preparatory course; but properly includes that reading of cases and textbooks of which every lawyer does more or less after his admission. *Benson's Estate*, 169 Pa 602, 604, 32 A 654.

**to regulate.** See **regulate.**

**tornado.** A violent storm distinguished by the vehemence of the wind. A windstorm featured by cyclonic or whirling winds of tumultuous force. 29A Am J Rev ed Ins § 1329. A violent windstorm, usually accompanied by a funnel-shaped cloud; an act of God. 1 Am J2d Act of God § 5. Not to be confused with the widely extended rotary storm known as a cyclone. *Queen Ins. Co. v Hudnut Co.* 8 Ind App 22, 26, 35 NE 397. Not to be confused with a hurricane.

It appears that for the purposes of insurance, the terms "hurricane," "tornado," and "windstorm" are often treated as synonymous. See **windstorm insurance.**

**tornado insurance.** See **windstorm insurance.**

**torpedo.** Noun: A projectile loaded with explosive employed against ships in war. Verb: To hit a ship with a projectile loaded with explosive. To lower and detonate a cartridge of explosive in an oil well for the purpose of releasing the oil from a pocket. 24 Am J1st Gas & O § 114. Slang: To prevent agreement by injecting new considerations.

See **signal torpedo.**

**torpedo doctrine.** Another expression for the doctrine of attractive nuisance. 38 Am J1st Negl § 142.

**Torrens Acts.** Statutes adopting the Torrens System of registration of land titles. 45 Am J1st Reg L T § 2.

**Torrens System.** A system for the registration of titles to land, whereby an official certificate always shows the state of the title and the person in whom it is vested, the name deriving from Sir Robert Torrens who drew the first Registration Act, such having been adopted in South Australia in 1858. 45 Am J1st Reg L T § 2.

The system spread to the other Australian states and territories, to other British possessions, and to Great Britain itself. With various modifications it has been adopted in several of the states in the United States, in several of the Canadian provinces, and in the Philippines. 45 Am J1st Reg L T § 2.

#### [1284]

**tort.** A wrong. *Hayes v Massachusetts Mut. Life Ins. Co.* 125 111 626, 18 NE 322. A wrong independent of contract. *International Ocean Tel. Co. v Saunders*, 32 Fla 434, 14 So 148. A breach of duty which the law, as distinguished from a mere contract, has imposed. *Western Union Tel. Co. v Taylor*, 84 Ga 408, 11 SE 396. An injury or wrong committed, either with or without force, to the person or property of another.

Such injury may arise by the nonfeasance, by the malfeasance, or by the misfeasance of the wrongdoer. *Gindele v Corrigan*, 129 111 582, 22 NE 516.

In a general way, a tort is distinguished from a breach of contract in that the latter arises under an agreement of the parties, whereas the tort, ordinarily, is a violation of a duty fixed by law, independent of contract or the will of the parties, although it may sometimes have relation to obligations growing out of, or coincident with a contract, and frequently the same facts will sustain either class of action. *Busch v Interborough Rapid Transit Co.* 187 NY 388, 80 NE 197.

Although the same act may constitute both a crime and a tort, the crime is an offense against the public pursued by the sovereign, while the tort is a private injury which is pursued by the injured party. 52 Am J1st Torts § 2.

**tortfeasor.** One guilty of a tort. A person who commits a tort; a wrongdoer.

See **joint tortfeasors**.

**tortious.** Partaking of the nature of a tort; wrongful; injurious. Characterizing conduct, whether of act or omission which is of such character as to subject the actor to liability under the principles of the law of torts. Restatement, Torts, Vol 1 § 6.

See **tort**.

**tortious conveyance.** A conveyance of the whole fee and not merely the right or estate which the grantor had the right to convey. Orndoff v Turman, 29 Va (2 Leigh) 200.

**torture.** The infliction of severe pain as a means of persuasion. Anno: 16 ALR 372. Torment by means of the rack, or other contrivances for inflicting physical pain, employed for the purpose of extorting confessions. See 4 Bl Comm 32.

**to save harmless.** An expression in an engagement of indemnity. Foster v Atwater, 42 Conn 244, 252.

See **to indemnify and save harmless**.

**to secure.** See **secure**.

**to settle.** See **settle**.

**to ship by.** See **ship**.

**tot.** Noun: A word written opposite an item in an account to indicate an approval of it. Verb: To total.

**tota curia.** The whole court, the court with all the justices present.

**total.** Noun: The whole amount; the entire quantity. Adjective: Constituting the whole of a thing. Complete; absolute; utter; entire. Verb: To ascertain an amount by addition. To equal a certain amount, considered in entirety.

**total and permanent disability.** See **permanent disability; total disability**.

**total breach.** An entire breach, a material breach, a breach of contract which goes to the whole consideration. 17 Am J2d Contr § 446.

**total contract price.** The entire amount paid, or agreed to be paid, by the purchaser.

The amount of a mortgage assumed by a purchaser of realty on an instalment sale must be excluded from the basis used for determining the proportion of the gain which is taxable in a given year. Burnet v S. & L. Bldg. Corp. 288 US 406, 77 L Ed 861, 53 S Ct 428.

**total dependent.** A person who has no means whatever by which to support himself. Utah Fuel Co. v Industrial Com. 80 Utah 301, 15 P 2d 297, 86 ALR 858.

**total destruction.** See **total loss**.

**total disability.** As an occurrence insured against, such a disability as renders the insured unable to perform all the substantial and material acts necessary to the prosecution of his trade, business, or occupation in a customary and usual manner, irrespective of the fact that he is not reduced to a state of absolute helplessness. 29A Am J Rev ed Ins § 1517. For the purpose

of workmen's compensation, a disability or incapacity which completely destroys the claimant's earning power so that he is not capable of performing any remunerative employment, subject however to the rule in some jurisdictions that the fact that an injured employee may be able to perform light work, or that some usefulness remains in an injured member, does not preclude a finding of total disability. 58 Am J1st Workm Comp § 283.

An insurer's liability for the payment of benefits for total disability rendering insured unable to engage in any occupation or perform any work for compensation is tested by whether insured is incapacitated to earn in any occupation to which he may reasonably be fitted and whether his remaining earning capacity bears a substantial relation to his natural or previous capacity to earn. *Patton v Prudential Ins. Co.* 181 Tenn 138, 178 SW2d 760, 1 ALR2d 750.

As the term is used in a health policy, it does not mean absolute physical disability on the part of the insured to transact any kind of business pertaining to his occupation. It may exist although the insured is able to perform occasional acts if he is unable to do any substantial portion of the work connected with his occupation. *Brotherhood of Locomotive Firemen & Enginemen v Aday*, 97 Ark 425, 134 SW 928.

The term must of necessity be relative in its signification, which depends largely upon the occupation and employment in which the disabled person is engaged. A person who labors with his hands might be so disabled by a severe injury to one hand as not to be able to labor at all at his usual occupation, whereas a merchant or a professional man might by the same injury be only disabled from transacting some kinds of business pertaining to his occupation. *Lobdill v Laboring Men's Mut. Aid Asso.* 69 Minn 14, 71 NW 696.

**total disability clause.** A clause in a health or accident policy, sometimes in a life insurance policy, providing for the payment of benefits in the event of the occurrence of the total disability of the insured. 29A Am J Rev ed Ins § 1504. A provision in a life insurance policy for waiver of premiums during the total or permanent disability of the insured. 29 Am J Rev ed Ins § 581.

**total disability for work.** Such disability as incapacitates one from performing the usual tasks of a workman in such a manner as to enable him to procure and retain employment. Anno: 67 ALR 786.

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See **total disability; total loss of business time.**

**total failure of evidence.** The utter absence of all evidence. The failure to offer proof, either positive or inferential, to establish one or more of the many facts, the establishment of all of which is indispensable to the finding of the issue for the plaintiff. *Cole v Hebb* (Md) 7 Gill & J 20, 28.

**total incapacity.** See **total disability.**

**total loss.** The complete destruction of the property covered by an insurance policy. The complete destruction of a building as a building, although not necessarily the extinction of all its parts as materials or such destruction that no part is left standing. 29A Am J Rev ed Ins § 1536. In marine insurance, a total and actual loss to the insured of the subject matter of the insurance; a destruction of the thing in specie, even though some of its component elements or parts may remain. 29A Am J Rev ed Ins § 1570.

There can be no "total loss" so long as the remnant of the structure standing is reasonably adapted for use as a basis upon which to restore the building to the condition in which it was before the injury; and whether it is so adapted depends upon whether a reasonably prudent owner, uninsured, desiring such a structure as the injured one was before the injury, would, in proceeding to restore the building to its original condition, utilize such remnant as such basis. *Royal Insurance Co. v McIntyre*, 90 Tex 170, 182, 37 SW 1068.

A building is "wholly destroyed" within the meaning of a statute providing that when an insured structure shall be wholly destroyed the amount of the policy shall be conclusive of the true value of the property when insured and of the true amount of the loss, where it has lost its specific character and ceased to exist as a building, although a portion of the foundation remains which might be used in rebuilding. *Grandview Inland Fruit Co. v Hartford F. Ins. Co.* 189 Wash 590, 66 P2d 827, 109 ALR 1472.

As the term is used in fire insurance, it means the complete destruction of the insured property by fire, so that nothing of value remains of it, as distinguished from a partial loss, where the property is damaged, but not entirely destroyed. This does not mean that the materials of which the building was composed were all utterly destroyed or obliterated, but that the building, though some part of it may be left standing, has lost its character as a building, and, instead thereof, has become a broken mass, or so far in that condition that it cannot properly any longer be designated as a building. When that has occurred, then there is a total destruction or loss. A total loss does not mean an absolute extinction. *Corbett v Spring Garden Ins. Co.* 155 NY 389, 50 NE 282.

See **constructive total loss**.

**total loss of business time.** Inability to work at one's specific occupation, regardless of ability to do other work. *Continental Casualty Co. v Wagner* (CA8 Mo) 195 F2d 936, 31 ALR2d 1216.

See **total disability for work**.

**total loss of eyesight.** A complete loss of eyesight; a loss of eyesight to the extent that one cannot distinguish colors or objects one from another in good light, although he can distinguish between light and darkness; in some contexts, loss of eyesight which disables one from pursuing his usual and customed occupation. 29A Am J Rev ed Ins § 1513.

**totally or substantially destroyed.** An effective destruction of buildings as such, not necessarily a complete annihilation. 32 Am J1st L & T § 506.

**total mental disability.** The state of a person whose mental faculties are entirely suspended. Anno: 24 ALR 214. More realistically, a total disability.

**total permanent disability.** See **permanent disability; total disability**.

**total physical disability.** The state of a person who has lost the power to move. Anno: 24 ALR 214. More realistically, a total disability.

**total repudiation doctrine.** The doctrine that a party to a contract who has repudiated the contract is precluded from asserting an arbitration clause in the contract. Anno: 3 ALR2d 394, § 4.

**toted.** See **tot**.

**to the account.** See **on account**.

**to the country whence they came.** To the country from which aliens last entered the United States; to the country in which is located the foreign port at which aliens last embarked for the United States or for foreign territory contiguous to the United States. 8 USC § 1253(a); 3 Am J2d Aliens § 94.

**to the credit of.** A form of restrictive indorsement. *Werner Piano Co. v Henderson*, 121 Ark 165, 180 SW 495.

**to the diligent belongs the reward.** A maxim supplanted in bankruptcy by the principle that equality is equity. *Re Wisconsin Co-operative Milk Pool* (CA7 Wis) 119 F2d 999.

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

**totidem verbis.** In so many words.

**toties quoties.** As often as it shall happen.

**toto.** The whole.

**toto genere.** In all of its kind.

**Totten Trust.** A trust created by a bank deposit made by one person of his own money in his own name as trustee for another, such being a tentative trust merely, revocable at will, until the depositor dies or completes the gift in his lifetime by some unequivocal act or declaration, such as delivery of the passbook or notice to the beneficiary. Anno: 38 ALR2d 1244 et seq.; 10 Am J2d Banks § 392; Restatement, Trusts 2d § 58.

A savings account deposit by one person of his own money in his own name as trustee for another, standing alone, is a tentative trust, revocable at will until the depositor dies or completes the gift in his lifetime. Re Rodgers' Estate, 374 Pa 246, 97 A2d 789, 38 ALR2d 1238.

**totum.** The whole.

**Totum praefertur unicuique parti.** The whole is preferred to any one part.

**touch at port.** To stop a vessel at a port. Audenreid v Mercantile Mut. Ins. Co. 60 NY 482.

**touching.** Arousing emotion. Contiguous.

See **contiguous.**

**toujours et uncore prist.** Now and always ready.

**tour.** A long trip, especially a trip for pleasure. A trip across and around the country in performance of duty or by way of following an occupation

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or profession, as in the case of a trip by an entertainer, an orchestra, or a theatrical company. A trip taken by persons in a group for the pleasure of travel, for instruction, or religious inspiration.

**tourist camp.** A place where wayfarers, particularly tourists traveling in motor vehicles, are provided a place to camp, with water, connections to electric lines, and toilet facilities, for compensation.

**tourist card.** A requirement made in some countries in lieu of a visa for a visitor from a foreign country making a short stay.

**tourist house.** A residence or dwelling wherein wayfarers, primarily tourists traveling in motor vehicles, are given lodging or lodging with breakfast.

**tourist's policy.** A policy of insurance covering personal effects usually carried by tourists and travelers. Tibbils v Federal Ins. Co. (Mun Ct App Dist Col) 119 A2d 114. A policy of insurance covering the luggage and personal effects of tourists against risk of loss by fire, lightning, and perils of navigation or transportation. Anno: 55 ALR 804.

**to use.** See **use.**

**to use and control as he thinks proper.** A phrase in a lease authorizing acts or conduct of the tenant which would otherwise constitute waste. 56 Am J1st Waste § 7.

**tour mes effets.** (French.) All my effects.

See **effets.**

**Tout ce que la loi ne defend pas est permis.** Everything which the law does not prohibit is allowed or permitted.

**tout temps grist.** He has always been ready. The common-law form of averring readiness to pay, in pleading a tender of payment. See 3 Bl Comm 303.

**to utter.** See **utter.**

**to utter and publish.** See **uttering and publishing counterfeit.**

**tout un sound.** All one sound.

**tow.** Verb: To draw something along a course, particularly a vessel. *Ryan v Hook* (NY) 34 Hun 185, 191. To pull a motor vehicle along a highway or street. 8 Am J2d Auto § 839. Noun: One or more vessels being towed or drawn. 48 Am J1st Ship § 488. An automobile or two or more automobiles in tandem being drawn on the highway.

Within the meaning of a clause in an automobile liability policy exempting the insurer from liability while the vehicle is being towed, a trailer attached to a truck is being towed although the vehicles have come to a temporary stop in the course of their journey. *Maryland Casualty Co. v Cross* (CA5 Tex) 112 F2d 58.

**towage.** The supplying of power by a vessel to tow or draw another. 48 Am J1st Ship § 488. A charge exacted for towing a vessel.

**towage lien.** A maritime lien for services rendered in towing the vessel. 2 Am J2d Adm § 124.

**towage service.** The employment of one vessel to aid in the propulsion or to expedite the voyage of another, when there is no circumstance of peril, and nothing more is required than the acceleration of her progress. *Stevens v The White City*, 285 US 195, 76 L Ed 699, 52 S Ct 347.

**toward.** Facing.

The word is of very comprehensive signification, for it means in the direction of. To shoot at a person means to shoot toward him; to shoot in the general direction of the person. Both "toward" and "at" are words of somewhat indefinite meaning and their general significance is usually controlled by the context in which they are used. State use of *Johnston v Cunningham*, 107 Miss 140, 65 So 115.

**towboat.** Same as **tugboat.**

**towed.** See **tow.**

**towel service.** See laundry supply service.

**towing.** See **tow.**

**to wit.** That is to say; namely. A videlicet.

See **videlicet.**

**towline.** The hawser, table, or rope by which a vessel is towed by a tug. 48 Am J1st Ship § 503. Any rope or chain used for towing.

