

BALLENTINE'S  
LAW  
DICTIONARY

WITH PRONUNCIATIONS

BALLENTINE'S LAW DICTIONARY  
WITH PRONUNCIATIONS

THIRD EDITION



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THIRD EDITION

Edited by William S. Anderson

LAWYERS CO-OPERATIVE • BANCROFT WHITNEY



ADVERSE  
PARTY  
Adverse  
claim

FOREWORD TO THE THIRD EDITION

# BALLENTINE'S LAW DICTIONARY

WITH PRONUNCIATIONS

*JAMES A. BALLENTINE*

THIRD EDITION

Edited by William S. Anderson

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY  
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THIRD EDITION

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## FOREV

"A word is not a  
and may vary great  
is used," wrote Ju  
(1918).

True it is, words  
environment, social  
change. Thus are

Language is alive  
updating. This thi  
to its recognition  
to rely on a dictio

Every effort has  
The definitions of  
the actual constru  
the page on which  
the lawyer-research  
indefinable elemen

The scope of th  
reader will find p  
together with the  
enactments as pa  
all in accord with

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sion's immediate  
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Finally, the att  
ment of this part  
editor the late W  
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a number of scho  
of this Union. As  
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New York Jurisp  
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and perhaps gre  
Lord Coke's com  
learning dieth w



ADVERSE  
PARTY

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Adverse  
claim



Affirm-  
ative  
Defense  
Aff. Relief

## ADVERSE

-ti'she-us pe-kū'ni-a).  
sual source; not inher-

Adventitious.  
inherent; coming from

l ven'trem in-spi-she-  
mination of a woman  
she is pregnant.

ie as **adventure**.  
e' ma'ris). Adventures

ith an element of risk.  
urge of an agent to be  
t the best price obtain-

is used in marine poli-  
d as synonymous with  
used by the writers to  
yage as a "marine ad-  
pores v Louisville Un-  
226, 233.

**adventure**.  
shareowner in a mine;  
takes a risk; one who  
undertaking involving

(di-am). To a sense of  
**verecundiam**.

-tū'na). Ill fortune.  
y in a contest or an

i). Evidence otherwise  
e parties is permitted  
ar or related evidence  
his opponent. 29 Am

ested action or pro-  
s distinguished from  
lication.

trial in which there  
the court, who have  
t and establish their  
they have. Bolden v  
o. 215 Ala 334, 110

er'sa va-le-tū'dō ex-  
s, in a contract for

ve, in legal significa-  
**ment of hostility un-**  
stern Oregon Land  
, 952. The adjective  
persons in litigation  
**adverse parties**.

ile an adverse claim.

verse possession, a  
hostile to the true  
assertion of an ad-  
th and filed in the  
g an application for  
Superior Court, 14  
aim to property by  
ed against a trustee  
in J2d Bankr §§ 50-

ing title.

## ADVERSE

**adverse enjoyment**. The use of an easement under a  
claim of right.

See **adverse possession**.

**adverse interest**. An interest which displaces one's  
own interest in whole or in part.

As used in a statute permitting a litigant to call  
and cross examine any person having an adverse  
interest in the outcome of the litigation, the term  
"adverse interest" is to be construed according to  
its common and accepted meaning, not as synony-  
mous with "adverse testimony." 58 Am J1st Witn  
§ 560. Under a statute which prohibits a party from  
testifying where the adverse party is a guardian,  
trustee, executor, or administrator, it is adverse in-  
terest which disqualifies a person as a witness, not  
merely his nominal status as plaintiff or defendant.  
58 Am J1st Witn § 285.

As used in a statute providing that accounts of  
executors and administrators settled in the absence  
of any person "adversely interested" and without  
notice to him may be opened upon his application,  
the term has been defined as meaning the situation  
of one who has some interest in the estate, that is,  
someone having such an interest as would entitle  
him to notice of the filing by the executor or ad-  
ministrator of a final report, together with a prayer  
for discharge. Re Holman, 216 Iowa 1186, 250 NW  
498, 98 ALR 1363.

**adversely interested**. See **adverse interest**.

**adverse parties**. Persons who stand in relation to  
another person as being on the opposite side in an  
action or proceeding or whose interests are adverse  
to such person.

Within the meaning of the rule requiring a notice  
of appeal to be served upon all adverse parties, such  
parties include every party to the action or proceed-  
ing whose interest in the subject-matter of the ap-  
peal is adverse to, or will be affected by, the reversal  
or modification of the judgment, decree, or order  
from which the appeal is taken. Co-parties to an  
action who do not join in the appeal should, as a  
general rule, be served with notice of appeal where  
their interests are adverse to that of the appellant.  
4 Am J2d A & E § 318.

**adverse possession**. An actual and visible appropri-  
ation of property commenced and continued under  
a claim of right inconsistent with and hostile to the  
claim of another. An open and notorious possession  
and occupation of real property under an evident  
claim or color of right; a possession in opposition  
to the true title and real owner—a possession which  
is commenced in wrong and maintained in right. 3  
Am J2d Adv P § 1.

The term applied in matters concerning title to  
lands as distinguished from incorporeal heredita-  
ments. Anno: 27 ALR2d 325.

A title acquired by adverse possession is a title  
in fee simple, and is as perfect a title as one by deed  
from the original owner or by patent or grant from  
the government. Thornely v Andrews, 40 Wash  
580, 82 P 899.

See **constructive possession**.

**adverse use**. See **adverse user**.

**adverse user**. A continuous and exclusive user as of  
right for as long as the prescriptive period. 25 Am  
J1st High § 12. A use against the owner of the  
servient tenement as distinguished from a use under  
such owner. Zollinger v Frank, 110 Utah 514, 175  
P2d 714, 170 ALR 770. One who uses property as  
his own under a claim of dominion or right existing  
in himself to the exclusion of all other claimants.

## [41]

## ADVISEMENT

Use may be open and notorious and still not be  
adverse. Northern Pacific Ry. Co. v Cash, 67 Mont  
585, 216 P 782. An adverse user which will ripen  
into an easement by prescription is an exclusive,  
open, visible, or notorious use without license or  
permission of the true owner of the premises, but  
with his knowledge and hostile to him, under a  
claim to a definite right which can be the subject  
of a grant, that continues without interruption for  
the length of the prescriptive period. 17A Am J Rev  
ed Ease §§ 74 et seq.

**adverse witness**. A witness who, in the opinion of the  
presiding judge, is hostile.

**adverso**. See **adversus**.

**adversus**. Opposed to; aligned against.

**adversus bonos mores** (ad-ver'sus bō'nos mō'rēz).  
Contrary to good morals.

**advertise** (ad'ver-tiz or ad'ver-tiz'). To give public  
notice of; to announce publicly; especially by a  
printed notice. Montford v Allen, 111 Ga 18, 19.  
To make known to the public through a medium  
of publicity that one's goods or services are availa-  
ble for sale or engagement.

**advertisement** (ad'ver'tiz-ment or ad'ver-tiz'ment).  
A notice published in handbills or a newspaper.

The word also includes notice by posting or dis-  
play on signboards. The idea underlying the word  
has reference not so much to the vehicle or instru-  
mentality used for getting the notice before the pub-  
lic, as to the diffusion, or bringing home to the  
public, of the information or matter contained in  
the notice. People v McKean, 76 Cal App 114, 243  
P 898.

**advertising lottery** (ad'ver-ti-zing or ad'ver-ti'zing).  
The statutory offense provided for in nearly all ju-  
risdictions of advertising in any manner whatso-  
ever, either directly or indirectly, any lottery or the  
place or manner of conducting the same, or any  
offer or proposition to insure those participating  
therein from loss. In many instances the statutes are  
applicable to all forms of advertising, whether the  
lottery is to be drawn or conducted within the state  
or not. 34 Am J1st Lot § 27.

**advice**. View or opinion communicated to another,  
for example, a lawyer's advice to his client. In com-  
mercial law, information given as to shipments of  
goods, delays, the drawing of paper for acceptance,  
etc.

**advisamento consilii nostri**. See **de advisamento con-**  
**silii nostri**.

**advisamentum** (ad-vi-sā-men'tum). Advisement.

**advise** (ad-vi-sā're). To advise; to take under ad-  
visement; to consider; to be advised.

**adviseare vult**. See **curia adviseare vult**.

**advisari** (ad-vi-sā'ri). Same as **adviseare**.

**advise** (ad-viz'). To give advice; to offer an opinion  
as worthy or expedient to be followed; to counsel.  
Long v State, 23 Neb 33, 45, 36 NW 310.

**advised**. Armed with the facts or knowledge.

**advisedly**. Acting with a prepared mind, not on the  
spur of the moment.

**advisement** (ad-viz'ment). Consideration. A court  
takes a case under "advisement" when, following  
a trial or argument on a motion, it delays rendering  
judgment or decision until it has examined and con-  
sidered the questions involved. See Clark v Read,  
5 NJL 571, 573.



Affirm-  
ative  
Defense

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Aff. Relief



blood relations of the other spouse, and the husband is not related by affinity to the wife. *Re Bordeaux's Estate*, 37 Wash 2d 561, 225 P2d 433, 26 ALR2d 249; 23 Am J2d Desc & D § 45; 26 Am J1st H & W § 2; 27 Am J1st Incest § 4; 30A Am J Rev ed Judges § 144.

Under constitutional or statutory provisions, in practically all of the states, a judge is disqualified to act in any cause wherein he may be related to one of the parties within certain specific degrees of "affinity" or "consanguinity." 30A Am J Rev ed Judges § 142.

**affirm** (a-fĕrm'). To declare solemnly instead of making a statement under oath. 58 Am J1st Witn § 549; also, to confirm or ratify a statement, belief, opinion, decision or judgment, for example to affirm a judgment after appeal or review proceeding.