**town.** A word with varied popular as well as technical meanings. Historically, a collection of houses enclosed by a wall, the word deriving from the Anglo-Saxon "tun." An incorporated municipality of limited population. 37 Am J1st Mun Corp § 5. In some jurisdictions, particularly the New England and northeastern states, the political subdivision known elsewhere as a

township. 37 Am J1st Mun Corp § 5. In a popular sense, an urban community or the section of a city where the retail stores, hotels, theaters, etc., are located, as illustrated by the familiar expression: "Go downtown."

See **township**.

**town apprentice.** A person articulated as an apprentice by the town authorities to keep him from becoming a charge upon the town.

**town board.** A board of supervisors or trustees vested with various powers in reference to the government of a town. 52 Am J1st Towns § 9.

**town council.** Same as town board.

**town farm.** A poor farm.

**town hall.** A building wherein town officers are located and wherein town meetings are held.

**Town Hall.** A term capable of acquiring a secondary meaning as the title of a literary work or theatrical performance. Anno: 23 ALR2d 308.

**town meeting.** A meeting of the electors of a town for the purpose of determining such matters pertaining to the prudential affairs of the town as they may lawfully determine; often referred to as the most effective demonstration of democracy in action. 52 Am J1st Towns § 11.

**town order.** See **warrant**.

**town pauper.** A pauper supported by a town.

**town recorder.** See **magistrate**.

**township.** A political subdivision vested with certain powers of local government. 52 Am J1st Towns § 2. A territorial subdivision for school purposes, known as a school township. *W. H. Dreves, Inc. v Oslo School Township*, 217 Ind 388, 28 NE2d 252, 128 ALR 1505. A territory six miles square surveyed by the government for the purpose of entry and sale as public lands, often called a congressional township. 52 Am J1st Towns § 2. In some states, the equivalent of town. 37 Am J1st Mun Corp § 5.

See **town**.

**township board.** A board of supervisors or trustees

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vested with various duties in the government of a town. 52 Am J1st Towns § 9.

**township trustee.** One of the public officers in charge of the affairs of a town. 52 Am J1st Towns § 15. A member of the town or township board. 52 Am J 1 st Towns § 9.

**townsite.** A tract of land segregated from the public domain under proper authority and by proper procedure as the site for a proposed town. *Rice v Colorado Smelting Co.* 28 Colo 519, 66 P 894. The reservation from public lands of space for a town on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective center of population. 43 USC § 711. Broadly, the location selected for a proposed town.

**town warrant.** See **warrant**.

**town way.** Any street, lane, alley, road, or other highway in a town or city, which the public has a right to use, irrespective of the origin of the way. *Parks v Boston*, 25 Mass (8 Pick) 218.

**toxicologist.** A physician having special knowledge relative to poisons and treatment of sickness caused by a poison. Anno: 135 ALR 885. A person versed in the science of toxicology. *State v Cook*, 17 Kan 392, 394.

**toxicology.** A science which includes the effect of poisons upon the human system. *State v Cook*, 17 Kan 392, 394.

**tp.** An abbreviation of **township**.

**T. R.** Abbreviation of tons registered, having reference to a vessel.

**traced copy.** A copy made by placing transparent paper over a signature or other writing and tracing the signature or other writing thereon. *Howard v Russell*, 75 Tex 171, 12 SW 525. A mechanical copy or facsimile of an original map, document, or drawing, produced by following its lines, with pen or pencil, through a transparent medium, called tracing paper. *Chapman v Ferry* (CC Or) 18 F 539, 540.

**tracing funds.** Following or identifying particular funds after such have been mingled with other funds.

See **following trust fund or property**.

**tracing heirs.** See **heir hunter**.

**tracing person.** See **heir hunter; trailing**.

**tracing trust fund.** See **following trust fund or property**.

**track.** An imprint left by the foot of a person, or by the wheel of a vehicle, on the ground, even at times, upon pavement. 29 Am J2d Ev § 377.

See **railroad track; sidetrack; streetcar track; trackage**.

**trackage.** The tracks of a railroad or railroad system, considered in their entirety.

The word is sometimes used as referring to the right to construct and operate railroad tracks on the streets or other public grounds of a city. *St. Paul v Chicago, Milwaukee & St. Paul Railway Co.* 63 Minn 330, 63 NW 267, 65 NW 649, 68 NW 458.

**trackless trolley.** A means of public transportation operating, with electric power conveyed through an overhead line as in the case of streetcars, but not on rails, the vehicle being able to move from the thread of the street to the curb line for the convenience of passengers boarding and departing.

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

**Tractent fabrilia fabri.** Let smiths perform smithcraft.

**tract index.** An index of records of title according to the description of the property conveyed, mortgaged, or otherwise encumbered. 45 Am J1st Reeds § 78.

**traction engine.** A means of motive power seldom seen in the present day, being a steam engine used to pull plows or heavy loads on the highway.

See **tractor**.

**tractor.** A motor-powered vehicle with cab for the driver, used for hauling vans or trailers. An engine having traction, powered by gasoline or diesel fuel, used for moving heavy objects and in pulling plows and other implements of agriculture.

A farm tractor is not a motor vehicle within the meaning of a statute providing for constructive or substituted service on a nonresident motorist. Anno: 48 ALR 1284.

**tractor-trailer.** A vehicle on the highway consisting of tractor and trailer in combination.

**tradas in ballium.** Deliver you to bail, --a writ which lay to admit to bail a person who had been found under a writ de odio et atia to have been maliciously imprisoned.

See **de odio et atia**. In its broadest significance, any bargain or sale. See *May v Rice*, 101 US 231, 239, 25 L Ed 797, 800.

**trade.** An exchange of one commodity, article, or piece of real or personal property for another, sometimes including the addition on the one side of an amount of money known as boot. 30 Am J2d Exch P § 1. An occupation or calling; any ordinary occupation or business whether manual or mercantile. *State v Cuthrell*, 235 NC 173, 69 SE2d 233. Any occupation or business carried on for subsistence or profit. *Re Pinkney*, 47 Kan 89, 27 P 179; *Campbell v Motion Picture Machine Operators' Union*, 151 Minn 220, 186 NW 781, 27 ALR 631. Any employment in which one is engaged to procure a living or in which he habitually earns his living. 31 Am J2d Exemp § 51. A term implying a more or less continuous or habitual engagement in certain lines of industry, employment, or activity. 58 Am J1st Workm Comp § 82.

Commerce generally. *May v Sloan*, 101 US 231, 25 L Ed 797. Exchange or dealing of any kind, but more especially the barter or purchase and sale of goods, wares and merchandise, either by wholesale or retail. Anno: 76 L Ed 1210. Buying and selling, even a sale of land. *May v Sloan*, 101 US 231, 25 L Ed 797.

The term as used in the Sherman Anti-Trust Act is not synonymous with the word "commerce," "trade" being of more restricted import than the word "commerce." 36 Am J1st Monop etc § 157.

Commerce relates to dealings with foreign nations; trade, on the contrary, means mutual traffic among ourselves, or the buying, selling, or exchanging of articles between members of the same community. *Hooker v Vandewater* (NY) 4 Denio 349.

The word "trading" is the equivalent of the word "dealing" as applied to goods, wares, merchandise, and commodities, which words, in mercantile language, are always used with reference to corporeal substances, and never to mere choses in action. *Fleckner v Bank of the United States* (US) 8 Wheat 338, 353, 5 L Ed 631, 634.

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**trade acceptance.** Commercial paper. *Continental Nat. Bank & Trust Co. v Stirling*, 65 Idaho 123, 140 P2d 230, 149 ALR 314. A draft or bill of exchange, drawn by the seller on the purchaser of goods sold, and accepted by such purchaser, the purpose of the transaction being to enable the seller to raise money upon the paper before the obligation of the purchaser matures under the terms of sale. *Legal Discount Corp. v Martin Hardware Co.* 199 Wash 476, 91 P2d 1010, 129 ALR 420. A form of obligation revived in this country under the regulations of the Federal reserve bank board. *Atterbury v Bank of Washington Heights*, 241 NY 231, 239, 149 NE 841.

**trade agreement.** See **collective labor agreement**.

**trade association.** A classification of voluntary unincorporated associations; an association organized for the purposes of trade. 6 Am J2d Asso & C § 2. An association of persons in the same trade or industrial operation for the purpose of gathering and disseminating information useful to their members, particularly in the stabilization of production and prices. 36 Am J1st Monop etc § 86.

**trade building.** A structure used in carrying on any trade or manufacture.

**trade combination.** See **monopoly; restraint of trade**.

**Trade Commission.** A federal agency established by the Federal Trade Commission Act and empowered and directed by such Act to prevent the use of methods, acts or practices declared unlawful by the Act. 52 Am J1st Tradem § 198. An agency established by the Federal Trade Commission Act as an agency for the enforcement of such statute, including the gathering and compiling of information concerning, and the investigation of the organization, conduct, practices, and management of, certain corporations, and the administration and enforcement of the Federal Antitrust Laws. 52 Am J1st Tradem § 203. A quasi-judicial tribunal, the orders of which are administrative orders as distinguished from judicial decrees. *National Candy Co. v Federal Trade Com.* (CA7 Ill) 104 F2d 999.

**Trade Commission Act.** A federal statute, enacted in 1914, establishing the Federal Trade Commission, declaring unfair methods of competition and unfair or deceptive acts or practices in commerce to be unlawful, and empowering the Trade Commission to prevent the use of such methods, acts, or practices. 15 USC §§ 41 et seq.; 52 Am J1st Tradem § 198. The act of February 9, 1893, passed by Congress to prevent persons, partnerships, or corporations from using unfair methods of competition in commerce between the states and with foreign nations, between the District of Columbia and any state, territory, or foreign nation and within the District of Columbia. *Federal Trade Com. v Klesner*, 274 US 145, 71 L Ed 972, 47 S Ct 557.

**trade custom.** See **trade usage.**

**trade discount.** A discount allowed a dealer because of his status as a dealer.

**trade dispute.** A controversy between an employer and his employees as to terms and conditions of the employment. 31 Am J Rev ed Lab § 369.

As to meaning of the term as it appears in provisions of the Social Security or Unemployment Compensation Acts relative to disqualification for benefits, see Anno: 154 ALR 672.

**Trade Expansion Act.** A federal statute of 1962 the purpose of which is to stimulate the economic growth of the United States and maintain and enlarge foreign markets for the products of United States agriculture, industry, mining, and commerce, such stimulation to be accomplished through trade agreements with foreign countries. 19 USC §§ 1801-1991; 21 Am J2d Cust D § 19.

**trade fair.** See **trade show.**

**Trade Fair Act.** A federal statute of 1959 providing for the granting of certain privileges relative to the trade fair to be held in the United States, particularly the admission into the United States from a foreign country of articles to be exhibited at such fair, without the imposition of customs duty or internal revenue tax upon such article. 19 USC §§ 1751-1756.

**trade fixture.** An article annexed by a lessee to the real estate to aid him in carrying on his trade or business on the premises. *Ray v Young*, 160 Iowa 613, 142 NW 393. A structure or chattel annexed to the freehold for the purpose of trade or manufacture. *In re Shelar* (DC Pa) 21 F2d 136; *Ward v Town Tavern*, 191 Or 1, 228 P2d 216, 42 ALR2d 662. An article annexed to the realty by a tenant for the purpose of carrying on a trade or business, not exclusively agricultural. *Frost v Schinkel*, 121 Neb 784, 238 NW 659, 77 ALR 1381. Property which a tenant has placed on the rented real estate to advance the business for which the realty is leased, and which may, as against the lessor and those claiming under him, be removed at the end of the term. *John P. Squire & Co. v Portland*, 106 Me 230, 76 A 679. Such a chattel as merchants usually possess and annex to the premises which are occupied by them in order to enable them the better to store, handle, and display their goods and wares, such as counters, shelves, showcases, scales, etc. 37 Am J2d Frd Conv § 254.

**trade-in.** An old or used article or machine turned in as part of the purchase price of a new article or machine, particularly in the automobile and home appliance business. 30 Am J2d Exch P § 3.

**trade-in allowance.** The amount allowed by an automobile or appliance dealer to a purchaser for his automobile or appliance turned in as part payment of the purchase price of a new automobile or appliance.

**trade information.** Information interchanged between persons engaged in the same trade or industrial operation.

**trade-in value.** See **blue book; trade-in allowance.**

**trade journal.** See **trade publication.**

**trade libel.** False words published of and concerning a person which tend to prejudice him in his business, profession, occupation, or employment in such manner and to such extent that, as a necessary consequence, they prevent him from obtaining therefrom that pecuniary reward which, probably, he otherwise would have obtained. 33 Am J1st L &S§63.

**trademark.** A sign, device, or mark by which the articles produced or dealt in by a particular person or organization are distinguished or distinguishable from those produced or dealt in by others. 52 Am J1st Tradem § 2. A mark entitled to registration under the federal statute relating to the registration of trademarks, whether registered or not. 15 USC § 108.

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**trademark infringement.** See **infringement of trade mark.**

**tradename.** A name, word, or phrase employed by one engaged in business, as a means of identifying his products, business, or services, and of establishing good will. A name involving the individuality of the producer of or dealer in goods, used by him for protection in trade, to avoid confusion in business, and to secure the advantages of a good reputation as a producer or dealer. 52 Am J1st Tradem § 3. Sometimes referred to as a quasi-trademark. *Vonderbank v Schmidt*, 44 La Ann 264, 10 So 616. A part or all of a firm name or corporate name or abbreviation thereof, serving to some extent the same purpose as a trademark. 52 Am J1st Tradem § 3.

**tradename infringement.** See **infringement of tradename.**

**trade publication.** A publication of special interest to the members of a particular trade or industry, such as printing, the making of clothing, the manufacture of automobiles, the milling of flour, etc. 29 Am J2d Ev § 892.

**trader.** One who sells goods substantially in the form in which he bought them and who has not converted them into another form of property by his skill and labor. 51 Am J1st Tax § 320. A person who makes it his business to buy merchandise, goods, or chattels and sell the same at a profit. *State v Rosenbaum* 80 Conn 327, 68 A 250.

See **feme sole trader; treaty trader.**

**trade route.** A route followed by a dealer, such as a milk dealer, in delivering the product to regular customers. 28 Am J Rev ed Inj § 103.

**trade secret.** Information respecting the business or process of production of a dealer or producer, of special value to him in reference to competitors. 52 Am J1st Tradem § 118. Secrets of any character peculiar and important to the business of the employer which have been communicated to an employee of the employer in the course of a confidential employment. 35 Am J1st M & S § 96. Information relative to an industrial process or the conduct of a business, known only to the owner and those of his employees to whom it is necessary to confide if the fact known is to be made of value or, at any rate, not available to the trade generally. 28 Am J Rev ed Inj § 72.

**trade show.** An exhibition of local, state, or national, or international, scope, wherein the manufacturers or dealers exhibit their products of a particular line such as automobiles, motorboats, computers, etc.

See **Trade Fair Act.**

**trade slander.** Same as trade libel except that the defamatory words are spoken instead of published. 33 Am J1st L & S § 63.  
See **trade libel**.

**tradesman.** A man who follows a particular trade. A man engaged in business, as distinguished from a professional man.

In England, the word would seem to be principally used as expressive of a person engaged in traffic as a small shopkeeper; but in this country, it embraces a much larger class. Here it is seldom applied to persons engaged in the business of buying and selling, but is generally accepted as signifying mechanics and artisans of every kind whose livelihood depends upon the labor of their hands. *Richie v McCauley*, 4 Pa 471, 472.

**trade slogan.** A slogan employed as a trade name. *Yellow Cab Co. v Sachs*, 191 Cal 238, 216 P 33, 28 ALR 105. Apt words identifying a business by reference to the activities therein.

**trade talk.** Same as **seller's talk**.

**trade terms.** Words, phrases, and expressions having a meaning peculiar to a particular trade, for example, the term "working a street," familiar in the parlance of door-to-door salesmen. *Re Curtis*, 64 Conn 501, 30 A 769.