**affirmance** (a-fĕr'mans). The confirmation of a judgment or order of court. A final determination upon appeal that the proceeding under review is free from prejudicial error. 5 Am J2d A & E § 934. A positive declaration. The adoption by a person of the prior act of another which did not bind him at the time, but which was done or professed to be done on his account. 3 Am J2d Ag § 160.

**affirmance-day-general**. A day appointed for the general affirmance or reversal of judgments in the court of exchequer.

**affirmance of judgment**. A determination that the action or proceeding under review is free from prejudicial error and that the judgment appealed from shall stand. 5 Am J2d A & E § 934.

The dismissal of an appeal for want of prosecution is clearly *not* an affirmance of the judgment. *Drummond v Husson*, 14 NY 60, 61. Affirmance implies a consideration on the merits, while a dismissal may be very summary. 5 Am J2d A & E § 905.

**affirmant** (a-fĕr'mant). A person who affirms in lieu of taking an oath.

**Affirmanti, non neganti, incumbit probatio** (af-fir-man'ti, non ne-gan'ti, in-kum'bit pro-bā'she-o). The burden of proof is on the party who affirms, not on him who denies. Anno: 23 ALR2d 1254.

**affirmare** (af-fir-mā're). To affirm; to assert.

**affirmation**. A positive statement. A solemn statement or declaration, made as a substitute for a sworn statement by a person whose conscience will not permit him to swear. 39 Am J1st Oath § 13.

An affirmation of fact constituting a representation is a warranty and not merely evidence of a warranty if its natural tendency is to induce the buyer to purchase the goods and the buyer thus induced does purchase them. *Park v Moorman Mfg. Co.* 40 Utah 273, 241 P2d 914, 40 ALR2d 273.

**affirmative**. An answer "yes"; something beyond passive tolerance or acceptance. The side supporting a proposition; bearing the burden of proof.

**affirmative action**. Constructive action rather than mere negation.

As the term is used in the National Labor Relations Act in authorizing "affirmative action" by the Labor Relations Board in ordering the reinstatement of an employee who was discharged for union activities, the statute contemplates remedial, and not punitive or disciplinary action, and the order must therefore be confined to restitution for the wrong done, however widely that should be con-

ceived. *NLRB v Leviton Mfg. Co.* (CA2) 111 F2d 619.

**affirmative authorization**. A positive declaration of authority rather than authorization by implication.

A boom in a river authorized and constructed in the manner required by statute is within the exception of a Federal act prohibiting obstructions in navigable streams except those affirmatively authorized by law. *Pickens v Coal River Boom Co.* 66 W Va 10, 65 SE 865.

**affirmative charge**. An instruction to the jury which removes an issue from consideration by the jury.

**affirmative defense**. A defense which amounts to something more than a mere denial of the plaintiff's allegations; a defense which sets up new matter not embraced within the ordinary scope of a denial of the material averments of the complaint.

Among such defenses are accord and satisfaction, release, estoppel, fraud when set up as a matter in avoidance, mistake, alteration of contract, excuse for nonperformance of a covenant, act of God, the statute of limitations, title by prescription, and justification of an alleged tort. 41 Am J1st Pl § 144. See also 27 Am J2d Eq § 204.

**affirmative easement**. An easement which entitles the owner of the dominant tenement to use the servient tenement, or which clothes him with authority to do some act on the servient tenement which would otherwise be unlawful.

Rights of way, and rights of discharge of matter over the land of another, are illustrations of affirmative easements. 17A Am J Rev ed Ease § 13.

**affirmative order**. A rejected term of art.

In a seemingly technical distinction between "negative" and "affirmative" orders of the Interstate Commerce Commission, the opinion in *Procter & Gamble v United States*, 225 US 282, 56 L Ed 1091, 32 S Ct 761, gave authority to a doctrine which harmonizes neither with the considerations which induced it nor with the decisions which have purported to follow it. Later cases have made it clearer that "negative order" and "affirmative order" are not appropriate terms of art. Thus, the Supreme Court has had occasion to find that while an order was negative in form, it was affirmative in fact. *Rochester Tel. Corp. v United States*, 307 US 125, 83 L Ed 1147, 59 S Ct 754.

**affirmative plea**. In equity: a plea which alleges new matter of defense, proceeding on the theory that, admitting the case stated in the bill to be true, the matter pleaded by the plea affords a sufficient reason why the plaintiff should be denied relief. 27 Am J2d Eq § 204. At Law: a special plea of matters not provable under the general issue. 41 Am J1st Pl § 144.

**affirmative pregnant**. An allegation in the affirmative form implying a negative in favor of the adverse party.

Such allegations are denounced as bad pleading because they are ambiguous. See *Fields v State*, 134 Ind 46, 32 NE 780.

**affirmative proof**. Such evidence of the truth of the matters asserted as tends to establish them, and this regardless of the character of the evidence offered. *Jenkins v Hawkeye Commercial Men's Asso.* 147 Iowa, 113, 124 NW 199.

**affirmative proof of loss**. Evidence in such form as is usual and customary in such cases, or as is recognized by law, and such as is calculated to convince

or persuade the  
leged; clearly, so  
declaration of the  
ed Ins § 1404.

**affirmative relief**.  
an action upon  
his right thereto.

**affirmative repres**  
a fact as present  
§ 698.

**affirmative statute**  
act or duty, as d

**affirmative warra**  
which asserts the  
and appears on th  
thereto and mad  
Ins § 709.

**affix**. To attach in

**affixed**. Securely a

**affixed to the free**  
a fixture as to pa  
land, as in the ca  
upon it as in the  
dingham, 3 Cal  
See fixture.

**affixus** (af-fĭ'xus).

**afflatus divinus** (a  
inspired by divin

**affliction**. A cause

**afforare** (af-fō-rā')

**afforatus** (af-fō-rā')

**afforce** (a-fōrs'). T

**afforcer** (āf'for-sā')

**afforce the assize**  
verdict by starvi  
twelve agreed.

**afforciamentum** (a  
ing of a court in

**afforciamentum** o  
dis-trik'she-ō'ni  
a distress.

**afforciamentum**  
ple-ji-ō'rum). T  
pledges.

**afforciare** (af-fō  
strengthen.

See a fortiora

**afforer** (āf'for-ā).

**afforest** (af-for'es

**afforestation** (af-fo

**afforestation** (a-f-  
ment.

**afforestation** (af-f-  
barren of trees i

**affortiare** (af-for-

**affranchir** (ā'fran

**affray** (a-frā'). Fi  
a public place, t  
disturbance of p

Words alone  
defined, but if v  
accompanied by  
tempting to use

Answer



Colorable  
imitation

---

collusive  
suit

## COLLUSIVE

**collision of automom-**

g together with force  
am J2d Adm § 56; the  
er vessel or other float-  
Ins § 1317; a peril of  
of a marine insurance  
is § 1316.

marine insurance policy,  
circumstances can be  
ordinary use of lan-  
sion. An impairment  
caused by contact with  
collision, and vessels  
h one is temporarily  
dock. In this country  
common usage been  
act of the vessel with  
ne English cases hold  
the striking together  
that it does not apply  
into a sunken object,  
t obstruction; and in  
eld no collision where  
obstruction in the wa-  
1317.

The pillory.  
son who litigates with

classification of the  
or the purpose of pay-

allegations in a com-  
a in an action for libel  
plaintiff as the person  
c facts being required  
allegations that the  
shed or spoken of the  
r the statutes of many  
& S § 240.

o a collusion.

een two or more per-  
s rights by the forms  
et forbidden by law.  
NY 259, 51 NE 1056.  
ons interested in bid-  
et for construction of  
as for its purpose the  
competition between  
s § 15. As a defense  
at between a husband  
te the obtaining of a  
d spouse commit, or  
y represented in court  
which constitutes a  
press or refrain from  
uld prove or tend to  
r divorce. 24 Am J2d

ainted with collusion.

suit.

btained by collusion

ing of a vessel, which  
isdiction. 2 Am J2d

## COLLUSIVE

**collusive suit.** An action brought by collusion, with-  
out any real controversy to adjudicate. *Haley v*  
*Eureka County Bank*, 21 Nev 127, 26 P 64; an  
action intended to obtain a judicial opinion rather  
than to decide and determine an actual and existing  
controversy. 1 Am J2d Actions § 56.

**collybist** (kol'i-bist). A money changer.

**collybum** (kol'i-bum). (Civil law.) Exchange; the rate  
of exchange.

**Colonel.** An officer of the army, usually in command  
of a regiment, and ranking just below a brigadier  
general, an honorary title conferred formally or in-  
formally upon a person worthy of respect.

**colonial.** Pertaining to the colonies of the English  
government, known as the American colonies; per-  
taining to colonies; subservient rather than free and  
independent.

**colonial court.** Any of the courts held in the colonies  
before Independence.

**colonial laws** (kō-lō'ni-āl lās). The laws enacted by  
the legislatures of the American colonies of Eng-  
land, prior to the Revolutionary War; laws enacted  
in the colonies of Great Britain.

**colonna.** See *di colonna*.

**cononus** (ko-lō'nus). A serf; a husbandman.

**colony** (kol'ō-ni). A body of emigrants who settle  
abroad, but who remain loyal to their mother coun-  
try; a dependency; territory attached to a nation,  
known as the mother country, by ties of allegiance  
and usually by economic and political compacts or  
arrangements.

**color.** Mere semblance of a legal right. *State ex rel.*  
*West v Des Moines*, 96 Iowa 521, 65 NW 818; a  
characteristic of some races of men, but of primary  
legal significance in reference to Negroes; a per-  
sonal characteristic of vivid quality, usually with  
some measure of flamboyance.