See **trade-name**.

**trade trust.** A monopoly or unlawful combination in the form of a trust for the control of prices in a particular business or trade. 36 Am J1st Monop § 19.

**trade union.** Broadly, a labor union, an association of workers which exists for the purpose, in whole or in part, of bargaining on behalf of workers with employers about the terms or conditions of employment. Restatement, Torts § 778. In a restricted sense, a labor union organized on a craft basis, composed of workers engaged in a common occupation, although often employed by different employers. 31 Am J Rev ed Lab § 13.

**trade usage.** A uniform course of conduct followed in a particular trade, calling, occupation or business. Any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. UCC § 1-205(2).

**tradidi.** I have leased.

**trading.** See **trade**.

**trading bank.** A commercial, as distinguished from, a savings bank.

**trading contract.** A business contract. A contract between persons engaged in business.

**trading corporation.** A kind of business corporation. A corporation the chief business of which is to buy and sell for profit goods and chattels.

The following have been held not to be trading corporations: a warehouse company, a company to buy and sell stocks and bonds, a fire insurance company, a building and loan association, a water company, a laundry company, a transportation company, a forwarding company, a public library, a social club, a mining company. See *United States Hotel Co. v Niles* (CA6 Ohio) 134 F 225.

**trading firm.** See **trading corporation; trading partnership**.

**trading in dormant titles.** A form of maintenance of which cognizance has been taken by statute, the first statute on the subject being that of 32 Henry VIII, chapter 9, 14 Am J2d Champ § 11.

**trading partnership.** A commercial partnership; a partnership organized for the purpose of trade or commerce.

If the business of a partnership, according to the usual mode of conducting imports, in its nature, the necessity of buying and selling, the firm is properly regarded as a trading or commercial partnership otherwise it is nontrading or noncommercial. 40 Am J1st Partn § 12.

**trading stamp.** A stamp given by way of a premium upon the purchase of merchandise, redeemable in merchandise according to a previously arranged plan. A memorandum in writing given by a merchant to a customer upon the purchase of and pay

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ment for goods in cash, which expresses in money value a small percentage of the price of the goods bought and paid for, and entitles the recipient, after he has accumulated a certain number of such memorandums, often known as coupons, to use them, to the extent of their designated value, in payment for any other goods of the merchant which he may afterward desire, or goods of some other person or trading company that has undertaken to redeem the coupons. 52 Am J1st Trad St § 2.

In its ultimate analysis the use of trading stamps by a merchant is simply a form of advertising, resorted to for the purpose of increasing trade; merely an instrumentality or incident of a business, not a business in itself in the commercial sense. 52 Am J1st Trad St § 3.

**trading-stamp license.** An exaction upon trading stamps or trading stamp schemes for the purpose of regulation, revenue, or both. 52 Am J1st Trad St § 12.

**trading value.** See **blue book; speculative or trading value; trade-in allowance.**

**trading with the enemy.** Commercial intercourse with a subject of a nation with whom the United States is at war, whether proximate or remote, direct and personal, as between principal and principal, or through the intervention of an agent. 56 Am J1st War § 108. Carrying on commercial intercourse in time of war with a subject of enemy nationality or a loyal or neutral subject voluntarily residing in hostile territory or carrying on business therein. 3 Am J2d Aliens § 174.

**Trading With the Enemy Act.** A federal statute interdicting trading and commercial intercourse with enemies and allies of enemies, except with license of the President. 50 USC Appx §§ 1 et seq.; *Propper v Clark*, 337 US 472, 93 L Ed 1480, 69 S Ct 1338, reh den 338 US 841, 94 L Ed 514, 70 S Ct 33.

**traditio brevis mantis.** (Civil law.) The delivery of goods by mere consent, unaccompanied by any physical act. See Mackeldey's Roman Law § 284.

**traditio clavium.** (Civil law.) The delivery of the keys,-that is a symbolic delivery of a thing by a tradition of the key to its enclosure. See Mackeldey's Roman Law § 284.

**Traditio loqui facit chartam.** Delivery gives voice to a deed.

**tradition.** Knowledge, belief, or practices transmitted orally from father to son, or from ancestors to posterity.

When applied to pedigree, some authorities treat "tradition," "repute" and "reputation" as convertible terms. They mean such declarations and statements respecting the pedigree as have come down from generation to generation from deceased relatives in such away that even though it cannot be said or determined which of the deceased relatives originally made them, or was personally cognizant of the facts therein stated, yet it appears that such declarations and statements were made as family history ante litem motam, by a deceased person, connected by blood or marriage with the person whose pedigree is to be established. *Re Estate of Hurlburt*, 68 Vt 366, 35 A 77.

The word "tradition" as used in the civil law means "delivery." *Keepers v Fidelity Co.* 56 NJL 302, 28 A 585.

**traditional law.** The common law.

**Traditionibus dominia rerum, non nudis pactis, transferuntur.** The ownership of things is transferred by delivery, not by naked promises. See 2 Bl Comm 312.

**traditio nihil aliud est quam rei corporalis de persona in personam, de manu in manum, translatio aut in possessionem inductio; sed res incorporates, quae sunt ipsum jus rei vel corpori inhaerens, traditionem non patiuntur.** Livery is nothing but the transfer or the induction into possession of a corporeal hereditament from person to person, from hand to hand; but an incorporeal hereditament, which is the right itself to a thing or inherent in the person does not permit of livery. See 2 Bl Comm 317.

**Traditio nihil amplius transferre debet vel potest ad eum qui accipit, quam est apud eum qui tradit.** (Civil law.) Delivery ought to and can transfer nothing more to him who receives it than is in the possession of him who delivers.

**traditio rei.** The delivery of the thing.

**traditor.** A traitor, a person who commits treason.

**traditur in ballium.** He is delivered to bail.

**traffic.** The movement of vehicles upon the highways and streets. The operations of a carrier in transporting freight and passengers. Buying and selling; commercial intercourse. The passing of goods or commodities from one person to another for an equivalent in goods or money. *Williams v Fears*, 110 Ga 584, 35 SE 699.

See **liquor traffic**.

**traffic car.** A vehicle powered by a motor, having three wheels, two in the rear joined by an axle, with a single wheel in front, and a chassis upon which a body is installed like that of an ordinary small truck, the driver occupying a saddle and being protected from the weather in front by a windshield. *Womack v Life & Casualty Ins. Co.* (La App) 184 So 357.

**traffic circle.** An intersection, sometimes involving several streets, intended to facilitate traffic in moving from one street to another by being arranged and posted for movement of vehicles one way and in a circle. 7 Am J2d Auto § 203.

**traffic contract.** A contract between railroad companies respecting the operations of the one in reference to the operations of the other, often granting the privilege to the one of running its trains over the tracks of the other. 44 Am J1st RR § 375.

**traffic control devices.** Signal lights, stop signs, caution signs, etc. on street or highway.

**traffic court.** A municipal or police court exercising jurisdiction over traffic offenses. A court having special jurisdiction over traffic offenses. *Johnson v Virginia*, 373 US 61, 10 L Ed 2d 195, 83 S Ct 1053.

**traffic infraction.** The violation of a statute or ordinance respecting traffic on street or highway, usu-

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ally of a minor nature. *Ando v Woodberry*, 8 NY2d 165, 203 NYS2d 74, 168 NE2d 520.

**traffic lanes.** Longitudinal divisions of a highway or street made to separate traffic moving in opposite directions, and in the case of four lanes, to separate fast moving from slow moving traffic in the same direction.

**traffic offense.** A violation of a statute or ordinance in reference to the manner of operation of vehicles upon street or highway. 7 Am J2d Auto §§ 168 et seq. A public offense. *Smith v Hubbard*, 253 Minn 215, 91 NW2d 756.

**traffic officer.** A policeman or other officer of the law posted particularly for the purpose of controlling traffic on street or highway and arresting persons who violate traffic laws.

**traffic pool.** See **pool.**

**traffic regulations.** Regulations prescribed by statute or ordinance for the operation of automobiles and other vehicles upon the public highways. 7 Am J2d Auto §§ 168 et seq. Rules and regulations prescribed by law regarding the rights of vehicles and persons meeting or passing in a highway. 25 Am J1st High § 205. Regulations prescribed by law for the operation or navigation of boats. 12 Am J2d Boats §§ 14-19.

See **air traffic rules; rules of the road.**

**traffic rules.** See **traffic regulations.**

**traffic violation.** A violation of a statute or ordinance regulating the operation of motor vehicles.

See **traffic infraction.**

**trahens.** One drawing; the drawer of a bill of exchange.

**trahere.** To draw.

**trail.** Noun: A path or track. A way, road, or path suitable for the purpose of driving cattle over or along on their way to a market. *United States v Andrews*, 179 US 96, 99, 45 L Ed 105, 106, 21 S Ct 46. A course marked by footprints. Verb: To follow behind. To follow a person by his footprints or other sign left by him. To use blood hounds to follow the scent of one suspected of the commission of a crime, for the purpose of apprehending him. 26 Am J1st Homi § 331.

**trailer.** A car attached to a streetcar and operated with the latter. A vehicle used for transportation of freight on the highway, being towed by a tractor or another powered vehicle. *Waddey v Maryland Casualty Co.* 171 Tenn 112, 100 SW2d 984, 109 ALR 654. A vehicle having a large and commodious body, which can be towed upon the highway but is usually parked and used as living quarters; sometimes called a house trailer. A building within the meaning of a building code, where set up as a stationary home. *Lower Merion Township v Gallup*, 158 Pa Super 572, 46 A2d 35, app dismd 329 US 669, 91 L Ed 591, 67 S Ct 92. Not a motor vehicle within the meaning of a statute providing for constructive or substituted service upon a nonresident motorist. Anno: 48 ALR2d 1284.

A freight trailer falls into the category of trade equipment within the Michigan rule that damages for the loss of use of tools and trade equipment are recoverable in replevin, where the plaintiff's source of livelihood consisted of hiring out his trailer and tractor with himself as driver. *Steel Motor Service v Zalke* (CA6 Mich) 212 F2d 856, 48 ALR2d 1045.

**trailer coach.** A large vehicle carrying passengers but pulled by another vehicle, such as a tractor. *McNown v Pacific Freight Lines*, 50 Cal App 2d 221, 122 P2d 582.

**trailer park.** An area, usually adjacent to a highway, wherein house trailers are parked and used as living quarters, the area being equipped with electric, water, and gas lines, for the accommodation of the inhabitants of the trailers. *Visser v Jordon* (Fla App) 131 So 2d 754.

**trailing.** See **trail.**

**train.** An aggregation of cars drawn by an engine or engines. *La Mere v Railway Transfer Co.* 125 Minn 159, 145 NW 1068. Engine and cars assembled and coupled together for a run or trip on a railroad. *United States v Erie R. Co.* 237 US 402, 59 L Ed 1019, 35 S Ct 621.

A train pulled by a small engine called a "dummy," although exclusively engaged in carrying passengers, is a railroad train, within the meaning of a statute prescribing precautions to be observed by railroads. Birmingham Mineral Railroad Co. v Jacobs, 92 Ala 187, 9 So 320.

Within the air-brake provision of the Federal Safety Appliance Act, a train consists of an engine and cars which have been assembled and coupled together for a run or trip along the road. When a train is thus made up and is proceeding on its journey it is within the operation of the air-brake provision. But it is otherwise with the various movements in railroad yards whereby cars are assembled and coupled into outgoing trains, and whereby incoming trains which have completed their run are broken up. These are not train movements but are mere switching operations, and so are not within the air-brake provision. United States v Southern Pacific Co. (CA9 Cal) 100 F2d 984.

A locomotive with one or more cars attached to it, with or without passengers or freight, in motion upon a railroad from one point to another by means of power furnished by the locomotive, would undoubtedly constitute a train. Caron v Boston & Al. R. 164 Mass 523, 527, 42 NE 112.

See **accommodation train; local freight train; mixed train; passenger train; regular passenger train; wild train.**

**trained nurse.** See **nurse; registered nurse.**

**trainee.** One undergoing training in a shop or factory for the purpose of qualifying as an employee.

**training expenses.** Expenses incurred by an employer in training employees in production and salesmen.

**training school.** See industrial school; model training school.

**train schedule.** See **timetable.**

**train wreck.** The smashing, breaking or other damage to the cars of a railroad train which stop its journey, occurring by running off the track or by collision with another train or car of a train. Anno: 51 ALR 1331.

A term used in a policy of accident insurance providing double indemnity for death resulting from a train wreck does not contemplate or intend a total destruction of a train of cars, or even of one of the cars constituting a component part of a train. Mochel v Iowa State Traveling Men's Asso. 203 Iowa 623, 213 NW 259, 51 ALR 1327.

**traitor.** A person who has committed treason. One who has betrayed his country.

See **treason.**

**trajectu.** See **in trajectu.**

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**tram.** An open car used in mines for hauling coal or ore. The word in Great Britain for streetcar.

**tramp.** A vagrant; a nonresident vagrant. 55 Am J1st Vag § 1. A person who wanders from place to place begging, or doing occasional jobs for a living. Slang for a girl leading a dissolute life.

**tramp corporation.** A corporation receiving its charter to act as a corporation in one state with no intention of doing business in that state, but with intent to do business in another state or other states. State v Georgia Co. 112 NC 34, 17 SE 10.

**tramp's joint.** A place frequented by persons engaged in evil and secret practices, usually illegal practices. State v Shoaf, 179 NC 744, 102 SE 705, 9 ALR 426.

**tramp vessel.** A ship operating without schedule and not as a component of a fleet of a shipping company, picking up cargo as it finds it.

**tramway.** Track for a tram; a railway in a mine. *O'Malley v Riley County*, 86 Kan 752, 121 P 1108. A streetcar line in Great Britain.

**tranquility.** Serenity; a state of undisturbed emotions.

See **public and domestic tranquility**.

**transacting business.** Doing business. Engaging in business.

It has been held that entering into a contract to transact business is, in the unlimited meaning of the term, "transacting business," but that such was not the meaning of the term as contemplated in a statute requiring foreign corporations to perform certain acts as a prerequisite to transacting business within the state. *Tri-state Amusement Co. v Forest Park Highlands Amusement Co.* 192 Mo 404, 90 SW 1020.

See **doing business; engaging in or transacting business**.

**transacting business within the state.** See **doing business in state**.

**transaction.** A matter of dealing between parties, the word implying action, consent, knowledge, or acquiescence on the part of both of them. *Blount v Blount*, 158 Ala 242, 48 So 581. The carrying on or through of any matter or affair by two parties in concert the word implying mutuality. 58 Am J1st Witn § 238. The doing or performing of some business between parties, or the management of any affair, for the benefit or detriment of one or both of the parties. *Re Wind*, 27 Wash 2d 421, 178 P2d 731, 173 ALR 1276 (transaction with decedent). An act or agreement, or several acts or agreements having some connection with each other, in which two or more persons are concerned and by which legal relations between them are altered. 1 Am J2d Actions § 108.

As the word is employed in codes of pleading, it means something which has taken place whereby a cause of action has arisen. It must therefore consist of an act or an agreement, or several acts or agreements having some connection with each other, in which more than one person is concerned, and by which the legal relations of such persons between themselves are altered. *Craft Refrigerating Machine Co. v Quinnipiac Brewing Co.* 63 Conn 551, 29 A 76.

See **repeated transactions**.

**transaction for profit.** Any business activity productive of income. *Re Kansas City Star Co.* 346 Mo 658, 142 SW2d 1029, 130 ALR 1168.

**transactions connected with same subject of action.** A phrase applicable to a given state of facts wherefrom the plaintiff seeks different kinds of relief, but all of which kinds of relief spring from the same state of facts, and therefore are connected with the same subject of action. 1 Am J2d Actions § 109.

**transaction with person since deceased or incompetent.** A transaction between a witness and a person who has since died or become incompetent, so conducted that the latter, if living, could contradict the witness should he testify falsely. 58 Am J1st Witn § 238.