See **colored**; **colored person**; **color of title**.

**colorable case.** See **colorable cause**.

**colorable cause.** A case which upon the facts stated  
in a complaint or accusation is sufficient to invoke  
the jurisdiction of an inferior court to issue process.  
*Broom v Douglass*, 175 Ala 268, 57 So 860.

**colorable claim.** A claim which superficially is  
proper and well-founded, but may actually be in-  
valid; a claim to property by a person in possession  
against the demand of a trustee in bankruptcy for  
possession, made in bad faith and without legal  
justification or so lacking in substance and merit as  
to amount to a mere pretense. 9 Am J2d Bankr  
§ 52.

**colorable imitation.** An imitation calculated to de-  
ceive.

**colorable invocation of jurisdiction.** See **colorable**  
**cause**.

**colorable transaction.** A transaction which presents  
an appearance which does not correspond with the  
reality and is intended to conceal or to deceive.  
*Osborn v Osborn*, 102 Kan 890, 172 P 23.

See **fraudulent conveyance**.

**color blindness.** An absence or great weakness of the  
sensations upon which the power of distinguishing  
colors must be founded. It is not a mere incapacity  
for distinguishing colors, for this might be due to  
lack of training. *Kane v Chicago, Burlington &*  
*Quincy Railroad Co.* 90 Neb 112, 114, 132 NW  
920.

## [219]

## COMBE

**colore.** See **ex colore**.

**colored.** As applied to a person, one of a colored  
race, which ordinarily means a Negro. *Collins v*  
*Oklahoma State Hospital*, 76 Okla 229, 184 P 946,  
7 ALR 895, 899.

**colored person.** Literally, one of a race other than  
the white race, but generally understood, in the  
absence of a statutory definition to the contrary, to  
mean persons of Negro blood, the black people of  
Africa, known as Negroes, and their descendants  
of mixed or unmixed blood, at least those with a  
predominance of Negro blood. 35 Am J1st Mar  
§ 146; 47 Am J1st Sch § 216.

See **Negro**.

**colore officii** (ko-lō're of-fi'si-i). Color of office.

**color of authority.** Authority derived from an elec-  
tion or appointment, however irregular or informal,  
so that the incumbent is not a mere volunteer. *State*  
*ex rel. Brockmeier v Ely*, 16 ND 569, 113 NW 711.

**color of law.** Mere semblance of a legal right. *State*  
*ex rel. West v Des Moines*, 96 Iowa 521, 65 NW  
818.

**color of office.** An expression for acts performed by  
an officer which are entirely outside of or beyond  
the authority conferred by the office. *Haffner v*  
*United States Fidelity & Guaranty Co.* 35 Idaho  
517, 207 P 716; *Wilson v Fowler*, 88 Md 601, 42  
A 201.

**color of title.** The appearance but not the reality in  
title. 27 Am J1st Improv § 11; that which gives the  
semblance or appearance of title, but is not title in  
fact—that which, on its face, professes to pass title,  
but fails to do so because of a want of title in the  
person from whom it comes or the employment of  
an ineffective means of conveyance. 3 Am J2d Adv  
P § 96.

**colorogal.** A liquid used in taking an X-ray picture  
of an organ of the body by injecting it so as to  
render the organ opaque. *United States Fidelity &*  
*G. Co. v Wickline*, 103 Neb 681, 173 NW 689.

**colportage** (kol'pōr-tāj). The sending forth of per-  
sons to labor for the spread of the Gospel by dis-  
tributing religious books and tracts. Anno: 17 ALR  
1052.

**colporteur** (kol'pōr-tēr). A person who travels for the  
sale and distribution of religious tracts and books;  
a hawker and peddler, especially, in modern usage,  
a peddler of religious books. *Will of Fuller*, 75 Wis  
431, 436.

**colt.** An animal of the horse family, not more than  
three years old, or even younger, depending upon  
local terminology; a young person with little experi-  
ence.

**columbarium** (kol-um-bā'ri-um). A building contain-  
ing niches in which are placed urns containing the  
ashes of the deceased after cremation. 14 Am J2d  
Cem § 1.

**comaker.** A joint maker.

See **joint maker**.

**combat.** Noun: A fight or battle. Verb: To fight; to  
engage in battle. As the word appears in a clause  
excepting injuries received in combat, the term im-  
ports causation, aggression or fault on the part of  
the insured. 29A Am J Rev ed Ins § 1201.

See **mutual combat**.

**combe** (kōm). A narrow valley.



Copy  
right  
before  
Public  
ation

was enrolled, thereby establishing the rights of the tenant and giving more permanency to his estate than an ordinary estate at will. Anno: 114 ALR 626.

**copyhold tenure.** See **copyhold estate**.

**copyright.** The exclusive privilege, by force of statute, of an author or proprietor to print or otherwise multiply, publish, and vend copies of his literary, artistic, or intellectual productions, and to license their production and sale by others during the term of its existence. 18 Am J2d Copyr § 1.

See **literary property**; **notice of copyright**.

**copyright after publication.** The right to multiply copies secured by statute. 18 Am J2d Copyr § 1.

**copyright before publication.** A term of loose usage for the common law right of first publication.

See **first publication**.

**copyrighted.** Protecting a publication by a copyright. *Solis Cigar Co. v Pozo*, 16 Colo 388, 26 P 556.

See **copyright**.

**copyright notice.** See **notice of copyright**.

**cor.** An abbreviation of the word "corner," used in descriptions of real property, also of "coroner."

**coram** (kō'ram). Before; in the presence of.

**coram domino rege ubicunque tunc fuerit Angliae** (kō'ram do'mi-nō rē'je u-bi-kun'kwē tunk fu'e-rit ang'li-ē). Before our lord the king wherever he may then be in England.

**coram ipso rege** (kō'ram ip'sō rē'je). In the presence of the king himself. This was the style given to the court of king's bench from the fact that the king formerly sat there in person. See 3 Bl Comm 41.

**coram iudice** (kō'ram jō'di-sē). Within the jurisdiction of the court. *The United States v Arredondo* (US) 6 Pet 691, 8 L Ed 547, 554.

**coram me vel iudiciariis meis** (kō'ram mē vel jūsti-she-ā'ri-is mē'is). Before me or my justices.

**coram nobis** (kō'ram nō'bis). In our presence; before us. A writ used to obtain review of a judgment for the purpose of correcting errors of fact in criminal as well as in civil proceedings. 18 Am J2d Coram Nobis § 1.

For fine distinction between "coram nobis" and "coram vobis," see **coram vobis**.

**coram non iudice** (kō'ram non jō'di-sē). Before one who is not the judge. That is, before a court which has not jurisdiction of the matter. A proceeding had and determined by a court without such jurisdiction is said to be "coram non iudice," the situation being the same as if there were no court. *Grumon v Raymond*, 1 Conn 40.

**coram paribus** (kō'ram par'i-bus). In the presence of his peers. As was the custom with all other solemn transactions, the attestation of a deed was always coram paribus, and this was often done when they were assembled in the court-baron, hundred, or county court. See 2 Bl Comm 307.

**coram paribus de vicineto** (kō'ram pa'ri-bus dē vi-si'ne-tō). In the presence of the peers or freeholders of the neighborhood.

**coram rege** (kō'ram rē'je). In the presence of the king. "For at first the words nisi per legale iudicium parium (unless by the lawful judgment of his peers) had no reference to a jury: they applied only to the pares regni (the peers of the realm), who were the constitutional judges in the court of exchequer and

coram rege. *Hurtado v California*, 110 US 516, 529, 28 L Ed 232, 236, 4 S Ct 111, 292.

**coram sectatoribus** (kō'ram sek-tā-tō'ri-bus). Before or in the presence of the suitors.

**coram vobis** (kō'ram vō'bis). Before you; in your presence. A writ for the correction of error which is essentially the same as a writ of coram nobis, the only distinction being that where the writ is directed by the reviewing court to another arm of the same court, it is called "coram nobis," while if it is directed by the reviewing to the trial court it is called "coram vobis." 18 Am J2d Coram Nobis § 1.

**cord.** A unit of wood-measure applied to wood cut for fuel, being a pile of wood eight feet long, four feet high and four feet wide, containing one hundred and twenty-eight cubic feet. *Kennedy v Oswego & Syracuse Railroad Co. (NY)* 67 Barb 169, 178.

See **umbilical cord**.

**cordial.** Noun: A liqueur. Adjective: Hearty; friendly with warmth of feeling exhibited.

**corespondent.** The third party in the triangle of persons presented in an action for divorce on the ground of adultery. The person who is accused by the plaintiff in a suit for divorce of having committed adultery with the defendant.

**corf** (kōrf). A box for carrying coal, used in coal mining.

**corium forisfacere** (ko'ri-um for'fis-fā'ke-re). The forfeiture of skin,—a punishment for crime which was administered by flogging.

**corn.** In the very broad sense of the term, "corn" is grain, but in this country, "corn" means the grain or the plant of maize, often called Indian corn. A coarse spot on a toe caused by a thickening of the skin produced by pressure of ill-fitting shoes. A slang term for corn whiskey, also for banal or overly sentimental expressions.

**cornage** (kōr'nāj). Same as **cornage tenure**.

**cornage tenure.** A tenure by the service of blowing a horn when the Scots or other enemies entered the land, in order to warn the king's subjects. Like other services of the same nature, it was a species of grand serjeanty. See 2 Bl Comm 74.

**Cornelian law.** See **lex Cornelia**, et seq.

**corner.** The point at which converging lines meet; a point established by a survey and located by calls in a description of the boundaries of a tract of land. 12 Am J2d Bound § 72. The northeast, southeast, southwest, and northwest extremities of sections, quarter sections, and one-sixteenth sections of land as laid out by the government survey. The situation which exists where a person or a number of persons acting jointly have entered into contracts for future purchases of a given commodity in excess in the aggregate of the supply of such commodity in the market. Anno: 83 ALR 587. Acquiring control of all or a dominant quantity of a commodity with the purpose of artificially enhancing the price, executed by purchases and sales of the commodity and of options and futures therein, in such a way as to depress the market price, whereby the participants are enabled to purchase the commodity at satisfactory prices and withhold it from the market for a time, thereby inflating the price. *United States v Patten*, 226 US 525, 57 L Ed 333, 33 S Ct 141.

**corner lot.** A lot at a corner of intersecting streets.

See **frontage**.

**cornice.** A projecting  
1 Am J2d Adj L

**corn laws.** English  
merce in grain.

**corn-rent.** See **grain**

**corodium** (ko-rō'di-

**corody** (kor'ō-di)  
which allowed a mo

**corona** (kō-rō'nā). T

**coronare** (kō-rō-nā'r  
son a priest.

**coronare filium** (kō-r  
son a priest.

**coronary.** Pertaining  
blood to the tissue

**coronary occlusion.**  
tery, resulting in un  
medical aid is avail  
within the meaning  
erage disability cau  
v *United Ben. Life*  
234.

**coronator.** See **coron**

**coronatore eligendo.**

**coronatore exonera  
onerando.**

**coroner.** A judicial  
importance in the m  
dignity under the e  
functions have grad  
tance by legislation  
exists at all, the cor  
except to serve som  
sheriff and, in som  
quiry, sometimes w  
cause of death of pe  
to an end from oth  
J2d Corn § 1.

**coroner's court.** An I  
over by the corone  
Tribe, 42 Or 365, 7

**coroner's inquest.** See

**coroner's jury.** A ju  
make an inquiry in  
person. 18 Am J2d

**corporal.** Noun: A n  
army. Adjective: Per  
ral injury.

**corporale sacrament  
tum).** Same as corp

**Corporalis injuria r  
futuro** (kor-pō-rā'li:  
mā-she-ō'nem dē fū  
look to future proc  
Broom's Legal Max

**corporal oath.** An oa  
arm or touches the  
Am J1st Oath § 3.

**corporal punishment.**  
of punishment inflic  
ping or slapping, bu  
penalty itself. Impri  
term "corporal pun  
strued with the con  
Within the mean



Counter  
Claim



**counselor.** See **counselor at law**; **chamber-counselor**.

**counselor at law.** An attorney who has been duly admitted to the bar and presently qualified to practice law; an advising lawyer. 7 Am J2d Attys § 1.

See **chamber-counselor**; **of counsel**; **practicing law**.

**count.** The tally of votes cast at an election. 26 Am J2d Elect § 291; a division of a complaint, declaration, bill, or petition, wherein a separate cause of action is stated. 41 Am J1st Plead § 106; a separate part of an indictment or information wherein a separate and distinct offense is stated, division into counts being necessary where two or more distinct offenses are charged in a single indictment under one caption. 27 Am J1st Indict § 124.

See **common counts**; **election of counts**; **money counts**; **narratio**; **omnibus count**; **paragraph**; **tale**.

**countee.** An earl.

**countenance** (koun'te-nans). Face; credit; credibility; approval.

**counter** (koun'ter). Noun: A pleader; an attorney-at-law employed to defend in litigation. Verb: To oppose or defend against attack.

See **counters**.

**counter-affidavit.** An affidavit responding to and contradicting the affidavit produced by an adversary.

**counter-appeal.** See **cross-appeal**.

**counter-bond.** A bond given to indemnify a surety. See **redelivery bond**.

**counterbranding.** Branding domestic animals for identification. 4 Am J2d Ani § 8.

**counterclaim.** A claim which, if established, will defeat or in some way qualify the judgment or relief to which the plaintiff is otherwise entitled. 20 Am J2d Countel § 3; a counter demand or a cause of action existing in favor of the defendant against the plaintiff, on which the defendant might have secured affirmative relief had he sued the plaintiff in a separate action. 20 Am J2d Countel § 3. The statement, in a separate division of an answer, of defendant's cause of action against plaintiff is a counterclaim. Linscott v Linscott, 243 Iowa 335, 51 NW2d 428, 30 ALR2d 789.

See **cross-demand**; **recoupment**; **reconvention**; **setoff**.

**counter demand.** See **cross-demand**; **setoff**.

**counterfeasance** (koun-ter-fe'sanz). Counterfeiting.

**counterfeit.** Verb: To make a copy without authority or right and with the view to deceive or defraud by passing the copy as original or genuine; to fabricate a false image or representation. But as ordinarily understood in law, the term is confined to the making and uttering of false money, postage stamps, revenue stamps, bonds, etc. 20 Am J2d Counterf § 1. Noun: Something made in imitation of something else with a purpose to deceive. Adjective: Spurious; sham.

**counterfeit coin.** See **counterfeit money**.

**counterfeiting.** Making a counterfeit, especially counterfeit money; the federal offense of making counterfeit money. 20 Am J2d Counterf § 1.

**counterfeit money.** An imitation of real money, produced with the intent that it shall pass as money and be accepted in trade as money. 20 Am J2d Counterf § 2. As the term is used in the Federal statutes dealing with the crime of counterfeiting,

the coin to be "counterfeit" must be in the resemblance or similitude of a genuine United States coin. It is not necessary that the resemblance should be exact in all respects. The resemblance is sufficient if the coins are so near alike that the counterfeit coin is calculated to deceive a person exercising ordinary caution and observation in the usual transactions of business. United States v Gellman (DC Minn) 44 F Supp 360.

**counterfoil.** A part of a document, torn off and retained by the maker of the document as a memorandum; as, a check stub.

**counter-injunction.** An injunction restraining the enforcement of an injunction. State v Nortoni, 331 Mo 764, 55 SW2d 272, 85 ALR 1345.

**counter-letter.** A separate instrument, executed simultaneously with a deed absolute on its face, whereby the grantee named in the deed undertakes to reconvey the property to the grantor, upon the fulfillment of the terms and conditions stated in the counter-letter. Livingston's Exr. v Story (US) 11 Pet 351, 9 L Ed 746.

**countermand.** To revoke an order previously given.

**countermanding payment.** See **stopping payment**.

**countermotion.** A motion, made after a motion for change of venue to the proper county, to retain the case in the county where it was commenced on the ground of the convenience of witnesses and the ends of justice. Anno: 74 ALR2d 50.

**counteroffer.** An offer made by one of two negotiating parties in response to an offer by the other party. Where an acceptance of an offer is conditional, or introduces a new term, or varies substantially in any way from the terms of the offer, it may be treated as a counteroffer. 17 Am J2d Contr § 40.

**counterpart.** A person or thing closely resembling another person or thing; an obsolete term for copy. 2 Bl Comm 296.

**counterplea** (koun'ter-plē). A replication; a plea interposed in reply to another plea.

**counterplead.** To interpose a counter-plea; to plead against; to plead the contrary; to deny.

**counterroll** (koun'ter-rōl). A duplicate record.

**countersecurity.** Security given to a surety to indemnify him against loss.

**counter service.** Service at a counter, a method of serving meals or lunches in a public eating place. 29 Am J Rev ed Innk § 9.

**countersignature.** A signature, often that of a subordinate, added to the signature of an officer or superior, by way of authentication; an additional signature required by the terms of a written contract, as in the case of the requirement for the signature of a particular officer or agent of an insurance company in addition to the regular signature appended upon the issuance of a policy. 29 Am J Rev ed Ins § 214.

See **countersign**.

**counterwills.** Another term for reciprocal wills in which the testators name each other as beneficiaries under similar testamentary plans. 57 Am J1st Wills § 681.

See **mutual wills**; **reciprocal wills**.

**countez** (koun'tay). A word by which, when the jury are all sworn, the officer bids the court crier to number them. Blackstone facetiously remarks, "we

CROSS  
CLOMPHANT



Declaratory  
Judgment  
&  
Judgment  
ACT

## DECLARATION

akes a statement which evidence.

etter known in modern r petition, wherein the e of action. 41 Am J1st son entering the United her articles brought into m J2d Cust D § 74; a he significance of which nected with its hearsay t as a statement of one the stand. 29 Am J2d

Simply, as the term im- ne interest of the declar-

of homestead. A formal nt of a homestead, ex- as required by statute in which the homestead

tion taken by the board on which creates a divi- rporation and the right d and receive it. 19 Am g the creation of a debt to each stockholder and s to the payment of such Cooperaage Co. (CA9 Or)

A statement of the fact of exemption describing the with the county recorder ; the world that the occu- d exemption rights in the me § 90.

e. The formal public an- ental Congress on July vances of the American sh Government and de- and independent states. ie document do not have it is always safe to read it of it. 16 Am J2d Const

declaration by an alien e a citizen. The filing of issive under the present asche, 348 US 529, 99 L der the former law, the atention was a condition a petition for naturaliza- 147.

statement by the powers n Naval Conference of ; of naval warfare.

international declaration ritime law made at Paris

part of a state constitu- declaration enumerating ghts of the citizen which st respect; "not a mere rinciples, but a solemn themselves, guarded by a Masters v West Chester 481, 487.

A federal statute in re- vate property for public

## DECLARATION

use upon a formal declaration of taking, the same to be followed by proceedings for the determination of the compensation to be paid for the property. United States v Miller, 317 US 369, 87 L Ed 336, 63 S Ct 276, 147 ALR 55, reh den 318 US 798, 87 L Ed 1162, 63 S Ct 557.