**transcript.** A written or typewritten copy. A typewritten transcript of the court reporter's stenographic notes taken on trial. A deposition reduced to writing. A complete record of the case filed on appeal, including all material matters. 4 Am J2d A & E § 404.

In the absence of statute or rule of court, a reporter's transcript is not, as such, part of the record, but must be made so, if it is to be available on appeal by embodying it in a bill of exception, although once it is made a part of the bill of exceptions, the trial judge may adopt it as a correct statement of the evidence given on the trial. 4 Am J2d A & E § 411.

**transcripted judgment.** A judgment entered in a county other than that in which rendered, so as to perfect a judgment lien upon real estate in the other county, upon the filing of a transcript of the judgment record in such county. 30A Am J Rev ed

Judgm § 124. A judgment of a justice of the peace made a judgment of a court of record by filing a transcript of the record of the judgment in the court of the justice of the peace with the clerk of the court of record.

**transcription.** A copy of a writing; the act of making a copy.

See **transcript**.

**transcript of the evidence.** A record of the evidence as prepared by the court reporter. Blair v Greene, 246 Ala 28, 18 So 2d 668.

**Transeat in exemplum.** Let it pass into an example or precedent.

**transfer.** Verb: To place property in the hands of another. Culbertson v Cabeen, 29 Tex 247. To pass title. New Home Bldg. Supply Co. v Nations, 259 NC 681, 131 SE2d 425. For some purposes, to transfer legal title. Lyons v Freshman, 124 Mont 485, 226 P2d 775, 23 ALR2d 1165 (under the Uniform Stock Transfer Act). Noun: A delivery of possession. A passing of title or ownership. A bill of sale; a deed. A sale. An assignment. Every means and manner by which property can pass from the ownership and possession of one person to the ownership and possession of another, either by act of the parties or by operation of law, or both. 42 Am J1st Prop § 54. Under the Bankruptcy Act, the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance sale, assignment, payment, pledge, mortgage, lien, encumbrance, gift, security, or otherwise, including the retention of a security title to property delivered to a debtor. Bankruptcy Act § 1(30); 11 USC § 1(30).

A ticket or token given by a carrier to a passenger

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which entitles him to transportation upon another line of the carrier.

**transfer agent.** A person having the duty of registering a transfer of corporate stock. 18 Am J2d Corp § 408. Not a managing agent within the meaning of a statute concerning the service of process upon a foreign corporation. Anne: 113 ALR 79.

**transfer by indorsement.** The endorsement and delivery of a negotiable instrument to the indorsee.

Such delivery may be actual, as where it is manually handed by one to the other, or it may be constructive, as where the indorser puts the instrument in the power or under the control of the indorsee. Clark v Sigourney, 17 Conn 510, 524.

**transfer by operation of law.** An automatic transfer of title or ownership, being effected without voluntary action by either party directed particularly toward accomplishing a transfer. Dodier Realty & Invest. Co. v St. Louis Nat. Baseball Club, 361 Mo 981, 238 SW2d 321, 24 ALR2d 683.

**transfer company.** A motor carrier. A company engaged primarily in hauling goods from terminal of a common carrier to the place of business or residence of consignee. A railroad company which makes a business of shifting cars delivered to it by a carrier to a siding, house track, or unloading track of the consignee. 14 Am J2d Car § 663.

**transferee.** One to whom a transfer is made.

**transfer in contemplation** of death. A transfer of property, usually to spouse or child, impelled by the thought of death. United States v Wells, 283 US 102, 75 L Ed 867, 51 S Ct 446. Inclusive of a gift inter vivos, as well as a gift causa mortis, provided it is made in contemplation of death. Anno: 7 ALR 1030, s. 21 ALR 1337, 75 ALR 549, 120 ALR 188, 148 ALR 1056.

**transfer of cases.** The transfer of a case by one court to another.

See **removal of cause**.

**transfer of exchange.** See **cable transfer; telegraphing money.**

**transfer of jurisdiction.** The passing of jurisdiction from state court to federal court upon proper proceedings taken for removal of the cause, subject to jurisdiction of the state court being restored on remand. See 32 Am J2d Fed Pract § 510.

**transfer of order paper.** The negotiation of a negotiable instrument. transfer of property.  
See **transfer.**

**transferor.** One who makes a transfer.

**transferred intent.** The principle whereunder one acting with a wrongful intent is held criminally responsible for an ensuing wrong which was not intended by him. *State v Griego*, 61 NM 42, 294 P2d 282. The doctrine that where one intends to assault a certain person, and by mistake or inadvertance assaults another in his stead, the act is nevertheless a crime, the intent being transferred from the party intended to the person actually assaulted. *People v Rothrock*, 21 Cal App 2d 116, 68 P2d 364.

**transferred judgment.** An assigned judgment. A judgment transcribed to another county. 30A Am J Rev ed Judgm § 124. A judgment of a justice of the peace transcribed to a court of record.

**transferred sale.** A singular term of the cotton exchange for a sale offset by a purchase at the same price on the same day. *Dupont v United States*, 300 US 150, 81 L Ed 570, 57 S Ct 391.

**transfer service.** See **switching service; transfer company.**

**transfer tax.** A tax on the transfer of or succession to property. *Colorado v Harbeck*, 232 NY 71. A tax in the nature of an excise tax on the transfer of property. *Cole v Nickel*, 43 Nev 12, 177 P 409, 185 P 565.

The state tax on inheritance has been called a transfer tax and the Federal tax, an estate tax, but both have been imposed as excises on the transfer of property from a decedent and both to take effect at the instant of transfer. *Frick v Pennsylvania*, 268 US 473, 69 L Ed 1058, 45 S Ct 603, 42 ALR 316.

See **gift tax; inheritance tax; stock transfer tax; succession tax.**

**transformer.** A device for changing the voltage of an electric current, particularly from the voltage of a high line to the voltage appropriate for residential use. *Brooklyn Edison Co. v Davidson*, 269 NY 48, 198 NE 627.

**transgressio.** A trespass.

**transgressione.** See **trespass.**

**Transgressione multiplicata, crescat poenae inflictio.** Upon the multiplication of transgression, let the infliction of punishment increase.

**transgressive trust.** A trust which by its terms transgresses or violates the rule against perpetuities.

Nothing is denounced as a perpetuity that does not transgress this rule, and equity follows this rule by way of analogy in dealing with executory trusts; and those trusts which transgress the rule are called transgressive trusts, being in equity the substantial equivalent of what in law are called perpetuities. *Pulitzer v Livingston*, 89 Me 359, 364, 36 A 635.

**transhipment.** Same as **transshipment.**

**transient.** A person passing through a place or staying there only temporarily.

**transient alien.** An alien in the country temporarily or one merely passing through the country. Anno: 32 ALR 8, s. 48 ALR2d 813, 836-840, §§ 7, 17.

**transient dealer.** One who establishes himself in business in a locality with the intention and determination to remain there for a short period of time only, whether such period is a definite or indefinite one, such as a period of weeks or months, or until a particular stock of merchandise is disposed of, or until the local market for the commodity handled by the dealer has been exhausted, and who for such limited period engages or occupies a building or other place for the exhibition and sale of his goods or wares. 40 Am J1st Ped § 4. Sometimes called a transient merchant. *Carrolton v Bazette*, 159 Ill 284, 42 NE 837. Distinguished from a peddler in the respect that he has a definite place for the exhibition and sale of his goods, however temporary his stay at such place may be. Anno: 94 ALR 1083.

The term relates rather to the character of the business carried on by the merchant than to the residence of the individual merchant. *Ottumwa v Zekind*, 95 Iowa 622, 64 NW 646.

**transient foreigner.** Same as **transient alien**.

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**transient merchant.** See **transient dealer**.

**transient pauper.** A pauper without a settlement in the place where aid for him is sought. 41 Am J1st Poor L § 28.

**transient property.** Personalty merely temporarily within the limits of the state. Anno: 110 ALR 723; 51 Am J1st Tax § 453.

**transire.** A customs permit for the passage of goods.

**transit.** See **in transit**.

**Transit in rem judicatam.** It passes into, or is merged into a judgment.

"If there be any one principle of law settled beyond all question, it is this, that whensoever a cause of action in the language of the law, transit in rem judicatam, and the judgment thereupon remains in full force unreversed, the original cause of action is merged and gone forever." *United States v Leffler (US)* 11 Pet 86, 101, 9 L Ed 642, 647.

**transit number.** A number stamped upon a check by a bank by way of identifying the check as paper going through the bank. *Bohlig v First Nat. Bank*, 233 Minn 523, 48 NW2d 445.

**transitory.** Fleeting. Not permanent.

See **chose transitory**.

**transitory action.** An action upon a cause of action that could have arisen in any place whatsoever, having no such reference to one place as to render it a local action. 56 Am J1st Venue § 3.

**transitory crime.** A crime the venue for the prosecution of which may, by force of statute, be laid in a county other than that in which the offense may have been committed. *Watt v People*, 126 Ill 9, 18 NE 340.

**transitory seisin.** Seisin for the instant or for the moment, as where the person seised is a mere conduit of title for passing an estate. 25 Am J2d Dow § 29.

**transit privileges.** Stopover, milling-in-transit, and similar privileges granted a shipper by a carrier. 13 Am J2d Car § 318.

**Transit terra cum onere.** The land passes with its burden or encumbrance. The maxim presupposes a transfer of the land, and when that actually takes place, it forms the medium of a privity between the assignees. See *Mygatt v Coe*, 124 NY 212, 26 NE 611.

**transitu.** See **in transitu.**

**transitus.** Transit; a passing over or through; a conveyance.

**transit visa.** A visa limited by its terms and conditions to a continuous trip through the country.

See **visa.**

**transivit in rem judicatam.** It has been merged into the judgment. *Kendall v Hamilton* (Eng) 4 App Cas 504.

**translado.** (Spanish.) A transcript; a copy.

**translate.** To make a translation.

See **translation.**

**translation.** Giving the equivalent of a written or spoken statement in the words of another language or dialect. *Rasmussen v Baker*, 7 Wyo 117, 50 P 819. A change from one condition to another, as from the physical to the spiritual.

See **interpreter.**

**translator.** See **translation.**

**transmission.** A sending, conveying, or passing. A devolution of property by will or by law. *Rogers v Commissioner* (F) 1 T Ct 629. The remission of funds by one bank to another. 10 Am J2d Banks § 308. The instrumentality of a motor vehicle whereby the power of the motor is applied to the wheels for moving the vehicle. 8 Am J2d Auto § 649.

**transmission for collection.** The sending of commercial paper to a bank for collection. 10 Am J2d Banks § 308.

**transmission of assets.** The act of an ancillary representative in remitting assets of the estate in his control to the domiciliary representative. 31 Am J2d Ex & Ad § 706. The sending of assets in an ancillary receivership to the primary receiver. Anno: 45 ALR 633.

**transmission of funds.** See **transmission.**

**transmission of intelligence.** Communication.

The Supreme Court has held that the transmission of intelligence is commerce. The court said: "Other commerce deals only with persons, or with visible and tangible things. But the telegraph transports nothing visible and tangible; it carries only ideas, wishes, orders and intelligence." *Western Union Tel. Co. v Pendleton*, 122 US 347, 30 L Ed 1187, 7 S Ct 1126.

**transmutation.** The change of one thing into another.

A graphic expression applied to agreements between spouses concerning the status and disposition of their property, particularly in reference to status as community property. *Chavez v Chavez*, 56 NM 393, 244 P2d 781, 30 ALR2d 1236.

**transom.** A crosspiece or crossbar. A panel, usually of glass, over a door, which may be raised or lowered in control of ventilation. *Slane v Curbs*, 41 Wyo 402, 286 P 372, 288 P 12, 69 ALR 906.

**transport.** Verb: To carry from one place to another. To convey, as by truck, train, ship, wagon, cart, etc. *United States v Sheldon* (US) 2 Wheat 119, 120, 4 L Ed 199, 200. As required of a carrier:-to deliver at the final destination. 14 Am J2d Car § 691. Noun: A ship employed for carrying soldiers or military supplies.

**transportation.** The carriage of persons or property from one point to another. Removing a person from the country by way of punishment upon his conviction of an offense against the laws of the country. *Fong Yoe Ting v United States*, 149 US 697, 709, 37 L Ed 905, 911, 13 S Ct 1016. As used in the Interstate Commerce Act:-not only the physical instrumentalities, but all services in connection with the receipt, delivery, elevation, transfer in transit, ventilation, refrigeration or icing, storage, and handling of the property transported. 49 USC

The word is used in constitutional provisions and statutes relating to intoxicating liquor in its ordinary sense. It comprehends any real carrying about, from one place to another, or a substantial movement of liquor from one place or vicinity to another, whether on the person or in a vehicle. 30 Am 1 Rev ed Intox L § 40.

Under the Interstate Commerce Act authorizing

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the Interstate Commerce Commission to adjust rates to meet "transportation conditions," such conditions may and should include conditions other than mere operating conditions. *Board of Trade v United States* (DC Mo) 36 F Supp 865.

See **facility of transportation.**

**Transportation Act.** A federal statute regulating railroads and motor carriers. 13 Am J2d Car § 36.

**transportation agent.** See **shipping agent.**

**transportation company.** A carrier. A transfer company.

**transportation conditions.** See **transportation.**

**transportation expenses.** Freight on shipment of goods or other property. The fare for the transportation of a passenger. As a deduction in calculation of net income for tax purposes, only the travel cost, not including meals and lodging. IRS Pub. No. 463 (10/65) p I.

See **mileage; travel expense.**

**transportation in bond.** The transportation in the United States of imported articles entered under bond without payment of customs duties. 21 Am J2d Cust D § 76.

**transportation of liquor.** See **transportation.**

**transportation of pupils.** The modern practice of carrying school pupils in busses to a central or consolidated school. A practice sometimes invoked to alleviate a so-called de facto segregation of races in the public schools by carrying pupils from districts predominantly white to districts predominantly colored anti vice-versa.

**transportation ticket.** See **ticket.**

**transship.** See **transshipment.**

**transshipment.** Moving cargo from one vessel to another. A violation of a contract of affreightment, except as authorized by the contract or required of necessity. 48 Am J1st Ship §§ 404-406.

**transubstantiation.** The theological doctrine that the consecration of the bread and wine in the sacrament of communion make them the actual body and blood of Christ.

**trap.** To catch and take game by the use of a trap. 35 Am J2d Fish § 6. Noun: A hidden danger on premises, the peril of which would be avoidable if the existence of the thing were known. *O'Shea v Lavoy*, 175 Wis 456, 185 NW 525, 20 ALR 1008. Any very dangerous construction or condition designedly arranged to do injury. *Moffat v Kenny*, 174 Mass 311, 315, 54 NE 850.

"A trap is a figure of speech, not a formula. It involves the idea of concealment and surprise, of an appearance of safety under circumstances cloaking a reality of danger." *Latham v Johnson, Ltd.* (Eng) I K B 398.

See **entrapment; speed trap.**

**trapdoor.** A door in ceiling or floor for occasional access to upper or lower story.

**trassatus.** The drawee of a bill of exchange.

**traumatic.** Originating in a violent application of force to the body.

**traumatic disease.** A disease resulting from a physical injury.

A claim for workmen's compensation based upon disability arising from traumatic disease should specify the time when, and the place where the accident occurred. *Iwanicki v State Industrial Acci.* Colo. 104 Or 650, 688, 205 P 990, 29 ALR 682.

**traumatic mental depression.** A condition of mental depression caused by worry following the sustaining of a personal injury, often worry pertaining to financial stress resulting from disability. *Wilson v Home Gas Co.* 267 Minn 162, 125 NW2d 725.

**traumatic neurasthenia.** The technical name of a disease of the nervous system whereby it has become so weakened that there is a lack of power in the nerve centers to perform their functions properly.

The disease usually results from a wound or injury. *Colorado Springs & Interurban Railway Co. v Nichols*, 41 Colo 272, 92 Y 691.