**declaration of trust.** A means whereby an owner of property may create a trust therein, consisting of his voluntary statement indicating or manifesting his intention to create a trust, which equity will regard as a transfer of title, notwithstanding there is no transfer of the subject matter, subject to the requirement of a writing where the nature of the property and the conditions of the transaction bring it within the statute of frauds. 54 Am J1st Trusts § 61; a judgment or decree declaring the existence of a trust. 54 Am J1st Trusts § 628.

**declaration of uses.** See **declaring a use**; **declaration of trust**.

**declaration of war.** A formal statement by a nation through its executive or legislative department announcing that a state of war exists with another nation. 56 Am J1st War § 5.

**declarations.** See **declaration** and **terms beginning declaration**.

**declarative remedies.** Those remedies in equity whose main and direct object is to declare, confirm, and establish the right, title, property, or estate of the plaintiff, whether it be legal or equitable. See 1 Pomeroy's Equity Jurisdiction § 112.

See **declaratory judgment**.

**declaratory.** Explanatory; affirmative; tending to remove doubt.

**declaratory judgment.** A judgment which declares conclusively the rights and duties, or the status, of the parties but involves no executory or coercive relief following as of course. Clein v Kaplan, 201 Ga 396, 40 SE2d 133; Brindley v Meara, 209 Ind 144, 198 NE 301, 101 ALR 682; Savage v Howell, 45 NM 527, 118 P2d 1113.

An action for a declaratory judgment is the appropriate remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights and wishes to avoid the hazard of taking steps in advance of the determination of such rights. 22 Am J2d Dec J § 1.

**Declaratory Judgment Act.** A federal statute, enacted in 1934, providing that in cases of actual controversy the courts of the United States shall have power, upon petition, declaration, complaint, or other appropriate pleadings, to declare rights and other legal relations of any interested party petitioning for such declaration whether or not further relief is or could be prayed, and that such declaration shall have the force and effect of a final judgment or decree and be reviewable as such. 28 USC §§ 2201, 2202; the Uniform Declaratory Judgments Act, first proposed in 1922, which has been adopted by the great majority of states, in some instances with slight modifications. See 9A Uniform Laws Annotated, Declaratory Judgments.

**declaratory part of a statute.** That part which declares or states the need or requirement which the statute was framed to fulfil, often introduced by the word "whereas." 50 Am J1st Stat § 152.

**declaratory relief.** See **declaratory judgment**; **declaratory remedies**.

**declaratory statute.** A statute which is declaratory or expressive of the common law, Gray v Bennett,

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## DECLINATORY

44 Mass (3 Metcalf) 522, 527; a statute, the purpose of which is to declare or settle the law where its correct interpretation has been doubtful or uncertain.

**declare.** In common parlance, to state; to assert; to publish; to utter; to announce; to announce clearly some opinion or resolution. Knecht v Mutual Life Ins. Co. 90 Pa 118, 121; in pleading, to allege or set forth in a declaration or other affirmative pleading.

**declared dividend.** See **dividend declared**.

**declared value capital stock tax.** A former federal excise tax. Helvering v Lerner Stores Corp. 314 US 463, 86 L Ed 343, 62 S Ct 341.

**declared war.** A status which continues during the actual hostilities and thereafter during the postwar period where no treaty of peace has been signed and, according to the political branch of the government, a state of war still exists. 3 Am J2d Aliens § 183.

**declaring a use.** Making a deed to show the object or use after a fine or recovery. If fines or recoveries were levied or suffered without any good consideration, and without any uses declared, they enured only to the use of him who levied or suffered them, unless their force and effect were directed by other deeds expressing particular uses. If such deeds were made before the fine or recovery, they were called deeds to lead the uses. If they were made subsequently, they were called deeds to declare the uses. See 2 Bl Comm 363.

See **declaration of trust**.

**de claro die** (dē kla'rō dī'ē). By the light of day.

**de clauso fracto** (dē klā-sō frak'tō). Of breach of close.

**de clerico admittendo** (dē kle'ri-kō ad-mit-ten'dō). For admitting the clerk. A writ of execution which was directed to the bishop or archbishop, not to the sheriff, requiring the admission and institution of the clerk presented by the patron who had recovered in a quare impedit, or assize of darrien presentment. See 3 Bl Comm 412.

**de clerico capto per statutum mercatorum deliberando** (dē kle'ri-kō kap'tō per sta'tu-tum mer-ka-tō'ri-um de-li-be-ran'dō). A writ for the liberation of a clerk who was arrested or imprisoned for the violation of a statute merchant.

**de clerico convicto commisso gaolae in defectu ordinarii deliberando** (dē kle'ri-kō kon-vik'tō kom-mis'sō gā'o-le in de-fek'tū or-di-nā'ri-i de-li'be-ran'dō). A writ for the liberation of a clergyman convicted and committed to jail in the absence of the ordinary.

**De Clero** (dē kle'rō). Concerning the clergy,—the title of the statute 25 Edward III, st. 3, c. 4 (1350), providing benefit of clergy for clerks convicted of any "treasons or felonies touching other persons than the king himself or his royal majesty." See 4 Bl Comm 373.

**declination** (dek-li-nā'shōn). A plea to the jurisdiction.

**declinatory plea** (dē-klī'nā-tō-ri plē). A plea which was at one time interposed before trial or conviction setting up the defendant's right to benefit of clergy. But later, when a defendant was allowed his clergy even after conviction, the plea was not used, for the reason that the prisoner had a chance of acquittal without using it and could pray for benefit of clergy



Equity

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Relaxing  
or Alleviat-  
ing Law

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## EQUITY

Latin form is *aequitas* (se'qui-tēr lē'jem). A subject to various interpretation seems to be to the boundaries which the prior course of adjudication prescribes that equity will follow precedents and will not create rights which are defined and limited by legal principles. 27 Am J2d Equity § 125.

married woman's right, by the courts of equity, for a settlement out of her choses in possession, and other property on law became the property of equity. The equity reduced them into his property. 27 Am J2d Equity § 48.

equity to marshal assets. The law to him who wishes to have the form of the principle is *in jure agere summum* (in'jū-er ā-jēr sū'mūm) which means that equity will not complete the performance of the act.

to fulfil an obligation. The statement of a general principle of equity acts. It is in cases involving the performance of covenants, the rule of equity is that the person who has done that which may be required as a performance of his obligation to have done the act is estate will be treated as if he had completed the performance. 27 Am J2d Equity § 48.

reasoning which interprets law; not embraced in any principle of true reason. The principle of *perfecta quadam ratio* (pēr-fek'tā kwē'dā-m rā'tiō) is that equity is not bound by the law, but equity delights in equalizing the members of a class on an equal basis and distributes rights equally or in proportion to the merits. 27 Am J2d Equity § 125.

violation of the law. It is a principle of equity which is the application of which may be attained in particular cases or customary forms of law. 27 Am J2d Equity § 1. The principle is *aequitas est laximen-* (ā-jūi-tās ēst lāk-si-men'tum jō-ris) (Pomeroy, § 46).

equality is equity. A maxim of equity is that *aequitas est* (ā-jūi-tās ēst) and *aequitas est* (ā-jūi-tās ēst) which means that equity delights in equalizing the members of a class on an equal basis and distributes rights equally or in proportion to the merits. 27 Am J2d Equity § 125.

uncertain but has fixed the Latin form of the statement *aequitas est* (ā-jūi-tās ēst) and *aequitas est* (ā-jūi-tās ēst) which means that equity delights in equalizing the members of a class on an equal basis and distributes rights equally or in proportion to the merits. 27 Am J2d Equity § 125.

## EQUITY

jurisdiction is not inferred from the novelty of the question. The fact that there is no precedent for the precise relief sought is not fatal to equity jurisdiction. 27 Am J2d Equity § 13.

**equity jurisdiction.** A broad and flexible jurisdiction to grant remedial relief where justice and good conscience demands it, but without purporting to create rights, being limited to determining what rights the parties have and whether or in what manner it is just and proper to enforce them. A jurisdiction in two categories, the one dependent upon the substantive character of the right sought to be enforced, the other dependent upon the inadequacy of the legal remedy. 27 Am J2d Equity § 5.

**equity jurisprudence.** That portion of our system of jurisprudence traditionally expounded and administered by courts of equity. 27 Am J2d Equity § 1. It remains a distinct part of the system, notwithstanding in many jurisdictions legal and equitable remedies have been commingled in one form of civil action and a court of general jurisdiction may hear both law and equity cases. 27 Am J2d Equity § 4.

**equity never aids contention where it can give a remedy.** The Latin form of the principle is *aequitas nunquam liti ancillatur ubi remedium potest dare* (ā-jūi-tās nūn'kwom lī'ti an-sil-lā'ter ū'bi re-mē'di-um pō'test dā're).

**equity never contravenes the law.** The Latin form of the principle is *aequitas nunquam contravenit legis* (ā-jūi-tās nūn'kwom kon-tra-vē'nit lē'jis). The principle is a corollary of the principle that equity follows the law.

**equity of partner.** The right to have the partnership assets applied in liquidation of the partnership debts before any one of the partners or his creditors can claim any right or title to them, and to have the surplus assets divided among the members of the firm. 40 Am J1st Partn § 404.

**equity of redemption.** The right, recognized by courts of equity from early times, of a mortgagor, following a breach of the condition of the mortgage, to redeem property from the forfeiture by discharging the obligation secured within a reasonable period; such right is a real and beneficial estate in the land under the concept of a court of equity that despite its terms, a mortgage is a transaction of security, not of purchase. 36 Am J1st Mtg § 180. See foreclosure.