**travail.** The labor and pains of childbirth. *State v Watzek*, 158 Minn 351, 197 NW 669. The condition of a mother in giving birth to a child, from the beginning of pains until delivery. "That perilous crisis, when, if ever, the mind will be most fearful of uttering a falsehood." *Bacon v Harrington*, 22 Mass (5 Pick) 63.

**travel.** Verb: To go from one place to another. To make a trip. To pass over a public way for the purpose of business, convenience, or pleasure. 25 Am J1st High § 427. To make such use of a way as the occasion may require legitimately. *Caddo Electric Cooperative v Bollinger* (Okla) 285 P2d 200, 55 ALR2d 172. Noun: A constitutional right under the Fifth Amendment to the United States Constitution. *Aptheker v Secretary of State*, 378 US 500, 12 L Ed 2d 992, 84 S Ct 1659. The act of taking a trip. *Ex parte Archy*, 9 Cal 147, 164.

To travel is to pass or make a journey from place to place, whether on foot, on horseback, or in any conveyance. Traveling is the act of making a journey; change of place; passage. The word "traveling," as used in some penal statutes, may have a narrow meaning; but, in order to maintain an action against a city or town for a defect in a highway, one need be a traveler only in the general sense above indicated. *Hendry v North Hampton*, 72 NH 351, 56 A 922.

A person is still "traveling" while delayed for a short time by an unforeseen accident. See *Ex parte Archy*, 9 Cal 147, 164.

**travel agency.** The business of making reservations on behalf of clients or customers with carriers by ship, rail or air, hotels, theaters, etc., booking tours, and advising people in reference to trips in prospect. The business of bringing together members of the traveling public and the operators of passenger automobiles who are not engaged in business as regularly licensed common or private carriers of passengers for hire. *Francis v Adams*, 54 Ariz 377, 96 112d 277, 126 ALR 190.

**travel bureau.** A state or municipal agency promoting travel to the place from other states or foreign countries.

**traveled part of highway.** Same as **traveled part of the road.**

**traveled part of the road.** That part of the road which is prepared for travel, not merely the most traveled part. *Winter v Harris*, 23 RI 47, 49 A 398.

**traveled road.** A road actually used and traveled as a public highway, irrespective of whether it has been legally established and laid out or dedicated as such. *Czech v Great Northern Railway Co.* 68 Minn 38, 70 NW 791.

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See **traveled part of the road.**

**traveler.** One who is traveling. One who spends much time in traveling. One using a public way. One who travels in any way, even for a short distance and in the city, town, or village of his residence. *Leon v Kitchen Bros. Hotel Co.* 134 Neb 137, 277 NW 823, 115 ALR 1078. As one for whom a public way must be kept reasonably safe, anyone rightfully using the way viatically or who has occasion to pass over the way for the purpose of business, convenience, or pleasure. 25 Am J1st High § 427. As a person entitled to carry a concealed weapon, one who travels such distance from his home that he goes beyond the circle of his general acquaintances, among strangers with whose habits, conduct, and character he is not acquainted. 56 Am J1st Weap § 15.

A radio repairman sitting in a customer's car parked in the street outside his shop, when his work on the car was interrupted by a rainstorm, is not a "traveler" on the highway, within a statute imposing on cities the duty to keep the highway safe for "travelers." *Wershba v Lynn*, 324 Mass 327, 86 NE2d 511, 14 ALR2d 179.

See **travel; wayfarer.**

**traveler's check.** An instrument, usually one of a set, purchased from a bank or other financially responsible institution, as a source of ready money on cashing the instrument, while traveling in the country or abroad, without identification other than the signature of the purchaser. 10 Am J2d Banks § 546. An instrument constituting a complete purchase and sale of credit, having the characteristics of a cashier's check where issued by a bank, and constituting a foreign bill of exchange. 11 Am J2d B & N § 17.

The instrument usually provides and is in such form that the check must be signed by the purchaser when obtained and countersigned again by him when he receives payment. It is the second signature which is the instrument's final currency. *Paulink v American Express Co.* 265 Mass 182, 163 NE 740, 62 ALR 506.

**travel expense.** A deduction in calculation of income tax purposes, when incurred while traveling away from home in pursuit of a trade or business. Internal Revenue Code § 162(a). A deduction in calculation of income for tax purposes, when incurred while traveling away from home for the production or collection of income, or the management, conservation, or maintenance of property held for the production of income, or in connection with the determination, collection, or refund of any tax. Internal Revenue Code § 212.

See **mileage; travel pay.**

**travel fee.** See **mileage.**

**traveling.** See **travel.**

**traveling abroad.** Traveling in a foreign country.

While the usual meaning of the expression signifies travel in a foreign country, and an officer is understood to be traveling "abroad" when he goes to a foreign port or place under orders to proceed to that place, or from a foreign port to a home port, yet he is not so traveling when going from one place to another in the United States by the shortest route although it may take him into a foreign country such as Canada, or upon the high seas. *United States v Hutchins*, 151 US 542, 38 L Ed 264, 14 S Ct 421.

**traveling man.** See **traveling salesman.**

**traveling salesman.** One who travels from place to place, selling to retailers alone. *Upchurch v LaGrange*, 159 Ga 113, 125 SE 47. Often called a commercial traveler or commercial salesman. Known in an older day as a "drummer." A person who is employed to travel from one place to another to sell goods for his employer.

Such a person is not a "day laborer" although by his contract with his employer he is paid by the day. *Briscoe v Montgomery & Co.* 93 Ga 662.

**traveling way.** That part of the underground workings of a mine used exclusively for purpose of travel and transportation. 35 Am J1st M & S § 215.

See **traveled part of the road.**

**travel pay.** An allowance for travel expense especially where made to persons in the armed forces. 36 Am J1st Mil § 80.

See **travel expense; mileage.**

**travel time.** Time spent by an employee in coming to and leaving his place of employment.

**traversable.** Subject to being traversed or denied.

See **traverse.**

**traverse.** Verb: To contest or deny an allegation. Noun: A denial of the facts alleged in the pleading of an adverse party. 41 Am J1st PI § 190.

**traverse jury.** A petit jury, that is, a trial jury. 31 Am J Rev ed Jury § 2. A jury impaneled to sit on the trial of an action. *United States v Taylor*, 147 US 695, 698, 37 L Ed 335, 337, 13 S Ct 479.

**traverser.** A party to an action who pleads by way of denial. *Commonwealth v Hite*, 33 Va (6 Leigh) 588.

See **traverse.**

**t. r. e.** An abbreviation of **tempos regis Edwardi.**

**tread.** Verb: To walk; to step. Noun: The part of a shoe which makes contact with the ground. The part of a tire which makes contact with the surface of the way, grooved to provide traction. The top board of a step in a stairway. Anno: 25 ALR2d 372, § 4.

**treason.** Levying war against the United States or adhering to the enemies of the United States, giving them aid and comfort. US Const Art 3 § 3. A breach of allegiance. *United States v Wiltberger (US)* 5 Wheat 76, 5 L Ed 37. A criminal attempt to destroy the existence of the government. *Respublica v Chapman (Pa)* 1 Dall 53, 1 L Ed 33.

**treason, felony, or other crime.** A phrase found in Article IV, section 2, clause 2, of the United States Constitution, relative to extradition for crime, embracing every act forbidden and made punishable by a law of a state. See *Kentucky v Dennison (US)* 24 How 66, 16 L Ed 717.

**treasurer.** A state or municipal officer whose duties are to receive and take custody of the public moneys, and to pay them out on warrants. 37 Am J1st Mun Corp § 406; 49 Am J1st States § 54.

The state treasurer is not a trustee of moneys in the state treasury, but holds them only as the agent of the state. 49 Am J1st States § 54.

**treasure-trove.** Any gold or silver in coin, plate, or bullion found concealed in the earth or in a house or other private place, but not lying on the ground, the owner of such discovered treasure being unknown. 1 Am J2d Aband § 4.

**treasury.** The accumulation of funds of the nation, state, or other public body. An accumulation of valuables. A place for the safekeeping of funds or valuables.

Money is said to be in the treasury whenever and wherever it is in the official custody of the treasurer or subject to his direction and control. *People v McKinney*, 10 Mich 53, 88.

**Treasury Department.** An executive department of the United States Government, headed by the Secretary of the Treasury, and charged with the duties of the management and collection of revenue and the support of the public credit. 5 USC § § 241 et seq; 54 Am J1st US § 49.

**treasury note.** A note issued by the United States Treasury and constituting legal tender.

**treasury shares.** Corporate stock which has been subscribed and paid for, but has thereafter been reacquired by the corporation by purchase, donation, forfeiture, or other means. 18 Am J2d Corp § 216.

**treasury stock.** Same as **treasury shares**.

**treasury warrant.** See **warrant**.

**treat.** To bestow by way of gift. To furnish by way of giving pleasure, as, for instance, drinks, cigars, food, and lodging. To bargain or negotiate with another: To act or behave toward another in a certain manner, for example, to act toward a child born out of wedlock as if it were one's own child, thereby acknowledging paternity. 10 Am J2d Bast § 52. To alleviate or seek to alleviate a condition, as to treat a wound. To perform work upon a material or a thing in order to render it fit for a purpose, as in treating metal.

**treatise.** A discussion of principles and the application thereof in a field of interest or concern, such as science, religion, law, government, or politics. 29 Am J2d Ev § § 887 et seq.

**treatment.** The manner in which a person or a thing is treated. The behaviour of one spouse toward the other spouse. *Robinson v Robinson*, 66 NH 600, 23 A 362.

See **cruel and inhuman treatment**.

**treatment endangering health or reason.** A ground for divorce in some jurisdictions, consisting of conduct such as to result in actual injury to the health of the complaining spouse or such as to make it probable that an impairment of health or reason will result if the conduct is continued. 24 Am J2d Div & S § 38.

**treatment endangering life.** A ground for divorce in some jurisdictions, consisting of a course of conduct, whether violent or not, which, under the circumstances of the case, endangers life. Anno: 5 ALR 713.

**treaty.** A written contract between nations executed with the formality customary in dealings and transactions between nations, although not necessarily in a particular and prescribed form. A contract between nations for which the consent of the contracting parties is given expressly or tacitly, verbally or in writing. 52 Am J1st Treat § 5. A contract of reinsurance.

**treaty power.** The power to make treaties with foreign nations, such being given by the United States Constitution to the President acting with the advice and consent of the Senate, any treaty requiring the concurrence of two-thirds of the senators present. 52 Am J1st Treat § 7.

By the United States Constitution, the several states are prohibited from entering into any treaty, alliance, or confederation, and they shall not, without the consent of Congress, enter into a compact with another state or with a foreign power. US Const Art 1 § 10.

**treaty trader.** An alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of an existing treaty between the country of which he is a national and the United States. *Susuki v Harris* (DC Tex) 29 F Supp 46.

**treble costs.** A term of art.

Where a statute gives "treble costs," they are to be calculated thus: 1. The common costs; 2, half of these; and then half of the latter. *Van Auken v Decker*, 2 NJL 108, 111.

**treble damages.** Multiple damages awarded under statutory authority for certain classes of wrongs, some courts regarding the excess of the award over the amount of injury actually sustained as an extraordinary liability imposed by way of penalty, others regarding it as an extraordinary liability imposed under a statute which is remedial and non-punitive. 22 Am J2d Damg §§ 267, 268.

**treble penalty.** A sentence imposed upon one convicted as an habitual criminal equal to three times that imposed for a first offense. Anno: 58 ALR 99, s. 82 ALR 379, 116 ALR 236.

**trebucket.** Same as **ducking stool**.

**tree.** A woody plant with a stem or trunk from which branches spring. 34 Am J1st Logs § 2. A part and parcel of the land in which rooted. 42 Am J1st Prop § 19. An interest in real estate, except as to a tree growing in a nursery and raised to be sold and transplanted. 49 Am J1st Stat of F § 155. A piece of timber suitable for building and like purposes. *Nettles v Lichtman*, 228 Ala 52, 152 So 450, 91 ALR 1455.

See **boundary trees; bounded tree; line tree; nursery; timber**.

**tree warden.** A public functionary having care and control of the trees on the public grounds of a town. *Markham v Middletown*, 102 Conn 571, 129 A 524, 44 ALR 1475.

**trench.** A ditch. A long ditch prepared and used for concealment and cover by soldiers in combat.

**trench digger.** A man who digs trenches. A machine used in digging trenches, being equipped with motor for power. *Wood v Food Fair Stores, Inc.* 49 NJ Super 352, 139 A2d 805.

**tres.** Three.

**tresayle.** The grandfather of a person's grandfather; that is a person's great-great-grandfather. See 3 Bl Comm 186

**Tres faciunt collegium.** Three make a corporation; that is, three persons may form a corporation.

By the maxim, the Roman law required three persons to form a corporation, but after it was formed, it might continue to exist as a corporation although the members were reduced to one. See 1 Bl Comm 469.

**tresor trouvé.** Treasure trove.

**trespass.** A misfeasance, transgression, or offense which damages another's person, health, reputation, or property. *Cox v Strickland*, 120 Ga 104, 47 SE 912. In the widest application of the term, any transgression or offense against the laws of

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nature or society whether relating to person or property. *Grunson v State*, 89 Ind 533. The equivalent of tort or wrong. *Bichenor v Hayes*, 41 NJL 193. An unauthorized entry on another's property. *Holler v New York, N.H. & H.R. Co.* (CA2 NY) 265 F 192, 17 ALR 823, 825. A common-law form of action which lies for the recovery of damages inflicted by the

direct application of force. An action which lies whenever an injury is the immediate result of the force originally applied by the defendant, and the plaintiff is injured thereby. 52 Am J1st Tresp § 2.

In its widest signification, trespass means any violation of law. In its most restricted sense, it signifies an injury intentionally inflicted by force either on the person or property of another. But still it has a signification in law much more narrow than the first, and more enlarged than the second meaning given, and embraces all cases where injury is done to the person or to property, and is the indirect result of wrongful force. Hill v Kimball, 76 Tex 210, 13 SW 59.

**trespass ab initio.** A trespass from the beginning. A trespass by retrospective operation, the principle being that where an entry, authority, or license is conferred by law under which conduct otherwise constituting a trespass may be justified, an abuse of such authority will destroy the privilege and render the act done in excess of authority, a trespass from the beginning, that is, from the time of the entry. 52 Am J1st Tresp § 19.

**trespass de bonis.** Same as **trespass de bonis asportatis.**

**trespass de bonis asportatis.** The common-law form of action for the recovery of damages resulting from the taking of chattel property from the possession of the plaintiff. 52 Am J1st Tresp § 2.

**trespass de uxore abducto.** An action of trespass for the abduction of the wife of the plaintiff. See 3 Bl Comm 139.

**trespasser.** A person who enters the premises of another without license, invitation, or other right, and intrudes for some definite purpose of his own, or at his convenience, or merely as an idler with no purpose apparent, other than, perhaps, to satisfy his curiosity. 38 Am J1st Negl § 109. A person who enters upon the land of another and who is neither suffered nor invited to enter. Anno: 36 ALR 37. In the broadest aspect of the term, one who has committed a trespass of any kind or nature.

**trespass for mesne profits.** A form of action supplemental to ejectment, brought against one wrongfully in possession to recover damages for the disturbance of the plaintiff's possession together with the profits which accrued during the wrongful possession. 52 Am J1st Tresp § 2.

**trespass on the case.** A common-law form of action, otherwise known as "case" and "action on the case," for an injury resulting from a wrongful act other than physical force, or for an injury resulting from nonfeasance or negligence, or for an injury which is consequential, as distinguished from a direct or immediate, result of the wrongful act. 52 Am J1st Tresp § 5. A remedy devised by the courts in remote times when actions were so carefully classified that a mistake in name was generally fatal to the case, its purpose being to cover new wrongs as they might occur so as to prevent a failure of justice. 1 Am J2d Actions § 22. Inclusive in the broad sense of the term of an action of assumpsit. 52 Am J1st Tresp § 6. More precisely, the remedy confined to actions for the redress of torts, the gravamen of the charge being the tort or wrong of the defendant, notwithstanding such tort or wrong may be also a breach of an express or implied contract. 1 Am J2d Actions § 22.