**equity of statute.** The reason and spirit underlying a statute as aids to its interpretation. 50 Am J1st Stat § 304.

**equity pleading.** A pleading in a suit in equity, whether bill, complaint, petition, answer, plea, or cross bill, etc., governed by traditional equity practice. In most jurisdictions today, distinctive rules of equity pleading have been largely, if not entirely, supplanted by statutory provisions or rules of court which prescribe rules of pleading, especially in those jurisdictions where law and equity courts have been combined or in which there is but one form or kind of action in a civil case, known as a "civil action." 27 Am J2d Equity § 179.

**equity prevents mischief.** A maxim of equity, a maxim addressed to the judicial conscience. Funk v Voneida (Pa) 11 Serg & R 109.

**equity receiver.** A receiver appointed by a court by virtue of its equity jurisdiction and without reference to statutory authority. 45 Am J1st Rec § 3.

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## EQUITY

**equity receivership.** A remedy for the dissolution or reorganization of a corporation in financial distress.

**equity regards as done that which ought to be done.** A maxim of equity which means that a court of equity, in determining a dispute between litigants, regards and treats as done that which, in fairness and good conscience ought to be or should have been done. 27 Am J2d Equity § 126.

**equity regards substance and intent, rather than form.** A maxim of equity sometimes stated as "equity regards form and circumstance as of less consequence than the subject matter itself." The Latin form is *aequitas rem ipsam intuetur de forma et circumstantiis minus anxia* (ā-jūi-tās rem ip'sam in-tu-ē'ter dē for'ma et sēr-kum-stān'she-is mī'nus an'xi-a). The meaning of the maxim is that the rights of the parties are not to be sacrificed to the mere letter, but that the intent or spirit of a contract, agreement, or transaction will in equity at least be the paramount consideration. 27 Am J2d Equity § 127.

**equity relieves against accidents.** An undoubted principle of equity. 27 Am J2d Equity § 44. The Latin form of the principle is *aequitas casibus medetur* (ā-jūi-tās kā'si-bus mē-dē'ter).

**equity rules of practice.** A set of rules supplanted by the Federal Rules of Civil Procedure, effective September 16, 1938. *Schlaefter v Schlaefter*, 71 App DC 350, 112 F2d 177.

**equity seeks to do justice.** A maxim of equity reflecting the principle that the first principle of equity is justice. *Tompers v Bank of America*, 217 App Div 691, 217 NYS 67.

**equity side.** The sitting of a court having jurisdiction in both law and equity but sitting for the time as a court of equity.

**equity supplies defects.** A maxim or principle of equity. 27 Am J2d Equity § 2. The Latin form is *aequitas defectus supplet* (ā-jūi-tās dē-fek'tus sup'plet).

**equity term (tērm).** A term or session of court without a jury, such being the term at which equity cases are tried.

**equity to a settlement.** See equity for a settlement.

**equity to marshal assets (mār'shāl ā'sēts).** The equity to marshal the assets, securities and funds of a debtor is the right of a creditor who has a junior lien on or interest in only a part of the assets, securities, or funds of the debtor to have a creditor who has a prior lien on or interest in the same assets, securities or funds, before resorting to the assets, securities and funds thus charged, to exhaust other assets, securities or funds of the debtor on which the prior creditor has a lien or in which he has an interest, but on which or in which the junior creditor has no lien or interest. 35 Am J1st Marsh A § 2.

**equity which is prior in time is better in right.** A principle or maxim of equity. The Latin form is *qui prior est tempore potior est jure* (quī prī'or est tem-po-re, pō'she-or est jū're). The meaning is that where opposing equities are otherwise equal, the one which is prior in time is entitled to precedence or preference. 27 Am J2d Equity § 149.

**equity will not do or require the doing of a vain or useless thing.** A maxim of equity, meaning that a court of equity must look to the practicalities of the situation and the relief sought to be had. 27 Am J2d Equity § 119.



Inter -  
locutory  
etc.  
~~Inter~~ Order

## INTERLOCUTOR

agency. 2 Am J2d Adm. Serv. § 1307.

### provisional order.

ordinance intended to amend a particular section or ordinance pending the adoption of the ordinance. The purpose of the ordinance is to prevent the evasion of a comprehensive law by entering upon the time that it takes to enact a comprehensive law. 1st Zon § 137.

parlance, a binder or a binder. 29 Am J Rev ed § 1307.

### temporary receiver.

a fiduciary of the condition of the administration thereof, of the inventory of the condition of the property as required by law. A report required of the receiver concerning the condition of the property and the amount of money on hand as may be required by the court within the first month of the trustee, and one every six months otherwise ordered by the court. 1st Zon § 1259.

### proportional insurance.

### proportional insurance.

an association engaged in insurance for its members.

executive department of the government, headed by a Secretary, charged with supervision of public lands, Indians, and wildlife service, geology, and agencies. 54

has already written, for the purpose of correcting what is wrong. 84 Mo 82, 88.

involving. That which is contained in an instrument. 4 Am

at a railroad crossing and gates so that one can pass independently of the other.

relationship between two persons who have directors or officers. 2d Corp § 1307.

common to the two corporations. 19 Am J2d

### Same as imparlance.

an interlocutory application or an interlocutory decree or an order of an action or

A judgment, order, or

## INTERLOCUTORY

**interlocutory.** Not decisive of the cause but determining an intervening matter relating to the cause. *Mora v Sun Mut. Ins. Co.* (NY) 13 Abb Pr 304, 307. Intermediate.

**interlocutory accounting.** See **intermediate accounting.**

**interlocutory application.** A motion made during the progress of a case invoking provisional or interlocutory relief rather than a final judgment or decree. An application for an order by way of getting the case in such shape that in the end it may be properly heard and finally adjudicated. 27 Am J2d Eq § 235.

**interlocutory award.** An award made by arbitrators, not final in character because of incompleteness or other cause. *Jones v Jones*, 229 Ky 71, 16 SW2d 503.

**interlocutory costs.** Costs or disbursements on an intermediate motion or proceeding. *Cardoff v Cardoff*, 152 Minn 399, 189 NW 124. Costs allowable, taxable, and payable during the progress of a case. *Goodyear v Sawyer* (CC Tenn) 17 F 2, 6.

**interlocutory decision.** See **interlocutory; interlocutory judgment.**

**interlocutory decree.** A decree intended, not as a final adjudication, but as a determination made for the purpose of presenting the case in such form that it may, in the end, be heard on the merits and finally adjudicated. 27 Am J2d Eq § 235. The determination of a matter preliminary to trial or hearing for the rendition of a final decree. *Comans v Tapley*, 101 Miss 203, 57 So 567. A decree of divorce, that is, a decree which determines that a party is entitled to a divorce, such decree not to be final until after the expiration of the period of time prescribed by the statute. 24 Am J2d Div & S § 427.

See **interlocutory judgment.**

**interlocutory divorce.** See **interlocutory decree.**

**interlocutory hearing.** Any hearing for the purpose, not of an ultimate determination and final adjudication, but to obtain a presentation of the case in such form that it may, in the end, be properly heard and adjudicated finally on the merits. 27 Am J2d Eq § 235.

**interlocutory injunction.** A provisional or temporary injunction. 28 Am J Rev ed Inj § 12.

See **temporary injunction.**

**interlocutory judgment.** An intermediate judgment, a judgment which lacks finality. *United States v Howe* (CA2 Vt) 280 F 815, 23 ALR 531, cert den 259 US 587, 66 L Ed 1077, 42 S Ct 590. A judgment which "speaks between", that is does not speak the last word which the court may be required to speak in the case. *Keffer v Keffer*, 307 Ky 831, 212 SW2d 314. A judgment rendered in the middle of a cause upon some plea, proceeding, or default, which is only intermediate and does not finally determine or complete the suit. *Jacoby v Carrollton Federal Sav. & Loan Assn.* (Ky) 246 SW2d 1000. A judgment which is made before a final decision, for the purpose of ascertaining a matter of law or fact preparatory to a final judgment, or which determines some preliminary or subordinate point or plea, or settles some step, question, or default arising in the progress of the case, but does not adjudicate the ultimate rights of the parties or finally put the case out of court. 30A Am J Rev ed Judgm § 121.

A judgment on the merits defining and settling the rights of the parties is not rendered interlocu-

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## INTERMEDIATE

tory by the fact that further orders may be necessary to carry into effect the rights settled by the judgment. 30A Am J Rev ed Judgm § 122.

See **interlocutory decree.**

**interlocutory judgment or decree of divorce.** A judgment or decree which determines that a party is entitled to an absolute divorce, such decree not to be final until after the expiration of the period of time prescribed by the statute. 24 Am J2d Div & S § 427.

**interlocutory motion.** See **interlocutory application.**

**interlocutory order.** An order rendered in an action or proceeding by way of provisional relief or upon a motion or application made during the course of the action or proceeding by way of determining the manner or form in which the case shall be presented for a final trial or hearing and an adjudication on the merits; not in itself an adjudication on the merits. *Re Blalock*, 233 NC 493, 64 SE2d 848, 25 ALR2d 818; *People v Priori*, 163 NY 99, 57 NE 85, 87; *Mackowain v Gulf Oil Corp.* 369 Pa 581, 87 A2d 314, 37 ALR2d 584.

See **interlocutory decree; interlocutory judgment.**

**interloper.** A trader operating without the license required by law. A party who takes an appeal or participates in an appeal taken by others who has no financial interest or other right which could be affected either adversely or favorably by the outcome of the litigation. *Re Bush's Trust*, 249 Minn 51, 82 NW2d 221.

**interlude.** An intervening event. A short dramatic piece, generally accompanied with music, usually represented or performed between the acts of longer performances. *Society for Reformation of Juvenile Delinquents v Diers* (NY) 60 Barb 152, 156.