See **vis impressa.**

**trespass per quod consortium amisit.** An action of trespass which lay where the defendant had assaulted or ill-used the wife whereby the plaintiff husband was deprived of her society. See 2 Bl Comm 140.

**trespass per quad servitium amisit.** An action of trespass which lay where the defendant had assaulted or ill-used a servant of the plaintiff whereby plaintiff was deprived of his services. See 3 Bl Comm 142.

**trespass quare clausum.** Same as **trespass quare clausum fregit.**

**trespass quare clausum fregit.** The common-law remedy for the recovery of damages for the wrong of intruding upon the real property of another. 52 Am J1st Tresp § 2.

**trespass to try title.** An action to recover possession of real property and damages for any trespass committed upon such property by the defendant. 52 Am J1st Tresp § 2. An action displacing or supplementing the common-law action of ejectment in some jurisdictions. 25 Am J2d Eject § 4.

**trespass vi et armis.** The common-law remedy for the recovery of damages inflicted by the direct application of force. 52 Am J1st Tresp § 3.

See **vis impressa**.

**trestle.** A wooden frame used by a carpenter or woodworker in combinations of two or more to support the boards upon which he works. A support of a bridge.

**tret.** A deduction which is made for dust in weighing certain commodities.

**triable.** Capable of being tried; within the jurisdiction of the court.

**trial.** In common parlance, a test of one's physical or mental strength; a burden to be born; a test. In law, a judicial investigation and determination of the issues between the parties to an action. 53 Am J1st Trial § 2. An examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. *Finn v Spagnoli*, 67 Cal 330, 332, 7 P 746. Technically, that step in an action by which issues or questions of fact are decided; often signifying a judicial examination of issues, whether of law or of fact. *Columbus Packing Co. v State*, 106 Ohio St 469, 140 NE 376, 37 ALR 1525. Sometimes inclusive of hearings upon motions attacking process or jurisdiction, as well as hearings upon motions attacking pleadings. 53 Am J1st Trial § 2. In its most comprehensive sense in reference to a criminal prosecution, inclusive of all the proceedings down to the acquittal or conviction of the accused. *State v Hudson*, 55 RI 141, 179 A 130, 100 ALR 313.

As to the stage of a trial at which the plaintiff may take a voluntary nonsuit or dismiss without prejudice, see Anno: 89 ALR 13.

The hearing of evidence after default in a divorce

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proceeding is not a "trial," as that term is used in statutory provisions for new trial. *Hamblin v Superior Court*, 195 Cal 364, 233 P 337, 43 ALR 1509.

See **mistrial; public trial; summary trial**.

**trial anew.** Same as **trial de novo**.

**trial at nisi prius.** See **nisi prius**.

**trial balance.** A recapitulation of debit and credit balances of all open accounts of the business. *Rosenthal v Dickerman*, 98 Mich 208, 57 NW 112.

**trial by battel.** Same as **trial by wager of battel**.

**trial by certificate.** A form of trial which was allowed in cases where the evidence of the person certifying was the only proper criterion of the point in dispute.

Such trials were permitted to save trouble and circuitry in cases where the evidence must have been conclusive if submitted to a jury. See 3 Bl Comm 333.

**trial by court.** See **trial by the court**.

**trial by fire.** An ancient form of trial in criminal cases, in which the accused was required to carry in his hand a piece of red-hot iron weighing from one to three pounds, or else to walk barefoot and blindfold over nine red-hot plough-shares, laid lengthwise at equal distances.

If he escaped unhurt, he was acquitted, but if otherwise, as was usually the case, he was adjudged guilty. See 4 Bl Comm 342.

**trial by inspection.** A trial by the judges, not by a jury, of some single matter which was obvious to sight. *Roberts v Ogdensburgh & Lake Champlain Railroad Co.* (NY) 29 Hun 154, 156.

In former times, the English courts of common law might, if they saw fit, try by inspection or examination, without a jury, the question of the infancy, or of the identity of a party; or, on an appeal of mayhem, the issue of mayhem or no mayhem; and, in an action of trespass for mayhem, or for an atrocious battery, might after a verdict for the plaintiff, and on his motion, and upon their own inspection of the wound, *super visum vulneris*, increase the damages at their discretion. In each of those exceptional cases, it was not thought necessary to call a jury to decide it, because the fact, from its nature, was deemed evident to the court, either from ocular demonstration or other irrefragible proof. The inspection was not had for the purpose of submitting the result to the jury; the question was thought too easy to require such submission. *Union Pacific Railway Co. v Botsford*, 141 US 250, 35 L Ed 734, 737, 11 S Ct 1000.

**trial by jury.** A trial in which the jurors are the judges of the facts and the court is the judge of the law. *State ex rel. Rhodes v Saunders*, 66 NH 39, 25 A 588. A matter of constitutional or statutory right to a trial by a legal, proper, fair, and impartial jury drawn from a cross section of the community. 31 Am J Rev ed Jury §§ 7 et seq.

A constitutional right to trial by jury "in all cases in which it has been heretofore used," does not extend to a suit in equity, even where, as incidental to the main relief sought, the complainant asks money damages. *Jamaica Sav. Bank v M. S. Investing Co.* 274 NY 215, 8 NE2d 493, 112 ALR 1485. The Seventh Amendment providing that in suits at common law where the value in controversy shall exceed \$20 the right of trial by jury shall be preserved, has no application to cases where the recovery of money damages is an incident to equitable relief, even though damages might have been recovered in an action at law. *NLRB v Jones & L. Steel Corp.* 301 US 1, 81 L Ed 893, 57 S Ct 615, 108 ALR 1352.

See **jury**.

**trial by ordeal.** See **ordeal**.

**trial by proviso.** A proceeding whereby the defendant in an action undertakes to bring the cause to trial upon the failure of the plaintiff to do so.

**trial by purgation.** See **corsned; purgation**.

**trial by record.** The trial of an issue arising on the record of an action, without a jury and without taking any testimony.

**trial by the country.** A trial of an accused by a jury of his peers.

See **jury of the country**.

**trial by the court.** A trial held before one or more judges without a jury. *Air-way Electric Appliance Corp. v Day*, 266 US 42, 70, 69 L Ed 162, 169, 45 S Ct 18.

See **trial by inspection**.

**trial by the iron.** Same as **trial by fire**.

**trial by wager of battel.** A duel or combat which in ancient times was sanctioned by law as a form of trial, in which champions, in civil actions, represented the parties, under the superstition that the right would triumph.

The last trial by battel on record was in 1638. See 3 Bl Comm 337, et seq.

**trial by wager of law.** A species of trial anciently used in civil actions, wherein the defendant gave pledges or sureties that he would wage his law; that is, that he would appear at the time set when he would make oath as to his innocence and would produce compurgators, witnesses in his behalf, who would swear that they believed his oath. See 3 Bl Comm 341.

**trial by water.** A trial by water-ordeal, which was performed either by plunging the defendant's bare arm up to the elbow in boiling water, or by casting him into a pool of water.

If he escaped harm from the boiling water, or sank in the plunge, he was deemed innocent and acquitted, but if he was scalded by the hot water, or if he floated when thrown into the pool, he was adjudged guilty. See 4 Bl Comm 343.

**trial counsel.** A trial lawyer. A lawyer assisting the attorney of record in the trial of a case. The prosecuting counsel in a general or special court-martial.

**trial de nova.** A new trial; a new trial on appeal. 4 Am J2d A & E § 2. A trial on appeal from a justice of the peace to a court of general jurisdiction. 31 Am J Rev ed J P § 129. Trying anew the matter involved in an administrative determination the same as if it had not been heard before and as if no decision had been previously rendered, the hearing being upon the record made before the administrative agency and such further evidence as either party may see fit to produce. 2 Am J2d Admin L § 698.

See **new trial; new trial on appeal.**

**trial examiner.** A hearing officer of an administrative agency, comparable to an auditor or special master of a court. Annotation: 89 ALR 426, s. 171 ALR 782; 2 Am J2d Admin L § 407. An officer of the National Labor Relations Board who conducts

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hearings and receives evidence in proceedings under the National Labor Relations Act. 31 Am J Rev , ed Lab § 297.

**trial judge.** A judge who presides at the trial of a cause.

**trial jury.** A jury for the trial of a case, as distinguished from a grand jury which returns an indictment. 31 Am J Rev ed Jury § 2.

See **jury.**

**trial marriage.** A marriage entered into under agreement that either or both parties shall have the option of annulling it. 4 Am J2d Annul § 7. A concept incidentally elucidated in "The Monastery" by Sir Walter Scott.

**trial minutes.** See **minutes.**

**trial per pais.** A term of ancient usage for trial by the peers of the party accused. 31 Am J Rev ed Jury § 7. Trial by jury.

**trial per testes.** A trial by witnesses testifying before the court, without a jury.

**trial record.** The record of the proceedings in a case in the trial court.

**trial term.** That part of the business of a court which is devoted to jury trials.

**trial to begin anew.** To begin again the examination of the matter of fact in issue in the trial. 31 Am J Rev ed Jury § 128.

**triare.** To try.

**triatio.** A trial.

**Triatio ibi semper debet fieri, ubi juratores meliorem possunt habere notitiam.** A trial ought always to be had where the jury can have the better information.

**tribe.** See **Indian tribe.**

**Tribonian.** A lawyer of Rome, who, with other lawyers, under the auspices of the Emperor Justinian compiled the present body of civil law, about 533 A.D. See 1 Bl Comm 81.

**tribunal.** A court. The seat or bench for the judge or judges of a court.

**tributary.** A stream which empties into or feeds another stream, as in the case of the Missouri River and the Mississippi River.

In a general sense a stream is tributary to a river when the stream empties into another river which empties into that river. *Miller v Insurance Co.* 12 W Va 116.

**tribute.** A tax which is imposed by a sovereign upon his subjects; a tax which is imposed by one nation upon another nation.

**trichinosis.** A disease centered in the intestine, usually resulting from the eating of pork insufficiently cooked to be purified of means of infection. *Mouren v Great Atlantic & Pacific Tea Co.* 1 App Div 2d 767, 148 NYS2d 1.

**trick.** An artifice.

See **larceny by trick.**

**tricycle.** A small vehicle having three wheels and propelled by foot power, used as a plaything by children, preferably on the sidewalk. 7 Am J2d Auto § 4.

**triennial cohabitation.** See **triennial test.**

**triennial test.** The old rule of the English ecclesiastical courts known as the rule of triennial cohabitation, which required a husband and wife to live together for three years, and if at the end of that time the marriage remained unconsummated, or the wife appeared to be a virgin, impotence was presumed.

In modern times in England the rule has been held not to apply where the court is satisfied of the husband's impotence by other evidence. Anno: 28 ALR2d 514, § 6.

There is some American authority expressly rejecting, and other American authority, expressly adopting, the triennial test. Anno: 28 ALR2d 514, § 6; 24 Am J2d Div & S § 358.

**triens.** The third part; dower. See 2 Bl Comm 129.

**trientes.** Four per cent per annum.

The Romans at one time allowed centesimae, one per cent monthly, or twelve per cent per annum, to be taken as interest for common loans; but Justinian reduced this to trientes, or one third of the centesimae, that is four per cent. But he allowed a higher rate to be taken from merchants because of the greater hazard. See 2 Bl Comm 462.

**triers.** Persons appointed by the court to try a challenge for favor. The respective functions of court and jury. 53 Am J1st Trial § 156.

**trifling.** Verb: Making play of another's affections. Adjective: Trivial. Paltry. Of little value; of little moment.

Under the rule that an injunction will be denied where the injury complained of is of a trifling character which may be readily compensated by the allowance of damages, the word "trifling" means trifling per se and not trifling as compared with the injury which would result to the defendant from the granting of the injunction. Anno: 61 ALR 925.

Under the principle that an injured party is required to prevent or lessen his damages if he can do so at a reasonable cost, or as commonly stated: "He must protect himself if he can do so at trifling expense," the word "trifling" has reference to the situation of the parties. It means a sum which is trifling in comparison with the consequential damages which the plaintiff seeks to recover in the particular case. So, a property owner is not required to make expenditures, which in proportion to the injury threatened are considerable, for the purpose of protecting his property. It seems that want of sufficient funds will excuse his absence of effort to lessen damages. 22 Am J2d Damg § 32.

**trigamist.** See **trigamus.**

**trigamus.** A trigamist; a person who has been lawfully married to three different wives, one at a time.

**trim.** Verb: To put in order; to make neat. To balance a load or cargo. To decorate. To clip. To castrate. Noun: Woodwork around the windows and doors of a building. A position in which stage lights are placed for most effective and appropriate illumination.

As applied to a canal boat, "trimming" is shoveling the grain from one place to another on the boat, and this is done by longshoremen with scoops or shovels. "Trimming" a ship's cargo when loading is stowing it and securing it for the voyage. See *Budd v New York*, 143 US 517, 530, 36 L Ed 247, 250, 12 S Ct 468.

**trimming trees.** Cutting branches off trees to improve the appearance or to prevent interference with telephone or electric wires.

**trim ship.** See **trim.**

### [1301]

**trina admonitio.** The third warning.

This was the final warning given to a prisoner who stood mute, before putting him on the rack to compel him to confess his crime. See 4 Bl Comm 325.

**Trinity.** The Father, Son, and Holy Spirit or Holy Ghost. The first Sunday following Pentecost.

The three series of annotated state reports, comprising American Decisions in one hundred volumes, covering the period from 1765 to 1869, American Reports in sixty volumes, covering the period from 1869 to 1887, and American State Reports in one hundred and forty volumes, covering the period from 1887 to 1911.

**Trinity term.** An English term of court beginning May 22nd and ending June 12th.

**trinket.** An ornament or plaything, rather than a thing of utility.

Bracelets, shirt pins, rings, and brooches,-they are clearly articles of personal decoration and adornment, and literally fall within the description of trinkets. See *Ocean S.S. Co. v Way*, 90 Ga 747, 17 SE 57.

**trinoda necessitas.** The threefold necessity. The three burdens to which all free householders, if not all freemen were subject under the ancient laws of England.

These were the duty of rendering military service against an enemy, the duty of assisting in the construction of castles or forts, and the duty of keeping bridges in repair. *Butler v Perry*, 240 US 328, 331, 60 L Ed 672, 674, 36 S Ct 258.

**triode.** A vacuum tube employed in the amplification of radio waves. *Lewis v Smith* (CA7 111) 228 F2d 926.

**triors.** Same as **triers.**

**trip.** A journey, voyage, or excursion. A stumble.

See **round trip.**

**tripartite.** In three parts; having three parties, as, a tripartite contract.

**tripartite contract.** A contract having parties of the first, second, and third parts.

See **third-party beneficiary contract.**

**triple damages.** See **treble damages.**

**triple letter.** A letter of three sheets. *Williams v Wells, Fargo & Co. Express* (CA8 Ark) 177 F 352.

**triplicatio.** A Roman law pleading corresponding to the common law sur-rejoinder, being the actor's reply to the defendant's duplicatio. See 3 Bl Comm 310.

**triplication.** An ecclesiastical law pleading corresponding to a common law rejoinder.

**trip permit.** A temporary license for the operation of a vehicle as a motor carrier. 7 Am J2d Auto § 90.

**trithing.** Old terminology for a division of a county or shire.

Where a county or shire was divided into three intermediate jurisdictions, they were called trithings and were anciently governed by a trithing-reeve. Having survived in the county of York, their name became corrupted into "ridings;" the north, the east, and the west riding. See 1 Bl Comm 116.

**trithing-reeve.** See **trithing.**

**triverbial days.** The twenty-eight judicial days in each year which the Roman law allowed to the praetor for deciding cases.

These days were called triverbial because upon them the praetor was permitted the use of the three words "Do dico, addico," I give judgment, I expound the law, I execute the law. See 3 Bl Comm 424, and footnote.

**trivial error.** Immaterial error; harmless error. 5 Am J2d A & E § 776.

**trolley.** A streetcar; a streetcar line. Any railway propelled by electric power and running over a route limited in length, often between a city and its suburbs or neighboring cities.

**trolley pole.** A pole upon which the electric wires which carry the current for propelling a streetcar or trolley are affixed and carried.

**tronage.** An ancient toll charged for the weighing of wool.

**troops.** Soldiers; officers and men in any branch of the military forces: *Louisville & N. R. Co. v United States*, 258 US 374, 66 L Ed 668, 42 S Ct 337.

In 1850 the word had, and it has ever since had an established meaning:-namely, "soldiers collectively,-a body of soldiers." Contemporary legislation draws a clear distinction also between "troops," that is, those having the status of soldiers, and those who once had been in, or were seeking to enter the military service. *United States v Union Pacific Railroad Co.* 249 US 354, 357, 63 L Ed 643, 645, 39 S Ct 294.

**trophy.** Something taken as a symbol of victory, for example, the football used in a football game. In an older time, the head of a defeated opponent.

**tropical year.** The interval between two consecutive returns of the sun to the vernal equinox.

**trove.** Found.

See **treasure-trove.**

**trover.** The common-law action for the recovery of damages for the conversion of personal property. 18 Am J2d Conversion § 1.

**troy weight.** The measure employed in weighing gold, silver, and precious jewels, characterized by grains, pennyweight, and ounces troy, twelve of such ounces making one pound troy.

**truancy.** The act of a child of school age in wilfully avoiding attendance at school. The act of a child in deserting his home or place of abode. 31 Am J Rev ed Juv Ct § 36. Neglect of work.

**truant.** Broadly, one who is in a state of truancy. A pupil absent from school without the permission of his parent. *Holmes v Nester*, 81 Ariz 372, 306 P2d 290, 62 ALR2d 1322.

The cases present differing views as to what constitutes a truant from school. Anno: 62 ALR2d 1328.

See **truancy.**

**truant officer.** See **attendance officer.**

**truce.** An agreement made between belligerents that they will temporarily cease hostilities.

**Truce of God.** An armistice proclaimed by the church in medieval times.

**truck.** A large vehicle used in the transportation of goods, propelled by motor. A low platform on wheels used in factories and warehouses for carrying goods, especially heavy articles. Garden produce.

See **pick-up truck.**

### [1302]

**Truck Acts.** Statutes regulating the medium in which wages are payable. 31 Am J Rev ed Lab § 822.

As early as the fourteenth century, laws in England prohibited the payment of wages, in certain trades, in anything but lawful money of the realm; and in 1831, all of these laws were consolidated into what is known as the Truck Act, embracing nearly all classes of trades. The purpose of this legislation was the abolition of what was known in that country as the Truck System, that is to say, the payment of wages to laborers in goods or by truck. Similar legislation in the United States has been held constitutional.

**trucker.** One who drives a truck. A company engaged in the business of hauling goods for others. One engaged in truck farming.

**truck farming.** The growing of vegetables, a kind of agriculture. 58 Am J1st Workm Comp § 97.

**truckman.** See **trucker.**

**Truck System.** See **Truck Acts.**

**true.** In accord with fact, with the actual state of things. Honest; sincere. Reliable. *Moulou v American Life Ins. Co.* 111 US 335, 345, 28 L Ed 447, 451, 4 S Ct 466. Real, genuine, as a true plumber. *Andrews v Peck*, 83 Conn 666, 78 A 445.

See **half truth.**

**true admission.** A judicial admission, that is, an admission made by a party in the course of judicial proceedings. 29 Am J2d Ev § 597.

**true bill.** An indictment found by the concurrence of the requisite number of grand jurors, as indicated by the indorsement of the words "true bill" on the instrument. 27 Am J1st Indict § 30.

**true cash value.** The value which property has, as used, and by reason of its use. *Pittsburg, Cincinnati, Chicago & St. Louis Railway Co. v Backus*, 154 US 421, 430, 38 L Ed 1031, 1037, 14 S Ct 1114.

See **actual cash value**.

**true construction.** The rule of construction in ascertaining the intent of the parties as revealed in the language of the instrument and, as necessary in a proper case, in interpreting such language in the light of the surrounding circumstances.

In construing contracts, recourse must first be had to the language of the instrument. A true construction of the words or phrases used is the touchstone of legal right. They are to be interpreted according to their strict and primary acceptance unless from the context of the instrument and the intention of the parties to be collected from it as they appear to be used in a different sense, the cardinal rule always being to give effect to the intention of the parties in the light of the surrounding circumstances. *Prudential Ins. Co. v Nelson* (CA6 Tenn) 101 F2d 441.

**true copy.** An exact copy of a written instrument.

**true estate.** The estate of a decedent for local probate purposes, not necessarily the estate for federal estate tax purposes. *Hooker v Drayton*, 69 RI 290, 33 A2d 206, 150 ALR 723.

**true in every spot and place.** A broad warranty of soundness, particularly in reference to a horse. *Andrews v Peck*, 83 Conn 666, 78 A 445.

**true man doctrine.** The rule that one subjected to a felonious assault which produces imminent danger to him of death or great bodily harm is not required to retreat but may stand his ground, repel force by force, and if, in the reasonable exercise of his right of self-defense, he kills his assailant, he is justified. 26 Am J1st Homi § 151.

**true meridian.** A great circle of the earth running through the geographical poles. A meridian according to which the boundary lines of public lands of the United States are to be run in surveying. 43 USC § 751; 12 Am J2d Bound § 10.

**true party in interest.** Same as **real party in interest**.

**true value.** See **full and true value**.

**true verdict.** A verdict which represents the conclusion of the jury as reached where each juror has given honest consideration to the rights of the parties litigant, or the accused, as the case may be, and has exercised his best judgment, guided by the law and the weight of the evidence introduced at the trial. 53 Am J1st Trial § 1028.

**truly.** In a true manner. Faithfully.

See **fairly; true**.

**trunk line.** The main line of a railroad. The main line of a public utility.

See **trunk railway**.

**trunk line sewer.** A sewer having lateral branches.

**trunk railway.** A commercial railway connecting towns, cities, counties, or other points within the state or in different states, which has the legal capacity, under its charter or the general law, of constructing, purchasing, -and operating branch lines or feeders connecting with its main stem or trunk, the main or trunk line bearing the same relation to its branches that the trunk of a

tree bears to its branches, or the main stream of a river to its tributaries. *Diebold v Kentucky Traction Co.* 117 Ky 146, 77 SW 674.

**trust.** Noun: A fiduciary relationship; a matter of confidence. 54 Am J1st Trusts § 4. A confidential relationship involving a trustee, beneficiary, and a res consisting in property. 54 Am J1st Trusts § 4. The legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter, which performance can be compelled in a court of equity or a court which follows equitable principles. 54 Am J1st Trust § 4. The separation of the same estate into parts, legal and equitable, the owner of either part being entitled to the aid of the court in establishing and enforcing his rights. *McDonogh v Murdoch (US)* 15 How 367, 14 L Ed 732. A monopoly. *State ex rel. Watson v Standard Oil Co.* 49 Ohio St 137, 30 NE 279. Verb: To have confidence in a person; to extend credit to a person. *Putnal v Inman*, 76 Fla 553, 80 So 316, 3 ALR 1580.

The word is often employed in law, as well as in popular language, in a sense which is much broader than its ordinary technical significance, as denoting or as synonymous with confidence, fiduciary relationship, etc., and it is often used in reference to the confidential aspect of any kind of a bailment or possession by one person of the property of another. In its literal significance the word "trust" implies nurturing and sheltering of a sacred confidence. In its more technical significance, the word still implies such confidence in a relationship which involves a trustee, beneficiary, and a res. 55 Am J1st Trusts § 4.

As the word is used in the law pertaining to unlawful combinations and monopolies, a "trust"

### [1303]

in its original and typical form is a combination formed by an agreement among the stockholders in a number of competing corporations to transfer their shares to an unincorporated board of trustees, and to receive in exchange trust certificates in some agreed proportion to their stockholdings. By popular development the word has come to signify any combination, whether of producers or vendors of a commodity, for the purpose of controlling prices and suppressing competition, so that all contracts, agreements, and schemes whereby those who are competitors combine to regulate prices are called "trusts." 36 Am J1st Monop etc § 19.

**trust allotment to Indians.** See **restricted allotment.**

**trust company.** A corporation, usually engaged in a general banking business, and in particular as a compensated trustee of funds or property. A bank for purposes of regulation. 10 Am J2d Banks § 11.

**trust deed.** See **deed of trust; trust.**

**trust deposit.** A deposit in a bank in trust for the benefit of a person other than the depositor.

**trust de son tort.** See **trustee de son tort.**

**trustee.** That person in a trust relationship who holds the legal title to the property subject to the trust, for the benefit of the beneficiary or cestui que trust, with certain powers and subject to certain duties imposed by the terms of the trust, principles of equity, or statutory provision. 54 Am J1st Trusts § 112. The person to whom property is conveyed by a deed of trust given by way of security. The title of some public officers, such as township trustees and members of the board of a state, county, or municipal college or university. 15 Am J2d Colleges § 11.

Every man to whom a business is entrusted by another has a trust to perform; and every man is a trustee who is to advise concerning, or to operate, the business of another. *Quinn v Thippis*, 93 Fla 805, 113 So 419, 54 ALR 1173.

**trustee de son tort.** A trustee by reason of one's own wrong. *Morris v Joseph*, 1 W Va 256. One charged as a constructive trustee by reason of his own wrong. 54 Am J1st Trusts § 218. In effect, a trustee ex maleficio.

**trustee ex delicto.** One charged as constructive trustee because of his own wrong. 54 Am J1st Trusts § 218.

See **trustee de son tort; trustee ex maleficio; trustee in invitum.**

**trustee ex maleficio.** A trustee from wrongdoing; the trustee of a trust arising by operation of law from a wrongful acquisition. A person charged as a constructive trustee because without right he has entered into possession or assumed the management of property belonging to another. *Morris v Joseph*, 1 W Va 256.

See **constructive trust.**

**trustee in bankruptcy.** One to whom the administration of a bankrupt estate is delegated and confided. 9 Am J2d Bankr § 621.

The Bankruptcy Act specifies either one or three trustees for a bankrupt estate, and there is nothing in the Bankruptcy Act or the General Orders which supports the appointment of two or more than three trustees for an estate. Whenever three trustees have been appointed, the concurrence of at least two of them is necessary to the validity of their acts concerning the administration of the estate. 9 Am J2d Bankr § 623.

See **official trustee.**

**trustee of express trust.** A trustee duly appointed or designated, as distinguished from a trustee de son tort or a trustee under a constructive trust.

The term includes a person with whom, or in whose name, a contract is made for the benefit of another. *Muncie Natural Gas Co. v Muncie*, 160 Ind 97, 66 NE 436.

**trustee process.** A remedy akin to garnishment, that is, a proceeding whereby property, money or credits of a debtor in possession of another, the garnishee, are applied to the payment of the debts by means of process against the debtor and garnishee. *Pennsylvania Railroad Co. v Rogers*, 52 W Va 450, 44 SE 300. The remedy of garnishment. 6 Am J2d Attach § 2.

**trustor.** The maker or creator of a trust. Sometimes applied to the person upon whom a trust is conferred. *Interallied Commercial Co. v Standard Beryllium Corp.* 39 Misc 2d 269, 240 NYS2d 433.

**trust estate.** The res of a trust. The fund or property held by the trustee for the benefit of the cestui que trust.

The expression seems to be used with some confusion in the books. Sometimes it is employed to express the estate of the trustee, and sometimes that of the cestui que trust. *Cooper v Cooper*, 6 NJ Ey 9, 12.

**trust ex delicto.** See **trustee ex delicto.**

**trust ex maleficio.** See **trustee ex maleficio.**

**trust for value.** A trust created by the trustor in return for a valuable and adequate consideration.

**trust fund.** A fund held in trust by a trust company or other trustee.

See **following trust fund or property; special deposit.**

**trust fund doctrine.** The principle, commonly known as the American doctrine, that the property of a corporation must be appropriated to the payment of debts before any assets are distributed among stockholders. *Wood v Dummer* (CC Me) 3 Mason 308, F Cas No 17944; *Hospes v Northwestern Mfg. & Car Co.* 48 Minn 174, 50 NW 1117. Sometimes stated broadly as meaning that the assets of a corporation constitute a trust fund for the benefit of its creditors. 19 Am J2d Corp § 1021. The equitable principle that the assets of an insolvent corporation become, from the date of its assured insolvency, a trust fund for equal distribution among its creditors, so that thereafter none of them can obtain priority by levy of or by recovering a judgment and levying an execution against the corporation. 19 Am J2d Corp § 1579. The principle that the capital stock of a corporation, at least of an insolvent corporation, is in equity a trust fund for the payment of its creditors, regardless of whether it has been paid into the company or exists in the form of unpaid instalments upon stock subscriptions. 19 Am J2d Corp § 722. The doctrine under which subscribers to stock in a corporation are liable for a balance due on their unpaid subscriptions after

the dissolution of the corporation, although the subscriptions were obtained fraudulently and although the charter of the corporation was annulled, revoked, and cancelled for fraud practiced on the state in securing the articles of incorporation. State

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ex rel. *Havner v Associated Packing Co.* 216 Iowa 1053, 90 ALR 1339, 249 NW 761.

As to whether the insolvency of the corporation precludes the rescission of a subscription contract on the ground of fraud practiced upon the subscriber, see 18 Am J2d Corp § 336.

**trust fund immunity.** The principle that while a charity is not immune from liability in tort or from suit where it is sought to impose a tort liability upon it, the trust property or funds by which it is supported or maintained cannot be reached by execution under a judgment obtained against it in an action to recover damages for a tort. 15 Am J2d Char § 157.

**trust fund theory.** See **trust fund doctrine; trust fund immunity.**

**trust indenture.** An instrument which states the terms and conditions of a trust, such as a pension trust or a trust created by way of security for a bond issue.

**Trust Indenture Act.** A federal statute of 1939 having a purpose comparable to that of other federal securities legislation, namely to afford the public protection in connection with securities. 15 USC §§ 77aaa etc.

**trusting.** In some contexts, a precatory word operating in the creation of a trust. Anno: 49 ALR 81.

**trusting and believing.** In some contexts, a precatory expression operating in the creation of a trust. Anno: 49 ALR 82.

**trusting and confiding.** In some contexts, a precatory expression operating in the creation of a trust. Anno: 49 ALR 81.

**trust in invitum.** A trust raised by operation of law without the consent of the trustee.

Such a trust arises where goods have been stolen or converted to the use of the taker and sold, with respect to the proceeds, whether such proceeds are in the form of money or other property purchased therewith, and equity will in such cases enforce a trust in invitum in the original taker or in his assignee with notice. Likewise, where a trustee or other fiduciary has misapplied trust funds a like trust will be raised. *Lightfoot v Davis*, 198 NY 261, 91 NE 582.

See **trustee de son tort.**

**trust inter vivos.** A trust which becomes effective during the life of the settlor; in other words, a living trust. 54 Am J1st Trusts § 5.

**trustor.** The grantor, creator, maker, or settlor of a trust. trust patent to Indians.

See **restricted allotment.**

**trust power.** A power of appointment or disposal to be exercised by the donee of the power for the benefit of one other than himself. 41 Am J1st Pow §3.

Trust powers are imperative and their performance may be compelled in equity. In every case where the trust is valid as a power, the lands to which the trust relates remain in or descend to the person otherwise entitled, subject to the execution of the trust as a power. *Tilden v Green*, 130 NY 29, 28 NE 880.

**trust pursuit rule.** The following of trust property wrongfully converted by the fiduciary for the purpose of compelling restitution to the beneficiary. 54 Am J1st Trusts § 248.