**intermarriage.** The act of marrying. *People v Bord*, 243 NY 595, 596, 154 NE 620.

**intermarry.** To enter into a marriage.

**intermeddler.** One who stirs up litigation.

A person who officiously intrudes into a business to which he has no right.

The distinction between an intermeddler and a trespasser is not in any case very great. *Vassor v Atlantic Coast Line Railroad Co.* 142 NC 68, 950, 954, 54 SE 849.

**intermeddling.** A form of maintenance. Anno: 139 ALR 650.

See **intermeddler.**

**intermediary.** A go-between. One through whom a transaction is performed for another, for example, a person paying the rent of another with funds provided by the latter. 3 Am J2d Agency § 22.

**intermediary bank.** A bank which receives a collection from another bank and forwards it to a third bank for collection. Any bank to which an item is transferred in course of collection except the depository or payor bank. UCC § 4-105(c).

**intermediate.** Occurring between two events. Interlocutory; intervening.

See **interlocutory.**

**intermediate accounting.** An accounting by a fiduciary at intervals between the filing of the inventory of the estate and the final accounting. 54 Am J1st Trusts § 511.

**intermediate administrative appeal.** An appeal from an administrative order to an officer on an inter-



Master  
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Chancery

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## SESSION

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**n'dī).** (Civil law.) uring cattle on the

**a (ser'vi-tus pe'ko-** l law.) The servi- e to water on the

**prē'di-ī ur-bā'ni).** any servitude or to a city estate.

**ē-di-ō'rum).** (Civil itude or easement

**i-she-en'dī).** (Civil of projecting one's r.

**(ser'vi-tus ser-vi-** cannot be an ease-

**i'di-ī).** (Civil law.) ermitting the rain one's house upon

**us tig'ne im-mit-** le or easement of one's neighbor.

**il law.)** The servi- way over the land

**t.** s fā'sit, ut he'rus the master may

**rating the reward** employment. See

**ting; a sitting.**

**legislative body,** or the transaction Accounts, 64 Ill inistrative board, d Admin L §§ 227 ed body or group. or a day; the entire n which a legisla- he 45th session of

**laws which have** sessions of a state

**of court. Precisely,** en the court actu- siness. 20 Am J2d

Cts § 44. The time during which the court is in fact holding court at the place appointed, and engaged in business. *Re Gannon*, 69 Cal 541, 545, 11 P 240.

**sessions of the peace** (of the pēs). A court of record held before two or more justices of the peace for the execution of the authority given them by their commission and certain acts of Parliament. *People v Powell* (NY) 14 Abb Pr 91, 93.

**set.** Adjective: Fixed or established. Verb: To put in place. To mark down; to put on paper.

See articles of set.

**set apart.** To divide for a purpose, sometimes for identification, as in setting apart a homestead.

Under a divorce statute authorizing the court to decree that the separate property of the husband be "set apart" for the support and maintenance of the wife, the words include authority to decree the transfer of absolute title to such property to the wife. *Powell v Campbell*, 20 Nev 232, 20 P 156.

**set aside.** See *setting aside*.

**setback lines.** See *building lines*.

**setback restriction.** See *building lines*.

**set fire to.** To make burn. 5 Am J2d Arson § 43.

In the law of arson it has been held that the terms "burn" and "set fire to" are synonymous, and that the use of the latter term does not vary the common-law rule that burning is necessary to the offense. *Anno*: 1 ALR 1164.

**set for trial.** See *setting case for trial*.

**set of bills.** See *bills in a set*.

**set of exchange.** See *bills in a set*.

**setoff.** A discharge or reduction of one demand by an opposite demand. *Malle v Harrell*, 118 Tex 149, 12 SW2d 550. A defense or an independent demand made by the defendant to counterbalance that of the plaintiff, in whole or in part. *Mack v Hugger Bros. Constr. Co.* 153 Tenn 260, 283 SW 448, 46 ALR 389. The right which exists between two persons, each of whom under an independent contract, express or implied, owes an ascertained amount to the other, to set off their mutual debts by way of deduction so that in an action brought for the larger debt, the residue, only after such deduction, may be recovered. *Teeters v City Nat. Bank*, 214 Ind 498, 14 NE2d 1004, 118 ALR 383. A counter demand which a defendant holds against a plaintiff, arising out of a transaction extrinsic to the plaintiff's cause of action. 20 Am J2d Countcl § 2. A money demand independent of and unconnected with the plaintiff's cause of action. *Pekofsky v State*, 15 Misc 2d 358, 180 NYS2d 930. In the broad sense, the discharge or reduction of one demand by an opposite one, or the right one party has against another to use his claim in full or partial satisfaction of what he owes to the other. 20 Am J2d Countcl § 2. Simply a mode of defense whereby the defendant acknowledges the justice of the plaintiff's demand on the one hand, but, on the other, sets up a demand of his own to counterbalance it, either in whole or in part. *Peacock Hotel v Shipman*, 103 Fla 633, 138 So 44; *Steck v Colorado Fuel & Iron Co.* 142 NY 238, 37 NE 1. In relation to transactions in futures, the method by which a contract to purchase is set off against a contract to sell without the formality of an exchange of warehouse receipts or actual delivery of the commodity, being in legal effect a delivery. *Lyons Mill Co. v Goffe & Carkener* (CA10 Kan) 46 F2d 241, 83 ALR 501. In respect of a decedent's estate:—the right of an

executor or administrator, who is himself a creditor of the estate, to retain the amount of such debt out of the funds of the estate in his hands. A term used loosely for the right of an executor or administrator to deduct indebtedness due from a distributee. 31 Am J2d Ex & Ad § 567.

**setoff of benefits.** Deducting the benefit to remaining property from a public improvement in ascertaining damages for property taken in eminent domain. 27 Am J2d Em D § 357.

**setoff of judgments.** A right of an equitable nature, arising as an incident of the general jurisdiction of the court over its suitors, whereby the satisfaction of a judgment may be wholly or partly produced by compelling a judgment creditor to accept in payment a judgment to which he is subject. 30A Am J Rev ed Judgm § 1011.

**set on foot.** To arrange; to place in order; to set forward; to put in the way of being ready. *United States v Ybanez* (CC Tex) 53 F 536, 538.

**set out.** To start on a journey. To commence work upon a project to be accomplished. To set forth. To allege verbatim; to recite the very words of a document in a pleading. *First Nat. Bank of Chadron v Engelbercht*, 58 Neb 639, 641, 79 NW 556.

**setting aside.** Vacating, annulling; making void. A remedy on attack against an indictment for insufficiency, error, defect, or irregularity. 27 Am J1st Indict §§ 137 et seq.

"When it is said that such a voluntary deed is void or set aside, these terms must be understood as meaning only that the conveyance, while good against all others, shall not operate to defeat the equity of the creditors of the grantor." *Steinmeyer v Steinmeyer*, 64 SC 413, 42 SE 184.

See *quashing; vacation; vacation of judgment*.

**setting case for trial.** Fixing a certain day upon or after which the case may be called for final disposition or trial. 53 Am J1st Trial § 9.

"At the time the cause is first set upon the trial calendar," has been held to be synonymous with the words, "at the time the case is set for trial." *Mutual Bldg. & Loan Assn.* 220 Cal 282, 30 P2d 509.

**settle.** To take up residence in a place. To arrange or put in order. To pay a bill or account. To adjust differences; to eliminate controversy. To make a determination. To establish title or estate in a person.

When used with relation to pending litigation, the word has not acquired such a well defined meaning as would enable courts to interpret the intent of the parties in making use of it in connection with the ending of the litigation, without the aid of extrinsic evidence. Recourse must be had to the context of the agreement of the parties, to the circumstances under which the agreement was made, including the state and the various phases of the litigation referred to, and the conferences and correspondence between the parties pending the negotiation of the agreement. *Setzer v Moore*, 202 Cal 333, 260 P 550.

A written agreement "to settle" is not equivalent to an agreement to pay. It is not a recognition of the debt claimed; it is an offer to adjust matters and may be rather a denial of any indebtedness. *Parker v Carter*, 91 Ark 162, 120 SW 836.

When applied to a liquidated demand, "to settle" means to pay it. When applied to an unliquidated demand, the word means to effect a mutual adjust-



## MASTER

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A noncommissioned

## MASTER

officer of the Navy, of a rank comparable to that of sergeant major of the Army.

**master in chancery.** An officer of the court. A referee in a suit in equity. An assistant of the chancellor having the function of performing acts, either judicial or ministerial in nature, which the chancellor may see fit, in accordance with equity practice, to require of him. 27 Am J2d Eq § 225.

**Master of Arts.** A postgraduate degree in the liberal arts, humanities, or social sciences.

**Master of Science.** A postgraduate degree in science.

**master of ship.** The person, usually called "captain," in command of the vessel, including control of the crew, chief charge of the government and navigation of the vessel, and supervision over the care of the vessel and cargo. 48 Am J1st Ship § 113.

**master of the crown office** (of the kroun off'is). An important English officer performing the functions of public prosecutor in the court of king's bench, and also acting as coroner to the king.

**master of the rolls** (of the rôls). An assistant judge of the English chancery court, holding a court of his own ranking next below that of the lord chancellor.

**master of vessel.** See **master of ship.**

**master plumber.** A skilled plumber. A plumber qualified to work without supervision.

**master pro hac vice** (màs-têr prô hâk vî'se). A master appointed to act in a particular case and for such case only. 27 Am J2d Eq § 225.

**master's mate.** See **mate.**

**master sergeant.** The highest in rank of noncommissioned officers of the United States Army.

**masthead.** A term of the printing and publishing business for the part of a page of a publication upon which there is noted the name of the publication, the names of the owner, publisher, and editor, the place of publication, business-office address, the address of the editorial office, and the titles of any prior publications which have been merged or consolidated with the reporting publication. American Photographic Publishing Co. v Ziff-Davis Publishing Co. 27 Cust & Pat App 1014, 127 F2d 308.