See **following trust fund or property.**

**trust receipt.** A security transaction intended to aid in financing importers and retail dealers who do not have sufficient resources to finance the importation or purchase of merchandise, and who may be unable to acquire credit except through utilization as collateral of the merchandise imported or purchased. 53 Am J1st Tr Rec § 1. A comparatively modern instrument of security protecting a bank or finance company for money advanced or credit given for the purchase of goods by a dealer, the bank or finance company receiving title from the manufacturer and taking from the dealer a statement that he holds the goods in trust for the bank or finance company, it being contemplated by the transaction that the dealer will resell the goods and repay the bank or finance company, and that the ultimate buyer or consumer will obtain clear title. 47 Am J1st Sales § 838; 53 Am J1st Tr Rec § 2.

**Trust Receipts Act.** One of the uniform statutes. Repealed by the Commercial Code. 15 Am 32d Com C § 6.

**trust relationship.** See **fiduciary relation; trust.**

**truth.** The state of being true.

See **true.**

**truth drug.** Same as **truth serum.**

**truth serum.** A drug used with some success in testing an accused on the question of insanity or sex deviation but not as yet determined to be a reliable and accurate means of ascertaining truth or deception. 29 Am J2d Ev § 830.

**try a case.** See **trial.**

**try and decide.** See **hear and determine.**

**tuberculin test.** A method of testing cows for tuberculosis, provided by statute as a health measure for insuring a pure supply of milk. 22 Am J1st Food § 72.

**tuberculosis.** A serious disease, involving the formation of nodules in tissues of the body, particularly of the lungs, but yielding to modern medical treatment commenced before it has reached an advanced stage. 29 Am J Rev ed Ins § 745.

**tubman.** A barrister of experience in the court of exchequer. See 3 Bl Comm 28, note.

**Tucker Act.** A federal statute in reference to jurisdiction of certain actions brought against the United States. 28 USC § 1346.

**tug.** Same as **tugboat.**

**tugboat.** A watercraft used to tow or accelerate the progress of another vessel in some manner. 48 Am J1st Ship § 488. A small but powerful vessel employed for towing other vessels. See *Phoenix Ins. Co. v The Atlas*, 93 US 302, 23 L Ed 863. A vessel employed for pushing as well as pulling other vessels.

**tuition.** A fee charged a student at a college or university for the privilege of attendance at the institution. 15 Am J2d Colleges § 18. A charge sometimes imposed on a pupil in a public school because of his non-residence, and sometimes paid by the district of his residence. 47 Am J1st Sch § 154.

**tulit.** He brought.

**tumbrel.** A cart. Another term for ducking stool.

**tumult.** An uproar. Commotion or confusion, usually involving noise.

**tumultuous assembly.** An assembly conducted with disorder, noise, and confusion.

An assemblage of a thousand people in the main street of a city, obstructing the use of the street, discharging bombs, skyrocketing, Roman candles, and other missiles loaded with powerful explosives, at private property, endangering life and preventing the use of the street for purposes of business, is a tumultuous assembly. *Madisonville v Bishop*, 113 Ky 106, 67 SW 269.

**tumultuous petitioning.** An offense in the nature of a riot, in violation of the statute 13 Charles 11, St. I, c. 5 (1661) providing that not more than twenty names shall be signed to any petition to the king or either house of parliament for any change in the laws, unless previously approved by the public officers named in the statute. See 4 Bl Comm 147.

**tun.** The Anglo-Saxon word from which our word "town" derived.

**tunc.** Then; at that time.

See **nunc pro tunc**.

**tunnel.** An underground way. The excavation made in a mine for the purpose of exploring for or reaching a vein or lode of mineral. 36 Am J1st Min & M § 72.

**tunnel location.** A term of mining men. The right to drive a tunnel beneath the surface in making an exploration for the discovery of minerals, and, in the event of the discovery of mineral in such manner, to appropriate veins or lodes thereof, not previously known to exist, within a limited distance from the tunnel. 36 Am J1st Min & M § 72.

**turbary.** See **common of turbary**.

**turbulence.** Air in violent motion creating a condition of concern to an air pilot. 8 Am J2d Avi § 93.

**turf.** Sod. A layer of earth with grass growing upon it and the roots of the grass matted within it. A track for horse racing.

See **common of turbary**.

**turf and twig.** A clod of turf, or a twig or bough growing on the land, the usual symbolic means by which livery of seisin was effected, one of these being delivered on the land by the feoffor to the feoffee. See 2 Bl Comm 315.

**turf exchange.** A place where patrons congregate and bet on horse races run at another place. *James v State*, 4 Okla Crim 587, 112 P 944.

**turn.** A gate or bar on a turnpike or toll road at which tolls are collected. 54 Am J1st Turn & T R § 2. A change in the direction of movement. A development.

**turning.** The manipulation of a motor vehicle in changing direction. 7 Am J2d Auto § 216.

**turning lights.** Lights on a motor vehicle to be used as signals in turning. 7 Am J2d Auto § 157.

**turning out by the heels.** A jocular term for physical ouster from possession of real estate. 3 Am J2d Adv P § 174.

**turning signal.** The signal to be given by the driver of a vehicle upon the highway in advance of making a turn, as a warning to approaching or following vehicles. 7 Am J2d Auto § 217.

**turning state's evidence.** Voluntarily giving testimony against those with whom one participated in the commission of a crime, the testimony implicating one's self, but given in the hope of avoiding prosecution of self or of receiving a light sentence. 58 Am J1st Witn § 525.

**turn-key drilling.** See **turn-key job.**

**turn-key job.** An expression of the construction industry, meaning a complete house, one ready for occupancy by the owner as a dwelling. 13 Am J2d Bldg Contr § 10. A term with a fixed and definite meaning in the oil industry.

On such a job the driller of an oil well undertakes to furnish everything and does all the work required to complete the well, place it on production, and turn it over ready to "turn the key" and start the oil running into the tanks. Walker v Chitty (CA6 Ohio) 112 F2d 79; Retsal Drilling Co. v Commissioner (CA5 Tex) 127 F2d 355.

**turnout.** A siding or sidetrack branching out from the main line or track of a railroad. Appeal of River Front Railroad, 133 Pa 134, 19 A 356, 357.

**turnover.** A business term for the employment of assets in a series of acts, as buying a stock of particular merchandise, such as shoes, selling it out, and then replenishing the stock by another purchase. Park Amusement Co. v McCaughn (DC Pa) 14 F2d 553.

**turnover order.** An order rendered in a proceeding supplementary to judgment and execution requiring the judgment debtor to turn over for application to the satisfaction of the judgment property subject to execution, in his possession or under his control, disclosed in the supplementary proceeding. 30 Am J2d Exec § 838. An order in a turnover proceeding in bankruptcy, the terms of which call for the delivery of property of the bankrupt to the trustee in bankruptcy. 9 Am J2d Bankr § 1150.

**turnover proceeding.** A summary proceeding in a court of bankruptcy brought for the purpose of summarily retrieving for the trustee in bankruptcy, who is entitled thereto, assets concealed and diverted from him the efficacy of such proceeding appearing in the fact that the withholding of such assets pending the outcome of plenary suits to recover them would intolerably obstruct and delay administration of the bankrupt estate. 9 Am J2d Bankr §§ 1137 et seq.

**turnpike.** A highway for the use of which a toll is charged; a highway which is distinctive in the respect that one who refuses to pay the toll may be turned back as of right. 54 Am J1st Turn & T R § 2. In loose usage, an improved highway.

**turnpike corporation.** A private corporation engaged in operating a turnpike or toll road. turnpike road.

Same as **turnpike.**

**turnstile.** A revolving post with bars, placed in a fence to permit a passage of persons but precluding passage of animals; a device of similar construction placed at an entrance to a theater, subway, etc. to restrict entrance to one person at a time. Gascoigne v Metropolitan Westside Elevated R. Co. 239 111 18, 87 NE 883. Sometimes released for movement by placing a coin in a slot.

**turntable.** A revolving platform, found in railroad shops and terminals, upon which a locomotive is turned around.

#### [1306]

**turntable cases.** Cases involving an injury to a child on a turntable which elucidate the doctrine of attractive nuisance. 38 Am J1st Negl § 143.

See **attractive nuisance.**

**turntable doctrine.** The principle of liability for attractive nuisance as applied in cases involving an injury to a child sustained while playing upon a turntable. 38 Am J1st Negl § 143.

See **attractive nuisance.**

**turpentine.** A tree crop classified as fructus industriales. *Richbourg v Rose*, 53 Fla 173, 44 So 69. An ingredient of paints and varnishes, made from matter exuded from a pine tree.

**turpentine timber.** See **timber suitable for turpentine purposes.**

**turpis.** Bad; base; immoral; wicked; dishonorable.

**turpis contractus.** A dishonorable contract.

**Turpis est pars quae non convenit cum suo toto.** That part is bad which does not correspond with its own whole.

**turpitude.** Depravity.

See **moral turpitude.**

**turris.** A tower.

**tuta.** Safe, secure.

**Tuta est custodia quae sibimet creditur.** That custody or guardianship is safe which is intrusted to itself alone.

**tutela.** (Civil law.) A guardianship or tutelage.

**tuteur.** (French.) Guardian or protector.

**Tutius erratur ex parte mitiori.** It is safer to err on the side of leniency.

**Tutius semper est errare in acquietando, quam in puniendo; ex parte misericordiae quam ex parte justitiae.** It is always safer to err in acquitting than in punishing; on the side of mercy rather than on the side of justice. See *Broom's Legal Maxims* 326.

**tuto.** See **in tuto.**

**tutor.** A guardian. A person who under the Roman law occupied practically the same position with reference to his minor charge as a guardian of the person of an infant occupies toward his ward, under our laws. See 1 Bl Comm 460. A teacher engaged privately. A teacher instructing one pupil at a time.

See **protutor.**

**tutorship.** The position, duties, and authority of a tutor.

See **dativo tutorship; tutor.**

**tutrix.** Feminine of tutor.

**T. V. A.** Abbreviation of Tennessee Valley Authority.

**Twelfth Amendment.** An amendment to the Constitution of the United States, prescribing the manner of choosing a President and Vice President.

**twelve-man jury.** The common law jury; the jury required by statute in many jurisdictions. 31 Am J Rev ed Jury § 121.

**Twentieth Amendment.** An amendment to the Constitution of the United States which fixes the date of the commencement of the terms of President, Vice President, United States Senators, and members of the House of Representatives, and the filling of vacancy in the office of the Presidency or Vice Presidency due to death before the time fixed for the beginning of term, failure to qualify, or failure to elect.

**Twenty-eight Hour Law.** A federal statute, applicable to the interstate transportation of livestock, which provides that a carrier shall not keep livestock confined in cars for a period longer than twenty-eight consecutive hours without unloading for rest, water, and feeding, for a period of at least five hours, unless the unloading is prevented by storm or other unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight, but permitting the extension of the period of permissible confinement to thirty six hours upon the written consent of the owner or person in charge of the shipment. 45 USC §§ 71-74; 13 Am J2d Car § 356.

**Twenty-first Amendment.** An amendment to the Constitution of the United States repealing the Eighteenth Amendment relative to traffic in intoxicating liquors.

**Twenty-fourth Amendment.** An amendment to the United States Constitution barring payment of poll tax as a qualification in federal elections.

**Twenty-second Amendment.** An amendment to the Constitution of the United States limiting Presidential terms of office.

**Twenty-third Amendment.** An amendment to the Constitution of the United States providing a Presidential vote for the District of Columbia.

**twice in jeopardy.** See **prior jeopardy.**

**twig.** See **turf and twig.**

**Twine's Case.** A famous English case involving conveyances in fraud of creditors, reported in 8 Coke 80.

**twin wills.** Same as mutual wills. Anno: 169 ALR 12, 13.

See **mutual wills.**

**twisting.** The efforts of an agent representing an insurance company to induce a person to drop insurance already held by him in some other insurance company and take out insurance in the company represented by the agent, especially where characterized by misrepresentations. 29 Am J Rev ed Ins § 63.

**two-courts rule.** The principle followed by a higher appellate court in not interfering with a finding of facts made by the trial court if such finding has been affirmed by an intermediate appellate court. 5 Am J2d A & E § 828.

**two-dismissal rule.** The rule in some jurisdictions that a notice of voluntary dismissal of an action shall operate as an adjudication upon the merits when filed by a plaintiff who has once dismissed an earlier action based on or including the same claim. 24 Am J2d Dism § 76.

**two-donee statute.** A statute providing that a person may make a conveyance or a devise of lands to a succession of donees, then living, not exceeding two, and to the heirs of the body of the remainder

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man, and in default thereof to the right heirs of the donor in fee simple. 41 Am J1st Perp § 11.

**two-for-one rule.** The rule that where a carrier does not furnish a car of the dimensions or weight-carrying capacity ordered by a shipper, but for reasons of convenience furnishes a car of different dimensions or weight-carrying capacity which is thereupon loaded to capacity, and the balance of the shipment is taken in another car, the entire shipment is subject to carload minimum weight rates applicable to the car of the dimensions or weight-carrying capacity ordered. *Atchison, T. & S. F. R. Co. v Judson Freight Forwarding Co.* (DC Cal) 49 F Supp 789.

**two-innocent-persons principle.** The principle of equity that when one of two innocent persons that is, persons each guiltless of an intentional moral wrong-must suffer a loss, it must be borne by that one of them who, by his conduct, has rendered the injury possible, or who could have prevented it. 28 Am J2d Estop § 62. The maxim that as between one of two innocent persons who must suffer from the fraud of a third, he who furnishes the means to commit the fraud, or whose negligence enables the third person to commit it, must bear the loss. 37 Am J2d Fraud § 306.

**two-issue rule.** The rule that where there are two or more distinct defenses upon which the parties are at issue, a general verdict will stand on appeal if it can be supported on the basis of any one of them, regardless of error in the charges to the jury pertaining to the others. 5 Am J2d A & E § 787. A rule of some courts that if the case presents two separate issues, and if one issue, complete in itself as a cause of action or defense, is submitted to the jury free from error, and the jury returns a general verdict and there is nothing to indicate upon which issue the general verdict is grounded, the issue which presents the claimed error may be disregarded. *McCrate v Morgan Packing Co.* (CA6 Ohio) 117 F2d 702.

For limitations upon the two-issue rule, see 5 Am J2d A & E § 787. See also *McCrate v Morgan Packing Co.* (CA6 Ohio) 117 F2d 702.

**two-level appellate system.** A system prevailing in some states under which there are two levels of courts to or through which an appeal may be taken. 4 Am J2d A & E § 3.

**two-step appeal.** An appeal taken in a state having a two-level structure of appellate courts, the appeal going first to an intermediate court and from thence to the higher court of appeals. 4 Am J2d A & E § 3.

**two universities.** See **courts of the two universities.**

**two-witness rule.** A rule provided by statute in some jurisdictions which requires for conviction in a capital case the testimony of at least two witnesses. *State v Palko*, 122 Conn 529, 191 A 320, 113 ALR 628, *affd* 302 US 319, 82 L Ed 288, 58 S Ct 149. The rule in certain cases which requires two witnesses or one witness and corroborating circumstances to prove a fact. 41 Am J1st Perj § 78. The rule that the testimony of two witnesses or its equivalent is required to overcome the weight of defendant's answer in equity as evidence. 30 Am J 2d Ev § 1100.

**tymbrella.** Same as **tumbrel.**

**type certificate.** A certificate issued by the Administrator of the Federal Aviation Agency for aircraft, aircraft engines, and propellers. 8 Am J2d Avi § 22.

**type restriction.** A restriction by covenant limiting the erection or construction of buildings upon the premises involved to a certain type of structure, particularly a dwelling house or residence. 20 Am J2d Cov § 190.

**typhoid fever.** A common infectious disease, but sometimes classified as an injury or personal injury for the purposes of an award of workmen's compensation. 58 Am J1st Workm Comp § 244.

**typographical error.** The error of a printer in setting type. *Thompson v Alexander City Cotton Mills Co.* 190 Ala 184, 67 So 407. In loose usage, the error of a stenographer in typing.

**tyranny.** The rule of a despot or tyrant; absolutism.

**tyrant.** See despot; tyranny.

**Tyrrel's Case.** An ancient English case before the statute of uses, which held that a use upon a use could not be sustained, reported in Dwyer 155a.