**mastiff.** A large dog formerly in common use for hunting, also as a watchdog.

See **lawing.**

**masturbation.** Self-abuse; onanism; the self-excitement of the genitals, usually by manipulation. Sometimes a serious disease within the meaning of an application for life insurance. 29 Am J Rev ed Ins § 745.

**mat.** A removable covering for the floor or part of the floor, often placed in vestibules and aisles of the cars of a carrier to prevent passengers from falling on a slippery floor.

**match.** See **boxing match; matched orders; matching.**

**matched orders.** Orders to sell or purchase the same securities in substantially the same amounts, at substantially the same prices, and at substantially the same times at which sales or purchases are made; a means of illegal manipulation of prices on an exchange. 50 Am J1st Stock Ex § 26.

**matching.** A stock exchange term designating the practice, when dealing in futures, of settling contracts by offsetting purchases against sales. United

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## MATERIAL

States v New York Coffee & Sugar Exchange, 263 US 611, 616, 68 L Ed 475, 476, 44 S Ct 225.

**mate.** A ship's officer, subordinate to the captain. Sometimes regarded as a seaman, although clearly of a rank above an ordinary seaman. 48 Am J1st Ship § 144.

The officers of a ship are the master and the mate. The mate is the first officer under the master. He is sometimes called the "master's mate," and is neither a seaman nor a mariner. Ely v Peck, 7 Conn 239, 242.

Two masters of whaling vessels are said to mate when they enter into a contract of mateship. Baxter v Rodman, 20 Mass (3 Pick) 435.

See **contract of mateship.**

**materfamilias** (mă'ter-fa-mi'li-as). (Civil law.) The mother of a family; a woman in the position of head of the household.

**material** (ma-te'ri-a). Materials; matter; subject matter.

See **in pari materia.**

**material.** Adjective: Important; relating to the substance rather than form; going to the merits and essence. Noun: Metal, wood, or any substances used in the fabrication of a product. Wood, brick, stone, steel, etc. used in the construction of a building or other improvement. 36 Am J1st Mech L § 69. Collected facts or ideas used by a writer in the preparation of an essay or thesis.

See **immaterial.** See also terms and expressions beginning **immaterial.**

**material allegation.** A statement in a pleading upon which an issue in the action can be made. Miller v Brumbaugh, 7 Kan 343, 353. A statement in a pleading essential to the claim or defense, and which cannot be stricken from the pleading without leaving it insufficient. Tucker v Parks, 7 Colo 62, 67.

**material alteration.** A change in the terms of a written instrument which gives it a legal effect different from that which it originally had. Barton Sav. Bank & Trust Co. v Stephenson, 87 Vt 433, 89 A 639. An intentional act performed upon an instrument after it has been fully executed, by one of the parties thereto, without the consent of the other, which changes the legal effect of the instrument in any respect. O. N. Bull Remedy Co. v Clark, 109 Minn 396, 124 NW 20. An alteration of an instrument which destroys the identity of the instrument or of the contract evidenced thereby, or which so changes its terms as to give it different legal effect from that which it originally had, and thus works some change in the rights, obligations, interest, or relations of the party. 4 Am J2d Alt Inst § 5. The completion of an executed but incomplete instrument, in a manner other than is authorized, so as to change the contract. UCC § 3-115(a).

Elimination of words which had no legal effect at the time the contract was signed and delivered is not a material alteration. Cities Service Oil Co. v Viering, 404 Ill 538, 89 NE2d 392, 13 ALR2d 1448.

An instrument is "materially altered" if the change increases the liability of, or injuriously affects, a party or parties. Newman v Cover, 300 Pa 267, 150 A 595.

**material breach.** A breach of contract which goes to the whole consideration; a breach which gives to the injured party the right to rescind the contract



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## VOIDABLE

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## VOIDABLE

ence under the Bankruptcy Act, see 9 Am J2d Bankr § 1057.

**voidable process.** Process which is defective but amendable so as to be rendered fully effective by correction of the defects therein. 42 Am J1st Proc § 20.

**voidable release.** A release which is binding until set aside for cause such as infancy, mental incompetency, or fraudulent representation. 45 Am J1st Rel § 17.

**void agreement.** See **void contract**.

**voidance** (voi'dəns). A vacancy. Ejection from a benefice.

**void as to creditors.** Voidable as to creditors. 37 Am J2d Frd Conv § 106.

**void contract.** An absolute nullity from the contractual aspect. The equivalent of no contract at all. Williston, Contracts 3d ed § 15; 17 Am J2d Contr § 7. A contract which cannot be validated by ratification or other act or omission. 17 Am J2d Contr § 7.

**void deed.** A deed which is invalid in law for any purpose whatsoever. 23 Am J2d Deeds § 137.

**void divorce.** A divorce absolutely ineffective in severing the marital relation.

See **void judgment**.

**void grant.** A patent or other grant of public lands which is absolutely inoperative for want of title in the government or want of authority to convey. 42 Am J1st Pub L § 38.

**voiding.** Declaring void that which is voidable. Emptying.

**void judgment.** A judgment which in legal effect is no judgment; a judgment under which no rights are acquired or divested; a judgment which neither binds nor bars anyone. *Stafford v Gallope*, 123 NC 19, 21, 31 SE 265. A judgment which because of want of jurisdiction is entitled to no respect whatever but may be entirely disregarded or declared inoperative by any court in which effect is sought to be given to it. 30A Am J Rev ed Judgm § 45. A judgment which is an absolute nullity, so that its invalidity may be asserted upon either direct or collateral attack by any person whose rights are affected, at any time and at any place. *Southern Surety Co. v Texas Oil Clearing House* (Tex Com App) 281 SW 1045, 1046.

**void marriage.** A marriage absolutely prohibited by law and not subject to ratification. A marriage which is expressly declared a nullity ab initio by statute. 35 Am J1st Mar § 46.

**void process.** Process which is defective to the extent of being a nullity and not amendable, either because in violation of statute which prohibits it or because it is not in substantial compliance with statutory requirements. 42 Am J1st Proc § 20. Such process as the court has no power to award, or has not acquired jurisdiction to issue in the particular case, or which does not in some material respect comply in form with the legal requisites of such process, or which loses its vitality in consequence of noncompliance with a condition subsequent, obedience to which is rendered essential. *Fischer v Langbein*, 103 NY 84, 90, 8 NE 251.

**void release.** A release which is forged, prohibited by express statute, contrary to public policy, or given by one without power to grant a release. 45 Am J1st Rel § 17.

## [1349]

## VOLSTEAD

**void tax.** A tax imposed without basis in law, as where the statute under which it is levied is unconstitutional or so indefinite, uncertain, or inconsistent as to be entirely inoperative. 51 Am J1st Tax § 303. A tax which never had any effect, which never created any lien or raised any obligation to pay.

A void tax is no tax. It is as if there never had been any attempt at assessment. The owner of property is under no duty, either at law or in equity, to pay it. There is no equitable reason for requiring the owner to pay such a tax before a cloud upon his title made by a tax sale shall be removed. *Morrill v Lovett*, 95 Me 165, 49 A 666.

**voir dire** (vwor dēr). To speak the truth. An oath administered to one called as a witness or juror preliminary to an examination of him in reference to his qualifications or disqualifications as witness or juror. 31 Am J Rev ed Jury § 136.

**voir dire examination** (vwor dēr eg-zam-i-nā'shōn). The examination of a prospective juror by a litigant, usually through the latter's counsel, for the purpose of determining whether such prospective juror is qualified to act as a juror and for the further purpose of aiding the litigant in the exercise of his peremptory challenges. 31 Am J Rev ed Jury § 136. The preliminary examination of one called as a witness to determine competency. 58 Am J1st Witn § 211.

**voiture** (vwo-tür). (French.) Carriage; coach; vehicle.

**voiturier** (vwo-tür-yā). (French.) Carrier. One engaged in transportation.

**volatile estates** (vol'ā-til). Movables of a solid character, such as tables and other heavy furniture. See 2 Bl Comm 428.

**volens**. (Latin.) Willing, but not necessarily wishing.

It is said in the *Kambour Case*, 77 N H at page 47, that "volens means wishing, not willing; and it by no means follows from the fact that a person is willing to chance being injured, that he wishes, or even is willing to be injured." Whether volens means wishing rather than willing may be questioned, but if one may be willing to chance being injured, he at least is willing to be injured rather than not take the chance of it, for otherwise his action would not be taken. *Smith v Twin State Gas & Electric Co.* 83 NH 439, 61 ALR 1015, 144 A 57.

**volenti non fit injuria** (vo-len'ti non fit in-jū'ri-a). One is not legally injured if he has consented to the act complained of or was willing that it should occur. Anno: 17 ALR2d 348, § 3. The maxim upon which the principal of assumption of risk is based. 35 Am J1st M & S § 293.

The maxim is frequently applied to a plaintiff who is complaining of a nuisance to which he voluntarily exposed himself. 39 Am J1st Nuis § 196. If a vendee blindly trusts where he should not and closes his eyes where ordinary prudence requires him to see, he is willing to be deceived, and the maxim applies. 55 Am J1st V & P § 67.

**volition.** Choice or determination by one's own will.

See **rational volition**.

**volitional insanity.** Irresistible impulse. 26 Am J1st Homi §§ 78, 80.

**volo** (vo'lō). I will; I wish.

**Volstead Act** (vol'sted akt). The federal statute which established national prohibition of the liquor traffic under the Eighteenth Amendment to the